Co-ordination Agreement

Housing Australia
Housing Australia

Australian Capital Territory
Territory

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Co-ordination Agreement

Date

Parties

Housing Australia ABN 22 498 714 570 (the body corporate established by section 7 of the *Housing Australia Act 2018* (Cth)) of Level 23, 420 George Street, Sydney NSW 2000 **(Housing Australia)**

Australian Capital Territory the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth) represented by the City and Environment Directorate **(Territory)**

Background

A. Housing Australia:

(a) administers:

(i) the Housing Australia Future Fund Facility **(HAFF),** to support the delivery over 5 years from 2024 and ongoing availability, of 20,000 social homes and 10,000 affordable homes (including HAFF – Social and Affordable, HAFF – Crisis and Transitional);

(ii) the National Housing Accord Facility, to support the delivery over 5 years from 2024 and ongoing availability, of an additional 10,000 affordable dwellings;

(iii) the National Housing Infrastructure Facility (including the National Housing Infrastructure Facility – Critical Infrastructure);

(iv) the Affordable Housing Bond Aggregator; and

(b) has or may establish other programs for the provision of funding for housing projects,

(each, a **Funding Program).**

B. Housing Australia provides funding to social and affordable housing projects under Funding Programs, including through the provision of debt funding.

C. The Territory has facilitated and will continue to facilitate the development, refurbishment, operation, management and maintenance of social and affordable housing projects (including those which may incorporate market rent dwellings) in the Australian Capital Territory including by providing funding, land rights and other support to those projects. Housing Australia may be requested to also provide funding and support to those projects.

D. Given the funding and other support which each of Housing Australia and the Territory will provide to those projects, the parties have agreed to set out in this document arrangements which will apply to address each of the parties' rights in relation to those projects including when those projects face financial or other difficulties.

Operative provisions

1. Objectives

(a) The objectives of Housing Australia and the Territory in entering into this document, including the ongoing management of the obligations of each party under this document, are **(Objectives):**

(i) that the Territory and Housing Australia will work together in the interests of completion of the Projects to seek to ensure continuity of service for tenants of the Relevant Projects before any undertaking default or termination action;

(ii) to allow Housing Australia to take the lead on administering technical financial and creditor matters, including with Third Party Financiers. Housing Australia is to do this in close collaboration with the Territory, which will be consulted and kept informed at all stages which will primarily occur via the Governance Group;

(iii) to provide certainty of the funding and support for Relevant Projects and access to the Relevant Project land, and to this end the Territory will not terminate or materially vary Territory Support Documents or unilaterally cease funding, but instead the Territory and Housing Australia will work closely together to optimise outcomes for each Relevant Project including by Housing Australia sharing information with the Territory and seeking to work collaboratively with the Territory via the Governance Group; and

(iv) without limiting the requirements of any funding or other support program of the parties, to seek to harmonise the milestones and reporting requirements applicable to a Relevant Project to support efficiencies in delivery and operations by the Recipient.

(b) The parties seek to achieve these objectives through a culture of mutual respect and cooperation, and in an environment that fosters cost efficiency, transparency and open, honest and timely communication.

(c) Each party agrees when performing any obligations or exercising any rights arising from or in connection with this document, that it will use reasonable endeavours to act consistently with the Objectives set out in clause 1(a).

(d) To this end, each party commits to an open and collaborative working relationship, in which:

(i) the performance of any of its obligations or exercising of any of its rights arising from or in connection with this document; and

(ii) any communication or the provision of information relevant to those Objectives and this document is readily exchanged and shared in a manner that,

in each case, facilitates that collaborative relationship. Schedule 3 sets out some example scenarios which would indicate a Relevant Project is distressed and provides an indication of how the parties might collaborate together in various circumstances, but collaboration in these ways is not mandatory and it is the intention of the parties, primarily via the Governance Group, to implement solutions to issues impacting a Relevant Project to seek to increase the likelihood of ensuring continued provision of social and affordable housing in the manner contemplated in the Relevant Project.

2. Definitions and interpretation

2.1 Definitions

In this document:

Authority means any:

(a) government or governmental, semi-governmental or local government authority, local council, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or

(b) person having jurisdiction over the performance of any obligations under this document.

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in the capital city of the Australian Capital Territory.

CHP means a community housing provider registered in the Australian Capital Territory by the ACT Human Services Registrar under the *Community Housing Providers National Law (ACT) Act 2013* (ACT).

Chief Executive Officer means:

(a) in relation to Housing Australia, the 'Chief Executive Officer' of Housing Australia from time to time as notified to the Territory; and

(b) in relation to the Territory, the Director-General of the Directorate (or that person's nominee).

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

(a) under or in connection with this document or any Relevant Project;

(b) at Law; or

(c) for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.

Commonwealth Entity has the meaning given to the term "Commonwealth entity" under the *Public Governance, Performance and Accountability Act 2013* (Cth).

Completed means, in relation to a Relevant Project, that all works in relation to that Relevant Project have been completed and all of the homes in the Relevant Project are able to be occupied by tenants (including any Occupancy Certificate).

Commencement Date means the date on which the last of the parties signs this document.

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

Default Right means any right, power, discretion or remedy of the Territory (whether under a Territory Support Document or otherwise at law or in equity) to:

(a) avoid, terminate or rescind, or treat as terminated or repudiated, a Territory Support Document; or

(b) cease or suspend performance of its obligations under a Territory Support Document; or

(c) release the Territory from its obligations under a Territory Support Document.

Development Period means any period of time during the Term during which any Relevant Project has not been Completed.

Discharge Date means, in relation to a Relevant Project, the date (as determined by Housing Australia) that all amounts owing by the Recipient:

(a) to Housing Australia under any of the HA Funding Documents have been paid in full; and

(b) to any Third Party Financier under the Third Party Finance Documents have been paid in full; and

(c) all commitments under the HA Funding Documents and Third Party Finance Documents have been cancelled and the Recipient is not entitled to draw down further financial accommodation under any of those documents,

and in each case Housing Australia is satisfied that it is not reasonably foreseeable, within a reasonable timeframe, that the Recipient will become liable to pay to Housing Australia any further amounts under any of the HA Funding Documents.

Director-General of the Directorate means the officer appointed to the position of director-general of the City and Environment Directorate or such other Directorate that performs the functions of that Directorate from time to time.

Dispute has the meaning given in clause 18.1.

End Date means the date upon which all HA Funding Documents and all Territory Support Documents in relation to Relevant Projects have been terminated or expired in accordance with their terms or such earlier date as the parties may agree in writing.

Enforcing Party means Housing Australia, any External Administrator, agent or attorney appointed under a Security or any nominee of Housing Australia (including, for the avoidance of doubt, a Third Party Financier).

External Administrator means an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.

Governance Group has the meaning given in clause 5.1(a).

HA Default Right means any right, power, discretion or remedy of Housing Australia (whether under a HA Funding Document or otherwise at law or in equity) to:

(a) avoid, terminate or rescind, or treat as terminated or repudiated, a HA Funding Document; or

(b) cease or suspend performance of its obligations under a HA Funding Document; or

(c) release Housing Australia from its obligations under a HA Funding Document.

