



Te Tūāpapa Kura Kāinga
Ministry of Housing and Urban Development

Residential Development Underwrite Agreement

in relation to **[insert description of Development]**

between

[Developer] (Developer)

and

The Sovereign in right of New Zealand acting by and through the Chief Executive of Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (**Crown**)

[APPROVED TEMPLATE DATED 14 MARCH 2025]

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Date

Parties

Name **[Developer]** (Developer)

Name **The Sovereign in right of New Zealand acting by and through the Chief Executive of Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (NZBN 9429047143937) (Crown)**

Background

- A The Crown is offering qualifying residential developments a partial underwrite to assist developers with achieving the pre-sales needed to secure development finance and maintain momentum to continue at pace with resource consented, costed and ready-to-commence projects. This initiative supports the residential construction sector to maintain construction activity, retain sector expertise and continue investment in housing supply to meet the market when demand improves.
- B The Developer [owns a freehold interest in the Land][**has entered into an unconditional/conditional contract to purchase the Land**] and has all required resource consents for the Development.
- C The Developer is undertaking the Development of the Homes on the Land and the subdivision of the Land into the Lots.
- D The Crown has agreed to provide an Underwrite on the terms and conditions of this agreement.
- E The Developer may require the Crown to purchase certain Unsold Homes on the terms and conditions of this agreement.

Agreed terms

1. Defined terms, references and interpretation

1.1 Defined terms

In this agreement:

Anticipated Marketing Date means the date set out in Schedule 1.

Approved Pre-sale Agreement means the form of agreement for the sale of Underwritten Homes approved by the Crown under clause 4.3.

Confidential Information means information that:

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

Crown Sale Agreement means an agreement for the sale of Underwritten Homes to the Crown following the Developer's valid exercise of the Underwrite in the form set out in Schedule 3 (amended as necessary to include details of the relevant Underwritten Home and the Underwrite Price).

Development means the development described in Schedule 1.

Direct Deed means a deed between the Developer, the Crown and any party holding or proposing to take security over the Land or the Development.

Force Majeure Cancellation Date means the date that is set out in Schedule 1.

Force Majeure Event means an extraordinary occurrence or act of God that could not have been foreseen and that could not have been avoided including earthquake, flood and fire for which provision could not reasonably have been made, war, invasion, act of hostilities (whether or not war is declared), civil disturbance, insurrection, martial law, act of terrorism, epidemic, national emergency or confiscation by order of any regulatory authority and national strikes.

GST means goods and services tax under the *Goods and Services Tax Act 1985*.

Home means any home on any Lot.

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

- (a) the presentation of an application for liquidation of the Developer that is not discharged within 20 Working Days of its filing or that is not demonstrated to the Crown prior to the expiry of that 20 Working Day period as being an application that is frivolous or vexatious;
- (b) any step taken in or toward the making of any compromise, proposal or deed of arrangement with all or some of the Developer's creditors;
- (c) the appointment of a liquidator, receiver, statutory manager, administrator or similar official to the Developer;
- (d) the suspension or threatened suspension by the Developer of the payment of the Developer's debts;
- (e) the cessation by the Developer of the whole, or any relevant part, of the Developer's business in New Zealand;
- (f) the enforcement of any security against the whole, a substantial or any relevant part of the Developer's assets; or
- (g) any other insolvency event or proceedings analogous to any of the foregoing occurring in any relevant jurisdiction.

Land means the land described in Schedule 1.

Lot means each lot or unit within the Development to be contained in a separate record of title on completion of the Development.

Master Plan means the master plan for the Development set out in Schedule 4.

Material Variation means, in respect of the Master Plan or Outline Plans and Specifications, any variation that:

- (a) requires a variation to the resource consent in respect of the Development; or
- (b) materially diminishes the value of any Home or the quality of a Home.
- (c) results in an increase or decrease in the floor area of any Home or the area of any Lot on which a Home is located of 5% or more measured in accordance with the then current edition of "The Guide for the Measurement of Residential Properties" published by the Property Council New Zealand / Property Institute,

and excludes the substitution of any materials, finishes, products or systems specified in the Outline Plans and Specifications with alternative materials, finishes, products or systems of a kind and nature as near as reasonably practicable to the specified material, finish, product or system where that substitution does not materially diminish the value of the Home or the quality of the Home.

Non-Underwritten Home means a Home that is not an Underwritten Home.

Notice means a notice, demand, consent, approval or communication.

