

Date

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WIRRAL PARTNERSHIP HOMES LIMITED T/A MAGENTA LIVING

and

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Standard Contract

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B3 2ES

Ref: 28952.0447

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SCHEDULE 4 - PAYMENT MECHANISM.....

CONTRACT (“this Contract”) dated 201[]

PARTIES:

- (1) **WIRRAL PARTNERSHIP HOMES LIMITED** trading as **MAGENTA LIVING** (a charitable registered provider of social housing charity number 1106969) whose registered office is at Partnership Building, Hamilton Street, Birkenhead, Merseyside CH41 5AA (“**Magenta**”); and
- (2) The Organisation listed as the Provider in Schedule 1 [*Contract Details*] (“**the Provider**”).

INTRODUCTION

The Provider has agreed to provide the works, supplies and/or services specified in Schedule 1 [*Contract Details*] on the terms of this Contract and Magenta has agreed to pay for them in accordance with and on the terms of this Contract.

IT IS AGREED:

1 INTERPRETATION

1.1 In this Contract (unless the context requires otherwise):

- “**Agreed**” means agreed in writing by both Parties and “agree” shall be construed accordingly;
- “**CDM Regulations**” means the Construction (Design and Management) Regulations 2015;
- “**CIS**” means the Construction Industry Scheme administered by HM Revenue and Customs;
- “**Completion Date**” means the date when the Works, or the Works comprised in an Order (as applicable) are accepted by Magenta following inspection under Clause 2.16 [*Provider’s obligations*] or without inspection under Clause 2.15 [*Provider’s obligations*] as having been completed in accordance with this Contract;
- “**Completion Deadline**” means the date set out in the Specification or an Order as the date by which the Works, or the Works comprised

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| | in that Order must be completed in accordance with this Contract (as varied under Clause 2.14 [<i>Provider's obligations</i>] where applicable); |
| “Confidential Information” | means any information communicated by either Party to the other on the basis that it is confidential; |
| “Construction Act” | means the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009; |
| “Construction Phase Plan” | means any construction phase plan (as defined in the CDM Regulations) prepared for any Works to which the CDM Regulations apply and setting out the health and safety arrangements and site rules applicable to those Works; |
| “Contract Details” | means the details of this Contract set out at Schedule 1[<i>Contract Details</i>]; |
| “CPI” | means the index of consumer prices published by the Office for National Statistics; |
| “Data Controller” | has the meaning given in Data Protection Law; |
| “Data Processor” | has the meaning given in Data Protection Law; |
| “Data Processing Table” | means the table set out in Clause 10.6 |
| “Data Protection Law” | means all Law relating to privacy and the processing of personal data, including all applicable guidance and codes of practice issued by the Information Commissioner’s Office or any replacement EU or UK data protection or related privacy Law in force in England and Wales; |
| “Data Subject” | has the meaning given in Data Protection Law; |
| “Data Subject Access Request” | a request by a Data Subject under Data Protection Law to access their Personal Data; |

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| “DBS Check” | | means a check with the Disclosure and Barring Service (or any statutory successor) of the most extensive kind available (if any) in relation to and (actual or prospective) member of Staff having regard to the Works they are to undertake under this Contract and including any update to that check, whether through the Disclosure and Barring Service update service or through a further check being made; |
| “Default Notice” | | means a notice served by Magenta indicating that the Provider is in breach of this Contract and giving a period of time to put it right; |
| “Defect” | | means any Works not complying with the requirements for those Works as set out in this Contract; |
| “Defect Period” | Rectification | means the period stated in the Contract Details within which a Defect must be rectified; |
| “Defects Period” | Liability | means the period stated in the Contract Details within which the Provider is required to rectify Defects; |
| “Dispute” | | means either a dispute concerning this Contract or an allegation by a Party that the other has committed a breach of this Contract; |
| “Dispute Procedure” | Resolution | means the procedure set out in Clauses 25 [<i>Informal Dispute Resolution</i>] to 27 [<i>Governing Law and Enforcement</i>]; |
| “Documents and Data” | | all documents, data, information, text, drawings, diagrams, images, records or sound embodied in any electronic or tangible medium used or created in connection with this Contract or the Works; |
| “Equality and Diversity Law” | | means all Law preventing unlawful discrimination including unlawful discrimination on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, paternity, race, religion or belief, sex or sexual orientation or part time or temporary status or any other protected status; |

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| “Expiry Date” | means the date (if any) stated in the Contract Details as the date on which this Contract will expire; |
| “FOIA” | means the Freedom of Information Act 2000; |
| “Financial Year” | means each period from 1 April to 31 March next (inclusive); |
| “Force Majeure” | has the meaning given in Clause 15 [<i>Force Majeure</i>]; |
| “General Principles of Risk Prevention” | means the general principles of risk prevention referred to in the CDM Regulations 2015 as set out in Schedule 1 to the Management of Health and Safety at Work Regulations 1999; |
| “Good Practice” | Industry means that degree of skill, care, prudence and workmanship which would reasonably and ordinarily be expected from a skilled and experienced provider carrying out the Works; |
| “Group” | means in relation to a company or a co-operative and community benefit society: <ul style="list-style-type: none"> • that company or society; • all of its subsidiaries, holding companies or companies or societies of which it is a subsidiary; and • all subsidiaries of its holding company or of companies or societies of which it is a subsidiary; (in each case as defined in section 1159 of the Companies Act 2006 or sections 100 or 101 of the Co-operatives and Community Benefit Societies Act 2014); |
| “Health and Safety Law” | means all Law related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents; |
| “Inflation” | means the percentage change in the CPI over the 12 (twelve) months leading up to the date specified in the Contract Details; |
| “Insurances” | means the insurances the Provider is required to maintain under Clause 14 [<i>Insurance</i>]; |

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| “Intellectual Property Rights” | means all patents, copyrights and design rights (whether registered or not and all applications for any of them) and all rights of confidence in any Documents and Data (whenever and however arising) for their full term and all renewals and extensions of such rights; |
| “Interest Rate” | means the interest rate specified in the Contract Details; |
| “KPI’s” | Means the key performance indicators set out in Schedule 3 [KPI’s] |
| “KPI Improvement Notice” | Has the meaning given in Clause 4 [Performance Monitoring] |
| “KPI Minimum Performance Level” | Means the minimum KPI performance level specified for each KPI in Schedule 3 [KPI’s] in relation to which if the Provider’s performance falls below these levels and does not improve this Contract may be terminated for material breach under Clause 17.1.8 [Termination] |
| “Law” | means: <ul style="list-style-type: none"> • any act of Parliament; • any subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978); • any exercise of the royal prerogative; • any enforceable community right (as defined in section 2 of the European Communities Act 1972); and • any determinations directions or statutory guidance having the force of law; |
| “Liabilities” | means all demands, actions, claims, proceedings, liabilities, losses on a “professional and own client” full indemnity basis, judgements, costs (including legal costs), charges, taxes, duties, payments and expenses; |
| “Method Statements” | Means the Provider’s Methodologies for undertaking the Works as set out in Schedule 2; |
| “Order” | means an order for Works and containing the matters listed in the Contract Details; |
| “Parties” | means the Parties to this Contract and |

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| | their successors and permitted assignees and “Party” shall be construed accordingly; |
| “Payment Mechanism” | means the basis on which the Price is to be calculated and paid as set out in Schedule 3 [<i>Payment Mechanism</i>]; |
| “Personal Data” | means personal data, within the meaning given by Data Protection Law, concerning either Residents or employees or workers of the Provider or any Subcontractor and which is obtained or Processed in connection with undertaking the Works or complying with either Party’s obligations under this Contract; |
| “Personal Data Breach” | means any event that results or may result in any unauthorised or unlawful access to, Processing, loss and/or destruction of Personal Data in breach of this Contract including any personal data breach (as defined under Data Protection Law); |
| “Pre-construction Information” | means pre-construction information (as defined in the CDM Regulations) provided to the Provider in relation to any Works subject to the CDM Regulations; |
| “Price ” | means the price payable by Magenta for the Works as set out in Schedule 3 [<i>Payment Mechanism</i>]; |
| “Processing” | Has the meaning given under Data Protection Law and “ Process ” and “ Processed ” shall be construed accordingly; |
| “Prohibited Materials” | <p>means goods, materials, substances or products which are generally accepted or (having regard to Good Industry Practice) are reasonably suspected of:</p> <ul style="list-style-type: none"> • being harmful in themselves; • being harmful when used in a particular situation or in combination with other materials; • becoming harmful with the passage of time; or • being damaged by or causing damage to the structure in which they are to be affixed. <p>Goods, materials, substances or products are to be regarded as harmful if, in the</p> |