HA Funding Documents means, in relation to a Relevant Project, the funding, finance, security, intercreditor documents and other documents entered into or to be entered into by Housing Australia as financer and the Recipient in relation to the Relevant Project.

HA Representative means the person nominated as such by Housing Australia. The person nominated at the date of the document is set out in Schedule 4.

Housing Australia means Housing Australia, the body corporate established by section 7 of the *Housing Australia Act 2018* (Cth).

Insolvency Event has the meaning given in the applicable Territory Support Document, however if there is no such definition it means the occurrence of any one of the following events in respect of an entity:

(a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);

(b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller (as defined in the Corporations Act) appointed to its property;

(c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by Housing Australia);

(d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 21 days), resolution passed, or any other action taken, in each case in connection with that person, in respect of any of paragraphs (a), (b) or (c) of this definition;

(e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;

(f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which Housing Australia reasonably deduces it is so subject);

(g) it is otherwise unable to pay its debts when they fall due; or

(h) something having a substantially similar effect to paragraphs (a) to (g) of this definition happens in connection with that person under the law of any jurisdiction.

Law includes:

(a) Acts of the Commonwealth and the Territory;

(b) ordinances, regulations, by-laws, orders and proclamations or other instruments made under those Acts referred to in paragraph (a) of this definition; and

(c) lawful directions by any Authority in exercising their statutory powers.

Loss means a loss, damage, liability, cost, charge, expense, penalty, compensation, fine, outgoing suffered, paid or incurred.

Material Notice means:

(a) a notice under or in connection with:

(i) a Territory Support Document;

(ii) a HA Funding Document; or

(iii) any other agreement to which the Territory and the Recipient are counterparties or to which Housing Australia and the Recipient are counterparties,

in each case in relation to a Relevant Project given by the Territory or Housing Australia to or received by the Territory or Housing Australia from the Recipient;

(b) a notice under or in connection with Third Party Finance Document which indicates that a default or breach (however described) has occurred under a Third Party Finance Document or that the Third Party Financier may not provide funding to the relevant Recipient in accordance with the Third Party Finance Documents; and

(c) a notice given by an Authority in connection with a Relevant Project received by the Territory or Housing Australia (whether from the Recipient or any other person, including the relevant Authority).

Member has the meaning given in clause 5.1(a).

Notice has the meaning given in clause 19.1.

Novatee has the meaning given in clause 16(b).

Objectives has the meaning given in clause 1.

Occupancy Certificate means any permit or approval required under the Laws of the Territory to allow a Relevant Project to be occupied and used in accordance with the nature of that Relevant Project.

Operations Period means a period of time during the Term which is not a Development Period.

Power means any right, power, discretion or remedy of an Enforcing Party under or in connection with a Security or under applicable law. It includes accepting repudiation and granting waivers.

Preferred Remedy Option has the meaning given in clause 5.2(a).

Project means:

(a) a project to develop, refurbish, operate, manage and/or maintain housing which includes social and/or affordable dwellings in the Australian Capital Territory which receives or is to receive funding, finance or support in part or whole under both:

(i) one or more HA Funding Documents; and

(ii) one or more Territory Support Documents; and

(b) any other project which the parties agree is a Project for the purposes of this document.

Recipient means the party that receives funding, finance or support in part or whole from both Housing Australia and the Territory in relation to a Project and any person taking a transfer or novation of that party's rights and obligations under any agreement pursuant to which that

party receives funding, finance or support in part or whole from Housing Australia and the Territory in relation to a Project.

Recipient Failure Event (Other) means, in relation to a Relevant Project, circumstances:

(a) where Housing Australia has a right to terminate, surrender, rescind or accept repudiation of any HA Funding Document or cancel any undrawn funding commitments under any such agreement;

(b) where there has been a default or breach (howsoever described) by the Recipient under any HA Funding Document;

(c) where there has been a default or breach (howsoever described) by the Recipient under any Third Party Finance Document;

(d) where Housing Australia, under any HA Funding Document, has a right to step in or cure or remedy a default or breach (howsoever described) by the Recipient under any document in connection with the Relevant Project; or

(e) where the Recipient does not pay to the Housing Australia when due any amount payable by it under any HA Funding Document.

Recipient Failure Event (TSD) means, in relation to a Relevant Project, circumstances:

(a) where the Territory has a right to terminate, surrender, rescind or accept repudiation of any Territory Support Document or cancel any undrawn funding commitments under any Territory Support Document;

(b) where there has been a default or breach (howsoever described) by the Recipient under any Territory Support Document;

(c) where the Territory has a right to step in or cure or remedy a default or breach (howsoever described) by the Recipient of any Territory Support Document; or

(d) where the Recipient does not pay to the Territory when due any amount payable by it under any Territory Support Document.

Recipient Failure Event Notice has the meaning given in clause 10.

Relevant Project means the Projects referred to in Schedule 1 (which is to be updated from time to time) and each Project which is subsequently designated a Relevant Project in accordance with clause 5.1(c)(i) or agreed by the parties (including pursuant to clause 6) to be a Relevant Project. A Project ceases to be a Relevant Project when agreed by the parties in accordance with this document.

Remedied, Remedy (and similar expressions) means:

(a) for a default or breach (however described) relating to a failure to pay money, the payment of the outstanding amount due and payable to the Territory;

(b) for a default or breach (however described) relating to a failure to do any other thing that is able to be done, the doing or procuring of the doing of that thing;

(c) for a default or breach (however described) relating to an Insolvency Event in respect of the Recipient, an Enforcing Party giving a Step-in Notice to the Territory; and

(d) in the case of any other default or breach (however described):

(i) payment of compensation claimed (or such other amount agreed) by the Territory; or

(ii) undertaking or procuring a course of action as detailed to Housing Australia by the Territory (or otherwise agreed by the Territory),

which the Territory reasonably determines is necessary to remedy or overcome any detriment to the Territory caused by that default or breach, having regard to the nature of the default or breach, the time required to pay the compensation or take the course of action and the resources available to Housing Australia or Enforcing Party (as the case may be).

Remedy Period means, for a default or breach (however described), the period starting on the later of expiry of any applicable remedy period under the relevant Territory Support Document and one Business Day after the date Housing Australia receives a copy of the Recipient Failure Event Notice (TSO) under clause 10(d) and ending 6 months after the date the Remedy Period starts or any longer period:

(a) allowed for remedy or cure of the default under the relevant Territory Support Document;

(b) agreed between Housing Australia and the Territory; or

(c) as extended in accordance with clause 13(b).

Representative means, in respect of any person, any consultant, employee, officer, contractor, agent, invitee or licensee of that person.

Security means each Security Interest granted by or on behalf of a Recipient in relation to any HA Funding Document and/or Third Party Finance Document.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person including a security interest under section 12 of the *Personal Properly Securities Act 2009* (Cth).

Step-in Notice means a written notice from Housing Australia to the Territory stating that an Enforcing Party is stepping-in to the Recipient's rights and obligations under the relevant Territory Support Document for the purposes of this document.

Step-in Period means the period from (and including) the date that Housing Australia gives a Step-in Notice to the Territory to (but excluding) the earlier of:

(a) receipt by the Territory of a Step-out Notice; and

(b) the date on which the relevant Territory Support Document terminates or expires or is novated as contemplated in clause 16.

