

Service Agreement Template

Developed by Borden Ladner Gervais LLP
based on the Key Terms and Conditions established by the
Housing Strategy Steering Committee (HSSC) Service
Agreement Technical Table and
informed by Service Managers participating in the
Service Agreement Legal Services Bulk Procurement
facilitated by the Housing Services Corporation.

Background

The Province of Ontario amended the *Housing Services Act, 2011*, and O. Reg. 367/11 to enable Service Managers (SMs) / District Social Services Administration Boards (DSSABs) and Housing Providers to move from the legislated funding and compliance relationship to a new contractual relationship as provincially guaranteed mortgages are discharged.

An SM/DSSAB technical table worked over the summer of 2022 to develop Service Agreement Principles and suggested Key Terms and Conditions. The Key Terms and Conditions include mandatory provisions required under the HSA and optional clauses. That resource was not intended to cover all elements that may be included in a legal/contractual service agreement. It only includes housing related elements considered by the HSSC Service Agreement Technical Table to be of collective interest to SMs.

A group of SMs and DSSABs approached the Housing Services Corporation (HSC) to request that HSC procure and retain a lawyer to develop a standard Service Agreement Template (the Template) on behalf of the group. HSC issued a request for quotations and retained Borden Ladner Gervais (BLG) on behalf of the group. HSC facilitated meetings of participating SMs/DSSABs to establish the approach to the Template and to identify additional provisions to be included. Participating SMs/DSSABs had the opportunity to review the draft template and HSC provided their consolidated comments to BLG. BLG legal services costs were divided equally among the 37 participating SMs/DSSABs. HSC's services for the Template project were provided free of charge.

Confidentiality & Ownership Rights

The Template is owned by the 37 SMs/DSSABs who collectively funded the HSC procured legal services. Participating SMs/DSSABs can amend/adapt the template however they deem most appropriate for local use.

The Bulk Procurement Agreement executed by all participating SMs/DSSABs included a confidentiality provision. This template is accompanied by an opinion from BLG provided as confidential legal advice.

Instructions for Use

The HSA includes specific requirements for Service Agreements. Template provisions pertaining to these requirements are highlighted in grey. SMs/DSSABs may wish to seek legal advice before altering these provisions. Unless highlighted in grey, the housing elements of the template reflect the HSSC Principles/Key Terms and Conditions or priorities identified by participating SMs/DSSABs. Additional language was incorporated in the template to reflect SM/DSSAB comments, (*e.g. requirement for SM/DSSAB consent to encumbrances*). These elements may be deleted if not locally applicable.

Additional optional provisions, with recommended insertion points noted, are provided for SM/DSSAB reference at the end of the template. These additional pages do not form part of the agreement and should be deleted before circulation to a housing provider.

THIS PART VII.1 SERVICE AGREEMENT made as of the ____ day of _____, 20__.

B E T W E E N :

[INSERT NAME OF SERVICE MANAGER OR DISTRICT SOCIAL SERVICE ADMINISTRATION BOARD]

(the “**Service Manager**”)

OF THE FIRST PART

- and -

[INSERT NAME OF HOUSING PROVIDER]

(the “**Provider**”)

OF THE SECOND PART

WHEREAS:

- A. There are forty-seven (47) consolidated municipal service managers (“**CMSMs**”) and district social services administration boards (“**DSSABs**”) responsible for the funding and administration of community housing.
- B. CMSMs and DSSABs shall ensure that public funds are used responsibly to support a viable community housing system for future generations in line with local housing and homelessness plan.
- C. Non-profit and co-operative housing providers (“**Housing Providers**”) are essential partners to the CMSMs and DSSABs in meeting local need.
- D. CMSMs and DSSABs and Housing Providers share the mutual goals to protect, sustain and grow community housing assets across Ontario and have a shared responsibility to the public to facilitate, promote and deliver affordable housing.
- E. The system of funding and administering community (subsidized, social) housing in Ontario is governed by the *Housing Services Act*, 2011 (the “**Act**”).
- F. As part of the multi-year Community Housing Renewal Strategy, Ontario passed Bill 184, the *Protecting Tenants and Strengthening Community Housing Act*, 2020, which amended

the Act and Ontario Regulation 367/11 (“**O. Reg 367/11**”) by creating regulation-making authority to protect and grow affordable community housing supply, stabilize the sector, and ensure community housing is sustainable over the long-term for Ontarians.

- G. Part VII.1 of the Act and new provisions in O. Reg 367/11 outline a framework that allow the CMSMs and DSSABs to enter Part VII.1 service agreements with Housing Providers as the Housing Providers’ mortgages or operating agreements come to an end, as well as other non-profit Housing Providers that are not currently operating under the Act.
- H. Changes to the Act and to O. Reg 367/11 regarding Part VII.1 service agreements provide an opportunity to modernize the operating framework for community housing and to provide a set of flexible baseline funding and operational rules to support the continued delivery of community housing and ensure resident stability.
- I. CMSMs, DSSABs and Housing Providers wish to enter into agreements substantially in the form of this Service Agreement to:
 - i. maintain public accountability and compliance through streamlined, simplified, and transparent reporting processes that minimize administration burden wherever possible;
 - ii. create flexibility to establish an appropriate funding approach based on the unique circumstances of each Housing Provider to protect existing tenancies and deliver affordable, quality housing across the whole of the CMSMs and DSSABs portfolios;
 - iii. establish the conditions to support sustainability across the community housing system while ensuring Housing Providers are viable in all facets of their business including but not limited to stable tenancies, financial, asset management, governance and operations. This includes working together to advocate for permanent financial investments from senior levels of government;
 - iv. recognize and respect the historical investments made to establish the community housing assets and work together to protect, strengthen, and where possible grow the community housing system;

- v. promote growth and support solutions that modernize the system through capacity building, corporate restructuring (mergers and amalgamations), and new development; and
 - vi. collaborate to protect, preserve and grow the community housing system to deliver quality housing for residents in communities, while creating conditions that facilitate Housing Providers to be self-sustaining, autonomous and entrepreneurial.
- J. Parties wish to enter into this Service Agreement to govern the Provider’s operation of the Project and availability of funding from the Service Manager on the terms and conditions as set out herein;
- K. By entering into this Service Agreement, the Service Manager and the Provider confirm its intent for the Project to be governed by Part VII.I of the Act and cease to be a “designated housing project” under the Act.

NOW THEREFORE THIS SERVICE AGREEMENT WITNESSES that in consideration of the mutual covenants and agreements herein and subject to the terms and conditions set out in this Service Agreement, the parties agree as follows:

1. INTERPRETATION

- 1.1 In this Service Agreement, unless something in the subject matter or context is inconsistent therewith, the following terms shall have the following meanings:
- a. “**Act**” has the meaning ascribed thereto in the recitals;
 - b. “**Additional Contracts**” has the meaning ascribed to it in Section 8.4(e);
 - c. “**Applicable Law**” means, in respect of a person, property, transaction, event or other matter, as applicable, all present or future Law relating or applicable to that person, property, transaction, event or other matter, including any interpretation of Law by any Governmental Authority;

- d. “**Business Day**” means a day other than a Saturday, Sunday or statutory or declared holiday observed in Ontario and any other day on which the Service Manager’s offices is not open to the public;
- e. “**Claims**” has the meaning ascribed thereto in Section 11.1;
- f. “**CMSMs**” has the meaning ascribed thereto in the recitals;
- g. “**Cure Period**” has the meaning ascribed thereto in Section 12.1;
- h. “**DSSABs**” has the meaning ascribed thereto in the recitals;
- i. “**Encumbrance(s)**” means (i) any mortgage, charge, pledge, security interest, assignment, encumbrance, lien (statutory or otherwise), title retention agreement or arrangement, or any other arrangement or condition, that in substance secures payment or performance of an obligation, (ii) any attachment or judgment, and (iii) any agreement, option, lease, sublease, licence, easement, right-of-way, servitude, right to use, profit a prendre, restriction, restrictive covenant, by-law, regulation, ordinance, encroachment, title defect or irregularity, adverse claim, right or registration that creates, evidences or otherwise gives notice of an interest or right in or to, or that restricts or otherwise affects title to or the use of, real property.
- j. “**Event of Default**” has the meaning ascribed thereto in Section 12.1;
- k. “**Financial Plan**” means the financial plan agreed to by the Service Manager and Provider, prepared in accordance with Part VIII.I of O. Reg. 367/11 and attached hereto as Schedule “C”;
- l. “**Funds**” means the funds the Service Manager provides to the Provider pursuant to this Service Agreement and “Funding” has the same meaning;
- m. “**Governmental Authority**” means the government of Canada, province, territory, municipality, state any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, or the application, enforcement, or interpretation of Law;