Outline Plans and Specifications means the outline plans and specifications (including landscaping plans, where applicable) for each Home and the Development attached to this agreement as Schedule 5.

PCG means a project control group established by the Developer to monitor progress of the Development, which may include the Developer's representative and the Developer's contractor, project manager, architect, quantity surveyor or other similar consultants.

Pre-sale Agreement means a written agreement between the Developer as vendor and a purchaser that is not the Crown in respect of the sale of a Home.

Pre-sale Settlement Conditions means the following conditions that the Developer is required to achieve in completing the Homes and the Development:

- (a) the relevant building consent authority having issued a code compliance certificate for the relevant Home (as those terms are defined in the *Building Act 2004*); and
- (b) Land Information New Zealand having issued a separate record of title for the relevant Home.
- (c) **[Insert any other agreed conditions]**

Records means all information held by the Developer in connection with the Development and the Developer's performance of its obligations under this agreement irrespective of the form of that information, including (for the avoidance of doubt) all agreements entered into by the Developer for the sale of Homes.

Report has the meaning given to it in clause 6.5.

Sunset Date means the date set out in Schedule 1 (subject to extension under clause 7.3).

Target Commencement Date means the target date for the Developer to commence construction of the Homes set out in Schedule 1.

Target Completion Date means the target date for the Developer to meet the Pre-sale Settlement Conditions for all Homes set out in Schedule 1 (subject to extension under clause 7.3)

Underwrite means the Developer's right to require the Crown to purchase any Underwritten Home specified in a valid Underwrite Notice as set out in clause 5.1.

Underwrite Date means the date referred to in Schedule 1, as that date may be varied in accordance with clause 4.2(c)(ii).

Underwrite Notice means a written notice served under clause 5.1 in the form set out in Schedule 2.

Underwrite Price means, in respect of any Underwritten Home, the price payable on the exercise of the Underwrite as set out in Schedule 1 (plus GST, if any).

Underwritten Home means a Home that is listed as an Underwritten Home in Schedule 1.

Unsold Home means an Underwritten Home that is not the subject of a Pre-sale Agreement.

Working Day means any day of the week other than:

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, Labour Day, Waitangi Day and each of the Auckland and Wellington provincial anniversary days; and
- (b) any day in the period commencing on 24 December in any year and ending on 15 January in the following year, both days inclusive.

1.2 References

A reference in this agreement to:

- (a) **\$** means the lawful currency of New Zealand;
- (b) an **agreement** includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (c) **at any time** includes from time to time;
- (d) **including** and similar expressions do not limit what else may be included;
- (e) **law** includes any common law, equity and any statute; and
- (f) a **person** includes:
 - (i) an individual, body corporate, association of persons (whether corporate or not), trust, state, agency of state and any other entity (in each case, whether or not having separate legal personality; and
 - (ii) that person's successors, permitted assigns, executors and administrators (as applicable).

1.3 Interpretation

In this agreement:

- (a) headings are for reference only and do not affect interpretation;
- (b) references to clauses, schedules and appendices are to those in this agreement, and a reference to this agreement includes any schedule or appendix;

- (c) reference to a document or agreement includes that document or agreement as extended, novated, altered, amended, supplemented or replaced from time to time;
- (d) reference to any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (e) reference to legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (f) the singular includes the plural and vice versa, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (g) unless stated otherwise, anything (other than making a payment) required to be done on or by a day which is not a Working Day, will be done on or by the next Working Day;
- (h) reference to time is to New Zealand time unless stated otherwise; and
- (i) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting.

2. Conditions

2.1 Developer conditions

This agreement is conditional on the Developer:

completing its purchase and becoming the registered owner of the Land by 5pm on [date to be inserted];

- (a) entering into on terms and conditions satisfactory in all respects to the Developer (acting reasonably) a construction contract for the construction of the Development by 5pm on [date to be inserted]; and
- (b) obtaining on terms and conditions satisfactory in all respects to the Developer (acting reasonably) funding in order to undertake and complete the Development by 5pm on [date to be inserted].]

[To be amended to reflect the agreed terms]

2.2 Benefit of conditions

- (a) The conditions in clause 2.1 are inserted for the benefit of both parties and may not be waived by one party unilaterally.
- (b) If a condition in clause 2.1 is not satisfied by the date for satisfaction, then either party may at any time before the relevant condition is satisfied cancel this agreement by written notice to the other party and neither party will have any claim against the other except for any earlier breach of this agreement.