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| | | context of their use in the Works (whether alone or in combination with other materials) they: |
| | | <ul style="list-style-type: none"> • are prejudiced to health and safety; • pose a threat to the structural stability or the physical integrity of any Property; or • could materially reduce the normal life expectancy of any part of any Property; |
| “Property” | | means a property at which the Works are to be provided; |
| “Regulatory Requirements” | | means the requirements of the Law and of all statutory authorities in relation to the Works including the requirements of any regulatory body to which Magenta is subject; |
| “Resident” | | means a tenant or occupier of a Property; |
| “Scheme” | | means the Scheme for Construction Contracts under the Construction Act; |
| “Sensitive Data” | Personal | is “sensitive personal data” within the meaning given under Data Protection Law or Personal Data within one of the specified categories of data as defined under Data Protection Law; |
| “Specification” | | means the specification for the Works set out in Schedule 2 [<i>Specification</i>]; |
| “Staff” | | means all persons employed or used by the Provider in carrying out its obligations under this Contract; |
| “Starting Date” | | means the date on which this Contract starts as set out at Schedule 1 [<i>Contract Details</i>]; |
| “Statutory Permissions” | | means those permissions, consents, approvals, licences, certificates and permits in legally effective form that are necessary from any statutory authority lawfully to commence, carry out and complete the Works in accordance with this Contract including: <ul style="list-style-type: none"> • any planning permission and/or reserved matters approval; • building regulations consents and/or bye-laws approvals; and |

- the requirements of any Statutory Authority regulating the Works and/or the way in which they are carried out;

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| “Subcontractor” | means any subcontractor of or supplier to the Provider; |
| “Termination Date” | means the date on which the Works are completed, the Expiry Date or the date on which this Contract is terminated under Clause 17 [<i>Termination</i>]; |
| “VAT” | means value added tax payable under the Value Added Tax Act 1994 or any tax which is substituted for it; |
| “Working Day” | means any day other than a Saturday, Sunday or a bank or local government or public holiday in England; and |
| “Works” | means works to be provided, services to be performed or supplies to be provided by the Provider under this Contract as set out in the Contract Details or, where the Contract Details provide for work to be instructed by Order, as set out in the Order. |

1.2 In this Contract:

- 1.2.1 references to Clauses and Schedules are (unless stated otherwise) references to Clauses and Schedules of this Contract;
- 1.2.2 any reference to a Paragraph (unless stated otherwise) is a reference to the relevant Paragraph of the Schedule in which it appears;
- 1.2.3 the contents section, headings and references to them are not to affect its interpretation;
- 1.2.4 references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;
- 1.2.5 any references to Law, shall be construed as references to that Law as amended, replaced, consolidated or re-enacted and in relation to Acts of Parliament shall include all regulations, determinations, directions and statutory guidance having the force of Law made or given under it;
- 1.2.6 references to “consent” or “approval” are to the prior written consent of the consenting or approving Party and any breach of the terms of any consent given is to be a breach of this Contract;
- 1.2.7 the terms “including” and “in particular” are illustrative only and are not intended to limit the meaning of the words which precede them and neither the ejusdem generis rule of construction nor any similar rule or approach shall apply to the construction of this Contract;
- 1.2.8 references to “persons” include individuals, firms, partnerships, companies, industrial and provident societies, corporations, associations, organisations, governments, states, agencies, foundations, trusts, unincorporated bodies of persons and any

- organisations having legal capacity (in each case whether or not having separate legal personality) and their successors, permitted assignees and transferees;
- 1.2.9 references to any document are (unless specified) references to such document as amended or supplemented from time to time; and
- 1.2.10 where a Party consists of more than one person the obligations of each of them are joint and several. The other Party may release or compromise the liability of any of them without affecting that of the others.
- 1.3 The Schedules to this Contract are an integral part of this Contract and are to have effect as if set out in full in the body of this Contract. References to this Contract include the Schedules.
- 1.4 Where this Contract requires something to be done:
- 1.4.1 it must be done in accordance with this Contract;
- 1.4.2 if it is to be done within a period after an action is taken, the day on which that action is taken does not count in the calculation of that period; and
- 1.4.3 if the last day of the period within which it must be done is not a Working Day, the period shall be extended to include the following Working Day.
- 1.5 All obligations, duties and responsibilities of the Provider under this Contract are separate obligations, duties and responsibilities owed to Magenta.
- 1.6 This Contract will commence on the Starting Date (or will be deemed to have done so). Where the Contract Details include an Expiry Date this Contract will continue until midnight on the Expiry Date unless terminated earlier under Clause 17] [*Termination*].
- 1.7 Where the Contract Details so provide Magenta may extend the length of this Contract as set out in the Contract Details by serving a written notice to that effect on the Provider at any time in the 6 (six) months immediately preceding the Expiry Date.
- 1.8 Following the service of a notice under Clause 1.7, the new Expiry Date is to be the last date of the period of the extension specified in the notice.

2 PROVIDER'S OBLIGATIONS

- 2.1 The Contract Details state whether or not Works are to be instructed through the issue of Orders. Where the Contract Details provide that:
- 2.1.1 Works are not to be instructed through the issue of Orders, the Provider shall carry out those Works without the need for any further instruction from Magenta; and
- 2.1.2 Works are to be instructed through the issue of Orders, the Provider shall carry out such Works as are instructed through Orders issued by Magenta under this Contract.
- 2.2 Magenta may carry out work similar to the Works through using either its own employees or by engaging other contractors to carry out such works. Where

Works are instructed through this issue of Orders, Magenta gives no guarantee as to the volume of Orders Magenta will instruct the Provider to do under this Contract or that it will instruct any Orders at all. The Provider is not entitled to claim for any loss of profit, loss of business or otherwise if the volume or timing of Works under this Contract is different in amount, value or scope than anticipated.

- 2.3 The commencement date for Works that are not to be instructed through the issue of Orders (as stated in the Contract Details) is the Starting Date. Where Works are instructed through the issue of Orders, the commencement date for the Works under each Order is the date stated in the Order, but if no date is stated in the Order the commencement date is the date the Order was issued. All Works are to be completed by their Completion Deadline.
- 2.4 Magenta may cancel an Order in respect of Works at any time before the Works have been started. Where Magenta cancels such an Order, the Provider will be paid its reasonable out-of-pocket costs for the cancelled Order.
- 2.5 The Provider must undertake the Works:
 - 2.5.1 using reasonable skill, care and diligence;
 - 2.5.2 in accordance with all applicable Law, Regulatory Requirements and Statutory Permissions;
 - 2.5.3 in accordance with this Contract;
 - 2.5.4 in accordance with all applicable European or British Standards;
 - 2.5.5 in accordance with Good Industry Practice;
 - 2.5.6 without the use of any Prohibited Materials;
 - 2.5.7 by any deadline agreed with Magenta;
 - 2.5.8 in a manner that causes the minimum inconvenience and nuisance from obstruction, dust, noise etc;
 - 2.5.9 within a culture and working environment in which health and safety is paramount to everybody involved with the Works; and
 - 2.5.10 in accordance with any instructions given by Magenta.
- 2.6 The Provider shall be responsible for seeking and obtaining all Statutory Permissions necessary to undertake the Works.
- 2.7 The Provider warrants that:
 - 2.7.1 it has the competence, resources and capacity to comply with, and will comply with any Code of Practice approved by the Health and Safety Executive under the Health and Safety at Work etc Act 1974;
 - 2.7.2 it will provide all information which might reasonably affect the health and safety of Staff involved in any Works to all those responsible for the design of any aspect of those Works;
 - 2.7.3 if it is undertaking Works involving asbestos which are required to be undertaken by a licensed contractor it is itself so licensed or will employ an appropriately licensed Subcontractor for the Works;
 - 2.7.4 if it is undertaking gas works either it is Gas Safe registered and will use only Staff that are Gas Safe registered or will use a Subcontractor that is Gas Safe registered;
 - 2.7.5 if it is undertaking electrical works it is a member of the NIC EIC or ECA or will use a Subcontractor that is a member of the NIC EIC or ECA; and