- n. “**Households**” means those individuals who live in a unit(s) owned by the Provider, which for clarity include subsidized and non-subsidized households.
- o. “**Housing Provider**” has the meaning ascribed thereto in the recitals;
- p. “**Indemnitee**” and “**Indemnitees**” have the meanings ascribed thereto in Section 11.1;
- q. “**Information**” has the meaning ascribed to it in Section 8.1(o);
- r. “**Law**” means all laws, (including the common law), by-laws, ordinances, rules, statutes, regulations, treaties, orders, judgments and decrees, and all official directives, rules, guidelines, notices, approvals, orders, policies and other requirements of any Governmental Authority whether or not they have force of law;
- s. “**Market Rent**” means the amounts set out in Schedule “A”, as may be amended from time to time;
- t. “**Material Default**” means any default that is not cured within the Cure Period or as defined in Section 12.1;
- u. “**MFIPPA**” means the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56;
- v. “**MFIPPA and PIPEDA Compliance**” has the meaning ascribed to it in Section 19.3;
- w. “**Minister**” means the Minister of Municipal Affairs and Housing;
- x. “**Notice**” has the meaning ascribed thereto in Section 15.1;
- y. “**O. Reg 367/11**” means Ontario Regulation 367/11;
- z. “**Other Funds**” has the meaning ascribed thereto in Section 7.2;
- aa. “**Other Funding Agreements**” has the meaning ascribed thereto in Section 7.2;
- bb. “**Parties**” means the Service Manager and the Provider (and their respective successors and/or assigns) and each shall be individually known as a “**Party**”;

- cc. **“Permitted Encumbrance(s)”** means other matters affecting title to the Property as set out in Schedule “G”;
- dd. **“Personal Information”** shall mean “personal information” as defined in the MFIPPA and PIPEDA, respectively;
- ee. **“PIPEDA”** means the Personal Information Protection and Electronic Documents Act, S.C. 2000, c. 5
- ff. **“Project(s)”** means the housing project operated by the Provider, as more particularly described in Schedule “B” to this Service Agreement;
- gg. **“Property”** means the property on which the Project(s) is/are located, as more particularly set out in Schedule “B” to this Service Agreement;
- hh. **“Provider’s Records”** has the meaning ascribed thereto in Section 10.1;
- ii. **“Receiver”** has the meaning ascribed thereto in Section 13.1;
- jj. **“RGI”** has the meaning ascribed thereto in Section 3.6;
- kk. **“Service Agreement”** means this Service Agreement, including its attached schedules, and all amendments made to it in accordance with its provisions as amended, revised, replaced, supplemented or restated from time to time;
- ll. **“Subsidized Units”** means the units within the Project that receive RGI or an alternative form of assistance from the Service Manager.

1.2 All the Recitals preceding Section 1 of this Service Agreement are true and correct.

1.3 All references in this Service Agreement, including, without limitation, the Schedules hereto, to “rent” are deemed to include housing charges paid by members or households of non-profit housing co-operatives and “rental” is deemed to have a corresponding meaning.

1.4 The following Schedules are attached to form part of this Service Agreement:

Schedule “A” Market Rent

Schedule “B”	Project Particulars and Mortgage Maturity Dates
Schedule “C”	Financial Plan
Schedule “D”	Insurance Requirements
Schedule “E”	Other Funding Agreements
Schedule “F”	Certificate of Independent Legal Advice
Schedule “G”	Permitted Encumbrances

- 1.5 All references in this Service Agreement to section numbers are references to sections of this Service Agreement unless otherwise stated.
- 1.6 The headings and subheadings contained in this Service Agreement are inserted for convenience and for reference only and in no way define, limit or describe the scope or intent of this Service Agreement or form part of this Service Agreement.
- 1.7 Words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders.
- 1.8 Unless otherwise expressly provided in this Service Agreement, whenever any action to be taken is stated or scheduled to be required to be taken on, or (except with respect to the calculation of interest or fees) any period of time is stated or scheduled to commence or terminate on, a day other than a Business Day, the action will be taken or the period of time will commence or terminate, as the case may be, on the immediately preceding Business Day.
- 1.9 Any reference in this Service Agreement to any legislation, by-law or policy, or to any section of or any definition in the aforesaid, shall be deemed to be a reference to such legislation, by-law, policy, section or definition as amended, supplemented, substituted, replaced or re-enacted from time to time.
- 1.10 Any reference to the title or position of a member of the Service Manager staff in this Service Agreement shall include any change to the title or position or any successor title or position or any new title or position which assumes the responsibilities of the title or position referenced

in this Service Agreement. Any reference to a Service Manager administrative unit shall include any change to the name or any administrative unit which assumes the responsibilities of the administrative unit referenced herein.

2. TERM

2.1 The term of this Service Agreement shall be **[INSERT TERM]**¹, commencing **[INSERT COMMENCEMENT DATE]** and ending **[INSERT EXPIRY DATE]** (the “Term”).²

2.2 This Service Agreement shall remain in effect after the end of Term until:

- (a) this Service Agreement is replaced by a new service agreement; or
- (b) the Service Manager and the Provider enter into an exit agreement as defined in the Act and the exit agreement takes effect.

3. OPERATION OF PROJECT

3.1 It is the intention of the Parties that the Project shall become a Part VII.1 Housing Project. If the Project was previously a designated housing project, the Service Manager and Provider agree that, provided the requirements of the Act thereto are complied with, the Project shall cease to be a designated housing project and that only those provisions of the Act applicable to Part VII.1 Housing Projects, or otherwise applicable by reference in this Service Agreement, shall apply to the Project.

3.2 The Provider further acknowledges that it shall comply with all Applicable Laws, including without limitation, the Act and specifically, including without limitation:

- (a) the RGI assistance and special needs housing eligibility rules as set out in Part V of the Act and O. Reg. 367/11;
- (b) the general duties of a housing provider as set out in Section 69 of the Act; and

¹ Which must be no later than 10 years from the date of the Agreement.

² The Minister must be given least 30 days notice before this Service Agreement takes effect.

(c) Part VII.1 of the Act.

In addition to the foregoing, the Service Manager and the Provider acknowledge and agree that they shall continue to be bound by Part IX of the Act (including without limitation Sections 124, 127 and 151) and O. Reg 367/11 (including without limitation Section 136) notwithstanding the legislative amendments to Part VII.1 Housing Projects.

- 3.3 For greater certainty, any existing agreement(s) between the Service Manager and the Provider delegating RGI responsibility under the *Social Housing Reform Act*, 2000 are hereby automatically terminated and superseded by this Service Agreement.
- 3.4 [***Mandate of Project, if applicable***: The Service Manager acknowledges that the mandate of the Provider is to serve **[insert description as applicable]**. The foregoing mandate may not be altered without the approval of both the Service Manager and Provider.]
- 3.5 The Provider, as operator of the Project, agrees to provide in the Project **[INSERT NUMBER OF UNITS, TARGET NUMBER OF UNITS OR RANGE OF UNITS]** number of Subsidized Units where households shall receive rent-gear-to-income (“RGI”) assistance or an alternative form of assistance, subject to the requirements provided for in Section 4.1.

[If there is alternative funding assistance:

- 3.6 The Provider agrees to provide **[INSERT NUMBER OF UNITS, TARGET NUMBER OF UNITS OR RANGE OF UNITS]** number of units in the Project in accordance with **[INSERT ALTERNATIVE FORM OF ASSISTANCE]** as set out in Schedule 4.2 of O. Reg. 367/11, subject to calculation rules set out in Schedule 4.2 and eligibility and household selection rules established by the Service Manager.
- 3.7 The Provider agrees to provide **[INSERT NUMBER OF UNITS OR TARGET NUMBER OF UNITS]** number of units in the Project in accordance with **[INSERT ALTERNATIVE FORM OF ASSISTANCE – i.e. ASSISTED, AFFORDABLE, HOUSING BENEFIT, ETC.]**, subject to eligibility and household selection rules established by the Service Manager.]

[If there is special needs housing:

- 3.8 The Provider agrees to provide **[INSERT NUMBER OF UNITS OR TARGET NUMBER OF UNITS]** number of units in the Project as special needs housing units, as defined in Section 38 of the Act, in the Project through the following selection process: **[NTD: Manager to insert criteria.]** and following all protocols and policies as negotiated between the Service Manager and Provider, and as amended from time to time.]
- 3.9 The Provider may transition to an alternative form of assistance as set out in the Act for new subsidized households in such manner and timing as so directed by the Service Manager in the Service Manager's sole discretion.