Step-out Notice means a written notice from Housing Australia to the Territory stating that an Enforcing Party is stepping-out of the relevant Territory Support Document for the purposes of this document.

Subsidiary has the meaning given to the term "subsidiary" in the Corporations Act, but as if body corporate includes any entity. It also includes an entity required by current accounting practice to be included in the consolidated annual financial statements of that entity or would be required if that entity were a corporation.

Territory means the body politic established by section 7 of the Australian Capital Territory (Self-Government) Act 1988 (Cth). In this document a reference to the Territory includes the

Territory in its capacity as lessor under a sub-lease of land to a Recipient in connection with a Relevant Project.

Territory Ancillary Documents means any agreement, document or arrangement pursuant to which the Territory provides other support or rights to a Recipient in relation to a Project including licences, leases or sale of land.

Territory Funding Documents means any agreement, document or arrangement pursuant to which the Territory provides financial or funding support to a Project including by way of refundable or non-refundable grants, debt funding, revenue or cost support and/or availability payments.

Territory Representative means the person nominated as such by the Territory. The person nominated at the date of the document is set out in Schedule 4.

Territory Support Documents means any Territory Funding Documents and Territory Ancillary Documents entered into in relation to a Project.

Third Party Finance Document means each of the finance, security and intercreditor documents which evidence the provision of finance or funding by any Third Party Financier and security by the Recipient in connection with a Relevant Project.

Third Party Financier means any third party (other than Housing Australia) which provides financing or is a financier or finance party (including any facility agent or security trustee) to the Recipient under the Third Party Finance Documents entered in connection with the Relevant Project.

Third Party Financier Reliance Letter means a letter from the Territory for the benefit of a Third Party Financier substantially in the form set out in Schedule 2 (or such other form as agreed by the parties).

2.2 Interpretation

In this document:

(a) headings are for convenience only and do not affect interpretation;

(b) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust, in each case whether or not comprising a separate legal entity;

(c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;

(d) a reference to a document (including this document) is to that document as varied, novated, ratified or replaced from time to time;

(e) a reference to a statute or any part of it includes its delegated legislation, regulations and other instruments under it, and any consolidations, amendments, re-enactments and replacements;

(f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(g) a reference to a party, clause, schedule, attachment or annexure is a reference to a party, clause, schedule, attachment or annexure to or of this document in which it appears, and a reference to this document includes all schedules, exhibits, attachments and annexures to it;

(h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

(i) if anything is required to be done under this document on or by a day that is not a Business Day, it must be done on or by the next Business Day;

U) a reference to a time is to that time in the Australian Capital Territory;

(k) "includes" in any form is not a word of limitation;

(l) the meaning of "or" will be that of the inclusive "or", that is meaning one, some or all of a number of possibilities;

(m) unless a party is expressly required under this document to act reasonably in exercising a power, right or remedy, that party may exercise any power, right or remedy in its absolute and unfettered discretion and that party has no obligation to do so;

(n) without limiting clause (m), unless a party is expressly required under this document to act reasonably in exercising a power, right or remedy, the term "may", when used in the context of a power, right or remedy exercisable by a party, means that party may exercise that power, right or remedy in its absolute and unfettered discretion and that party has no obligation to do so; and

(o) "$" or "dollar" refers to Australian currency.

2.3 No fetter

This document is a commercial agreement between the Territory and Housing Australia. Notwithstanding anything expressly stated or implied in this document to the contrary:

(a) neither the Territory nor Housing Australia is obliged to exercise any executive or statutory right, duty or function, or to influence, over-ride, interfere with or direct any other Authority in the proper exercise and performance of any of its executive or statutory rights, duties or functions; and

(b) nothing expressly stated or implied in this document has the effect of constraining the Territory, Housing Australia or any other Authority or placing any fetter on the Territory's, Housing Australia's or any other Authority's discretion to exercise or not to exercise any of its executive or statutory rights, duties or functions.

No party will be entitled to make any Claim against the other party in connection with any exercise or failure to exercise any of executive or statutory rights, duties or functions.

2.4 Machinery of government changes

In relation to the Territory, the parties acknowledge that over the term of this Agreement there may be assignment, novation, transfer or other dealing by the Territory where merely the department or other administrative unit forming part of the Territory or through which the Territory acts in relation to this document, changes. In the event that such department or other administrative unit ceases to exist or is reconstituted, renamed or replaced, and its powers or functions are transferred to another department or administrative unit, a reference to the department or administrative unit will include that other government department or administrative unit.

2.5 Rights under Territory Support Documents or the HA Funding Documents not affected

Except as this document expressly provides otherwise, this document does not affect a person's rights, obligations, powers or remedies under the Territory Support Documents or the HA Funding Documents.

3. Composition of this document

(a) This document comprises:

(i) clauses 1 to 21; and

(ii) Schedules 1, 2, 3 and **4,**

(this **document).**

(b) This document:

(i) commences on the Commencement Date; and

(ii) continues until the End Date,

(the **Term).**

4. Representatives

4.1 HA Representative

(a) Housing Australia must ensure that at all times throughout the Term, there is a natural person who is the HA Representative for this document. The HA Representative may change from time to time (refer to Schedule 4).

(b) The HA Representative will administer this document on behalf of Housing Australia and:

(i) will exercise all rights, powers, authority and functions of the HA Representative under this document; and

(ii) may exercise all rights, powers, authority and functions of Housing Australia under this document.

(c) The HA Representative may at any time delegate the exercise of any power or authority of the HA Representative to a person other than the then appointed HA Representative.

(d) Housing Australia may at any time delegate the exercise of any power or authority of Housing Australia to a person other than the then appointed HA Representative.

(e) Housing Australia must promptly notify the Territory of the identity of each delegate and the powers and authority delegated (including any conditions applying to the delegated power).

(f) Housing Australia may vary or terminate any power or authority ii has delegated, whether to the HA Representative or otherwise, and must promptly notify the Territory of any such variation or termination.

4.2 Territory Representative

(a) The Territory must ensure that at all times throughout the Term, there is a natural person who is the Territory Representative for this document. The Territory Representative may change from time to time (refer to Schedule 4).

(b) The Territory Representative will administer this document on behalf of the Territory and:

(i) will exercise all rights, powers, authority and functions of the Territory Representative under this document; and

(ii) may exercise all rights, powers, authority and functions of the Territory under this document.

(c) The Territory Representative may at any time delegate the exercise of any power or authority of the Territory Representative to a person other than the then appointed Territory Representative.

(d) The Territory may at any time delegate the exercise of any power or authority of the Territory to a person other than the then appointed Territory Representative.

(e) The Territory must promptly notify Housing Australia of the identity of each delegate and the powers and authority delegated (including any conditions applying to the delegated power).

(f) The Territory may vary or terminate any power or authority it has delegated, whether to the Territory Representative or otherwise, and must promptly notify Housing Australia of any such variation or termination.

5. Governance

5.1 Governance Group

(a) The parties must establish and must participate in a governance group comprised of:

(i) 2 members appointed by Housing Australia, one of which must be the HA Representative; and

(ii) 2 members appointed by the Territory, one of which must be the Territory's Representative;

(each a **Member** and together the **Governance Group)**.