3. Development of Homes

3.1 Basis for Underwrite

The Developer acknowledges that the Crown agrees to provide the Underwrite on the basis that:

- (a) the Development will be completed in accordance with the Master Plan (subject to variations permitted by this agreement);
- (b) the Homes will be completed in accordance with the Outline Plans and Specifications (subject to variations permitted by this agreement); and
- (c) the Developer will use reasonable endeavours to achieve all Pre-sale Settlement Conditions for all Homes on or before the Target Completion Date,

and, subject to the terms and conditions of this agreement, the Developer undertakes to the Crown to complete the Development on the above basis.

3.2 Variations to Development

- (a) The Developer will not:
 - (i) vary the number of Homes or the Target Completion Date in any circumstances; or
 - (ii) make any Material Variation without obtaining the Crown's prior written approval.
- (b) For the purposes of clause 3.2(a)(ii) the Crown will give the Developer written notice of whether the Crown approves the proposed variation within 15 Working Days of receiving the Developer's written request for approval. The Crown will act reasonably in deciding whether to approve any proposed variation.
- (c) For the avoidance of doubt, the Developer may make a variation to the Master Plan or the Outline Plans and Specifications that is not a Material Variation without obtaining the Crown's prior written approval.

3.3 Direct Deed

In order to secure the Developer's undertaking in clause 3.1, the Developer will enter into and procure any party holding or proposing to take security over the Land or the Development to enter into the Direct Deed.

3.4 Easements, encumbrances, rights and obligations

- (a) The Developer will not register on the record(s) of title for the Land any easement, covenant, right, lease or licence, building line restriction, encumbrance or other instrument affecting the Land (**New Interest**) if the New Interest decreases the value or marketability of any Home or requires

the owner of any Home to pay any joining fee for or levies to a residents' society.

- (b) The Developer's obligation in this clause 3.4(a) does not extend to any interest or instrument:
 - (i) registered on the record(s) of title to the Land as at the date of this agreement;
 - (ii) required under the terms of the Developer's resource consent for the Development or by any network utility operator; or
 - (iii) the location and terms of which are provided for or contemplated in the Master Plan (as may be varied in accordance with this agreement).

4. Marketing and sale of Homes

4.1 Sale of Homes

The Developer:

- (a) acknowledges and agrees that the Crown requires all Underwritten Homes to be initially marketed and, where possible, sold to purchasers other than the Crown;
- (b) will use all reasonable endeavours to sell the Underwritten Homes to such purchasers.

4.2 Marketing requirements

- (a) The parties agree that:
 - (i) the date on which any Home is to be launched to market will be mutually agreed between the Crown and the Developer (both acting reasonably), with the expected date being the Anticipated Marketing Date; and
 - (ii) the Developer's marketing obligations for any Underwritten Home will cease on the earlier of the date on which the Developer:
 - (aa) enters into an unconditional Pre-sale Agreement for that Home; or
 - (bb) becomes entitled to exercise the Underwrite for that Home described in clause 5.1(a).
- (b) The Developer agrees that it will:
 - (i) market the Homes in accordance with standard marketing practices engaged for developments of a similar size to the Development and homes of a similar typology and price point to the Homes;

- (ii) market Non-Underwritten Homes and Underwritten Homes in substantially the same manner and will not offer any incentives or preferential terms in respect of Non-Underwritten Homes that are not also offered for Underwritten Homes; and
- (iii) ensure that:
 - (aa) any agent or salesperson engaged by the Developer for the sale of any Home under an agency agreement is licensed under the *Real Estate Agents Act 2008* and will comply with their duties under that Act; and
 - (bb) any person involved in the sale of any Home who is employed by or contracted directly to the Developer rather than through an agency agreement will follow the ethical principles of that Act even if they are not licensed under that Act. For the avoidance of any doubt, the Crown agrees that (subject to clause 4.2(b)(iii)(aa)) nothing in this clause requires any person involved in the sale of any Home who is employed by or contracted directly to the Developer to become licenced under the Act.
- (c) If the Crown considers (at its discretion) the Developer's marketing of any Home to be inconsistent with any of the Developer's obligations under clauses 4.2(a) and (b), the Crown may:
 - (i) require the Developer to change or cease its marketing of that Home until the Crown is satisfied that the Developer's marketing of that Home is consistent with those obligations; and/or
 - (ii) On giving 5 Working Days' notice, defer the Underwrite Date for such period as the Crown may determine in its absolute discretion, but in no case for more than 90 Working Days.