[If there are supportive housing partnerships:

- 3.10 The Provider has a referral arrangement or head lease agreement with **[INSERT NAME OF PARTNER]** and delegated its responsibilities to select such households for the Project to **[INSERT NAME OF PARTNER]** with respect to **[INSERT NUMBER OF UNITS OR TARGET NUMBER OF UNITS]** number of units in the Project.

4. ELIGIBILITY

- 4.1 At all times, the Provider shall ensure that all Subsidized Units are occupied by eligible households in accordance with the eligibility rules and household selection rules in the Act and those rules and policies established by the Service Manager from time to time, at the Service Manager's sole discretion, including without limitation Service Manager's selection system under Section 47 of the Act, the priority rules made under clause 47 (2) (b) of the Act.
- 4.2 The Provider shall select households to occupy the Subsidized Units in the Project from the Service Manager's centralized waiting list, in accordance with Section 46 of O. Reg. 367/11 and prescribed Service Manager rules, including priority rules as set out in O. Reg. 367/11 and, following all protocols and policies as established by the Service Manager from time to time, at the Service Manager's sole discretion.

4.3 The Provider shall determine the eligibility of the household of a Subsidized Unit at the time of initial occupancy and at least annually thereafter (unless as otherwise required in accordance with the Act).

5. CALCULATING RENTS

5.1 The Provider acknowledges and understands that the rent paid by the household(s) of the Subsidized Units may be an amount that is not less than the legislated minimum amount and not more than the Market Rent. With respect to Subsidized Units, the Provider confirms that rents for such units shall be calculated in accordance with the Act and O. Reg. 367/11.

5.2 The Provider also acknowledges and understands that nothing in this Service Agreement shall operate to establish a market rent amount for a Subsidized Unit that is greater than Market Rent amount charged for units similar in size and type in the same housing project at any time during the term of this Service Agreement without the prior written consent of the Service Manager.

5.3 Notwithstanding any other provision in this Service Agreement, it shall be the Provider's responsibility to ensure at all times that Market Rents and any increases or decreases thereto comply with all Applicable Laws, including the *Residential Tenancies Act*, 2006. S.O. 2006, chapter 17, *Co-operative Corporations Act*, R.S.O. 1990, c. C.35, and all other applicable legislation.

5.4 The Provider and Service Manager agree that all households in the Project that are in receipt of any form of RGI or alternate form of assistance as of the date prior to the effective date of this Service Agreement shall continue to receive such assistance until such time as they cease to qualify for such assistance.

6. FUNDING

6.1 The Service Manager and the Provider confirm that they have mutually agreed to the Financial Plan included in Schedule "C" of this Service Agreement, which sets out the capital plan and the terms of funding, including a funding schedule in compliance with the Act and Section 105.1(2)13 of O. Reg 367/11.

- 6.2 The Financial Plan shall be reviewed, at a minimum, once every five years [or at such earlier frequency as required at the Service Manager's sole discretion].
- 6.3 If the Parties are unable to settle on an agreed upon Financial Plan, the provisions of Section 14 shall apply.
- 6.4 The Service Manager shall provide the Funds to the Provider for the Subsidized Units as set out in the Financial Plan. The Funds will be included in the Financial Plan and will be based on the difference between the RGI/assisted amount calculated under the relevant section of the Act and the Market Rent. Such Funds shall be paid in advance, based on the amount as determined by the Service Manager (as based upon the Market Rent) and reconciled annually. The treatment of any operating surplus or reconciliation of Funds with respect to the Project shall be set out in the Financial Plan.³.
- 6.5 Financial assistance provided by the Service Manager to the Provider pursuant to this Service Agreement will be based on both the establishment of targeted units receiving assistance and the Financial Plan. Parties may amend or re-negotiate this Service Agreement if there is any material change.

[Optional clause:

- 6.6 The Service Manager may provide additional Funding for the Project, which shall include the following items (including but not limited to), which shall be further set out in the Financial Plan:
- (a) additional funding to support the operation of the Provider;
 - (b) capital funding for capital projects and repairs; or
 - (c) property tax waiver/grant/exemption.
- 6.7 If a Subsidized Unit has been vacated or abandoned by a household, whether in a lawful manner or not, the Provider may fund the vacant period with funds governed by this Service Agreement provided that (i) the Service Manager has determined in its sole discretion the

³ Please see Service Template Agreement cover letter.

Provider has diligently made every reasonable effort to lease the vacated unit; (ii) the Provider is in compliance with this Service Agreement; and (iii) the vacant period does not exceed “X” months. In such cases the Service Manager shall pay the Market Rent to the Provider. In cases where one or more of the conditions outlined in this section are not satisfied, then the Provider is prohibited from using funds governed by this Service Agreement to pay for such vacant periods without the prior written consent of the Service Manager.]

7. ACKNOWLEDGMENT OF FUNDING ARRANGEMENTS

7.1 The Service Manager is not obliged to provide any Funds to the Provider in excess of the amount of Funds set out in the Financial Plan.

7.2 [*If applicable:* The Service Manager and Provider acknowledge that the Provider has also entered into the agreements as set out in Schedule “E” attached hereto regarding other sources of funding for the Project, which include but are not limited to other municipal funding agreements or contribution agreements (“**Other Funding Agreements**”). The Service Manager and Provider further acknowledge and agree that the Provider shall be subject to those covenants and obligations as set out in the Other Funding Agreements and that the Other Funding Agreements shall be read together with this Service Agreement.]

8. PROVIDER OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

8.1 The Provider hereby represents and warrants to and covenants with the Service Manager as follows:

- (a) the Provider has not provided any false or misleading information to the Service Manager in conjunction with this Service Agreement and that it shall not provide any false or misleading information to the Service Manager in conjunction with this Service Agreement;
- (b) the Provider has full power and authority to operate the Project and enter into this Service Agreement and to observe, perform and comply with the terms and conditions of this Service Agreement, and all necessary acts and procedures have been taken in order to authorize this Service Agreement and it has been duly executed and delivered;

- (c) the Provider is a corporation and is duly organized, registered, and validly existing under the laws of Ontario or Canada, and is qualified to do business wherever necessary to carry out the terms of this Service Agreement and operate the Project, and has not been dissolved or wound up;
- (d) the Provider holds all permits, licenses, consents, intellectual property rights, registrations and authorities necessary to perform its obligations under this Service Agreement;
- (e) the Provider has ensured that, in respect of the Project, all municipal real property taxes, development charges and any other municipal charges, if any, have been paid and are in good standing;
- (f) there is not now pending against the Provider any litigation, action, suit or other proceeding of a material nature by or before any court, tribunal or other governmental agency or authority or any pending or threatened action, suit or other proceeding against the Provider or against or affecting any of the properties or assets of the Provider whether such property or assets are owned legally or beneficially that, if resolved adversely to the Provider, could be reasonably expected to materially and adversely affect the business operations, properties or assets, or the condition, financial or otherwise, of the Provider or the ability of the Provider to operate the Project;
- (g) the Provider's board of directors has implemented and complies with good governance and conflict of interest policies;
- (h) the Provider is not a party to any agreement under the terms of which the Provider is prohibited or restricted from entering into any of the liabilities imposed, or restrictions accepted by the Provider under this Service Agreement;
- (i) no Event of Default has occurred, or appears reasonably likely to occur as of the date of this Service Agreement;

- (j) to the best of the Provider's information and belief and after making diligent inquiries the Provider is not aware of any material facts or circumstances which have not been disclosed to the Service Manager;
- (k) there are no outstanding judgments, injunctions, or administrative or regulatory directives, writs of execution, encroachments, rights-of-way, deed restrictions, leases or tenancies or other agreements, mortgages, work orders, against the Provider or the Property, that might reasonably be seen to have a materially adverse impact upon the Provider's prospects or the condition of the Property or affecting the operation of the Project;
- (l) none of the execution or delivery of, the consummation of the transactions contemplated in, or compliance with the terms, conditions and provisions of any of the Service Agreement or any of the agreements or documents delivered in connection therewith, by the Provider, conflicts with or will conflict with, or results or will result in any breach of, or constitutes a default under or contravention of, any Applicable Law;
- (m) the Provider has good and marketable fee simple title to the Property. The Provider enjoys peaceful and undisturbed possession of the Property and there is no pending or, to the knowledge of the Provider, threatened condemnation or expropriation proceedings relating to the Property. The Property and the structures thereon are:
 - (i) structurally sound with no known material defects; and
 - (ii) in conformity with all Applicable Law including, without limitation, applicable zoning by-laws, *Building Code*, *Ontario Fire Code*, *Canadian Environment Assessment Act*, 2012, S.C. 2012, c. 19, s. 52, environmental, motor vehicle safety, occupational safety and health laws and regulations and other requirements relating thereto;
- (n) The Provider:
 - (i) has not committed any act of bankruptcy;

