MAGENTA LIVING

and

[Provider]

FRAMEWORK AGREEMENT

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[Asbestos surveys - Lot 1: Voids]

[Asbestos surveys - Lot 2: Other Properties]

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### **FRAMEWORK AGREEMENT (“this Agreement”)** dated 2021

PARTIES

1. **MAGENTA LIVING** (a charitable company limited by guarantee company number 04912562) whose registered office is at Partnership Building, Hamilton Street Birkenhead, Merseyside CH41 5AA; (**“Magenta Living”**) contracting on its own behalf and on behalf of each Magenta Living Group Organisation (as defined in Clause 1 [*Definitions*]); and
2. **[Provider]** (company/LLP registration number [***insert***]) whose registered office address is [***insert***] (**“the Provider”**).

INTRODUCTION

1. Magenta Living is a body governed by public law and a contracting authority for the purposes of the Public Contracts Regulations 2015 (“**PCR 2015**”).
2. Magenta Living has a requirement for asbestos surveys (“**the Services**”) from time to time. Magenta Living has divided that requirement into two Lots as follows:

* Lot 1: Void Properties; and
* Lot 2: Other Properties.

1. After publishing a notice in Find a Tender Service with reference number [ ] dated [ ] (“**the FaTS Notice**”) Magenta Living has procured a framework (**“the Framework”**) for the Services for Lot [***No***] comprising this Agreement and Other Framework Agreements in accordance with PCR 2015.
2. Based on the Provider’s Tender submitted in response to the FaTS Notice, Magenta Living awarded a place on the Framework for Lot [***No***] to the Provider and has set up this Agreement under which Magenta Living will call off the Services through issuing an Instruction for such Services under that Lot as are required.
3. Call offs of individual contracts for Services are to be made in accordance with the procedures in this Agreement and on the terms of this Agreement.