- 2.7.6 in relation to any Works subject to the CDM Regulations, has the skills, knowledge, experience and organisational capability to act as a contractor under the CDM Regulations for the Works in a manner that secures the health and safety of any person affected by those Works.
- 2.8 When undertaking the Works the Provider must ensure that:
- 2.8.1 at all times safe systems of work are adopted and all appropriate risk assessments are available;
 - 2.8.2 those Works have been planned in accordance with the General Principles of Risk Prevention and by reference to any Pre-construction Information provided to the Provider in accordance with the CDM Regulations;
 - 2.8.3 any Construction Phase Plan applicable to the Works is complied with and, if no Construction Phase Plan has been prepared, that the Provider prepares one before starting work on site;
 - 2.8.4 all appropriate safety signs are used and safety precautions are taken;
 - 2.8.5 any inconveniences and disturbances that are unavoidable are discussed fully in advance with the Resident and any other persons who are likely to be affected and all necessary precautions to be taken are agreed with them in advance;
 - 2.8.6 nothing is done that may injure the stability of any Property, or any other building, boundary wall, fence or railings;
 - 2.8.7 no permanent damage is caused to lawns, flower beds, plants, trees or paving during the Works and any damage caused is rectified to the satisfaction of Magenta and, where applicable, the Resident;
 - 2.8.8 at the end of every Working Day the Resident(s) of the Property (if there are any) have full facilities available to them for lighting, heating, power, drinking water and sanitation, together with washing and cooking facilities; and
 - 2.8.9 where a Property is unoccupied on completion of the Works or at the end of each Working Day, that Property is secured, all doors and windows are locked and any temporary door and window coverings are reinstated as necessary.
- 2.9 The Provider must immediately notify Magenta in writing of any divergence the Provider discovers between the Regulatory Requirements and its obligations under this Contract. The Provider must comply with any direction of Magenta following such notification.
- 2.10 The Provider shall comply with any direction that Magenta gives in relation to the Works in order:
- 2.10.1 to enable Magenta to comply with the Human Rights Act 1998;
 - 2.10.2 to prevent a breach of Health and Safety Law; or
 - 2.10.3 to secure that the Works are provided in accordance with the Contract.
- 2.11 The Provider shall notify Magenta immediately of any incident that occurs in providing the Works that causes personal injury or damage to the property of any third party.
- 2.12 The Provider must provide such information, co-operation and assistance as Magenta reasonably requests to comply with its obligations to consult tenant associations, and Residents (including leaseholders) who pay variable

service charges in relation to the Works. This assistance must be provided in sufficient time to enable Magenta to comply with those obligations.

- 2.13 The Provider shall give written notice to Magenta of any matter which causes or is likely to cause a delay in the completion of the Works or the Works included in an Order beyond their Completion Deadline.
- 2.14 If the Provider gives notice to Magenta under Clause 2.13 Magenta shall in writing fix such later Completion Date for those Works as may be fair and reasonable.
- 2.15 The Provider shall notify Magenta in writing when the Provider considers that the Works or the Works in each Order (as applicable) have been completed and/or supplied in accordance with this Contract. Within 5 (five) Working Days of the receipt of such notice Magenta may notify the Provider that Magenta wishes to inspect such Works. If no such notice is given the date 5 (five) Working Days from the date of the Provider's notice shall be the Completion Date.
- 2.16 Magenta shall carry out any inspection it has notified the Provider that it wishes to make within 15 (fifteen) Working Days of notifying the Provider under Clause 2.15 of its desire to carry out the inspection. In these circumstances the Completion Date will be the date on which Magenta notifies the Provider that it is satisfied that the Works or the Works comprised in the Order (as applicable) are complete.
- 2.17 Any dispute over whether or not the Works are complete or over the Completion Date are to be dealt with under the Dispute Resolution Procedure. Any Completion Date agreed or determined under the Dispute Resolution Procedure shall override any Completion Date determined under Clause 2.16.
- 2.18 The Provider must rectify all Defects notified to the Provider by Magenta during the Defects Liability Period within their Defect Rectification Period, such rectification is to be to the satisfaction of and at no cost to Magenta.

3 STAFF

- 3.1 Subject to the consent of the Resident, Magenta licenses the Provider and its Staff to go into the Properties in order to provide the Works as set out in this Contract. The Provider shall be responsible for all liaison with the Residents of any occupied Property to which Works are to be undertaken. The Provider shall notify Magenta if the Provider is unable to gain access to a Property after having made reasonable attempts to do so.
- 3.2 The Provider shall ensure all its Staff providing the Works:
- 3.2.1 have (or are in the course of obtaining) the necessary skills, knowledge, training and experience to carry out the tasks allocated to them in relation to the Works in a manner that secures the health and safety of any person working at or present at the Property whilst the Works are being undertaken;
 - 3.2.2 are provided with appropriate supervision, instructions and information including in relation to health and safety, so that the Works can be

- carried out, so far as reasonably practicable, without risks to health and safety;
- 3.2.3 have, to the extent that the Provider is lawfully able to undertake one, been the subject of a DBS Check of the most extensive kind available for that member of Staff in light of the Works they will undertake under this Contract which discloses that there are no concerns in relation to their working alongside children or vulnerable adults;
 - 3.2.4 are given suitable induction training including information on the procedures to be followed in the event of a serious and imminent danger to health and safety, information on health and safety risks that have been identified in relation to the Works and information necessary for them to be able to comply with Health and Safety Law;
 - 3.2.5 act in the best interests of Magenta;
 - 3.2.6 comply with all applicable Health and Safety Law;
 - 3.2.7 comply with Equality and Diversity Law;
 - 3.2.8 comply with Magenta's applicable policies (including Magenta's Equality and Diversity Policy and Code of Conduct for Contractors);
 - 3.2.9 comply with any direction given by Magenta in accordance with this Contract;
 - 3.2.10 are properly and presentably dressed in appropriate uniforms or workwear;
 - 3.2.11 use appropriate personal protective equipment;
 - 3.2.12 maintain the highest standards of hygiene and courtesy; and
 - 3.2.13 carry out the Works in as orderly and quiet a manner as is reasonable and practicable having regard to the nature of the duties being performed by them.
- 3.3 The Provider must not employ any person who is a board member or employee of Magenta or a close relative of any such person without the written consent of Magenta.
- 3.4 Magenta may require the Provider to remove any member of Staff from the Properties if Magenta is not satisfied in any way with that Staff member's clothing, conduct, manner, workmanship, ability, safety procedures and observance or DBS Check (when available).
- 3.5 The Provider must appoint a senior employee who is empowered to act on behalf of the Provider and act as Magenta's primary point of contact in relation to the Contract.
- 3.6 The Provider must ensure that the person appointed under Clause 3.5 or a nominated deputy whose name and contact details have been notified to Magenta in writing is contactable by Magenta at all times 24 hours a day throughout the duration of this Contract.
- 3.7 The Provider warrants that neither the Provider nor any of the Provider's officers or employees:
- 3.7.1 have been convicted of any offence involving slavery or human trafficking; or
 - 3.7.2 have, to the best of the Provider's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence

or alleged offence of or in connection with slavery and human trafficking.

4 MONITORING, OPENING UP AND COMPLAINTS

- 4.1 Magenta may monitor the performance of the Works and any activities undertaken by the Provider in connection with this Contract. The Provider must grant access to Magenta to any premises from which the Contract is undertaken or administered. Magenta may “shadow” the Provider at any time and for any Works. This may entail a surprise visit by Magenta to accompany the Provider’s Staff to the Property, or meet them at the Property, to watch the Works being undertaken. Magenta may undertake an audit of the Provider’s procedures in relation to the Contract either annually or at any time.
- 4.2 Magenta may require the opening up for inspection of any completed or part-completed Works at any time. On request from Magenta the Provider will open up such Works and will notify Magenta when the opened up Works are ready for inspection. If the Works are satisfactory and in accordance with this Contract, the Provider will be paid its reasonable out-of pocket costs for the opening up and making good. If the Works or materials are not in accordance with this Contract, all costs incurred in replacing the unsatisfactory Works, including all costs of “opening up” and “inspection,” are to be borne by the Provider.
- 4.3 Magenta may require any materials or completed Works to be tested by an independent body. The Provider will be responsible for arranging for such tests. If the materials and workmanship are in accordance with this Contract, the Provider will be reimbursed for its reasonable costs out-of pocket costs of such tests. If the tests show that the materials are or workmanship is not in accordance with this Contract, the Provider must bear all costs incurred in connection with the tests and replacing the unsatisfactory materials or works.
- 4.4 The Provider must:
- 4.4.1 deal with any complaints received in connection with the Works in a prompt, courteous and efficient manner;
 - 4.4.2 keep written records of all complaints received and of the action taken in relation to each of them;
 - 4.4.3 keep those records available for inspection by Magenta at any reasonable time;
 - 4.4.4 promptly provide all information Magenta requires in order to deal with any complaints Magenta receives in connection with the Works or the Provider; and
 - 4.4.5 co-operate with Magenta in responding to Ombudsman enquiries in relation to the Works and reimburse Magenta any compensation recommended to be paid as a result of the Provider’s default.
- 4.5 The Provider’s performance of Orders issued by Magenta Living will be monitored and assessed in accordance with Schedule 2 [Specification] and against the KPI’s as set out in Schedule 3 [KPI’s].
- 4.6 The Provider shall report to Magenta Living on its performance against the KPI’s as required in Schedule 3 [KPI’s].