- (ii) is not insolvent, or has not proposed, or given notice of its intention to propose, a compromise or arrangement to their creditors generally;
 - (iii) has not had any petition for a receiving order in bankruptcy filed against any of them;
 - (iv) has not made a voluntary assignment in bankruptcy;
 - (v) has not taken any proceeding with respect to any compromise or arrangement;
 - (vi) has not taken any proceeding to have itself declared bankrupt or wound-up;
 - (vii) has not taken any proceeding to have a receiver appointed of any part of its assets;
 - (viii) has not had any encumbrancer take possession of any of any property; or
 - (ix) has not had an execution or distress become enforceable or become levied on any of its property including the Property;
- (o) all information, representations, statements and declarations (collectively referred to as the “**Information**”) furnished by or on behalf of the Provider to the Service Manager for purposes of, or in connection with, this Service Agreement or any other transaction contemplated by this Service Agreement is or will be true and accurate in all material respects on the date as of which the Information is given and not incomplete by omitting to state any material fact necessary to make the Information not misleading at such time in light of then current circumstances;
- (p) the Provider acknowledges and agrees that they have been advised by the Service Manager or its appointed representative to consult a lawyer before executing this Service Agreement. The Provider further acknowledges and agrees that it has either obtained independent legal advice from their own lawyer with respect to the terms of this Service Agreement prior to execution or declined seeking such independent legal advice. Nevertheless, the Provider herein acknowledges that they have read this Service

Agreement, understand the terms and conditions and the Provider's rights and obligations under this Service Agreement and agree to be bound by same. The Provider acknowledges and agrees that this Service Agreement are being executed voluntarily. The executed certificate of independent legal advice or waiver of same attached hereto as Schedule "F" shall constitute prima facie evidence of aforesaid legal consultation and independent legal advice or that the Provider declined to obtain same.

- 8.2 The representations and warranties set out in Section 8.1 will be deemed to be repeated by the Provider as of the date of advance of Funding except to the extent that on or prior to such date:
- (a) the Provider has advised the Service Manager in writing of a variation in any such representation or warranty; and
 - (b) if such variation in the opinion of the Service Manager, acting reasonably, is material to the Property, Project, liabilities, affairs, business, operations, prospects or condition (financial or otherwise) of the Provider considered as a whole or could have, or be reasonably likely to result in, a material adverse effect, the Service Manager has approved such variation.
- 8.3 The Provider explicitly acknowledges that the Service Manager has relied on the representations and warranties provided by the Provider in Sections 8.1 and 8.2 in entering into this Service Agreement and in paying Funds to the Provider.
- 8.4 The parties agree that all obligations or agreements contained in this Service Agreement shall be deemed to be covenants. The Provider covenants and agrees that as long as this Service Agreement is in effect and except as otherwise permitted by the prior written consent of the Service Manager the following shall apply:
- (a) the Provider shall comply with all Applicable Law in respect of the Property, the Project and the performance of this Service Agreement, including without limitation the Act, the *Residential Tenancies Act*, 2006, S.O. 2006, chapter 17, the *Not-for-Profit Corporations Act*, 2010, S.O. 2010, c. 15, and the *Co-operative Corporations Act*, R.S.O. 1990, c. C.35;

- (b) the Provider shall ensure the Project is well managed, maintained in a satisfactory state of repair, complies with all the Applicable Laws;
- (c) the services and obligations required herein by the Provider shall be produced or performed in a professional and proper manner acceptable to the Service Manager and shall be suitable for the purposes specified herein;
- (d) all financial statements and other financial data, which have been or shall be furnished to the Service Manager by the Provider in connection with this Service Agreement, do or will fairly present the financial condition and the results of the operations of the Provider, and the same and all other information, certificates, schedules, reports and other papers and data furnished for the Property are or will be at the time they are so furnished, accurate and complete in all materials respects; and no representation or warranty by the Provider in this Service Agreement, nor any statement, certificate, schedule, report or other document furnished or to be furnished to the Service Manager pursuant hereto contains or will contain any untrue statement of any fact or omits or will omit to state a fact necessary to make such representation, warranty, statement, certificate, report or other document not misleading;
- (e) the Provider is in good standing and covenants to comply with the terms of all agreements entered into with the Service Manager including, without limitation, the other Funding Agreements as set out in Schedule “E”, ** [*list existing agreements, i.e. SHIP, etc.*] (collectively, the “**Additional Contracts**”). The Provider agrees that a default or event of default by the Provider under any of the Additional Contracts, shall constitute an Event of Default under this Service Agreement;
- (f) the Provider shall remain a valid and existing corporation in accordance with the Laws of Canada or the Province of Ontario, as the case may be;
- (g) the Provider shall use the Funds advanced to the Provider under this Service Agreement for lawful purposes and only in accordance with the terms and restrictions set out in this Service Agreement, provided that the fact that Funds are used for a purpose other

than that specified in this Service Agreement shall not affect the obligation of the Provider repay the Funds, but shall render the Funds repayable on demand;

- (h) the Provider shall pay all amounts owing under this Service Agreement;
- (i) the Provider shall pay in full prior to the first advance of Funds and remain in good standing throughout the Term and while this Service Agreement is in force and effect, all outstanding real property taxes, amounts added to the municipal tax roll for the Property, including any additional fees associated therewith and any other municipal fees or charges;
- (j) the Provider shall comply with the Service Manager's requirements related to specific insurance terms as set out in Section 9 and Schedule "D" to be met by the Provider in order to protect the Service Manager's interest.
- (k) the Provider may not, directly or indirectly dispose or enter into any agreement to dispose of the Property or any part thereof, or any interest therein, or unconditionally agree to do so, without the written consent of the Service Manager being first obtained;
- (l) the Provider shall promptly notify the Service Manager of any Event of Default or pending Event of Default;
- (m) the Provider shall promptly notify the Service Manager of any material adverse effect that would apply to it or any event or circumstance that is likely to give rise to a material adverse effect;
- (n) the Provider shall promptly notify the Service Manager of the occurrence or threatened occurrence of any litigation, dispute, arbitration, proceeding or other circumstance the result of which, if determined adversely, would be a judgment or award against it or that would result in a material adverse effect to it, and from time to time provide the Service Manager with all information requested by the Service Manager concerning any such proceeding;

- (o) the Provider shall keep and maintain the Property and Project in good repair and in compliance with all Applicable law including but not limited to the provisions of the Service Manager's property standards by-law;
- (p) the Provider shall not change its legal or operating name without providing the Service Manager with thirty (30) days prior written notice thereof;
- (q) no Encumbrances save for the Permitted Encumbrances may be registered on title to the Property without the Service Manager's prior written consent;
- (r) the Provider shall promptly give notice to the Service Manager of:
 - (i) any notice of expropriation, or material action or proceeding affecting: the Property or the business of the Provider or business of the Provider;
 - (ii) any violation any Applicable Law in respect of the Property or Project which results or could result in a material adverse effect;
 - (iii) any damage to or destruction of the Project or the Property which would impair the operations of the Project or impact the tenancy of a unit in the Project; and,
 - (iv) any Encumbrance registered against the Property, other than a Permitted Encumbrance.

9. INSURANCE REQUIREMENTS

9.1 Upon execution of the Agreement, the Provider shall provide the Service Manager with original certificates of insurance, or if required by the Service Manager, certified copies of each insurance policy, in respect of the Property, in form and content satisfactory and with insurers satisfactory to the Service Manager as more particularly set out in Schedule "D", and shall maintain such insurance policies during the term of this Service Agreement and provide the Service Manager with proof of same on an ongoing basis as reasonably required by the Service Manager from time to time. No Funds shall be provided until the certificates of insurance are provided to the Service Manager. If the Provider receives any proceeds of insurance the proceeds shall be applied as set out in Schedule "D".