(b) The Governance Group will:

(i) during any Development Period and while a Recipient Failure Event (TSD) subsists, meet on approximately a monthly basis;

(ii) during any Operations Period as long as no Recipient Failure Event (TSD) subsists, meet on approximately a quarterly basis; and

(iii) meet on an ad hoc basis as agreed by the parties in order to further the Objectives,

and in each case those meetings will be chaired and facilitated by a Housing Australia Member in accordance with the procedures set out below and as agreed by the Members.

(c) The role of the Governance Group will be:

(i) to discuss and consider whether any Project should be designated as a Relevant Project and whether any Relevant Project should cease to be a Relevant Project;

(ii) to review the progress and performance of each Project;

(iii) to review the performance of each Recipient;

(iv) if a Recipient is in breach or default under any document that is material to the delivery or operation of a Relevant Project (some example scenarios are set out in Schedule 3), to discuss and consider options to collaboratively support the Recipient and assist with the delivery or operation of the Relevant Project;

(v) if it appears that a Recipient may breach or default under any document that is material to the delivery or operation of a Relevant Project (some example scenarios are set out in Schedule 3), to discuss and consider options to collaboratively support the Recipient and to assist with the delivery or operation of the Relevant Project;

(vi) if ii appears that a preferred solution to seek to ensure the continued provision of social and affordable housing in relation to a Relevant Project may include the novation or assignment of the relevant Recipient's rights under the Territory Support Documents, to seek to identify novatees or assignees which will be aligned with implementation of the relevant Territory Support Documents and acceptable to the parties and Third Party Financiers; and

(vii) to discuss and address such other matters as the Members may agree from time to time in connection with a Relevant Project or a Recipient.

(d) The Governance Group may meet in person, by telephone or by other means of electronic communication by which all persons participating in the meeting are able to hear the entire meeting and to be heard by all other persons attending the meeting.

(e) The Governance Group will have no decision making role or power in respect of this document, a Project or a Recipient, however it is the intention of the parties that the Governance Group will:

(i) make recommendations which will be considered by the parties in the context of the Objectives;

(ii) collaborate in order to assist with the achieving of the Objectives; and

(iii) report to the Territory and Housing Australia in relation meetings of the Governance Group.

5.2 Supporting Relevant Projects

(a) If:

(i) a Recipient is in breach or default under any document that is material to the delivery or operation of a Relevant Project including any Recipient Failure Event (Other) or Recipient Failure Event (TSO); or

(ii) Housing Australia has identified that a Relevant Project may not be able to be delivered or operated in accordance with any document that is material to the delivery or operation of a Relevant Project,

then Housing Australia will, in relation to that Relevant Project, seek to:

(iii) ascertain and summarise the issues that:

A. have led to the breach or default;

B. have alerted Housing Australia that Relevant Project may not be able to be delivered or operated in accordance with relevant requirements;

(iv) identify the rights that Housing Australia has in connection with the breach or default, including any right to remedy (or cause another person to remedy) the breach or default; and

(v) identify a preferred option that support the Objectives to remedy the breach or default or otherwise support the delivery or operation of the Relevant Project (which, in each case, may include additional funding from Housing Australia or the Territory or amendments to the terms of the arrangements between Housing Australia or the Territory and the Recipient or other parties involved in the Relevant Project) **(Preferred Remedy Option),**

and will provide details of the above to the Territory to enable discussion of the Preferred Remedy Option at the meeting of the Governance Group.

(b) Subject to the Preferred Remedy Option being discussed at a meeting of the Governance Group (and, to the extent that it requires additional funding from the Territory or an amendment to the terms of the arrangements between the Territory and the relevant Recipient, the Preferred Remedy Option being approved by the Territory), Housing Australia may present the Preferred Remedy Option to (as the case requires) the relevant Recipient and other relevant party (including a Third Party Financier) **(Relevant Counterparties).** If the Preferred Remedy Option is acceptable to the Relevant Counterparties, Housing Australia and the Territory will co-operate to implement the Preferred Remedy Option.

(c) The parties agree that clause 5.2(a) will be iterative so that Housing Australia may update the information and Preferred Remedy Option in order to meet the Objectives.

6. Relevant Projects

(a) Each of Housing Australia and the Territory have programs to provide financial and other support to projects incorporating social and affordable housing.

(b) Various entities are in the process of planning to develop, refurbish, operate, manage and/or maintain housing projects in the Australian Capital Territory which incorporate social and affordable housing.

(c) If both Housing Australia and the Territory agree to provide financial or other support to such a project, the Objectives are served by the co-ordination of the rights and obligations of Housing Australia and the Territory in connection with those projects. In relation to such projects:

(i) any party may notify the other party in writing that the project should be a Relevant Project for the purpose of this document. The party giving the notice will, to the extent known, provide a summary of the timing and milestones for the project (noting that this may be based on information from the potential Recipient or other third parties); and

(ii) the other party will, promptly after receiving a notice under clause 6(c)(i), respond to the first party in writing advising whether or not it agrees that the project should be a Relevant Project for the purpose of this document,

and, if other party agrees that the project should be a Relevant Project, then the project is a Relevant Project from the date of the other party's notice under clause 6(c)(ii) (or such other date as agreed by the parties).

(d) The parties may also agree that a project is no longer a Relevant Project, but this may only be done if each party is satisfied that no Third Party Financier is entitled to rely on the terms of a Third Party Financier Reliance Letter in connection with that Relevant Project.

(e) Housing Australia will update the list of Relevant Projects from time to time after there has been a change to the list of Relevant Projects. Housing Australia will send the updated list of Relevant Projects to the Territory and, once the updated list has been tabled and confirmed by the Governance Group, at a Governance Group meeting that list will replace Schedule 1.

7. Benefit of Third Party Financiers

The parties agree that achieving Objectives can be assisted if the Territory provides written confirmation to Third Party Financiers (or potential Third Party Financiers) advising that the Territory agrees that the Third Party Financier (or potential Third Party Financier) may rely on certain aspects of this document as set out in a Third Party Financier Reliance Letter.

8. Consent to Securities

(a) The Territory consents to each Security Interest granted or to be granted to Housing Australia over a Relevant Project, a Recipient or any property of a Recipient.

(b) The Territory will consider whether it consents to each Security Interest granted or to be granted to a Third Party Financier over a Relevant Project, a Recipient or any property of a Recipient on a case by case basis (and confirmation may be provided in a Third Party Financier Reliance Letter).

(c) The Territory's consent given in clause 8(a) will be sufficient for the purposes of any consent required from the Territory under a Territory Support Document.