- 4.7 If Magenta Living is concerned about the accuracy of any KPI performance monitoring by the Provider, Magenta Living may arrange for independent monitoring or verification of the KPI data. If monitoring data obtained by the Provider is found to have been inaccurate, Magenta Living may recover from the Provider the costs of the independent monitoring.
- 4.8 Magenta Living may at any time monitor or direct the Provider to monitor the Provider's performance in relation to any KPI over such period as Magenta Living determines.
- 4.9 If there is any dispute over the data collected to monitor the Provider's KPI performance or any discrepancy between the KPI data collected by Magenta Living and that collected by the Provider the decision of Magenta Living over which data is valid is to be final and binding.
- 4.10 Whenever required by Magenta Living, the Provider and Magenta Living shall jointly review the KPI monitoring report with a view to identifying the areas of the Provider's performance that could be improved upon and where good practice has been identified which could be adopted elsewhere.
- 4.11 If the Provider fails over any period of 3 (three) months to meet the Minimum Performance Levels for any one or more of the KPI's then Magenta Living may serve on the Provider a notice specifying the improvement in performance that Magenta Living requires (an "**Improvement Notice**").
- 4.12 If following the service of an Improvement Notice the Provider does not improve performance above KPI Minimum Performance Levels throughout 2 (two) of the 3 (three) months following the month in which the Improvement Notice is served or fails to sustain performance above the KPI Minimum Performance Levels for 9 (nine) of the 12 (twelve) months after service on an Improvement Notice this shall be deemed to be a material breach of this Contract by the Provider and Magenta Living shall be entitled to terminate this Contract and all Orders issued under in accordance with Clause 17.1.8 [Termination].

5 PAYMENT

- 5.1 The Price payable for the Works (or for the Works in each Order, as applicable) will be calculated in accordance with the Payment Mechanism.
- 5.2 The Provider shall invoice Magenta for the Works monthly in arrears within 14 (fourteen) calendar days of the end of each month. Each invoice shall state the Price payable in respect of all Works completed (where their Completion Dates have occurred). The Provider shall include such supporting information required by Magenta to verify the accuracy of the invoice, including any relevant Order numbers. No sums shall be due under this Contract in respect of any invoice unless that invoice is accompanied by such information as Magenta has specified that it requires.
- 5.3 Within 14 (fourteen) calendar days of the date of each invoice, Magenta shall notify the Provider of the amount that they consider to be due in respect of that

invoice. The due date for the payment of the invoice is 21 (twenty one) calendar days from the date of the invoice.

- 5.4 Magenta may set off any money it is owed by the Provider against any amounts due to the Provider under this Contract subject, where the Construction Act applies to the Works, to Magenta serving a notice of intention to pay less at least 3 (three) calendar days before the final date for payment of the amount due.
- 5.5 The final date for payment of the amount due under each invoice is the date 30 (thirty) calendar days from the date on which the invoice is regarded as valid and undisputed. Interest is payable on any amounts which are not paid by that date at the Interest Rate from the final date for payment to the actual date of payment (inclusive of both dates).
- 5.6 The Price is paid for the performance of all the Provider's obligations under this Contract and no additional payment or reimbursement of expenses is to be made by Magenta other than as set out in the Order.
- 5.7 Where there is an undue delay in Magenta considering and verifying an invoice, the invoice under Clause 5.3 that invoice shall be regarded as valid and undisputed after a reasonable time has passed. A reasonable time for these purposes shall be no less than 14 (fourteen) calendar days from the date of the invoice.
- 5.8 Where the Contract Details provide for the Prices to be adjusted by Inflation on 1 April at the start of each Financial Year, monetary amounts set out in the Payment Mechanism are to be varied in line with Inflation and the revised amounts shall apply to all Orders issued after that date.
- 5.9 If the basis of computing the CPI changes whilst this Contract is in force, any official reconciliation between the two bases of calculation is to be used in calculating Inflation. If there is no reconciliation or no replacement index, Inflation is to be calculated by reference to such other index as the Parties (acting reasonably) agree most closely replaces the CPI, with such adjustments as are appropriate to reflect the differences between that index and the CPI.
- 5.10 Where at any time Magenta is a 'contractor' under the CIS:
5.10.1 any obligation of Magenta to make any payment under this Contract is subject to the CIS;
5.10.2 the Provider must provide such information as Magenta requires from time to time to verify the deduction status of the Provider; and
5.10.3 the Provider must notify Magenta in writing if at any time its CIS status changes.
- 5.11 Where the Price includes a refundable deposit on a container or other packaging, the Provider must collect the container or packaging from Magenta at its own cost when requested to do so by Magenta. The Provider must also refund the deposit to Magenta within 5 (five) Working Days of the date on which Magenta authorises the Provider to collect the container or packaging.

6 SUBCONTRACTING, ASSIGNMENT AND PAYMENTS TO SUBCONTRACTORS

- 6.1 The Provider must not subcontract or assign any of its obligations under this Contract or assign or transfer the benefit of its rights under this Contract, or any part, share or interest in this Contract without the written consent of Magenta.
- 6.2 Where the Provider subcontracts any of its obligations in accordance with Clause 6.1, the Provider is to remain liable for the performance of its Subcontractors.
- 6.3 Where Magenta so requires when approving a subcontract under Clause 6.1, the Provider must procure that its Subcontractor provides a collateral warranty satisfactory to Magenta within 10 (ten) Working Days of the date of the subcontract.
- 6.4 Magenta may assign or transfer the benefit of any or all of its rights under this Contract, or any part, share or interest in the Contract to any successor in title of Magenta with the prior written consent of the Provider (such consent not unreasonably to be withheld or delayed). This assignment will be effective when written notice of the assignment is served on the Provider.
- 6.5 Magenta may require the Provider to enter into a deed of novation to transfer both Magenta's rights and obligations under this Contract to any public or local authority or to any registered provider of social housing. The deed of novation must be in such form as Magenta reasonably requires.
- 6.6 The Provider must assign to Magenta the benefit of all product warranties given by Subcontractors in connection with the Works or any materials provided in connection with them.
- 6.7 Where the Provider enters into a subcontract, the Provider shall include in that subcontract provisions:
- 6.7.1 requiring invoices to be considered and verified in a timely fashion;
 - 6.7.2 requiring the payment of undisputed valid and undisputed invoices within 30 (thirty) calendar days of receipt;
 - 6.7.3 providing that where there is an undue delay in considering and verifying an invoice, that invoice is to be regarded as valid and undisputed after a reasonable time has passed; and
 - 6.7.4 requiring the Subcontractor to include provisions having the same effect as this Clause 6.7 in any subcontract relating to the Works.
- 6.8 In Clause 6.7 a reference to "a subcontract" is to a contract between two or more Subcontractors, at any stage of remoteness from Magenta in the supply chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the Works.
- 6.9 If the Provider fails to comply with Clause 6.7 Magenta, as agent for the Provider, may pay such Subcontractor and deduct any sum so paid from any sum due to the Provider. The Provider appoints Magenta as its agent for the purposes of this Clause 6.9 and such appointment is irrevocable during the term of this Contract.

6.10 The Provider shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chain concerning the Works and in connection with this the Provider shall:

6.10.1 carry out appropriate due diligence before employing any Subcontractor;

6.10.2 require all Subcontractors to warrant that, neither the Subcontractor nor any of the Subcontractor's officers or employees:

(a) have been convicted of any offence involving slavery or human trafficking; or

(b) have, to the best of the Subcontractor's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and

6.10.3 require all Subcontractors to include provisions having the same effect as this Clause 6.10 in all subcontracts (at any stage or remoteness in the supply chain) relating to the Works.

6.11 Within 5 (five) Working Days of the Starting Date the Provider will notify to Magenta Living in writing the names, contact details and (if known) details of legal representatives of each of its proposed Subcontractors. The Provider shall notify Magenta Living within 5 (five) Working Days of:

6.11.1 Any change to that information; and

6.11.2 The name, contact details and (if known) details of legal representatives of any new Subcontractors

6.12 The Provider shall not allow a Subcontractor to Process any Personal Data without the prior consent of Magenta Living to that Subcontractor.

7 INTELLECTUAL PROPERTY

7.1 Each Party grants to the other Party an irrevocable, non-exclusive, royalty free licence to copy and use in connection with the project all Documents and Data in which it has Intellectual Property Rights but this licence is not to extend to:

7.1.1 copying or using those Documents and Data other than in connection with the Works;

7.1.2 granting any other person the right to copy or to use those Documents and Data; or

7.1.3 selling, transferring or otherwise disposing of or granting rights in those Documents and Data.

7.2 A Party which makes available Documents and Data to another Party under Clause 7.1 shall indemnify and hold harmless the Party to whom those Documents and Data are supplied against any liability or damages (including legal costs) that may be awarded or agreed to be paid to any third party because of a claim or action that the normal operation, possession or use of the Documents and Data by that Party infringes the Intellectual Property Rights of the third party.