- 9.2 The Provider shall obtain and maintain such insurance policies for the Project as would a prudent operator of a similar housing project.
- 9.3 The Provider acknowledges and agrees that it shall participate in such insurance programs as it is so prescribed under the Act. For greater certainty, the Provider shall continue to participate in the group insurance programs as the Provider has been required to participate in prior to the entering of this Service Agreement.
- 9.4 The Provider shall participate in the system of pooling capital reserves for investment purposes as established by Housing Services Corporation if the Provider was previously required as a Part VII provider.
- 9.5 The Provider shall forthwith take reasonable steps to mitigate risk associated with any activity that may result in any changes in insurance premiums.
- 9.6 All policies of insurance shall be:
- (i) written with an insurer licensed to do business in the Province of Ontario and not otherwise excluded by the Service Manager’s insurance and risk groups; and
 - (ii) non-contributing with and will apply only as primary and not excess to any other insurance available to the Provider.

10. INSPECTIONS, AUDITS AND RECORDS

- 10.1 The Provider shall maintain full and complete records in respect of this Service Agreement, including, without limiting the generality of the foregoing, all applications, reviews, notices, agreements, documents, papers, information, receipts, payrolls, accounts, contracts, financial statements and records of any nature or kind, including third party records and any meeting minutes of the board of directors (collectively, the “**Provider’s Records**”).
- 10.2 Subject to the *Freedom of Information and Protection of Privacy Act* (Ontario) and the *Municipal Freedom of Information and Protection of Privacy Act* (Ontario), the Provider, when requested by the Service Manager upon forty-eight (48) hours’ notice to the Provider, shall make or cause to be made available to the Service Manager and/or any of its duly

authorized representatives, appointees or delegates, any or all of the Provider's Records, to be inspected and/or audited, at all reasonable times both during the term of this Service Agreement and subsequent to expiration or termination, it being understood by the parties that the Service Manager shall be entitled to conduct such inspections and/or audits as the Service Manager requests from time to time, for the purpose of verifying the Provider's compliance with this Service Agreement. The Provider shall execute and deliver within forty-eight (48) hours of receipt from the Service Manager, any direction and/or authorization to a third party authorizing such third party to provide to the Service Manager, and/or any of its duly authorized representatives, appointees or delegates, all such information and records with respect to this Service Agreement that is requested by the Service Manager.

- 10.3 The Provider agrees that the Service Manager shall be entitled to make copies of any or all of the Provider's Records as it reasonably requests or requires from time to time.
- 10.4 The Service Manager and/or any of its duly authorized representatives, appointees or delegates, shall also have the right to conduct any review, audit or inspection of any and all of the Provider's Records in respect of this Service Agreement including the Project, without any prior notice to the Provider. It is the intent of the Service Manager to invoke this provision in circumstances of such a serious nature as would warrant the immediate review, audit or inspection by the Service Manager of any and/or all of the Provider's Records.
- 10.5 The Provider shall fully co-operate with the Service Manager and/or any of its duly authorized representatives, appointees or delegates in respect to any inspections, audits, reviews and requests made by the Service Manager under this Article 9.
- 10.6 The Provider will prepare and maintain its financial records in accordance with any exceptions to Generally Accepted Accounting Principles (GAAP) applied to its financial records prior to the commencement of this Service Agreement, unless otherwise directed by the Service Manager.
- 10.7 The Provider shall retain and preserve all of the Provider's Records related to this Service Agreement including the Project for a period of seven (7) years after each such record has been received or created, as the case may be, or a period of seven (7) years following the end of the

Term or the date of any early termination of this Service Agreement, whichever is the latest. The Provider shall not dispose of any records related to this Service Agreement before the expiration of any such period without the prior written consent of the Service Manager, subject to such conditions as the Service Manager deems advisable. For greater certainty, the obligations of the Provider under this Article 9 shall survive the termination or expiration of this Service Agreement.⁴

10.8 In each year, not later than five (5) months following the Provider's fiscal year-end, the Provider shall submit to the Service Manager, in the form prescribed or directed by the Service Manager:

- (a) its audited financial statement for the preceding year;
- (b) information on the household income and household composition of the units in the Project rented to households during the preceding year;
- (c) an annual information return;
- (d) an annual subsidy reconciliation for the Project;
- (e) a statement of capital reserve investments for the Project;
- (f) such other information or documentation as the Service Manager may request from time to time; and
- (g) any local reporting requirements as may be required by the Service Manager.

11. INDEMNITY

11.1 The Provider shall, both during and following the term of this Service Agreement, indemnify and save harmless the Service Manager, its council members, officers, partners, agents and employees (each an “**Indemnitee**”, collectively the “**Indemnitees**”) from and against any and all costs, losses, damages, expenses, injury and liability whatsoever which an Indemnitee may suffer from claims, demands, suits, actions, or any other proceedings (collectively, “**Claims**”)

⁴ Timelines can be adjusted to the Service Manager’s requirements, as applicable.

made, brought or recovered against an Indemnitee based upon, occasioned by, or attributable to anything done or omitted to be done by the Provider, and its directors, officers, employees, agents, volunteers, or anyone for whom the Provider is responsible at law, for or in connection with or arising out of the implementation of this Service Agreement.

- 11.2 The indemnification obligation in Section 11.1 of this Service Agreement shall survive the expiration or termination of this Service Agreement.

12. EVENTS OF DEFAULT AND TERMINATION

- 12.1 If the Provider commits an act of default, or has omitted to do anything which would constitute an act of default under this Service Agreement or otherwise breaches, fails to observe or perform any condition or requirement under this Service Agreement (in each case an “**Event of Default**”), the Service Manager may give the Provider fifteen (15) days’ written notice stating the details of the Event of Default and stating what the Provider must do, or refrain from doing, to correct the Event of Default. The Provider shall have thirty (30) days from the Service Manager’s notice of Event of Default to cure such Event of Default (“**Cure Period**”). If the Event of Default is not cured within the Cure Period, then such Event of Default shall be deemed a Material Default. The notice period may be shortened in case of emergency, at the sole discretion of the Service Manager. Notwithstanding anything contained herein, no notice shall be required to be given nor shall the Provider be given any time to rectify any Event of Default under Subsections 12.2 (i) to (p), both inclusive (“**Material Default**”). If the Provider fails to correct the Event of Default, and if the Event of Default is material and substantial, in the opinion of the Service Manager, the Service Manager may terminate this Service Agreement in which event the Funds advanced to the Provider shall be immediately due and payable. Any amount repayable under this Section shall be a debt due to the Service Manager and the Service Manager shall have whatever remedies available at law to collect the debt including the right to set off the debt against any other funds that may be payable to the Provider by the Service Manager.
- 12.2 Without limiting anything contained in Section 12.1, the following shall constitute an Event of Default under this Service Agreement:

- (a) if the Provider fails to comply with any of its obligations under this Service Agreement;
or
- (b) if there is a breach of any of the covenants, warranties or representations of the Provider contained in this Service Agreement; or
- (c) if the Provider demolishes or re-develops the Project without the written consent of the Service Manager; or
- (d) if there is any breach by the Provider of the terms and conditions of any applicable funding agreement, by-law or lease relating to the Project; or
- (e) the Provider incurs an expenditure or an accumulated deficit that is, in the opinion of the Service Manager, substantial and excessive; or
- (f) in the opinion of the Service Manager, acting reasonably, the Provider has failed to operate the Project properly; or
- (g) if the Provider permits any amount which is due by it and which forms or is capable of forming a lien or charge upon the Project or any part thereof to remain unpaid; or
- (h) if the Provider is in breach of its obligations to indemnify any of the Indemnitees in respect of any Claims, pursuant to Section 11.1 hereto; or
- (i) if the Provider becomes bankrupt or insolvent or takes the benefit of any act now or hereafter in force for bankrupt or insolvent debtors or files any proposal or makes any assignment for the benefit of creditors or any arrangement or compromise; or
- (j) if a receiver or a receiver and manager is appointed for all or a portion of the Project and the receiver's appointment is not vacated within thirty (30) days; or
- (k) if any steps are taken or any action or proceedings are instituted by the Provider or by any other party including, without limitation, any court or governmental body of competent jurisdiction for the dissolution, winding up or liquidation of the Provider or its assets; or

- (l) if the Provider denies its obligations under this Service Agreement, or claims any part of this Service Agreement to be invalid or withdrawn in whole or in part; or this Service Agreement is invalidated by any act, regulation or action by any governmental authority having jurisdiction, or is determined to be invalid by a court or other judicial entity and such determination has not been stayed pending appeal; or
- (m) if one or more final judgments, writs of execution, garnishment or attachments or similar processes are issued or levied against the Project or the Provider; or
- (n) if rent levels are increased beyond allowable limits; or
- (o) if misrepresentation occurs related to eligibility for the Funding;
- (p) Funds are used for purposes other than those set out in this Service Agreement the Service Manager;
- (q) any material adverse change occurs in the financial condition of the Provider that would detrimentally affect the ability of the Provider to meet its obligations pursuant to this Service Agreement, as determined by Manager;
- (r) any representation, warranty, statement, declaration or information provided to the Service Manager by the Provider in connection with this Service Agreement is incorrect, false, misleading or erroneous in any material respect as of the time it was made or given;
- (s) the Provider abandons the Project as determined by the Service Manager in its sole, absolute and unfettered discretion;
- (t) the cessation or threatened cessation by the Provider of its business generally or the admission by the Provider of its inability to, or, its actual failure to, pay its debts generally or operate the Project;
- (u) an assignment of this Service Agreement or its rights and obligations for the Project, by the Provider without the prior written consent of the Service Manager which may be arbitrarily withheld by the Service Manager; and

- (v) the Project is entirely destroyed or damaged to the extent that it is no longer fit for the purposes for which it is intended and the insurance proceeds are insufficient to repair the destruction or damage

12.3 If an Event of Default occurs, the Service Manager shall be under no further obligation to advance or provide any of the Funds, whereupon such obligation shall forthwith terminate and, subject to Section 13 below, the Service Manager may demand that all of the Funds advanced by the Service Manager be forthwith repaid to the Service Manager.