### **IT IS AGREED** as follows:

# DEFINITIONS

## In this Agreement (unless the context requires otherwise):

|  |  |
| --- | --- |
| “Code of Practice” | any code of recommended practice produced by a Regulatory Body (including the Information Commissioner) or industry representative body including the Construction Leadership Council; |
| “Confidential Information” | means information that ought because of its nature to be considered as confidential (however it is conveyed or on whatever media it is stored) including Personal Data, financial information, information whose disclosure would, or may prejudice the commercial interests or reputation of any person, and information specifically designated by a Party as confidential; |
| “Construction Act” | means the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009); |
| “Data Controller” | has the meaning given under Data Protection Law; |
| “Data Processing Table” | means the table set out in Clause 8.4 [*Data Protection*] setting out the subject matter, nature, purpose and duration of Personal Data Processing under this Agreement (in addition to under individual Instructions) by the Provider as Data Processor; |
| “Data Processor” | has the meaning given under Data Protection Law; |
| “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 data protection or related privacy Law in force in England and Wales; |
| “Data Protection Principles” | means the principles applicable to the protection of Personal Data under Data Protection Law; |
| “Data Subject” | has the meaning given under Data Protection Law; |
| “Data Subject Access Request” | means a request by a Data Subject under Data Protection Law to access their Personal Data; |
| Disaster Recovery Plan | has the meaning given in Clause 11.3 [*Force Majeure*] |
| “Dispute” | means either a dispute concerning this Agreement or an allegation by a Party that the other has committed a breach of this Agreement; |
| “Dispute Resolution Procedure” | means the procedure set out in Clause 22 *[Disputes]*; |
| “Equality and Diversity Law” | means all Law preventing unlawful discrimination including unlawful discrimination based on 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; |
| “Fee” | means the fee payable by Magenta Living for the Services under an Instruction calculated in accordance with Schedule 2 [*Pricing Schedule*]; |
| “Financial Year” | means each period from 1 April to 31 March next (inclusive); |
| “Force Majeure” | means governmental action, war, riot, terrorist attack, civil commotion, fire, flood, epidemic, pandemic, a labour dispute (other than a labour dispute involving employees of that Party or its Subcontractor’s employees), currency restriction and Act of God; |
| “Framework” | has the meaning given in Paragraph (C) of the Introduction to this Agreement; |
| “Framework Commencement Date” | means [ ] 2021; |
| “Framework Providers” | means the Provider and the Other Providers, being the Providers on the Framework and “**Framework Provider**” is any one of them; |
| “Framework Period” | means the period from the Framework Commencement Date to the date 4 (four) years from the Framework Commencement Date or sooner if this Agreement is terminated under Clause 13 [*Termination*]; |
| “Freedom of Information Law” | means the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any equivalent freedom of information Law (including where limited to Residents) to the extent that Magenta Living becomes a designated body under that Law or subject to such freedom of information Law during the Framework Period; |
| “Good Professional Practice” | means that degree of skill, care, diligence and workmanship which would reasonably and ordinarily be expected from a skilled and experienced service provider providing services similar to the Services; |
| “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 Index of Consumer Prices (all items) United Kingdom (Table D7BT) produced by the Office for National Statistics over the 12 (twelve) months leading up to September immediately preceding 1 April each year; |
| “Instruction” | means an instruction containing the information set out in Schedule 5 *[Instruction]* in the form of an Order from Magenta Living to the Provider to provide Services in accordance with this Agreement*;* |
| “Insurances” | means the insurance policies the Provider is required to maintain under the Instruction Terms as set out in Paragraph 16 [*Insurances*] of the Instruction Terms; |
| “Intellectual Property Rights” | means all intellectual property rights including patents, inventions, trade marks, service marks, logos, designs, design rights (whether registered or not) and all applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the UK) and the right to sue for passing off and all renewals and extensions of such rights; |
| “KPIs” | means the key performance indicators set out in Schedule 3 [*KPIs*]; |
| “KPI Improvement Notice” | has the meaning given in Clause 5 [*Performance Monitoring*]; |
| “KPI Target” | means the minimum KPI performance level specified for each KPI in Schedule 3 [*KPIs*] in relation to which if the Provider’s performance falls below these levels and does not improve this Agreement may be terminated for material breach under Clause 13.2.15 [*Termination*]; |
| “Law” | means:   * any Act of Parliament or legislation; * any subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978); * any exercise of the royal prerogative; * any retained European Union law in force in England under the European Union (Withdrawal) Act 2018 * the EU/UK Trade and Co-operation Agreement (so far as directly applicable under the European Union (Future Relationship) Act 2020); * any applicable judgement of a relevant court of law which is a binding precedent in England; and * any determination, direction, statutory guidance or Code of Practice having the force of law; |
| “Liability” | means all demands, actions, claims, proceedings, liability, losses, judgements, settlements, costs (including legal costs on a “professional and own client” basis), charges, taxes, interest, duties, payments and expenses; |
| “Magenta Living Group Organisation” | means Magenta Living’s subsidiaries, holding companies or societies of which it is a subsidiary together with all subsidiaries of such holding companies or societies (in each case as defined in section 1159 of the Companies Act 2006 or sections 100 and 101 of the Co-operative and Community Benefit Societies Act 2014) and their successors in title; |
| “Materials” | means all documents, drawings, plans, data, information, text, diagrams, bills of quantities, valuations, designs, specifications, schedules, reports, calculations’ images, records or sound embodied in any electronic or tangible medium and other materials and any designs or inventions produced by or on behalf of the Provider in connection with any Instruction or the Services; |
| “Minimum Selection Requirements” | means the selection requirements (“pass/fail” questions) that the Provider had to meet in order for its Framework Tender to be considered by Magenta Living: |
| “Normal Working Hours” | means 08.00 to 17.00 hours on Working Days; |
| “Other Framework Agreement” | means a framework agreement on similar terms to this Agreement entered into between Magenta Living and another successful tenderer for the same Lot as this Agreement is for; |
| “Other Provider” | means a person with whom Magenta Living has entered into an Other Framework Agreement; |
| ‘Party’ | means Magenta Living or the Provider and (in each case) their successors and permitted assignees and **‘Parties’** shall be construed accordingly; |
| “Personal Data” | means personal data, within the meaning given by Data Protection Law which is obtained or Processed in connection with this Agreement or the Services; |
| “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 Agreement including any personal data breach (as defined under Data Protection Law); |
| “Processing” | has the meaning given under Data Protection Law and “**Process**” and “**Processed**” shall be construed accordingly; |
| “Property” | means a property owned or managed by Magenta Living or a Magenta Living Group Organisation in relation to which the Services are to be provided; |
| “Provider’s Tender” | means the method statements and tender documents (other than in relation to pricing, which is in Schedule 2 [*Pricing Schedule*]) submitted by the Provider in relation to this framework as set out in Schedule 7 [*Provider’s Tender*]; |
| “Regulatory Body” | means any governmental, local government administrative or regulatory body (including the Regulator of Social Housing and the Information Commissioner) with oversight over the Services, Data Protection Laws, Magenta Living, any Magenta Living Group Organisation or the Provider or from whom permission is required to carry out the Services; |
| “Regulatory Requirements” | means the requirements of the Law and of all Regulatory Bodies in relation to the Services including the requirements of any Regulatory Body regulating the Services and/or the way in which they are carried out; |
| “Representative” | means the representative of a Party appointed under Clause 2 [*Representatives*] and “**Magenta Living’s Representative**” and “**Provider’s Representative**” shall be construed accordingly; |
| “Request for Information” | means a request for information made under Freedom of Information Law; |
| “Resident” | means a tenant, leaseholder or occupier of a Property; |
| “Services” | means the services to be provided under Instructions issued under this Agreement as set out in Schedule 1 *[Specification];* |
| “Special Category Data” | means special category data, within the meaning given by Data Protection Law which is obtained or Processed in connection with the Services or this Agreement; |
| “Staff” | means all persons employed or used by the Provider or any Subcontractor in providing the Services or performing the Provider’s obligations under this Agreement; |
| “Subcontract” | means a contract between the Provider and a Subcontractor or between 2 (two) or more Subcontractors, at any stage of remoteness from Magenta Living in the Provider’s supply chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the Services; |
| “Subcontractor” | means any permitted subcontractor of or supplier to the Provider of any tier; |
| “Successor Provider” | means any organisation, body or service provider including Magenta Living, which provides services equivalent to the Services after the end of the Framework Period; |
| “Tax” | means any form of taxation including corporation tax, income tax, VAT and all forms of tax collection including IR35, the CIS and the VAT reverse charge; |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006; |
| “Work Allocation Procedure” | means the procedure for allocating Services under this Agreement as set out in Schedule 4 [*Work Allocation Procedure*]; and |
| “Working Day” | means any day other than a Saturday, Sunday or bank or local government holiday. |