4.3 Approved Pre-sale Agreement

- (a) The Developer will provide the Crown with its form of pre-sale agreement (for the pre-sale of any Underwritten Home) upon this agreement being signed.
- (b) The Crown will give its approval promptly after receiving the form of pre-sale agreement from the Developer where the Crown is satisfied (acting reasonably) that the form of pre-sale agreement is consistent with and properly reflects the Developer's obligations under this agreement.
- (c) The Developer warrants that the Developer will not vary or agree to vary the Approved Pre-sale Agreement when entering into a Pre-sale Agreement for an Underwritten Home without obtaining the Crown's prior written approval of that variation (not to be unreasonably withheld). For the avoidance of any doubt, the Crown agrees that its consent is not required under this clause where a variation is requested by the solicitor for the purchaser under a Pre-Sale Agreement for an Underwritten Home, and such variation is in accordance with standard pre-sale agreement terms or practices.

5. Exercise of Underwrite

5.1 Service of Underwrite Notice

The Developer may serve an Underwrite Notice on the Crown on or after the Underwrite Date if, as at the date of the Underwrite Notice:

- (a) the Underwritten Home specified in the Underwrite Notice is an Unsold Home at any time on or after the Underwrite Date;
- (b) the Developer certifies to the Crown in a form acceptable to the Crown that:
 - (i) the Developer has not varied any aspect of the Development restricted under clause 3.2 other than in accordance with clause 3.2; and
 - (ii) the Underwritten Home specified in the Underwrite Notice has been completed and constructed in accordance with the Outline Plans and Specifications and in accordance with sound construction and engineering practice; and
 - (iii) the Developer has, to the best of its knowledge and belief having used due diligence to ascertain, complied with the marketing obligations in clause 4.2(b);
- (c) the Developer has entered into and has procured any party holding or proposing to take security over the Land or the Development to enter into the Direct Deed; and
- (d) the Underwrite has not expired under clause 5.3.

5.2 Effect of Underwrite Notice

If the Developer serves a valid Underwrite Notice on the Crown, then in respect of the Underwritten Home specified in the Underwrite Notice:

- (a) the Developer and the Crown will enter into a Crown Sale Agreement as vendor and purchaser respectively within 10 Working Days of the date of the Underwrite Notice (with the Developer to prepare the Crown Sale Agreement at the Developer's cost);
- (b) the purchase price payable by the Crown to the Developer under the Crown Sale Agreement will be the Underwrite Price; and
- (c) the settlement date under the Crown Sale Agreement will be the date that is 10 Working Days after it is signed by both parties.

5.3 Expiry of Underwrite

The Underwrite will expire immediately in the following circumstances:

- (a) in respect of all Underwritten Homes, if the Developer does not achieve all Pre-sale Settlement Conditions for all Homes on or before the Sunset Date; or
- (b) in respect of any Underwritten Home, on the date that is three months after the Underwrite Date.

5.4 Assignment of Crown Sale Agreement

The Developer acknowledges that the Crown may assign its interest in any Crown Sale Agreement to any other person (but, for the avoidance of doubt, that assignment will not release the Crown from liability under the Crown Sale Agreement). The Developer will sign all documentation reasonably required by the Crown to give effect to any such assignment.

6. Communications, reporting and audit

6.1 No surprises

The Developer acknowledges that it is important to the Crown that the Developer consults with the Crown continuously throughout the Development and keeps the Crown informed about any:

- (a) act, omission, matter or thing that might, or might reasonably be perceived to, affect in any material way the completion of the Development so that the Crown is “not surprised” by that act, omission, matter or thing; and
- (b) other act, omission, matter or thing relating to the Development as reasonably required by the Crown.

6.2 Communications

The Developer will:

- (a) fully brief the Crown (including providing a copy of any communications) at least 24 hours’ before releasing any communications relating to the Development (including any media statement or advisory or any notice to a stock exchange or regulatory authority (which notice must be at least one hour prior to that notice being issued)); and
- (b) before releasing any communications, in good faith, consider and take account of any comments received by the Developer from the Crown in respect of those communications, including any comments on the need for and proposed extent of the disclosure.

6.3 Assistance

The Developer will provide all reasonable advice and assistance to the Crown to enable the Crown to understand any aspect of the Development including any particular documentation produced by the Developer.