- 7.3 All Intellectual Property Rights in any Documents and Data or any other materials which are produced or developed for or in connection with the Works are to belong to the Party which developed them.
- 7.4 Each Party agrees promptly to notify the other Party in writing of any infringement or potential infringement of that Party's Intellectual Property Rights in connection with the Works of which it becomes aware.

8 CONFIDENTIALITY AND SECURITY OF INFORMATION

- 8.1 Subject to Clause 8.2 each Party shall keep confidential any confidential information communicated to it by the other on the basis that it is confidential.
- 8.2 Clause 8.1 shall not apply to:
- 8.2.1 any disclosure of information that is reasonably required by either Party to perform its obligations under this Contract to persons performing those obligations;
 - 8.2.2 any Confidential Information which is in the public domain other than as a result of a breach of this Clause 8;
 - 8.2.3 any disclosure required by any court order or statutory, legal or parliamentary obligation of the Party making the disclosure or the rules of any government or regulatory authority having the force of Law, including the Information Commissioner or the Information Tribunal (as defined in the FOIA);
 - 8.2.4 any disclosure of Confidential Information which is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party;
 - 8.2.5 any disclosure under the Dispute Resolution Procedure; and
 - 8.2.6 any disclosure by either Party for the purpose of the examination, certification and/or audit of that Party's accounts.
- 8.3 Where a disclosure of Confidential Information is made under Clause 8.2 (other than under Clauses 8.2.2, 8.2.3 or 8.2.4) the Party disclosing the Confidential Information shall use reasonable endeavours to impose a similar duty of confidentiality on the recipient of the information as that contained in this Clause 8.
- 8.4 For a period of 12 (twelve) years after termination of the Contract the Provider shall maintain full records of:
- 8.4.1 this Contract;
 - 8.4.2 the Works provided under it;
 - 8.4.3 all payments made by Magenta; and
 - 8.4.4 any expenditure of the Provider that Magenta has reimbursed.
- 8.5 Whenever requested by Magenta the Provider shall make any records it maintains under Clause 8.4 available for inspection and analysis by Magenta's internal or external auditors or representatives of any regulatory body to which Magenta is subject.

9 PUBLICITY

- 9.1 The Provider will not advertise, publicly announce or undertake any publicity activity that it is undertaking work for Magenta without the prior written consent of Magenta on each occasion. All press releases relating to any

contract with Magenta must be approved by the Magenta Communications Team and Magenta given the opportunity to provide a quote in any press release.

10 DATA PROTECTION

- 10.1 Each Party shall comply with Data Protection Law in connection with this Contract. In particular each Party shall Process Personal Data of which the other is Data Controller only in accordance with Data Protection Law and this Contract.
- 10.2 Each Party shall ensure they have all necessary and appropriate consents required for the lawful Processing of Personal Data under this Contract (including any transfer of Personal Data to the other Party). Personal Data shall be treated as Confidential Information.
- 10.3 Where either Party Processes Personal Data of which the other Party is a Data Controller, the Processing Party shall do so on the basis of one or more of the following legal grounds, that Processing is necessary:
- 10.3.1 for compliance with a legal obligation to which that Party is subject;
 - 10.3.2 for performing a contract to which the Data Subject is a party;
 - 10.3.3 in order to protect the vital interests of the Data Subject;
 - 10.3.4 for the performance of a task carried out in the public interest;
 - 10.3.5 for the purposes of legitimate interests pursued by the Parties, except where the Processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the Data Subject; or
 - 10.3.6 for any other purposes for which Personal Data may lawfully be Processed under Data Protection Law.
- 10.4 Where either Party Processes Sensitive Personal Data of which the other Party is a Data Controller, the Processing Party shall do so on the basis of one or more of the following legal grounds, that Processing is necessary:
- 10.4.1 for the purposes of exercising or performing any right or obligation which is conferred or imposed by Statutory Requirements on the Data Controller in connection with employment;
 - 10.4.2 to protect the vital interests of the Data Subject or of another person where:
 - a) the Data Subject is physically or legally incapable of giving his or her consent; or
 - b) the Data Controller cannot reasonably be expected to obtain the Data Subject's consent; or
 - 10.4.3 for any other purposes for which Sensitive Personal Data may lawfully be Processed under Data Protection Law;

10.5 The Parties agree that Magenta is the Data Controller and the Provider is the Data Processor in relation to Personal Data which is Processed under this Contract.

10.6 The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Contract are set out in the table below:

| | |
|---|---|
| Categories of Data Subject: | Residents |
| Subject matter of Processing (including types of Personal Data that may be Processed): | Personal Data concerning Residents including names, addresses and contact details, Property access requirements and special requirements or vulnerabilities. |
| Nature and purpose of Processing: | Interrogation of the Personal Data for the purpose of carrying out the Works, including arranging appointments and access, ensuring the safety of both Residents and Staff carrying out the Works, monitoring Resident satisfaction and correcting any Personal Data found to be incorrect whilst carrying out the Works. |
| Duration of Processing: | Prior to the issue of the final Certificate of Making Good Defects and for 20 (twenty) Business Days from the issue of the final Certificate of making Good Defects (within which it is to be returned or destroyed). <i>[OR From the Commencement Date of the Works until the Termination Date]</i> |

Comment [VK1]: To be amended where necessary depending on the Personal Data involved in each contract.

10.7 Where the Provider is the Data Processor of Personal Data of which Magenta is the Data Controller the Provider shall:

10.7.1 do so only on written instructions from Magenta (the first such instructions being those set out in this Contract) as revised by Magenta from time to time (where applicable) in accordance with clause 10.15;

10.7.2 promptly comply with Magenta's written instructions and requirements from time to time, including any requests to amend, delete or transfer Personal Data;

- 10.7.3 immediately inform Magenta if the Provider thinks that it has been given an instruction which does not comply with Data Protection Law;
- 10.7.4 take all reasonable steps to ensure the reliability and integrity of all persons (including Staff) whom the Provider authorises to Process the Personal Data and ensure that those persons:
- a) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - b) do not Process, publish, disclose or divulge any of the Personal Data other than in accordance with this Contract or Magenta's written instructions; and
 - c) undergo adequate training in Data Protection Law, the confidentiality, security, use, care, protection and handling of Personal Data and the Provider's obligations under this Contract.
- 10.7.5 fully cooperate with and assist Magenta, by having appropriate technical and organisational measures in place, to give effect to the rights of Data Subjects and respond to requests for exercising the Data Subject's rights including Data Subject Access Requests;
- 10.7.6 Process the Personal Data in such a manner that ensures that at all times Magenta complies with Data Protection Law;
- 10.7.7 promptly forward any complaint, request (including a Data Subject Access Request), notice or other communication which relates directly or indirectly to the Personal Data or to either Party's compliance with Data Protection Law (including any request from the Information Commissioner), to Magenta and not respond to or otherwise deal with such communication except as instructed by Magenta or as required by Data Protection Law;
- 10.7.8 keep records of any Processing of Personal Data it carries out on behalf of Magenta which are sufficient to demonstrate compliance by Magenta and the Provider with Data Protection Law;
- 10.7.9 on request, provide Magenta promptly with all information that Magenta needs to show that both Magenta and the Provider have complied with their data protection obligations under this Contract; and
- 10.7.10 at the option of Magenta, either irretrievably delete or return all Personal Data of which Magenta is Data Controller by the date set out in the Data Processing Table above (unless the Provider is required by Law to retain that Personal Data).

10.8 Where the Provider Processes Personal Data it shall maintain appropriate technical and organisational measures to protect that Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction or damage having regard to:

- 10.8.1 the state of technological development;
- 10.8.2 the cost of implementing any measures;
- 10.8.3 the nature, scope, context and purpose of the Processing of the Personal Data; and
- 10.8.4 the harm that might result from any Personal Data Breach including the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons.

10.9 Security measures maintained under Condition 10.8 shall:

- 10.9.1 to the greatest extent possible involve pseudonymisation and encryption of Personal Data;
- 10.9.2 ensure the ongoing confidentiality, integrity, availability and resilience of the Data Processor's technical and IT Systems;
- 10.9.3 ensure that the availability of and access to Personal Data can be restored promptly following a physical or technical incident; and
- 10.9.4 include regular testing, assessing and evaluating of the effectiveness of the technical and organisational measures to ensure the security of Processing.

10.10 The Provider shall not transfer any Personal Data of which Magenta is Data Controller outside of the European Economic Area without the prior written consent of Magenta. Where Magenta consents to such a transfer, the Provider shall ensure there is adequate protection, as approved by Magenta, for such Personal Data in accordance with Data Protection Law.