9. Limitations on the Territory

(a) Subject to the provisions of this document, on or before the Discharge Date for a Relevant Project, the Territory must:

(i) not accept, demand or seek payment, repayment or a refund of any amount from the Recipient for that Relevant Project including under the Territory Support Documents;

(ii) not sue for or take other legal action or proceeding to recover payment of any amount from the Recipient for that Relevant Project;

(iii) not exercise a right of set-off, counterclaim or deduction against any amount owed or payable by a Recipient to the Territory for a Relevant Project;

(iv) not seek or take, accept or receive the benefit of any Security Interest, guarantee, indemnity or other assurance against loss from (or over the assets of or over the shares in) the Recipient for that Relevant Project or register or note any interest on the title to any land which is used or to be used for the purposes of the Relevant Project (and in each case not enter into any agreement, document or other arrangement regarding the same);

(v) not assign, novate, transfer or otherwise deal with all or any part of its interest in, or obligations or rights under any of the Territory Support Documents;

(vi) not lease, license, transfer, sell, dispose of, part with possession of, or otherwise deal with the whole or any land made available by the Territory to the Recipient regarding a Relevant Project;

(vii) not make or permit any amendment to, replacement of or waiver of any material provision of any of the Territory Support Documents;

(viii) not terminate, surrender, rescind or accept repudiation of any Territory Support Document or cancel any undrawn funding commitments under any Territory Support Document;

(ix) not petition for (or vote in favour of any resolution for) or initiate or support or take steps with a view to any insolvency, liquidation, reorganisation, administration, or dissolution proceedings or any voluntary arrangement or assignment for the benefit of creditors or the termination or dissolution of the Recipient related to that Relevant Project; and

(x) not vote in, or requisition or convene a meeting to consider, any arrangement, assignment or composition or protection from creditors under statute for the Recipient;

each a **"Relevant Action",** unless, in each case:

(xi) it has notified Housing Australia that it is considering taking the Relevant Action;

(xii) a period for consultation about the Relevant Action of 20 Business Days from the Territory's notice (or such other period as the parties agree, taking into account the circumstances of the Relevant Project and Recipient at that time) has elapsed; and

(xiii) if the Relevant Action relates to a Default Right, it is entitled to enforce a Default Right in relation to the Relevant Project in accordance with clause 12.

(b) If Housing Australia participates in the consultation with the Territory for the purposes of clause 9(a)(xii), the parties acknowledge the consultation will focus on the Objectives and may be undertaken by the Governance Group.

(c) For the avoidance of doubt, the occurrence of any refinancing of the HA Funding Documents or the Third Party Finance Documents will not result in the Discharge Date occurring.

10. Information

(a) Subject to any confidentiality requirements and laws that may restrict the exchange of information:

(i) the parties agree to share information in relation to each Relevant Project and in relation to each Recipient; and

(ii) the parties may share information in relation to programs in connection with the support or funding of social and affordable housing projects in the Australian Capital Territory.

(b) The purpose of the sharing of information includes to:

(i) support the Objectives;

(ii) support the delivery and operation of each Relevant Project and to seek to allow the parties to identify issues that may impact upon the delivery or operation of a Relevant Project in accordance with the Territory Support Documents, the HA Funding Documents and Third Party Finance Documents; and

(iii) identify projects which may be considered for inclusion as a Relevant Project.

(c) If a party gives or receives a Material Notice (except from the other party) it must promptly (and in any case within 10 Business Days) after receiving that Material Notice provide a copy of the Material Notice to the other party to this document.

(d) The Territory must notify Housing Australia as soon as reasonably practicable:

(i) after it becomes aware of a Recipient Failure Event (TSO); and

(ii) upon the expiry of any cure period applicable to a Recipient Failure Event (TSO) in the circumstances where the Recipient Failure Event (TSO) is continuing,

each such notice being a **Recipient Failure Event Notice.**

(e) Housing Australia must notify the Territory:

(i) as soon as reasonably practicable:

A. after it becomes aware of a Recipient Failure Event (Other); and

B. upon the expiry of any cure period applicable to a Recipient Failure Event (Other) in the circumstances where the Recipient Failure Event (Other) is continuing; and

(ii) prior to exercising a HA Default Right.

(f) The parties will seek to proactively share information about emerging risks or concerns relating to Relevant Projects, not just formal breach or default events through the Governance Group. Some of the potential scenarios to consider are set out in Schedule 3.

11. Recipient Failure Event (TSO)

The Territory agrees to:

(a) provide to Housing Australia and any Enforcing Party nominated by Housing Australia:

(i) a copy of any notice given or received by it in relation to a Recipient Failure Event (TSO) or the exercise of any Default Rights in connection with that Recipient Failure Event (TSO); and

(ii) information within its possession concerning the subject matter of a Recipient Failure Event (TSO) promptly following the Enforcing Party's reasonable request; and

(b) use reasonable endeavours to provide any assistance reasonably requested by Housing Australia and any other Enforcing Party concerning the remedy of a Recipient Failure Event (TSO), having regard to the nature of that Recipient Failure Event (TSO) and the resources required by the Territory and cost to the Territory in complying with that request.

12. Exercise of Default Rights

(a) Except as set out in clause 12(b), the Territory may only exercise any Default Right that it has in relation to a Recipient Failure Event (TSO) if:

(i) it has given a copy of a Recipient Failure Event Notice to Housing Australia (and any Enforcing Party nominated by Housing Australia) in relation to the Recipient Failure Event (TSO) in accordance with clause 10(d);

(ii) the relevant Recipient Failure Event (TSO) has not been Remedied within the relevant Remedy Period and has not ceased to subsist; and

(iii) in the case of a Recipient Failure Event (TSO) being an Insolvency Event in respect of the Recipient, no Step-in Period subsists.

(b) Clause 12(a) does not prohibit the Territory from exercising a Default Right arising under a Territory Support Document (after allowing for any grace, remedy or cure period that would have been available to the Recipient) for breach or default (however described) caused by an act or omission of an Enforcing Party during a Step-in Period.

13. Cure Rights

(a) Housing Australia (or an Enforcing Party nominated by Housing Australia) may, but is not obliged to, take steps to prevent, Remedy or procure the Remedy of a Recipient Failure Event (TSO).

(b) If Housing Australia (or an Enforcing Party nominated by Housing Australia) requests, the Territory agrees not to unreasonably withhold its agreement to extend a Remedy Period where an Enforcing Party is diligently pursuing Remedy of the relevant Recipient Failure Event (TSO).

(c) If a Recipient Failure Event (TSO) occurs then, until the relevant Remedy Period expires or the relevant Recipient Failure Event (TSO) is Remedied, unless the Territory and Housing Australia otherwise agree in the circumstances, the Territory must continue to observe and perform all of its obligations under the relevant

Territory Support Document as if that Recipient Failure Event (TSO) had not occurred.

(d) If a Recipient Failure Event (TSO) is Remedied:

(i) that Recipient Failure Event (TSO) will be taken to be remedied for all purposes as between the Territory and the Recipient (notwithstanding that the time required under the relevant Territory Support Document for doing any thing may have passed); and

(ii) the Territory will continue to observe and perform all of its obligations under the relevant Territory Support Document,

as if that Recipient Failure Event (TSO) had not occurred.

14. Step-in Notice and Step-out Notice

(a) At any time after a Recipient Failure Event Notice is issued or the Security granted to Housing Australia or a Third Party Financier is enforceable, Housing Australia may give the Territory a Step-in Notice in relation to the Territory Support Documents for the impacted Relevant Project. The Step-in Notice may specify that Housing Australia (or an Enforcing Party nominated by Housing Australia) is to 'step-in' to perform the Recipient's obligations under the Territory Support Documents.

(b) At any time after a Step-in Period has commenced, Housing Australia may give the Territory a Step-out Notice.

(c) More than one Step-in Notice and Step-out Notice may be given.