6.4 Crown right to inspect and attend PCG meetings

- (a) At any time after this agreement becomes unconditional, the Crown may, on reasonable prior notice (except in the case of an emergency), access the Land for the purpose of inspecting the progress of the Development and ensuring that the Development is being completed in accordance with this agreement. In doing so, the Crown will comply with the Developer's health and safety plans in place and have regard to any hazard notifications affecting the Land and the Development.
- (b) The Developer may refuse access to, or limit access to parts of, the Land:
 - (i) if the required time for accessing the Land would coincide with the undertaking of any works that the Developer considers to have an unacceptable hazard or risk level for any person exercising those access rights; or
 - (ii) where any Home has been sold and transferred to a third party.
- (c) Where the Developer has established a PCG for the Development, the Developer will allow the Crown to attend PCG meetings for the purposes of determining the progress of the Development and ensuring that the Development is being completed in accordance with this agreement.
- (d) Where the Developer has not established a PCG for the Development, the Developer will meet with the Crown when reasonably required by the Crown for the purposes of determining the progress of the Development and ensuring that the Development is being completed in accordance with this agreement.

6.5 Reporting by Developer

The Developer will provide a report to the Crown (**Report**), to be submitted monthly on the first Tuesday of each month to the Crown's address for notices, with a first Report being due no later than one month after the date of this agreement, setting out details of:

- (a) the marketing programme for the Development, the market response to that marketing programme and any changes to that marketing programme;
- (b) the progress and status of sales of the Homes, including:
- (c) a schedule setting out details of all Pre-sale Agreements entered into by the Developer (including a description of the relevant Home and the date for satisfaction of any conditions, whether any conditions have been satisfied, the sunset date (if any), the settlement date and the purchase price);

- (i) any Pre-sale Agreement that fails to go unconditional or, once unconditional, fails to settle in accordance with its terms;
 - (ii) any settlement of a Home expected to complete in the coming month; and
 - (iii) the number of Underwritten Homes that are Unsold Homes;
- (d) the progress and status of the works to complete the Development, including:
- (i) the preparation of applications for building consents for the Development and their submission and progress, including the views of, and negotiations with, the relevant authorities and the building consent number for each Home when issued;
 - (ii) any proposed variation to the Master Plan or the Outline Plans and Specifications, irrespective of whether that variation may constitute a Material Variation;
 - (iii) the development and preparation of each stage of the design documentation for the Development;
 - (iv) the programme for the Development and changes to the programme, including the extent to which the Developer is meeting or likely to meet the Target Commencement Date and the Target Completion Date;
 - (v) the subdivision of the Land into the Lots;
 - (vi) infrastructure development and construction activity on the Land;
 - (vii) any deaths, injuries, near misses, dangerous situations, minor mishaps, lost time incidents and accidents on the Land or arising from or in connection with the Development; and
 - (viii) anything not covered by clause 6.5(c)(vii) that might reasonably be expected to:
 - (aa) affect the performance by the Crown of its duties under the Health and Safety at Work Act 2015; or
 - (bb) result in the Crown incurring any liability (whether civil or criminal);
- (e) any disputes relating to the Development that are pending resolution; and
- (f) any other matter relating to the marketing and sale of the Homes or the progress of the Development reasonably requested by the Crown.

6.6 Notice by the Crown

The Crown will use reasonable endeavours to notify the Developer if the Crown becomes aware of any defect or omission in, or any other occurrence material to,

the Developer's performance of its obligations under this agreement that could lead to an Underwrite Notice being considered invalid by the Crown. For the avoidance of doubt, the Crown will not have any liability to the Developer if it fails to comply with this clause.

6.7 Maintenance and retention of Records

The Developer will ensure that the Records are kept up-to-date at all times and are held in an appropriate form and in a location suitable for the Records in question.

6.8 Audit rights

The Crown may review, investigate and formally audit the Records and/or any Report received by the Crown. The Developer will fully cooperate and provide all reasonable assistance with any such review, investigation or audit to the extent it is able to so at law. The costs of any review, investigation or audit under this clause will be paid by the Crown except in the case of manifest error by the Developer in the Records, in which case the costs will be paid by the Developer.

7. Force majeure

7.1 Delay caused by Force Majeure Event

Neither party will be liable for any failure or delay in complying with any obligation imposed on that party under this agreement if:

- (a) the failure or delay arises directly from a Force Majeure Event;
- (b) the affected party gives the other party written notice of the delay as soon as possible, but no later than ten (10) Working Days after becoming aware of the cause or likelihood of the cause of the delay and providing details of the nature, expected duration and effect of the cause and keeps the other party informed of any changes in the nature of the cause and of the cessation of the cause;
- (c) the affected party uses its best endeavours to mitigate the effects of the cause of the delay; and
- (d) the affected party uses its best endeavours to perform its obligations under this agreement within the time specified by this agreement and continues to perform all obligations possible despite the cause.