10.11 The Provider shall notify Magenta immediately if it becomes aware of any Personal Data Breach (however caused). Such notification must:

- 10.11.1 describe the nature of the breach including the categories and number of Data Subjects and records concerned;
- 10.11.2 communicate the name and contact details of all persons from whom more information can be obtained about the breach;
- 10.11.3 describe the likely consequences of the breach; and
- 10.11.4 describe the measures taken by the Provider and the measures which the Provider wishes Magenta (at the expense of the

Provider) to take to address the breach and mitigate its possible adverse effects.

- 10.12 The Provider shall give Magenta immediate and full co-operation and assistance in relation to any such Personal Data Breach including:
- 10.12.1 taking all reasonable steps Magenta requires to assist in the containment, mitigation, remediation and investigation of such breach;
 - 10.12.2 providing assistance with notifying the Information Commissioner's Office or affected Data Subjects of any breach of Data Protection Law; and
 - 10.12.3 providing Magenta promptly with all relevant information in the Provider's possession.
- 10.13 The Provider shall provide reasonable assistance to Magenta where Magenta is required by Data Protection Law to carry out any privacy impact assessment or data protection impact assessment in relation to Processing Personal Data.
- 10.14 Magenta may inspect and audit the Provider's facilities for Processing the Personal Data of which Magenta is Data Controller to ensure they comply with this Contract and Data Protection Law.
- 10.15 Magenta may revise its instructions to the Provider on the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall not entitle the Provider to any additional payment under or be treated as a variation to this Contract. Magenta shall use reasonable endeavours to give the Provider as much notice of the revision as possible, consistent with their obligation to comply with Data Protection Law and protect against any Personal Data Breach.
- 10.16 Nothing in this Contract requires either Party to disclose any information to the other Party or any third party if to do so would breach Data Protection Law. If any part of this Condition does not comply with Data Protection Law, Magenta may amend that part (to the minimum necessary to ensure such compliance) by giving the Provider at least 20 (twenty) Working Days' notice. The Parties agree that such amendment shall not be regarded as a variation to this Contract.
- 10.17 Magenta may replace clause 10.1 to 10.17 (inclusive) with any applicable Data Controller to Data Processor standard clauses forming part of an applicable certification scheme (as defined under Data Protection Law) at any time by giving the Provider at least 20 (twenty) Working Days' notice. The Parties agree that such amendment shall not be regarded as a variation to this Contract.

11 EQUALITY AND DIVERSITY

- 11.1 The Provider shall adopt policies to comply with its obligations under Equality and Diversity Law.
- 11.2 The Provider must set out its policy on equality and diversity:
- 11.2.1 in instructions to those concerned with recruitment, training and promotion;
 - 11.2.2 in documents available to Staff, recognised trade unions or other representative groups; and
 - 11.2.3 in recruitment advertisements or other literature.
- 11.3 The Provider must, on request, provide Magenta with examples of the instructions and other documents, recruitment advertisements or other literature.
- 11.4 The Provider must, as far as possible comply with all applicable guidance issued by the Equalities and Human Rights Commission and its predecessors.
- 11.5 The Provider must comply with the Equality Act 2010 on the basis that the Provider is providing services and exercising public functions under that Act. The Provider must use all reasonable endeavours to assist Magenta to fulfil its duties under the Equality Act 2010 in relation to the delivery of the Works.
- 11.6 If a finding of unlawful discrimination is made against the Provider concerning the Works by any court or employment tribunal, or an adverse finding is made in any formal investigation under any body responsible for enforcing Equality and Diversity Law the Provider must take appropriate steps to prevent repetition of the unlawful discrimination.
- 11.7 The Provider shall, on request, provide Magenta with details of any steps taken under Clause 11.4.
- 11.8 Magenta may from time to time require the Provider to cooperate with its nominated representative in monitoring the Provider's workforce according to such categories as Magenta specifies in writing to the Provider.

12 EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE

- 12.1 Nothing in this Contract is to require Magenta to act in any way which is inconsistent with its obligations as a charity or a registered provider of social housing.
- 12.2 Each Party undertakes (subject to Clause 12.1) to do all things and execute all further documents that the other may reasonably require to give effect to this Contract.

13 INDEMNITY

- 13.1 Without prejudice to the rights of either Party against the other, each Party will indemnify the other on a full indemnity basis against any Liabilities of any kind or nature whatsoever which may be sustained or suffered by or secured against them arising out of a breach by it of any term of this Contract.
- 13.2 The Provider must indemnify Magenta against Liability for the death of or personal injury to any person arising out of or in the course of the Works unless it was due to the negligence or default of Magenta.
- 13.3 The Provider must indemnify Magenta against loss or damage to property including any Property and/or any adjoining property where the Works are to be carried out due to any negligence, default or breach of Law in carrying out the Works or any breach of this Contract. Such loss or damage must include any contamination or pollution cause and any Liability for trespass or nuisance caused by Staff.
- 13.4 The Provider must indemnify Magenta against loss or damage to a Property due to vandalism or theft and other loss or damage either whilst the Provider is in possession of a key to that Property or which is caused by Staff of the Provider or any Subcontractor.

14 INSURANCE

- 14.1 Subject to such insurance being available in the market place at commercially reasonable rates and on commercially reasonable terms the Provider will maintain the minimum levels of insurance cover set out in the Contract Details. Such insurance shall be maintained with a substantial and reputable insurance company.
- 14.2 Whenever required to do so by Magenta, and on an annual basis following each renewal, the Provider will provide Magenta with documentary evidence that the insurances referred to in Clause 14.1 are being properly maintained and that premium payments are up to date.
- 14.3 If any of the insurances required by this Contract cease to be available at commercially reasonable rates and on commercially reasonable terms, the Provider shall notify Magenta immediately and the Parties shall discuss the best way to protect their respective positions. In these circumstances Magenta may terminate this Contract under Clause 17.1.5.
- 14.4 If the Provider fails to maintain any of the insurances Magenta may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 14.5 Each Party agrees not to do anything or omit to do anything, which could make the insurance policies referred to in Clause 14.1 void or voidable.

15 FORCE MAJEURE

- 15.1 Neither Party is to be liable to the other for any failure or delay in performing its obligations under this Contract due to any cause beyond its reasonable control ("**Force Majeure**") including governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes (other than labour disputes

involving employees of that Party or its subcontractor's employees), currency restrictions and Act of God.

- 15.2 The date for performance of an obligation which has been delayed by Force Majeure is to be suspended only for the period of delay caused by Force Majeure.
- 15.3 The Party seeking to exempt itself from liability because of this Clause 15 must give written notice to the other Party within 5 (five) working days of becoming aware of Force Majeure and must use all reasonable endeavours to mitigate its severity.
- 15.4 The Party seeking to exempt itself from liability because of this Clause 15 is not entitled to payment from the other Party for extra costs and expenses incurred because of Force Majeure.
- 15.5 Either Party may terminate this Contract by giving immediate notice to the other Party if Force Majeure continues for a period of 2 (two) months or more. Magenta may also terminate for this reason as set out in Clause 14.3 [*Insurances*].

16 CORRUPTION, BRIBERY AND CONFLICTS

- 16.1 In accordance with the Bribery Act 2010, Magenta may terminate this Contract for default by the Provider immediately by written notice and recover from the Provider the amount of any loss resulting from such termination if:
 - 16.1.1 the Provider has offered or given or agreed to give Magenta, or any person connected with any gift or consideration of any kind as an inducement or reward for:
 - (a) doing or not doing or having done or not having done any action in relation to the obtaining or execution of this Contract or any other contract with Magenta; or
 - (b) showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with Magenta;
 - 16.1.2 the acts referred to in Clause 16.1.1 have been done by any person employed by the Provider or acting on the Provider's behalf (whether without or with the Provider's knowledge).
- 16.2 The Provider shall not do anything which would place Magenta in breach of the prohibition in Section 122 of the Housing and Regeneration Act 2008 or Magenta's Probity Policy or Code of Conduct, copies of which shall be supplied to the Provider.
- 16.3 The Provider shall take appropriate steps to ensure that neither the Provider nor any Staff are placed in a position where (in the reasonable opinion of Magenta) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or Staff and the obligations owed to Magenta under this Contract.
- 16.4 The Provider shall promptly notify and provide full particulars to Magenta if any conflict referred to in Clause 16.3 above arises or is reasonably foreseeable to arise.

- 16.5 Magenta reserves the right to terminate this Contract immediately by giving notice in writing to the Provider and/or to take such other steps it deems necessary where, in the reasonable opinion of Magenta, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to Magenta under the provisions of this Contract. The action of Magenta pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to Magenta.