## In this Agreement:

### references to Clauses and Schedules are (unless stated otherwise) references to clauses and schedules of this Agreement;

### any reference to a Sub-clause or Paragraph (unless stated otherwise) is a reference to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears;

### the contents section, headings and references to them are not to affect its interpretation;

### references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;

### any references to Law shall be construed as references to that Law as amended, replaced, consolidated or re-enacted and in relation to legislation shall include all regulations, determinations, directions and statutory guidance having the force of law made or given under it;

### references to “**consent**” or “**approva**l” 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 Agreement;

### 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 Agreement;

### re references to a legal entity include a firm, partnership, company, cooperative and community benefit society, corporation, association, organisation, government, state, agency, foundation, trust, unincorporated body and any organisation having legal capacity (in each case whether or not having separate legal personality) and its successors (including any that takes over responsibility for its functions), permitted assignees and transferees;

### references to “**writing**” include electronic communications and other modes of representing words in visible and recordable form except where this Agreement states otherwise;

### if there is any conflict between this Agreement and the terms of any Instruction (including those set out in Schedule 6 [*Instruction Terms*]) the terms of the Instruction are to prevail in relation to the Services provided under that Instruction;

### references to any document are (unless specified) references to such document as amended or supplemented from time to time; and

### 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.

## The Schedules to this Agreement are an integral part of this Agreement and are to have effect as if set out in full in the body of this Agreement. References to this Agreement include the Schedules.

## Where this Agreement requires something to be done:

### it must be done in accordance with this Agreement;

### 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

### 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.

## All the Provider’s obligations, duties and responsibilities under this Agreement are separate obligations, duties and responsibilities owed to Magenta Living and are to be performed at the Provider’s own cost and expense.

## This Agreement will commence on the Framework Commencement Date and continue for the Framework Period unless terminated earlier under Clause 13 [*Termination*]

# REPRESENTATIVES

## The Representatives of each Party for the purposes of this Agreement shall

### for Magenta Living: The holder for the time being of the post of [ ] (currently [ ]); and

### for the Provider: [ ].

## Each Party may replace their Representative at any time and must notify the other Party in writing within 2 (two) Working Days of the appointment of a new Representative. This notification must include:

### the identity of the new Representative;

### the post held by the new Representative; and

### contact details for the new Representative.

## Magenta Living’s Representative may exercise all functions and rights of Magenta Living under this Agreement.

## The Provider must ensure that the Provider’s Representative or a nominated deputy is contactable by Magenta Living at any time (both inside and outside Normal Working Hours) during the Framework Period.