7.2 Cancellation for delay

If, as a result of a Force Majeure Event, the Developer does not achieve all Pre-sale Settlement Conditions for all Homes on or before the relevant Force Majeure Cancellation Date, then either party may cancel this agreement by giving written notice to the other. Cancellation of this agreement under this clause will not prejudice any other rights and remedies of either party against the other party in respect of any matter or thing occurring under this agreement before or after that cancellation.

7.3 Underwrite remains in place if delay is caused by Force Majeure Event

Notwithstanding clause 5.3, if a Force Majeure Event occurs and the conditions in clauses 7.1(a) to (d) have been met:

- (a) the Target Completion Date and the Sunset Date will be extended by an equivalent time of the delay; and
- (b) the Underwrite will not expire under clause 5.3(a) unless this agreement has been cancelled in accordance with clause 7.2.

7.4 Insolvency

Except as provided in the Direct Deed, the Crown acknowledges and confirms that the occurrence of an Insolvency Event in respect of the Developer does not void or terminate this agreement or the obligations of the Crown under this agreement.

8. Confidentiality

8.1 Protection of Confidential Information

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

- (a) to the extent that use or disclosure is necessary for the purposes of performing its obligations under this agreement; or
- (b) if the other party gives prior written approval to the use or disclosure; or
- (c) if the use or disclosure is required by law (including under the *Official Information Act 1982* (the **OIA**)), Ministers or parliamentary convention; or
- (d) in relation to disclosure, if the information has already become public, other than through a breach of the obligation of confidentiality by one of the parties; or
- (e) disclosures to professional advisers and affiliates, financiers and contractors; or
- (f) disclosures in defence of legal proceedings brought against any person.

8.2 Official Information Act

In relation to clause 8.1(c) above, each party acknowledges that the Crown is or may be subject to the OIA and that the Crown is obliged to disclose the terms and the existence of this agreement or other Confidential Information if so requested and if there is no good reason under the OIA to withhold that Confidential Information. The Crown will use reasonable endeavours to notify the Developer of any request received by the Crown under the OIA that relates to the terms and the

existence of this agreement or other Confidential Information and the response to be given to that request.

8.3 Obligation to inform staff

Each party will ensure that its personnel:

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

9. Notices

9.1 Service

A Notice given by a party in connection with this agreement must be:

- (a) in writing, in English and signed by an authorised representative of the party; and
- (b) hand delivered or sent by email to the recipient's address for notices specified in Schedule 1, as varied by any Notice given by the recipient to the party.

9.2 Effective on receipt

A Notice given in accordance with clause 9.1 takes effect when received (or at a later time specified in it) and is taken to be received:

- (a) if hand delivered, on delivery; or
- (b) if sent by email, when the recipient acknowledges receipt (system generated read receipts excluded),

but if the delivery or receipt is not on a Working Day or is after 5pm on a Working Day, the Notice is taken to be received at 9am on the next Working Day.

9.3 Other methods

This clause does not limit any other method for giving Notices provided for by law.

10. Dispute resolution

10.1 Parties to act in good faith

The parties will, both in their day-to-day interactions with each other and in performing their obligations under this agreement, act in good faith to each other.

10.2 Resolution by the parties

Notwithstanding clause 10.1, if any dispute or difference arises between the parties touching or concerning this agreement or anything to be done under this agreement, that dispute or difference will be dealt with as follows:

- (a) The parties will endeavour in good faith to resolve the dispute expeditiously by the parties' nominated representatives meeting promptly (and in any event no later than 10 Working Days after the nominated representatives have been informed of the dispute) and using their reasonable endeavours to resolve the dispute.
- (b) If agreement is not reached within 10 Working Days of the parties' nominated representatives first meeting to resolve the dispute under clause 10.2(a), then the parties will endeavour in good faith to resolve the dispute expeditiously by the parties' respective chief executive officers or senior manager (**CEOs**) meeting promptly (and in any event no later than 10 Working Days after the CEOs have been informed of the dispute) and using their reasonable endeavours to resolve the dispute.
- (c) If agreement is not reached within 10 Working Days of the CEOs' first meeting to resolve the dispute under clause 10.2(b), then the parties will refer the dispute to mediation and use reasonable endeavours to resolve the dispute by mediation, with the rules governing the mediation being those included in the Resolution Institute standard mediation agreement. The mediator will be a person agreed by the parties. Failing agreement, the mediator will be appointed by the Chair for the time being of the Resolution Institute.