13. FURTHER REMEDIES

13.1 In addition to other remedies set out in this Service Agreement, and subject to Section 13, if an Event of Default has occurred and is continuing, the Service Manager may appoint or seek the appointment of a manager and/or receiver, whether an officer, employee or agent of the Service Manager or not (the “**Receiver**”).

13.2 When a Receiver is appointed by the Service Manager pursuant to Section 13.1 the Receiver shall have the power to, with respect to the Project:

- (a) take control, direction and possession, or any of them, of a project or the Project, the revenue and the assets of the Provider, the operation, and books, records and accounts of the Provider, or any part of them;
- (b) give direction and exercise the rights of the Provider in respect of the employees and agents of the Provider;
- (c) receive and recover and use all revenues and assets of the Provider;
- (d) incur and pay liabilities;
- (e) complete the construction of the Project and maintain, operate and repair the Project; and
- (f) execute and prosecute all suits, proceedings and actions which the Receiver considers necessary for the proper protection of the Project, to defend all suits, proceedings and

actions against the Provider or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action, then pending or thereafter instituted and to appeal any suit, proceeding or action.

13.3 The Service Manager may:

- (a) at any time and from time-to-time change, terminate or renew the mandate of the Receiver or replace or reinstate the Receiver, but the Provider shall have no power to appoint, replace, reinstate or remove, or change, terminate or renew the mandate of the Receiver; and
- (b) fix the reasonable remuneration of the Receiver who may deduct the same out of the revenues of the Provider.

13.4 The Receiver shall be deemed to be the agent or attorney of the Provider and the Service Manager shall not be responsible for the Receiver's acts or omissions.

13.5 All of the remedies in this Service Agreement are cumulative and are not alternative and the Service Manager shall not be precluded from availing itself simultaneously of some or all of the said remedies and any other remedies available in equity or at law.

13.6 Notwithstanding any of the terms in this Service Agreement, the Service Manager shall have the option of waiving any or all of its remedies under this Service Agreement, but no waiver of a provision shall be deemed to constitute a waiver of any other provision (whether or not similar) nor shall any waiver constitute a continuing waiver unless otherwise provided.

14. DISPUTE RESOLUTION [NTD: SELECT ONE OF THE OPTIONS.]

[NTD: Option A]

14.1 In the event that a dispute arises between the parties out of or in connection with this Service Agreement, the parties agree to use the following dispute resolution process:

- (a) Either party may provide written notice to the other party, notifying them of the nature of the dispute and requesting that the parties negotiate a resolution. On receipt of such notice, the parties shall make every reasonable effort to resolve the dispute through

negotiation. [A meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to achieve a resolution to the dispute.]

- (b) If within [30 days] after delivery of Notice, or such further period agreed to by the parties in writing, the parties have not resolved the dispute, the parties agree to submit the matter to arbitration. The arbitration shall be conducted under the following parameters:
 - (i) The parties shall refer the dispute to a single arbitrator.
 - (ii) If the parties cannot agree on an arbitrator, then an arbitrator shall be appointed pursuant to the Arbitration Act, 1991, S.O. 1991, c.17.
 - (iii) The arbitration shall be conducted in accordance with the *Arbitration Act*, 1991, S.O. 1991, c.17, as may be amended or replaced from time to time.

14.2 Each party shall bear its own costs and half of the fees and expenses of the arbitrator unless the arbitrator determines otherwise.

[NTD: Option B.]

14.3 In the event that a dispute arises between the parties out of or in connection with this Service Agreement, the parties agree to use the following dispute resolution process:

- (a) Either party may provide written notice to the other party, notifying them of the nature of the dispute and requesting that the parties negotiate a resolution. On receipt of such notice, the parties shall make every reasonable effort to resolve the dispute through negotiation. [A meeting will be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to achieve a resolution to the dispute.]
- (b) If within [30 days] after delivery of Notice or such further period agreed to by the parties in writing, the parties have not resolved the dispute, the parties agree that either

party may, at their sole discretion, commence such legal actions or proceedings as permitted at law or in equity to seek resolution of the dispute.

15. NOTICE

- 15.1 Any notice, demand, statement or request (“**Notice**”) required or permitted to be given under this Service Agreement shall be in writing and shall be deemed to have been duly given if personally delivered, delivered by courier, facsimile transmission, electronic mail or mailed by registered prepaid post.

In the case of Notice to the Service Manager to:

[Insert Manager details]

and, in the case of Notice to the Provider:

[Insert Provider details]

Any notice or other communication shall be deemed to have been given and received on the day it is so delivered at such address, provided that if such day is not a Business Day such notice or other communication shall be deemed to have been given and received on the next following Business Day. Despite the foregoing the Provider acknowledges that the title and address for the staff person at Service Manager to which notice must be provided may change from time to time and that it is the responsibility for the Provider to obtain the correct information prior to any notice being provided to the Service Manager to ensure that notice is provided in compliance with this Service Agreement.

Either party may from time to time by Notice change the address to which notices to it are to be given. Notwithstanding the foregoing, during any interruption or threatened interruption in postal services, any Notice shall be personally delivered, or delivered by courier, facsimile transmission or electronic mail.

16. STATUS OF PARTIES

- 16.1 The Provider acknowledges and agrees that this Service Agreement is in no manner to be deemed or construed to be an agreement of or for employment. Specifically, the parties do not intend by this Service Agreement that the Provider or its employees, agents or contractors are

to be considered employees of the Service Manager for any purpose, including, without limiting the generality of the foregoing, for the purposes of the *Income Tax Act* (Canada), R.S.C. 1985 c.1 (5th Supp.); the *Canada Pension Plan Act* (Canada), R.S.C. 1985, c. C-8; the *Employment Insurance Act* (Canada), S.C. 1996, c.23; the *Workplace Safety and Insurance Act, 1997* (Ontario), S.O. 1997, c.16 (Sched. A); the *Occupational Health and Safety Act* (Ontario), R.S.O. 1990, c. O.1; the *Pay Equity Act* (Ontario), R.S.O. 1990, c. P.7; or the *Health Insurance Act* (Ontario), R.S.O. 1990, c. H.6, all as amended from time to time, and any legislation in substitution therefor.

16.2 Despite the provisions of Section 16.1, it is the sole and exclusive responsibility of the Provider to make its own determination as to its status under the Acts referred to therein, and, in particular, to comply with the provisions of any such Acts and to make any payments required thereunder.

16.3 Nothing in this Service Agreement shall be construed as creating or constituting the relationship of the partnership, joint venture, employees or agents of each other or other association of any kind or agent/principal relationship between the parties hereto. No party, unless otherwise specifically provided for herein, has the authority to enter into any agreement or create an obligation or liability on behalf of, in the name of, or binding upon, another party to this Service Agreement.

17. CONFLICT OF INTEREST

17.1 The Provider must establish and implement a policy which is satisfactory to the Service Manager to prevent conflicts of interest in the management of the funding provided to the Provider by the Service Manager under this Service Agreement [which shall be provided to the Service Manager upon written request]. The Provider shall disclose to the Service Manager any existing or potential conflict of interest that may exist at the date of execution of this Service Agreement or during the term of this Service Agreement and shall propose a resolution to such potential conflict of interest satisfactory to the Service Manager.