15. During Step-in Period

(a) Housing Australia will (or if an Enforcing Party is nominated by Housing Australia in the Step-in Notice, will cause the Enforcing Party to) be liable to perform the Recipient's obligations under the relevant Territory Support Document which are required to be performed during a Step-in Period for that Territory Support Document. However, neither Housing Australia nor any Enforcing Party will be responsible or liable (whether or not pursuant to this document) for any obligation or liability of the Recipient to the Territory which accrued, or is required under the relevant Territory Support Document to be performed, outside of a Step-in Period.

(b) During a Step-in Period, the Territory acknowledges and agrees that the relevant Territory Support Document will remain in full force and effect, and undertakes to:

(i) provide each Enforcing Party and its representatives all necessary access to the land in relation to the Relevant Project for the purposes of Relevant Project;

(ii) duly and punctually perform all of its obligations under the relevant Territory Support Document; and

(iii) not take any action detrimental to an Enforcing Party's rights under the Territory Support Document or the Security.

16. Assignment or novation of Territory Support Document

(a) It is the intention of the parties that any potential novation of the Territory Support Documents will be discussed within the Governance Group (see clause 5.1(c)(vi)) so that an appropriate Novatee may be identified (including being satisfactory to

any Third Party Financier). The parties recognise that in order to support the Objectives an assignment and novation of the Recipient's rights, duties and obligations under relevant Territory Support Documents may include an assignment and novation the Recipient's rights, duties and obligations under relevant HA Funding Documents.

(b) In relation to a Relevant Project, at any time during which a Security is enforceable and before termination of a Territory Support Document, the Territory, promptly following a request from Housing Australia, undertakes to assign and novate the Recipient's rights, duties and obligations under the relevant Territory Support Document in favour a person nominated by the Enforcing Party who:

(i) is a CHP;

(ii) meets any requirements specified under the relevant Territory Support Document; and

(iii) has the necessary financial and other resources to assume the Recipient's rights, duties and obligations under the Territory Support Document,

(Novatee), by entering into a deed with the Recipient, Housing Australia (and/or an Enforcing Party) and the Novatee in form and substance satisfactory to the Territory (acting reasonably).

17. Incorrectly received funds

(a) If the Territory receives or recovers an amount in relation to a Relevant Project in breach of the Territory's obligations under clause 9, the Territory must:

(i) promptly (and in any case within 20 Business Days) notify Housing Australia of the amount received or recovered; and

(ii) promptly (and in any case within 20 Business Days) after receiving a written request from Housing Australia pay that amount (or so much of it that is requested by Housing Australia) to Housing Australia.

(b) Amounts paid to Housing Australia by the Territory under this clause will be utilised by Housing Australia to reduce the amount owing to it by the relevant Recipient in relation to the Relevant Project or distributed in accordance with arrangements Housing Australia has entered into with a Third Party Financier in relation to the Relevant Project. Any amount provided by the Territory under this clause and remaining with Housing Australia that is not required by Housing Australia or the Third Party Financier in relation to the Recipient and the Relevant Project will be returned to the Territory.

18. Dispute resolution

18.1 Dispute

No party may commence court proceedings or action against another party under or in connection with this document (other than where urgent interlocutory relief is required) unless it has first attempted to resolve the dispute, controversy or claim arising out of or relating to this document, its breach, termination or alleged invalidity **(Dispute)** under this clause 18.

18.2 Notice of Dispute

(a) If a party wishes to pursue any Dispute, that party must give the other party notice of such Dispute together with details of that Dispute, including details of all attempts that have been made to firstly resolve any aspect of the Dispute.

(b) The HA Representative and the Territory Representative must, promptly after a notice is given under clause 18.2(a), meet with a view to resolving the Dispute.

18.3 Negotiation between the parties

If a Dispute is not settled by the parties within twenty (20) Business Days after receipt of the notice referred to in clause 18.2(a) and a party wishes to pursue that Dispute, that Dispute must be referred to the Chief Executive Officers of the parties or their delegates in each case who will negotiate in good faith to resolve the Dispute.

18.4 Referral

If the Dispute is not resolved by the Chief Executive Officers or their delegates within 20 Business Days after the referral under clause 18.3 and a party wishes to pursue that Dispute, the parties must do their best to resolve the Dispute by mediation under clause 18.5.

18.5 Mediation

(a) Except as otherwise provided under this document, for mediation of a Dispute, the mediator, the mediator's fees and the mediation rules must be:

(i) mutually agreed upon by the parties in writing; or

(ii) in the absence of agreement within 1O Business Days after the date on which a party requests the other party to refer the Dispute to mediation, as determined by the Resolution Institute.

(b) The parties agree to bear their own costs solely and the costs of the mediation equally.

(c) If the Dispute cannot be resolved within 10 Business Days of commencement of mediation or such other period as the parties agree, either party may, after notice in writing of not less than 1O Business Days to the other, commence legal proceedings in relation to that Dispute.

18.6 General obligations

(a) Any information or documents disclosed by a party under this clause 18 must be kept confidential by the other party and may only be used to attempt to resolve the Dispute.

(b) The parties must continue to perform their obligations under this document, despite a Dispute and during any process conducted under this clause 18.

18.7 Interlocutory Relief

Nothing in this clause shall prevent any party from seeking urgent interlocutory relief.

19. Notices

19.1 How Notice to be given

Each communication (including each notice, consent, approval, waiver, request and demand) **(Notice)** under or in connection with this document:

(a) must be given to a party:

(i) using one of the following methods (and no other method) namely, hand delivery, courier service, prepaid express post or email; and

(ii) using the address or other details for the party set out immediately below (or as otherwise notified by that party to each other party from lime to time under this clause 19.1):

Party name:	Housing Australia
Attention:	Housing Programs Tearn
Address (for hand delivery or delivery by courier or post):	Level 23, 420 George Street Sydney, NSW 2000
Email address:	fundingdocuments@housingaustralia.gov.au
Party name:	Australian Capital Territory
Attention:	Homes and Land Supply Branch, City and Environment Directorate
Address (for hand delivery or delivery by courier or post):	GPO Box 158 Canberra ACT 2601
Email address:	affordablehousing@act.gov.au

(b) must be in legible writing and in English;

(c) must be signed on behalf of the party giving the Notice **(Sending Party);** and

(d) (in the case of email) must:

(i) clearly indicate that the email is a Notice under or in connection with this document;

(ii) state the name of the Sending Party and be sent by the Sending Party or a person duly authorised by the Sending Party; and

(iii) if the email contains attachments, ensure the attachments are in a format the receiving party can download, open and view at no additional cost,

and Notices sent by email are taken to be signed by the Sending Party.

19.2 When Notice taken to be received

Without limiting the ability of a party to prove that a Notice has been given and received at an earlier time, each Notice under or in connection with this document is taken to be given by the sender and received by the addressee:

(a) (in the case of delivery by hand or courier service) on delivery;

(b) (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;

(c) (in the case of prepaid express post sent to an address in a different country) on the fourth Business Day after the date of posting; and

(d) (in the case of email) on the earlier of:

(i) the time sent (as recorded by the device or service from which the sender sent the email) unless, within 4 hours of sending the email, the sender receives an automated message that the email has not been delivered;

(ii) receipt by the sender of an automated message confirming delivery; and

(iii) the time of receipt as acknowledged by the addressee (either orally or in writing),

provided that:

(e) the Notice will be taken to be so given by the sender and received by the addressee regardless of whether:

(i) the addressee is absent from the place at which the Notice is delivered or sent;

(ii) the Notice is returned unclaimed; or

(iii) (in the case of email) the email or any attachment is opened by the addressee;

(f) if the Notice specifies a later time as the time of delivery then that later time will be taken to be the time of delivery of the Notice; and

(g) if the Notice would otheiwise be taken to be received on a day that is not a Business Day or after 5.00 pm in the place of receipt on any day, it is taken to be received at 9.00 am in the place of receipt on the next Business Day.