10.3 Commencement of arbitration

Where a dispute is not resolved within 10 Working Days of a mediation being held under clause 10.2(c), then either party may, by written notice to the other party, require the dispute to proceed to arbitration under clause 10.4.

10.4 Arbitration

Any reference to arbitration will be determined by a single arbitrator appointed by the parties (or, failing agreement within five Working Days, appointed by the then Chair of the Resolution Institute at the request of either party) in accordance with the *Arbitration Act 1996*.

10.5 Award final and binding

The award in any arbitration under clause 10.4 is final and binding on the parties but the parties agree that clauses 4 and 5 of the Second Schedule to the *Arbitration Act 1996* apply.

10.6 Privileged and confidential communications

The parties acknowledge that all communications between them in the course of negotiations in respect of any matter that may be in dispute under this agreement are subject to clause 8.

11. General provisions

11.1 Costs

Each party will pay its own costs of preparing, negotiating and entering into this agreement.

11.2 No assignment

- (a) The Developer will not:
 - (i) transfer or agree to transfer its interest in the Land or any Lot (other than the sale of a Home to a purchaser); or
 - (ii) assign or agree to assign its interest in this agreement, before completing the sale of all Homes to either purchasers other than the Crown under Pre-sale Agreements or the Crown under this agreement.
- (b) Notwithstanding clause (a) the Developer may, without the consent of the Crown, assign its interest in this agreement (whether by way of security or otherwise) to its financiers provided that the Developer has entered into and has procured that financier proposing to take security over this agreement to enter into the Direct Deed.

11.3 Change in control

The following events will be deemed to be an assignment of the Developer's interest in this agreement for the purposes of clause 11.2(a)(ii):

- (a) where the Developer is a company, any:
 - (i) change in the legal or beneficial ownership of the Developer's shares or the shares of any of its parent companies; or
 - (ii) issue of new capital in the Developer or any of its parent companies, that results in a change in the effective management or control of the Developer; and
- (b) where the Developer is a limited partnership, any:
 - (i) change in:
 - (aa) the number of limited partners that are part of the Developer;
 - (bb) a limited partner's partnership interest in the Developer;

- (cc) the legal or beneficial ownership of the general partner's shares or the shares of any of the general partner's parent companies; or
 - (ii) issue of new capital in the general partner or any of the general partner's parent companies or
 - (iii) assignment of the general partner's rights and powers in respect of the Developer,
- that results in a change in the effective management or control of the Developer.

11.4 Overseas Investment Act 2005 warranty

The Developer warrants that either the Developer:

- (a) has obtained consent to acquire the Land under the *Overseas Investment Act 2005*; or
- (b) does not require consent under the *Overseas Investment Act 2005* to acquire the Land.

11.5 Compliance with laws

In completing the Development and otherwise complying with its obligations under this agreement, the Developer will at all times (and at its cost) comply strictly with the requirements of all relevant laws, including (without limitation) the *Building Act 2004*, the *Resource Management Act 1991*, the *Health and Safety at Work Act 2015*, the *Privacy Act 2020*, the *Consumer Guarantees Act 1993* and the *Fair Trading Act 1986*.

11.6 Lowest price

For the purposes of the financial arrangement rules in the *Income Tax Act 2007*, the parties agree that to the extent that the Crown pays the Underwrite Price for any Underwritten Home, the Underwrite Price for that Underwritten Home:

- (a) is the lowest price they would have agreed for that Underwritten Home on the date of this agreement; and
- (b) does not contain any capitalised interest or discount component.

11.7 Severability

A provision of this agreement that is illegal, invalid or unenforceable is ineffective to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of the remainder of the agreement.

11.8 Variation

A variation of this agreement must be in writing and signed by or on behalf of each party.

11.9 Entire agreement

This agreement constitutes the entire agreement between the parties and supersedes all or any other prior oral or written understandings, representations or commitments at any time express or implied.

11.10 Further assurances

Each party will do all acts and things, including the execution of all relevant documents, as may be reasonable to implement and carry out its obligations under, and contemplated by, this agreement.

11.11 Governing law

This agreement is governed by the laws of New Zealand.