18. ASSIGNMENT

- 18.1 (a) The Provider shall not transfer, convey its interest in all or any part of the Project or mortgage, refinance or encumber the Project without, subject to clauses (c) and (d) herein, simultaneously assigning its interest in this Service Agreement to the transferee, and such transferee shall enter into one or more agreements with the Service Manager, in a form satisfactory to the Service Manager, to assume all of the Provider's obligations under this Service Agreement. In the event of such transferee's default under the agreement(s), the Provider shall remain jointly and severally liable under this Service Agreement for any such default.
- (b) For the purpose of this Service Agreement, a transfer of the beneficial interest in the shares of the Provider shall be deemed to constitute an assignment if it results in a change in the party or parties who owns or own more than fifty per cent (50%) of the voting shares of the Provider.
- (c) The Provider shall not assign its interest in this Service Agreement at any time following the disbursement of Funds under this Service Agreement unless the Provider is in good standing under this Service Agreement and unless the assignee enters into one or more agreements with the Service Manager, in a form satisfactory to the Service Manager, under which the assignee assumes all of the Provider's obligations under this Service Agreement. In the event of such assignee's default under the agreement(s), the Provider shall remain jointly and severally liable under this Service Agreement for any such default.
- (d) Any proposed assignment by the Provider shall be subject to the prior written consent of the Service Manager which consent may be unreasonably or arbitrarily withheld.

19. CONFIDENTIAL INFORMATION & PRIVACY

- 19.1 The Provider acknowledges and agrees that the Service Manager is bound by PIPEDA and MFIPPA in the performance of this Service Agreement, and that any Personal Information provided to the Service Manager in connection with this Service Agreement may be subject to disclosure in accordance with PIPEDA and MFIPPA. The Provider agrees that all Personal

Information provided to the Provider by the Service Manager is being provided on a confidential basis for the purposes of the administration of this Service Agreement. Such confidential information provided by the Service Manager to the Provider may only be disclosed to personnel within the Provider with a “need to know” in order to carry out its obligations under this Service Agreement, and shall not be released to any third party, without the written consent of the Service Manager, provided however, that the obligation to keep information confidential shall not apply to Personal Information which (i) is already known to the Provider when disclosed; (ii) is developed by the Provider independently and without reference to the received confidential information; or (iii) is required to be disclosed under operation of law. The Provider will protect all confidential information of the Service Manager with the same degree of care as it uses to avoid unauthorized access, use, disclosure, publication or dissemination of its own confidential information of a similar nature, but in no event, less than a reasonable degree of care.

19.2 Without limitation, the Provider agrees in the performance of this Service Agreement to:

- (a) preserve all Personal Information transferred to the Provider through this Service Agreement;
- (b) ensure the MFIPPA and PIPEDA Compliance of all Personal Information that the Provider collects in the course of performing its obligations under this Service Agreement; and
- (c) ensure the MFIPPA and /PIPEDA Compliance of all Personal Information that the Provider transfers to the Service Manager in the course of this Service Agreement.

19.3 The parties understand and agree that “**MFIPPA and /PIPEDA Compliance**” shall be understood to mean:

- (a) The collection, use and/or disclosure of Personal Information by fair and lawful means, with consent, and only for legally authorized purposes;

- (b) Protection of Personal Information through appropriate security measures, and the destruction of such Personal Information when it is no longer needed for the original purposes and in accordance with any retention requirements as set out in the Act;
- (c) Providing individuals with the right of access to their Personal Information and a means to request corrections if such personal information is inaccurate; and
- (d) A complaint procedure such that when contacted about a privacy concern, individuals are given appropriate avenues of recourse.

20. LIMITATIONS ACT

20.1 The Provider acknowledges and agrees that the Service Manager may make a claim or demand payment under this Service Agreement notwithstanding any limitation period regarding such claim or demand set forth in the *Limitations Act, 2002* (Ontario) or under any other applicable law with similar effect and, to the maximum extent permitted by applicable law, any limitations periods set forth in such Act or applicable law are excluded. For greater certainty, the Provider acknowledges that this Service Agreement constitutes a “business agreement” as defined under Section 22 of the *Limitations Act*.

21. REGISTRATION

21.1 The Parties agree that this Service Agreement may be registered on title to the Property on which the Project(s) are located as both parties may mutually agree. [The costs of registration shall be borne equally between the Service Manager and the Provider.]

22. PARAMOUNTCY

22.1 Unless otherwise expressly set out herein, if there is any inconsistency between the terms and conditions of this Service Agreement and the terms and conditions of the Schedules attached hereto, then the terms and conditions of this Service Agreement shall govern and control.

23. TIME OF THE ESSENCE

23.1 Time shall be of the essence in this Service Agreement, provided that the time for doing or completing any matter provided for under this Service Agreement may be extended or abridged by agreement in writing signed by the Service Manager.

24. ENTIRE AGREEMENT

24.1 This Service Agreement and the Schedules attached hereto, form the entire agreement between the parties and supersede any other understanding or agreement, collateral, oral or otherwise, existing between the parties at the date of execution of this Service Agreement. No supplement, modification, waiver or termination of this Service Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Service Agreement shall be deemed to or shall constitute a waiver of any other provisions, whether or not similar, nor shall such waiver constitute a continuing waiver unless expressly provided.

25. FURTHER ASSURANCES

25.1 The parties hereto covenant and agree that they will at their own expense from time to time and at all times hereafter, upon every reasonable request of the other, promptly make, do, execute and deliver or cause to be made, done, executed and delivered all such further acts, deeds or assurances as may be reasonably required for purposes of implementing the matters contemplated by this Service Agreement and establishing and protecting the rights, interests and remedies intended to be created as herein described.

26. SUCCESSORS AND ASSIGNS

26.1 This Service Agreement shall enure to the benefit of and be binding upon each of the parties hereto and their respective successors and permitted assigns.

27. AMENDMENTS TO THIS SERVICE AGREEMENT

27.1 No supplement, modification or waiver (other than a deemed waiver in accordance herewith) of this Service Agreement shall be binding unless in writing and executed by the parties hereto.

28. APPLICABLE LAW

28.1 This Service Agreement shall be governed by and be construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein and shall be treated, in all respects, as an Ontario contract.

29. PARTIAL INVALIDITY

29.1 Should any provision(s) of this Service Agreement be found to be void or unenforceable for any reason whatsoever, such provision(s) only shall be expunged and severed from this Service Agreement and the balance of this Service Agreement's provisions shall remain in full force and effect.

[REMAINDER OF THE PAGE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW.]

IN WITNESS WHEREOF the parties hereto have caused this Service Agreement to be duly executed by their respective authorized signing officers as of the date first written above.

SIGNED, SEALED AND DELIVERED

[Insert authorizing by-law]

) **[INSERT NAME OF MANAGER]**
)
)
)
)
)
) Per: _____
) Name:
) Title:

) **[INSERT NAME OF PROVIDER]**
)
)
) Per: _____
) Name:
) Title:
) I have authority to bind the
Corporation

SCHEDULE A

MARKET RENTS

[NTD: The Service Manager to insert initial market rents for the types of units.]

SCHEDULE "B"

PROJECT PARTICULARS

PROJECT NAME:	[insert name]
REGISTERED OWNER:	[insert name]
PROPERTY ADDRESS:	[insert municipal address]
PURPOSE OF PROJECT:	[insert if required. Can include information such as which population the Project is intended to serve.]
MORTGAGE MATURITY DATE:	[insert mortgage maturity date]

[NTD: This schedule can be amended as more projects come to EOM/EOA.]

SCHEDULE “C”
FINANCIAL PLAN

[NTD: To be inserted. Can include details such as the funding schedule if required.]

SCHEDULE “D”

INSURANCE REQUIREMENTS/CERTIFICATE OF INSURANCE

[NTD: To be inserted. Also see additional clauses re: Insurance below.]

SCHEDULE “E”

OTHER FUNDING ARRANGEMENTS

[NTD: To be inserted, if applicable]

SCHEDULE “F”

CERTIFICATE OF INDEPENDENT LEGAL ADVICE

[NTD: To be inserted.]