19.3 Notices sent by more than one method of communication

If a Notice delivered or sent under this clause 19 is delivered or sent by more than one method, the Notice is taken to be given by the sender and received by the addressee whenever it is taken to be first received in accordance with clause 19.2.

20. Confidentiality

20.1 Confidential information

All information provided under or in relation to this document as part of a party's (and its Representatives) participation in the Governance Group:

(a) which is identified as confidential at the time it is provided or which by its nature is confidential; or

(b) which the parties agree in writing is confidential,

other than information that is in:

(c) the public domain other than due to a breach of this document or any other unlawful means; or

(d) the possession of a party without restriction in relation to disclosure before the date of receipt,

must not be disclosed to any person, except:

(e) as permitted or contemplated under this document;

(f) with the consent of the disclosing party, including as provided under this document;

(g) if required by any applicable Law or regulation or by the rules of any stock or securities exchange relevant to it;

(h) in connection with legal proceedings relating to this document, a Territory Support Document, a HA Funding Document or a Project;

(i) by Housing Australia, in connection with its statutory or portfolio duties or functions or for public accountability and government administration reasons, including disclosure to the Commonwealth Auditor-General or to any other Authority, in response to requests for information by the Parliament of Australia, a parliamentary committee, or a government minister or department;

U) by the Territory in connection with its statutory or portfolio duties or functions or for public accountability and government administration reasons, including disclosure to the Territory Auditor-General or to any other Authority, or in response to requests for information by the Parliament, a parliamentary committee, or a government minister or department of the Territory;

(k) to any Representative of the relevant party, but only to the extent required for that Representative to perform its obligations in respect of the relevant Project; or

(l) by Housing Australia to a Third Party Financier in connection with a Relevant Project subject to the Third Party Financier requiring the information in connection with the funding provided, or to be provided, in relation to the Relevant Project.

The disclosing party (other than for a disclosure by Housing Australia or the Territory under clauses 20.1(i) and 20.10) respectively) must require that the recipient of the information keeps, and does all things necessary to ensure that its Representatives keep, the information confidential and not disclose it to any person other than in accordance with this clause.

21. General

21.1 Assignment and novation by Housing Australia

(a) Subject to this clause 21.1, Housing Australia may:

(i) assign any of its rights; or

(ii) novate or otherwise transfer any of its rights and obligations,

under this document to:

(iii) a wholly owned Subsidiary of Housing Australia; or

(iv) a Commonwealth Entity.

(b) The consent of the Territory is required for an assignment or novation by Housing Australia (such consent not to be unreasonably withheld or delayed), unless the assignment or novation is:

(i) to a wholly owned Subsidiary of Housing Australia; or

(ii) to a Commonwealth Entity.

21.2 Assignment, novation and other dealings by the Territory

The Territory may not assign, novate, transfer or otherwise deal with all or any part of its rights and/or obligations under this document without the prior written consent of Housing Australia (such consent not to be unreasonably withheld or delayed).

21.3 Conduct of business by Housing Australia

No provision of this document will:

(a) interfere with the right of Housing Australia to arrange its affairs in whatever manner it thinks fit;

(b) oblige Housing Australia to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or

(c) oblige Housing Australia to disclose any information or computations relating to its affairs.

21.4 Amendments

Unless this document expressly provides otherwise, this document may only be amended by a document signed by each party.

21.5 Consents and approvals

A consent or approval required under this document from a party may be given or withheld, or may be given subject to any conditions, as the relevant party (in its absolute discretion) thinks fit, unless this document expressly states otherwise.

21.6 Waiver

(a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this document by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this document.

(b) A waiver given by a party under this document is only effective and binding on that party **if** it is given or confirmed in writing and signed by that party.

(c) No waiver of a breach of a term of this document operates as a waiver of another breach of that term or of a breach of any other term of this document.

21.7 Entire agreement

To the extent permitted by law, in relation to its subject matter, this document:

(a) constitutes the entire agreement and understanding of the parties; and

(b) supersedes any prior agreement or understanding of the parties (whether written or otherwise).

21.8 Cost and expenses

Each party must bear its own costs of negotiating, preparing and executing this document.

21.9 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents reasonably necessary to give effect to this document.

21.10 No reliance

Each party acknowledges and warrants that it does not enter into this document in reliance on any conduct (including any representation, statement, warranty or forecast) by or on behalf of any other party, except as expressly stated in this document.

21.11 Relationship

Housing Australia and the Territory acknowledge and agree that:

(a) nothing in this document creates any joint venture, partnership, employment or agency relationship between Housing Australia and the Territory; and

(b) neither party has authority to incur any liability or make any representation on behalf of the other.

21.12 Severance

To the extent a provision of this document is or becomes illegal, void or unenforceable, that provision (or the relevant part) will be severed, and the remainder of this document has full force and effect.

21.13 Surviving clauses

All clauses which expressly or by implication from their nature are intended to survive termination or expiry of this document will survive such termination or expiry.

21.14 Governing law

This document is governed by and is to be construed according to the law applying in the Australian Capital Territory.

21.15 Jurisdiction

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this document; and

(b) waives any objection it may now or in the future have to the venue of any proceedings, and any Claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 21.15(a).

21.16 Counterparts

This document may be executed in any number of counterparts by or on behalf of a party and by the parties in separate counterparts. Each counterpart constitutes this document of each party who has executed and delivered that counterpart.

21.17 Electronic signatures

(a) Each party warrants that immediately prior to entering into this document it unconditionally consented to:

(i) the requirement for a signature under any law being met; and

(ii) any other party to this document executing it,

by any method of electronic signature that other party uses (at that other party's discretion), including signing on an electronic device or by digital signature.

(b) Without limitation, the parties agree that this document may be exchanged by hand, post or any electronic method that evidences that party's execution of this document, including by a party forwarding a copy of its executed counterpart by hand, post or electronic means to the other party.

Schedule 2 - Third Party Financier Reliance Letter

[Date]

[Address to the Third Party Financier]

Attention: [Insert]
[Insert address)

Email: [Insert email address]

[The above will be the Recipient's notice details]

[Project Name] - [Third Party Financier]

Co-ordination Agreement: Co-ordination Agreement dated [insert date] between Housing Australia and the Australian Capital Territory.

Recipient: [insert name/description of Recipient).

Relevant Project: [insert name/description of Relevant Project].

Third Party Financier: [insert name of Third Party Financier].

Territory Support Documents: [insert list of Territory Support Documents for Relevant Project].

1. Introduction and Background

1.1 The Territory and Housing Australia are parties to the Co-ordination Agreement.

1.2 The Territory provides this letter for the benefit of the Third Party Financier in connection with the Relevant Project described above.