11.12 Counterparts

This agreement may be executed in any number of counterparts. Each counterpart constitutes an original of this agreement, all of which together constitute one instrument. A party who has executed a counterpart of this agreement may exchange it with another party by emailing a scanned copy of the executed counterpart to that other party.

Signing page

EXECUTED as an agreement

[DEVELOPER] by:

Signature of authorised signatory

Name of authorised signatory

**THE SOVEREIGN IN RIGHT OF NEW
ZEALAND ACTING BY AND
THROUGH THE CHIEF EXECUTIVE OF
TE TŪĀPAPA KURA KĀINGA -
MINISTRY OF HOUSING AND URBAN
DEVELOPMENT** by:

Signature of authorised signatory

Name of authorised signatory

Example

Schedule 1 – Key Details

Development				The development of the Land into <input checked="" type="checkbox"/> Homes substantially on the terms specified in this agreement and the subdivision of the Land into the Lots in accordance with the Master Plan, together with all supporting infrastructure and services. <input type="checkbox"/> Homes are Underwritten Homes and <input type="checkbox"/> are Non-Underwritten Homes.				
Land				[insert address] being all of the land comprised in Record of Title <input checked="" type="checkbox"/> , being legally described as <input type="checkbox"/> and having an area of <input type="checkbox"/> (more or less)				
Underwritten Homes								
Unit/Lot No	Typology	GF A (m ²)	Carparking	Target Commencement Date	Target Completion Date	Sunset Date	Underwrite Price (Incl. GST)	Underwrite Price (excl. GST)
Anticipated Marketing Date						[Already commenced][date]		
Target Commencement Date						<input type="checkbox"/> 2025		
Target Completion Date						<input type="checkbox"/>		
Underwrite Date						The date that is <input checked="" type="checkbox"/> Working Days after the date that the Developer achieves all Pre-sale		

		Settlement Conditions for all Homes	
Sunset Date		The date that is [] months after the Target Completion Date	
Force Majeure Cancellation Date		The date that is [x] months after the Target Completion Date	
Addresses for Notices	Crown	Address	Level 7, 7 Waterloo Quay PO Box 82 WELLINGTON 6011
		Attention	Fiona Coughlan
		Email	fiona.coughlan@hud.govt.nz and to RDU@hud.govt.nz
	Developer	Address	[]
		Attention	[]
		Email	[]

Example

Schedule 2 – Form of Underwrite Notice

To: The Sovereign in right of New Zealand acting by and through the Chief Executive of Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development (the **Crown**)

Address: Level 7, 7 Waterloo Quay, Wellington 6011

Email: [TBC]

Attention: [TBC]

From: [Insert name of Developer]

Date: [Insert date]

Underwrite Notice – [insert description of Development]

1. This is an Underwrite Notice for the purposes of clause 5.1 of the Underwrite Agreement dated [date] (the **Agreement**).
2. This Underwrite Notice relates to the Underwritten Homes specified in the schedule to this Underwrite Notice (each an **Underwritten Home** and together the **Underwritten Homes**).
3. I certify on behalf of the Developer that, as at the date of this Underwrite Notice:
 - (b) each Underwritten Home remains an Unsold Home;
 - (c) the Underwrite Date has passed;
 - (d) the Developer has not varied any aspect of the Development restricted under clause 3.2 of the Agreement other than in accordance with that clause 3.2;
 - (e) each Underwritten Home and the Development has been completed in accordance with the Outline Plans and Specifications and in accordance with sound construction and engineering practice;
 - (f) the Developer has complied with its obligations in clause 3.4 of the Agreement;
 - (g) the Developer, to the best of its knowledge and belief having used due diligence to ascertain, has complied with its obligations in clause 4.2.b of the Agreement;
 - (h) *the Developer has entered into and has procured any party holding or proposing to take security over the Land or the Development to enter into the Direct Deed; and*

- (i) the Underwrite has not expired under clause 5.3 of the Agreement.
- 4. The Crown is now required to enter into a Crown Sale Agreement with the Developer for each Underwritten Home in accordance with clause 5.2 of the Agreement.
- 5. Except where defined in this Underwrite Notice, capitalised terms used in this Underwrite Notice have the meanings given to them in the Agreement.

[DEVELOPER] by:

Signature of authorised signatory

Name of authorised signatory

Schedule

Description of Underwritten Home	Underwrite Price (plus GST, if any)

Schedule 3 – Form of Crown Sale Agreement

Example

Schedule 4 – Master Plan

Example

Schedule 5 – Outline Plans and Specifications

Example

Schedule 6 – Form of Direct Agreement

Example