17 TERMINATION

- 17.1 Magenta may terminate this Contract with immediate effect by giving the Provider written notice if:
- 17.1.1 the Provider commits a material breach of this Contract which is not remedied to the satisfaction of Magenta within 10 (ten) Working Days of written notice from Magenta notifying the Provider of the breach and stating that if it is not remedied this Contract will be terminated;
 - 17.1.2 the Provider or anyone for whom the Provider is responsible has acted fraudulently or made a fraudulent misrepresentation in connection with the Works;
 - 17.1.3 the Provider or anyone for whom the Provider is responsible has offered or agreed to give any person working for or engaged by Magenta any gift or consideration in relation to this Contract or any other contract between the Provider and Magenta as set out in Clause 16;
 - 17.1.4 the Provider has been the subject of any insolvency related procedure including having:
 - had an administrator, receiver, receiver and manager or administrative receiver appointed, or having notified or been notified of an intention, or taken any steps to appoint, any of them;
 - suspended the payment of debts or commenced negotiations with its creditors to reschedule its debts;
 - had a winding up petition presented against it; or
 - suffered any equivalent insolvency related procedure; or
 - 17.1.5 any of the Insurances the Provider is required to maintain under Clause 14 [*Insurance*] ceases to be available at commercially reasonable rates; or
 - 17.1.6 the Provider is found to have committed any of the offences listed in Regulation 57(1) of the Public Contracts Regulations 2015, the European Court of Justice orders that this Contract is set aside because of a serious infringement of the EU Treaty or a court orders that this Contract is set aside because it has been subject to a substantial modification;
 - 17.1.7 the Provider is found to have committed any offence involving slavery or human trafficking; or
 - 17.1.8 the Provider fails to improve or sustain improved performance in accordance with Clause 5.8 [*Key Performance Indicators*] following the service of an Improvement Notice under Clause 4.12 [*Key Performance Indicators*].
- 17.2 Magenta may terminate this Contract by giving the Provider not less than the period of notice set out in the Contract Details to do so. Notice to terminate under this Clause will be valid only if given in writing.

- 17.3 Termination of this Contract is without prejudice to the rights and duties of either Party accrued due before termination or to any provisions which are intended to survive termination.
- 17.4 Clause 25 [*Informal Dispute Resolution*] shall not apply to any issues concerning termination of this Contract.
- 17.5 On termination of this Contract the Provider must co-operate fully with Magenta and/or any Successor Provider in relation to the legal and operational handover of responsibilities between the Provider and Magenta or the Successor Provider.
- 17.6 The Provider must use all reasonable endeavours to procure that the benefit of any guarantees, warranties, documentation and service contracts relating to the Works that are in force on the Termination Date are assigned to Magenta or as Magenta may instruct.
- 17.7 The Provider must deliver all materials and equipment paid for by Magenta to Magenta or as Magenta directs within 10 (ten) Working Days of:
- 17.7.1 the Termination Date, where the reason for termination is any reason other than breach of this Contract by Magenta;
- 17.7.2 the date on which the Provider receives payment for those materials and equipment.
- 17.8 Within 5 (five) Working Days of the Termination Date, the Provider must:
- 17.8.1 return all Documents and Data provided by Magenta;
- 17.8.2 provide copies of all other Documents and Data used in connection with the Works to Magenta; and
- 17.8.3 return all keys, passes, door entry codes and other information relating to the Properties.
- 17.9 Where the Provider has been the subject of any insolvency related procedure as set out in Clause 17.1.4 the other provisions of this Contract which require any further payment will cease to apply in respect of the Works other than supplies provided by the Provider.

18 WAIVER

- 18.1 A failure or delay in exercising any rights, powers or privileges under this contract will not operate as a waiver of them.
- 18.2 The single or partial exercise of any right, power or privilege does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).
- 18.3 Any waiver of a breach of this Contract is not to be effective unless given in writing signed by the Party waiving its entitlement.
- 18.4 No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Contract.

- 18.5 The receipt of money does not prevent the Party receiving it questioning the correctness of the amount or any other statement in respect of money.

19 SEVERABILITY

- 19.1 If any term of this Contract is illegal, void or unenforceable the remainder of this Contract will continue in force as though that term had not been included in it.

20 VARIATIONS

- 20.1 No variation of this Contract is to bind either Party and no person has authority on behalf of either Party to agree to any variations to this Contract except where the amendment is agreed to in writing by both Parties.
- 20.2 No consents to any variation to this Contract are required from any person who is not a party to it.

21 ENTIRE CONTRACT

- 21.1 Subject to Clause 21.2 this Contract and any Orders issued under it set out the whole Contract between the Parties in relation to the Works. This Contract supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which either Party has made orally or in writing.
- 21.2 Each Party warrants that it has not entered into this Contract on the basis of any representation made by the other except to the extent that such representation is expressly included in it (but nothing in this Clause 21.2 excludes any liability for fraudulent misrepresentation).

22 THIRD PARTIES

- 22.1 Nothing in this Contract shall confer any benefit on a person who is not a Party to it or give any such third party a right to enforce any of its terms.

23 NO PARTNERSHIP OR AGENCY

- 21.1 Nothing in this Contract is to constitute or be deemed a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other law concerning partnerships or limited liability partnerships.
- 21.2 Neither Party shall hold itself out as the agent of the other or have any authority to bind the other except to the extent that this Contract expressly provides otherwise.

24 NOTICES

- 24.1 Notices or other communications under this Contract will be duly served if given by and sent to the nominated representative of the Party to be served in accordance with the following table with the date of service and method of proof being as set out in it:

| Method of service | Date of service | Proof of service |
|--|--|---|
| Personal delivery of a letter addressed to the Party to be served at the address for service. | Day of delivery if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter. | Proof of delivery. |
| First class letter addressed to the Party to be served at its address for service. | 48 hours after posting if that is a Working Day otherwise 10.00 on the next Working Day thereafter. | Proof of posting unless returned through the Post Office undelivered service within 21 days of posting. |
| Email (requesting a "read receipt") addressed to the Party to be served and sent to its email address for service. | Day of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter. | Proof of sending email to the correct email address plus proof of requesting a read receipt. |

- 24.2 Each Party's address for service is its registered office where it has one. Where the Provider does not have a registered office a Party's address for service is the address set out at the start of this Contract or such other address as it notifies to Magenta in writing.
- 24.3 Each Party's email address for service is as follows:
24.3.1 [] for Magenta Living; and
24.3.2 [] for the Provider
- 24.4 Email shall not be a valid method of service for notices relating to termination under Condition 17 [Termination] or relating to any Dispute.

25 INFORMAL DISPUTE RESOLUTION

- 25.1 Each Party agrees to attempt to resolve any Disputes which it has with the other amicably but nothing in this Clause 25 is to prevent the exercise by a Party of its other rights under this Contract or to apply to termination of this Contract.
- 25.2 If a Party considers that a Dispute has arisen it may write a letter to the other Party specifying:
25.2.1 what the Dispute is alleged to be;
25.2.2 what steps should be taken to resolve the Dispute; and
25.2.3 within what reasonable period such steps should be taken.
- 25.3 If the Dispute is not resolved within the period set out in the letter then representatives of the Parties must meet within a further period of 10 (ten) Working Days to discuss the Dispute.

- 25.4 If the Dispute is still not resolved within 10 (ten) Working Days of the date of the meeting at which the Dispute is considered then the Chief Executive/Managing Director of each Party must meet within a further 10 (ten) Working Days to seek to resolve it.
- 25.5 If the matter is not resolved within 10 (ten) Working Days of the Chief Executive's/Managing Director's meeting, it is to be placed on the agenda of the next meeting of the governing bodies of both Parties.

26 ADJUDICATION

- 26.1 If the Contract is a construction contract to which the Construction Act applies and a Dispute arises which either Party wishes to refer to adjudication the Scheme will apply, subject to the following:
- 26.1.1 the adjudicator may decide upon his/her own substantive jurisdiction and the scope of the adjudication;
 - 26.1.2 the adjudicator must provide reasons for the decision unless both Parties agree otherwise; and
 - 26.1.3 the adjudicator may correct any clerical error or mistake arising from an accidental slip or omission in a decision within 10 (ten) Working Days of the date of the decision or such shorter period as the adjudicator specifies in the decision.
- 26.2 If the Parties cannot agree the identity of the adjudicator in accordance with the Scheme, the adjudicator is to be nominated by the body stated in the Contract Details on the application of either Party.

27 GOVERNING LAW AND ENFORCEMENT

- 27.1 The formation, construction, performance, validity and all aspects of this Contract are to be governed by English law.
- 27.2 The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute under this Agreement.

28 COUNTERPARTS

This Contract may be executed in two or more counterparts each of which shall be deemed to be an original but the counterparts shall together constitute one and the same contract.

AS WITNESS of the above both Parties have signed this Contract on the date set out at the start of it.