1.3 This document is given pursuant to clause 7 of the Co-ordination Agreement and constitutes the "written confirmation" referred to in the Co-ordination Agreement.

1.4 The Territory and Housing Australia have entered into the Co-ordination Agreement to set out arrangements which apply to address the parties' respective rights in relation to relevant housing projects where both Housing Australia and the Territory provide funding or other support.

1.5 The Relevant Project is a 'Relevant Project' for the purposes of the Co-ordination Agreement.

1.6 The Territory provides this letter as confirmation that the Third Party Financier may rely on the Territory complying with its obligations, undertakings, consents and confirmations set out in the Co-ordination Agreement without the need to be a party to the Co-ordination Agreement and without the need to enter into a separate agreement with the Territory.

2. Definition and Interpretation

2.1 In this letter, unless the context otherwise requires, defined terms have the same meaning as in the Co-ordination Agreement. In addition (including for the purposes of each provision of the Co-ordination Agreement referred to in clause 3.1(b)):

(a) **Co-ordination Agreement** has the meaning given in the heading above.

(b) **Enforcing Party** means Housing Australia, any External Administrator, agent or attorney appointed under a Security, or any nominee of Housing Australia (including, for the avoidance of doubt, the Third Party Financier).

(c) **Recipient** has the meaning given in the heading above.

(d) **Relevant Project** means the project described in the heading above, being a Relevant Project under the Co-ordination Agreement.

(e) **Third Party Financier** has the meaning given in the heading above.

(f) **Territory Support Documents** has the meaning given in the heading above.

3. Provisions of the Co-ordination Agreement for the benefit of the Third Party Financier

3.1 The Territory agrees, for the benefit of the Third Party Financier, that:

(a) the Discharge Date in relation to the Relevant Project will not occur until Housing Australia gives the Territory written notice that the Discharge Date has occurred;

(b) in relation to the Relevant Project, **it** will comply with and perform the following provisions of the Co-ordination Agreement:

(i) clause 6(d) (Relevant Projects);

(ii) clause 8 (Consent to Securities);

(iii) clause 9 (Limitations on the Territory) (but excluding clause 9(b), which operates only for the benefit of Housing Australia);

(iv) clause 12 (Exercise of Default Rights);

(v) clause 13 (Cure Rights);

(vi) clause 14 (Step-in Notice and Step-out Notice), noting that Step-in Notices and Step-out Notices are issued by Housing Australia;

(vii) clause 16(b) (Assignment or novation ofTerritory Support Document);

(viii) clause 17 (Incorrectly Received Funds); and

(ix) clause 21.2 (Assignment, novation and other dealings by the Territory).

4. End date

4.1 The Third Party Financier is able to rely on the Territory's confirmation of obligations set out in this letter until the earlier of:

(a) the Discharge Date;

(b) the date that the Territory Support Documents expire or are terminated; and

(c) the date that the Third Party Financier notifies the Territory that it no longer requires the benefit of this document.

4.2 The Territory agrees, for the benefit of the Third Party Financier, that, in relation to the Relevant Project, it will not amend the Co-ordination Agreement in a way that would be detrimental to the Third Party Financier.

4.3 The Territory agrees, for the benefit of the Third Party Financier, that if the Co-ordination Agreement is intended to be terminated (in relation to the Relevant Project or generally) before the Discharge Date, it will give the Third Party Financier at least 6 months' notice of the proposed termination (commencing on the date that the Territory or Housing Australia notifies the Third Party Financier and the Recipient that the Co-ordination Agreement is intended to be terminated (in relation to the Relevant Project or generally)).

5. Nature of this Letter

5.1 This letter is intended to set out the Territory's commitment to its obligations under the Co-ordination Agreement.

5.2 This letter does not require execution or acceptance by the Third Party Financier. The Third Party Financier may rely upon the Territory's commitment to its obligations under the Co-ordination Agreement as reiterated in this letter.

5.3 A copy of the Co-ordination Agreement will be made publicly available, and will be accessible by Third Party Financiers.

SIGNED for and on behalf of the
AUSTRALIAN CAPITAL TERRITORY
in the presence of:

.....	**.....**
Signature of witness	**Signature of delegate**
.....	**.....**
Print name	**Print name**

Schedule 3 - Example scenarios

The example scenarios set out in this Schedule 3 are included to illustrate the parties' shared commitment to collaborative problem-solving in circumstances where a Relevant Project may be experiencing difficulty.

They are not intended to be exhaustive or to limit the parties' ability to collaborate in other ways. In each scenario, the parties intend to work together, primarily through the Governance Group, to identify and implement solutions that are consistent with the Objectives and that seek to ensure the continued provision of social and affordable housing in connection with the Relevant Project.

The parties may agree to update this schedule from time to time or may via the Governance Group or otherwise in collaboration consider example scenarios that may be relevant during the term of this document to reflect evolving conditions.

Item	Example scenario
1	During the construction phase, if the builder becomes insolvent: Most of the Territory's grants providing upfront funding are based on milestones being reached. The Territory would wait until the appropriate milestone has been reached prior to making a payment. The milestones are not based on actual dates (e.g. month, year) but are based on evidence of the milestone being achieved. The Territory would support Housing Australia in working with the Recipient and Third Party Financiers to appoint an alternate builder and resume construction. Clawback of payments already made, or termination of the relevant Territory Support Document, would not occur while work is actively progressing to find a solution to the issue, unless required under legislation.
2	During the construction phase, the building is so defective it requires knockdown/rebuild: The Territory would support Housing Australia in working with the Recipient and Third Party Financiers to identify solutions to the project. Noting the fixed grant amount available, if any milestones were yet to be achieved, payment of remaining milestones may be able to be resumed for subsequent construction. The Territory would likely involve regulators in taking action regarding building quality. Clawback of payments already made, or termination of the Territory Support Document, would not occur while work is actively proqressing to find a solution to the issue, unless required under leqislation.
3	During the operation phase, if the required number of dwellings is not being made available as affordable or social housing: Based on regular reporting, the Territory would liaise with the Recipient to understand why the issue has occurred and whether it is able to be remedied. Depending on the nature of the issue, subsequent availability payments for the dwellings not being provided as affordable or social housing may need to be paused until the dwellings are available as affordable or social housing. The Territory would support Housing Australia in working with the Recipient and Third Party Financiers to identify solutions to the issue. Clawback of payments already made, or termination of the Territory Support Document, would not occur while work is actively progressing to find a solution to the issue, unless required under leqislation.
4	During the operation phase, the Recipient becomes insolvent: Regular reporting and interaction with the Registrar for the National Regulatory System for Community Housing **(NRSCH)** would likely have identified this as a potential issue and the Territory would be liaising with the Recipient and Housing Australia, and supporting Housing Australia to work with the Recipient and Third Party Financiers to identify solutions.

	Availability payments would continue while the dwellings were being provided as affordable or social housing. Arrangements for managing the project going forward would occur in line with NRSCH requirements, with dwellings to be transferred to another Recipient or the ACT Government. Consideration would be given to transferring funding arrangements in line with legal and financial options available (for example most Territory Support Documents permit assignment of the obligations with the agreement of the Territory). Clawback of payments already made, or termination of the Territory Support Document, would not occur while work is actively progressing to find a solution to the issue, unless required under legislation.