SCHEDULE “G”

PERMITTED ENCUMBRANCES

1. Any undetermined or inchoate liens and charges (including any and all statutory rights of expropriation) incidental to construction or current operations, of the Property which relate to obligations not yet due or delinquent and which have not been registered in accordance with Applicable Law.
2. The reservations, limitations, provisos and conditions, if any, expressed in the original grant from the Crown, in right of Canada or a Province thereof.
3. All applicable municipal, provincial or federal statutes, by-laws, regulations or ordinances (including all building and zoning by-laws and regulations) and any subdivision, site plan, development or other similar municipal or regional agreements provided they are complied with and do not materially adversely affect the ordinary use and operation of the Property.
4. (i) Any easements and/or agreements relating to drainage, storm or sanitary sewers, public utility lines, telephones lines, cable television lines or other services; and (ii) all other services and all other easements, servitudes and rights of way which do not materially adversely affect the present use and operation of the Property.
5. The provisions, restrictions and limitations contained in the *Land Titles Act* (Ontario) as amended, save and except Section 44(1)(11).
6. Encumbrances respecting minor encroachments by the Property over neighbouring lands permitted under agreements with the owners of such other lands and minor encroachments over any of the Property by improvements of abutting land owners permitted under agreements with such abutting owners.
7. Statutory liens and levies and other rights conferred upon, reserved to or vested in the Crown, the public or any Governmental Authority or other public authority by any statutory provision including rights of expropriation, access or use.
8. Any encumbrances: (i) filed by or at the request of the Purchaser; (ii) arising as a result of the acts or omissions of the Purchaser; or (iii) which are otherwise expressly approved by the Purchaser.
9. The specific encumbrances registered on title to the Property as of the day hereof.
10. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Property or any part there

[NTD: THE FOLLOWING DOES NOT FORM PART OF THE AGREEMENT. PLEASE REFER TO THE BELOW FOR OPTIONAL CLAUSES TO BE INCLUDED IN THE AGREEMENT AS APPROPRIATE.]

OPTIONAL PROVISIONS

Mutual termination right (if required):

<p>Insert into Section 2:</p>	<p>Either party has the right to terminate this service agreement upon *XX* days written notice to the other party. Notwithstanding anything else in this Service Agreement, termination of this Service Agreement is subject to both parties entering into an exit agreement, as required pursuant to the Act, as may be replaced or amended from time to time.</p>
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<p>To be included in Section 6:</p>	<p>The Provider shall maintain a capital reserve for the Project [and fund such reserve in accordance with the Financial Plan].</p>
	<p>The Provider shall provide the Service Manager with confirmation of its contribution to its capital replacement reserve, capital budget and capital expenditure plan for the Project annually.</p>
	<p>Income derived from the investment of capital reserves for the Project must be retained in the capital reserve.</p>
	<p>The Provider shall prepare and administer an annual capital budget and five-year capital and replacement plan for the Project using information from a [current] [NTD: Service Manager to determine how old the BCA may be] building condition assessment.</p>

	<p>OR</p> <p>The [Service Manager/ Provider] shall complete a building condition assessment and capital plan for the Project every five (5) years and be required to provide a copy to the [Service Manager/ Provider].</p>
	<p>The Service Manager shall provide *one time, monthly, annual* [TBD by the Service Manager] funding to be set aside in the capital reserve fund of the Provider for the Project and to be used solely for the purposes of undertaking capital repairs to the Project. The Service Manager may reconcile any surplus in capital reserve funds provided to the Provider and re-allocate such surplus in its sole discretion.</p>
	<p>The Service Manager shall provide the Provider with access to the AssetPlanner software in order to manage its capital repairs for the Project.</p>
	<p>Property tax relief for the Project will be provided in the form of a property tax exemption granted to the Provider, or pending such property tax exemption being granted, reimbursement of the portion of property tax expense for municipal and school purposes, as determined by the Service Manager at the Service Manager’s sole discretion and as permitted by Applicable Law.</p>

Manager Rights and Consents:

<p>Suggested to insert after Section 6 (subsequent Section references will have to be amended)</p>	<p>The parties agree that the Service Manager may cause this Service Agreement to be registered on title to the Project.</p>
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Acknowledgment of Funding Arrangements

<p>To be included in Section 7:</p>	<p>Notwithstanding this Service Agreement, the Provider is encouraged to and may apply for other subsidies, incentives or other funding for the Project that the Provider may likely be qualified for (the “Other Funds”).</p> <p><i>[Optional if agreement is with AHP and IAH providers: The parties understand that the Provider is an Affordable Housing Program / Investment in Affordable Housing provider, and that the Service Manager has elected to make the Provider and the Project subject to the provisions of this Service Agreement in replacement of/conclusion of the applicable contribution agreement(s) previously entered into between the parties.]</i></p>
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Additional Non-Compliance Provisions to insert if required:

<p>Insert into Section 12:</p>	<p><u>Non-Waiver:</u> No consent or waiver, expressed or implied, by the Service Manager of any default by the Provider in observing or performing its obligations under this Service Agreement is effective unless given in writing, nor is it a consent or waiver of any other default. Failure of the Service Manager to complain of any act or failure to act by the Provider or to declare the Provider in default, irrespective of how long that failure continues, is not a waiver by the Service Manager of its rights under this Service Agreement.</p> <p><u>Co-operation:</u> In the event that the Service Manager appoints an operational advisor, interim receiver and/or property manager in pursuing its remedies under this Service Agreement, the Provider shall co-operate with the Service Manager and such appointee as they carry out their duties with respect to the Project.</p>
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	<p>The Provider shall not undertake any of the following activities without prior written consent of the Service Manager:</p> <ul style="list-style-type: none"> a) change Articles of Incorporation; b) sell, transfer or otherwise dispose of any interest in the Project; c) demolish any buildings or conduct any renovation that has the effect of reducing the number of Subsidized units; d) mortgage, refinance or encumber the Project; e) develop or re-develop the Project; and/or f) re-organize, amalgamate, merge, consolidate or otherwise enter into any other form of business combination with any other person. <p>[NTD: Consider items under Events of Default.]</p>
	<p><u>Inspection Rights of Manager:</u> The Provider shall permit inspection of the Project by the Service Manager at the Service Manager’s discretion and reasonable notice being given to the Provider by the Service Manager. The Service Manager shall be entitled to attend at the Project, in order to monitor the progress of the Project. Any inspection by the Service Manager shall not in any way relieve the Provider of its obligations and responsibilities. It is specifically acknowledged and agreed that any such attendances or inspections by the Service Manager are for the sole purposes of monitoring the Project, and that no such attendances or inspections shall result in, or cause the Service Manager to assume any obligations or liabilities in connection with the Project or to be liable to, or have any obligations to, the Provider.</p>

Sample Language for Schedule D

	<p><u>Commercial General Liability:</u> Commercial general liability insurance shall be in the name of the Provider, and shall include as additional insured the Service Manager with limits of [Five Million Dollars (\$5,000,000)] inclusive per occurrence with a [Ten Million Dollar (\$10,000,000)] minimum general aggregate for bodily injury, death, and damage to property including standard non-owned automobile coverage with standard contractual liability endorsement, owner's and contractor's protective, products and completed operations, and employer's liability with coverage including the operations and activities of the Provider and those for whom it is in law responsible. The policy shall contain cross liability and severability of interest clauses of standard wording and shall waive subrogation against any insured thereunder. The form of this insurance shall be acceptable to the Service Manager and shall be maintained continuously for so long as the Project continues to operate as a Project. The policies shall be endorsed to provide the Provider and the Service Manager and each additional insured with not less than thirty (30) days written notice in advance of any cancellation, change or amendment restricting coverage.</p>
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Automobile Liability Insurance: Automobile Liability Insurance in respect of licensed vehicles shall have limits of not less than [Two Million Dollars (\$2,000,000)] inclusive per occurrence for bodily injury, death, and damage to property, in the following form endorsed to provide the Service Manager with not less than thirty (30) days written notice in advance of any cancellation, change or amendment restricting coverage:

Standard owner's form automobile policy providing third party liability and accident benefits insurance and covering licensed vehicles owned or operated by or on behalf of the Provider.

Umbrella Liability Insurance: Where any of the contractors cannot provide evidence of the required limits of liability with respect to the Commercial General Liability insurance coverage, liability limits may be provided using a combination of primary liability limits and umbrella insurance or excess liability limits which meet the Commercial General Liability coverage and general aggregate limits noted above.

Property Insurance: All risks property insurance shall be in an amount not less than the full replacement value of the cost of the building and contents and shall include windstorm, earthquake and flood coverage endorsements. The policy shall contain cross liability and severability of interest clauses of standard wording and shall waive subrogation against any insured thereunder. The Service Manager shall be named as a loss payee, 'as their financial interest may appear'.

	<p><u>Boiler and Machinery Insurance:</u> Boiler and Machinery Insurance in the full replacement cost of the building and contents. The policy shall contain cross liability and severability of interest clauses of standard wording and shall waive subrogation against any insured thereunder. The Service Manager shall be named as a loss payee, ‘as their financial interest may appear’.</p>
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