

Contract Framework Update # 1: Indemnity under Relationship Agreement – 17 December 2018

1. Introduction

Following the recent workshops between the Ministry of Housing and Urban Development (**HUD**) and public housing providers (**Providers**) in relation to HUD's new Public Housing Contract Framework, HUD has given further consideration to the indemnity which sits in clause 17 of the Relationship Agreement with the assistance of sector participants.

With effect from 13 December 2018, the indemnity in clause 17 will be narrowed. Any Provider that has already signed a Relationship Agreement will be offered a Variation to ensure it gains the benefit of this amended clause.

2. Summary of Change

In summary, the indemnity will now only come into play where the Provider has breached the Relationship Agreement or a Services Agreement or it has acted, or omitted to act, in a reckless or negligent manner.

The limitations remain the same, with the Provider importantly only indemnifying to the extent of its contribution to the loss caused.

Appendix – New clause 17

17. INDEMNITIES

17.1 General indemnities

Subject to clause 17.3 and except where the Provider is Housing New Zealand Corporation (or any other relevant Crown entity or Public Finance Act Schedule 4A company that provides housing services to HUD), the Provider will indemnify HUD and all HUD Personnel from and against all Claims, Losses and Liabilities arising from:

- (a) death or personal injury;
- (b) loss of or damage to any property:
 - (i) belonging to HUD or for which HUD is responsible; or
 - (ii) belonging to any third party;
- (c) breach of statutory duty; and
- (d) third party Claims made against HUD or any HUD Personnel,

arising from or in connection with:

- (e) the Provider's breach of this Agreement or any Services Agreement;
- (f) any reckless, negligent act or omission of the Provider;
- (g) to the extent permitted by Law, any Provider breach of Law; or
- (h) an Intellectual Property Claim (other than as a result of HUD engaging in any modification or updating of any Provider Intellectual Property Material or any breach by HUD of a licence under clause 16.4).

17.2 Release of Indemnified Parties

HUD and HUD Personnel will have no responsibility or liability to the Provider or any of its related companies or related entities (or any of its or their officers, employees, contractors, sub-contractors or agents) in connection with any Claims, Losses or Liabilities arising from the Provider's or any of its related companies' or related entities' (or any of its or their officers, employees', contractors', sub-contractor' or agents') use or occupation of any Property, and to the extent permitted by law and subject to clause 17.3 the Provider absolutely releases each of them from any such liability.

17.3 Limits on indemnity cover

The Provider's liability to indemnify HUD or any HUD Personnel shall be reduced proportionately to the extent that the Claims, Losses and Liabilities result directly from:

- (a) the Provider acting in accordance with HUD's written directions from HUD's representatives on the Relationship Management Group implemented in accordance with this Agreement;
- (b) an unlawful, reckless or negligent act or omission of HUD or any HUD Personnel;
- (c) any HUD failure to perform under this Agreement or any Services Agreement; or
- (d) any valid claim of a Force Majeure Event.

17.4 Privity

Clauses 17 and 18 are (for the purposes of the Contract and Commercial Law Act 2017) intended to confer benefits in favour of, and be enforceable by, all relevant HUD Personnel.

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