**SCHEDULE 1
CONTRACT DETAILS**

**Schedule 1
Contract Details**

Provider: [] [Limited] (company number []) whose registered office is at [] **[use for a company]**

OR

[], [] and [] being all the partners in the business trading as [] of [] **[use for a partnership]**

OR

[] of [] trading as [] of [] **[use for a sole trader]**

Works, services or supplies the Provider is to deliver:

- **[insert brief description of subject matter of the Contract]**

Clause 1 [Definitions]:

| | | | |
|--------------------------------------|----------------------|--|---|
| “Defects Liability Period” | Liability | | The Defects Liability period is [12] months from the Completion Date of the Works, or where the Works are to be undertaken to more than one Property, from the Completion Date for the Works to each Property [confirm/amend period] |
| “Defect Rectification Period” | Rectification | | The Defect Rectification Period is [] calendar days OR the period set out in WPH’s Residents Handbook for a repair of the same nature as the Defect [insert period/amend as applicable] |
| “Expiry Date” | | | [insert date] |
| “Inflation” | | | The period over which Inflation is to be calculated is the 12 months up to [September/January/February/March]* immediately preceding 1 st April each year [*select as applicable] |
| “Interest Rate” | | | The Interest Rate is: 5% (five per cent) above the base rate of the Bank of England from time to time; |
| “Order” | | | Each Order must include the following: <ul style="list-style-type: none"> • a description of the Works in the Order; • the Price payable for the Works comprised in the Order, calculated by reference to the Payment Mechanism; • the commencement date for the Works (if different from the date of issue of the Order); • the Completion Deadline for the Works in the Order; and |

| | | |
|---------------------|--|--|
| "Order" (continued) | | <ul style="list-style-type: none"> • [add a reference to any other items specific to the particular Contract where appropriate]. |
| "Starting Date" | | [insert date] |

Clause 1.7: Period of extension:

- **[insert length]**

Clause 2.2: Works are to be instructed by Orders:

- Yes
- No
[delete as applicable]

Clause 3.2: To the extent that the Provider is lawfully able to, the Provider must obtain for each member of Staff undertaking the Works:

- a clear DBS Check before undertaking the services and confirm that the Staff member has not done anything subsequently that the Provider is or ought to be aware of to change that status; **or**
- if the Provider is unable to obtain a DBS Check, the Provider must have sufficiently robust procedures to minimise the risk of operatives working on their behalf in providing the services to Magenta whom could pose a risk to Magenta Residents.

Clause 5.7: The Prices are to be adjusted for Inflation (as defined above) on 1st April:

- Yes
- No

Clause 14.1: The minimum insurance levels required to be maintained by the Provider are:

- Public liability cover - £[] million;
- Professional indemnity cover - £[] million for the duration of the Contract with run-off cover for 6 years thereafter;
- Employer's liability and motor insurance - as required by law; and
- Product liability cover – [] million for the duration of the Contract and run off cover for 3 years thereafter.
[levels should be confirmed by Magenta's insurance advisers]

Clause 17.2: The period of notice for Magenta to break the Contract on a "no fault" basis is:

- [3 (three) months]

Clause 26.2: Where this Contract is a construction contract under the Construction Act the body responsible for the appointment of the Adjudicator if not agreed is:

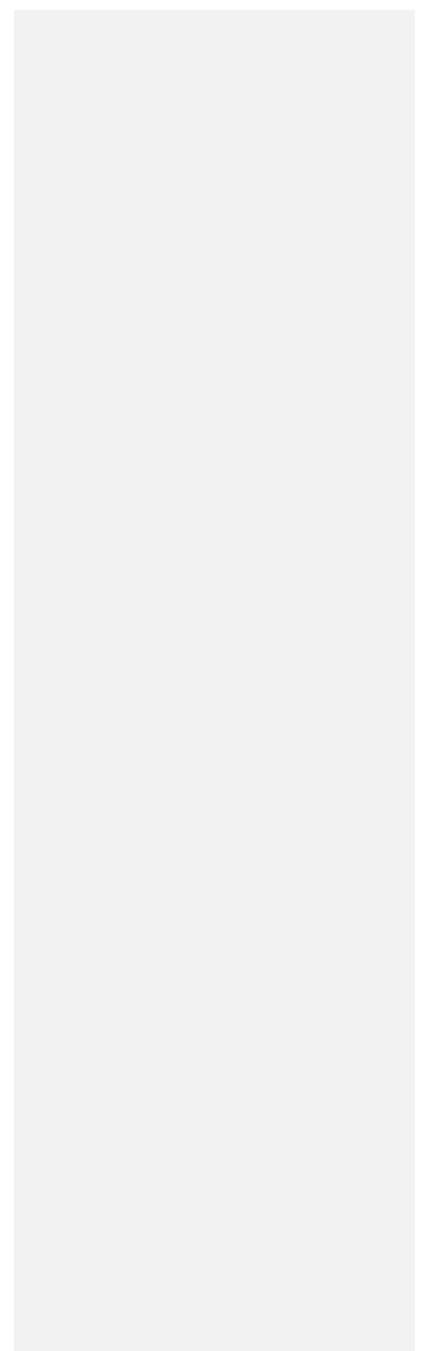
- The Law Society of England and Wales
[amend if desired - alternatives could include President of RICS, President of Chartered Institute of Arbitrators].

**SCHEDULE 2
SPECIFICATION**

**Schedule 2
Specification**

**[To be inserted] plus include Supplier's – Method Statement as an
Appendix to this Schedule 2 [from Supplier's bid]**

SCHEDULE 3
KEY PERFORMANCE INDICATORS



**SCHEDULE 4
PAYMENT MECHANISM**

**Schedule 4
Payment Mechanism**

[To be inserted]

In accordance with **Clause 5** the Provider shall invoice Magenta Living stating the price payable in respect of all Works completed and this sum shall be subject to a retention deduction at the rate of 5%; upon completion of the Works the rate of retention shall be reduced to 2.5%. The remaining retention shall be released upon satisfactory completion of defects that have appeared during the Defects Liability Rectification Period. *Drafting note: Consider the use of this wording if retention is required*

MAGENTA LIVING

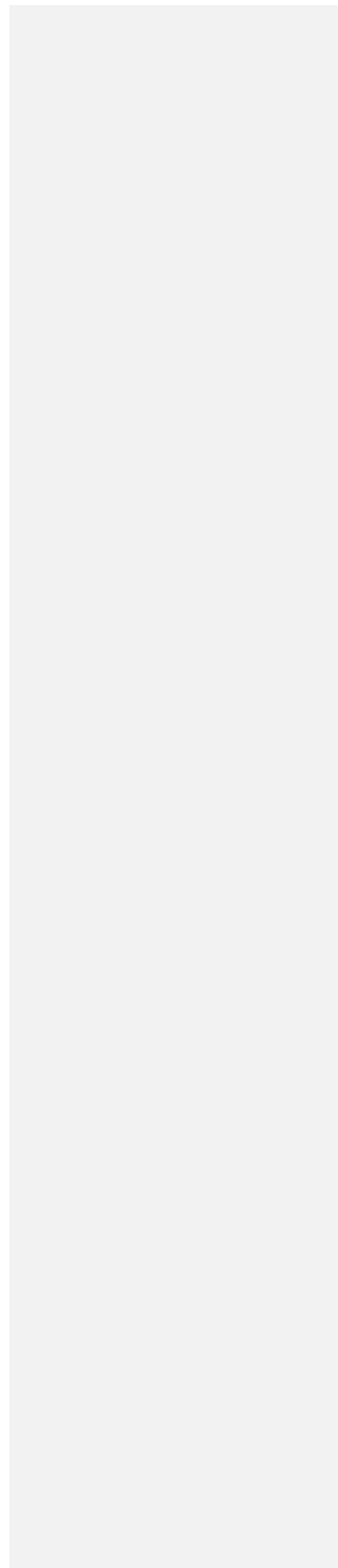
Signed on behalf of Wirral Partnership Homes)
Limited t/a Magenta Living in the presence of)
the following witness:)

**Signature of Board Member
or other authorised signatory:**

Witness signature_____

Witness name_____

Witness address_____



PROVIDER

Company

Signed on behalf of _____)
[_____] Limited in: _____)
the presence of the following witness: _____)

Signature of Director/Board Member:

Witness signature _____

Witness name _____

Witness address _____

Partnership

Signed on behalf of [_____] _____)
[_____] and _____)
[_____] _____)
being all the partners in the _____)
firm of [_____] by [_____] _____)
who has authority to bind the partnership in _____)
the presence of the following witness: _____)

Signature of Partner:

Witness signature _____

Witness name _____

Witness address _____

Sole trader

Signed by [_____] in _____)
the presence of the following witness: _____)

Signature of Individual:

Witness signature _____

Witness name _____

Witness address _____