## Any communication given by Magenta Living or Magenta Living’s Representative to the Provider’s Representative will be deemed to have been given to the Provider.

## The Provider must ensure that their Representative informs Magenta Living’s Representative promptly in writing of any act or omission by Magenta Living that stops the Provider from complying with this Agreement.

## If there is any ambiguity, discrepancy or matters requiring clarification in this Agreement, Magenta Living’s Representative (acting reasonably) may issue a clarification which shall be binding on the Provider and determinative of the meaning of this Agreement.

# PROVIDER’S WARRANTIES AND OBLIGATIONS

## The Provider warrants that:

### the Provider is a properly constituted business and has a full capacity and authority and all necessary permissions and registrations to enter into and to perform its obligations under this Agreement and all Instructions issued under it;

### as at the date of this Agreement, all knowledge and information, statements and representations contained in the Provider’s Tender are true, accurate and not misleading other than as specifically disclosed in writing to Magenta Living prior to the execution of this Agreement;

### neither the Provider nor any person connected to it has committed an act of bribery as set out in accordance with Clause 12.1 [*Corruption, Bribery and Conflicts*] in connection with this Agreement or any other contract with Magenta Living; and

### neither the Provider nor any of the Provider’s officers or employees:

#### have been convicted of any offence involving slavery or human trafficking; or

#### 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; and

### all representations and answers given in any due diligence, selection or pre-qualification questionnaire completed by the Provider in relation to the procurement of this Agreement by Magenta Living were true, complete and accurate when given and will continue to be true, complete and accurate throughout the Framework Period.

## The Provider confirms that the Provider has:

### taken such steps as the Provider wishes to take to verify the accuracy of any information provided by Magenta Living and has not relied on any information provided by Magenta Living;

### made its own assessment of the costs of and risks of providing such Services as may be allocated to them;

### made all due allowances for its costs of providing the Services within the prices set out in Schedule 2 [*Pricing Schedule*]; and

### obtained or will obtain all necessary permissions and rights from all Regulatory Bodies necessary or desirable for providing the Services.

## In designing and providing the Services under each Instruction the Provider shall comply with all obligations placed on the Provider under this Agreement or in the Instruction including under Schedule 6 [*Instruction Terms*]:

# ALLOCATION OF InstructionS

## The Provider shall provide such Services as are instructed through Instructions issued by Magenta Living under this Agreement. Magenta Living shall allocate Instructions for Services in accordance with the Work Allocation Procedure described in Schedule 4 [*Work Allocation Procedure*]. Each Instruction shall be a separate contract in the form set out in Schedule 5 [*Instruction Pro-Forma*] incorporating the terms of Schedule 6 [*Instruction Terms*].

## Magenta Living gives no guarantee as to the volume of Services Magenta Living will instruct the Provider to provide under this Agreement. The Provider may not claim for any loss of profit, loss of business or otherwise if the volume or timing of Services under this Agreement is different in amount, value or scope than anticipated.

## The Fee payable under each Instruction shall be calculated on the basis of the Fees set out in Schedule 2 [*Pricing Schedule*]. [The amounts in Schedule 2 [*Pricing Schedule*] (but not Fees for Instructions called off before that date) shall be adjusted in accordance with Inflation on 1 April each year in the Framework Period in relation to all Instructions called off after that date].

## The issue of an Instruction by Magenta Living will be regarded as the acceptance of an offer by the Provider to provide the Services under it in accordance with this Agreement and in particular the Instruction Terms. No further actions are needed for a contract called off from this Agreement to be formed

# PERFORMANCE MONITORING

## The Provider’s performance of Instructions issued by Magenta Living will be monitored and assessed against the KPIs as set out in Schedule 3 [*KPIs*].

## The Provider shall report to Magenta Living on its performance against the KPIs after the end of each month as required in Schedule 3 [*KPIs*].

## 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.

## 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 the Provider determines.

## 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.

## 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.

## If the Provider fails over a period of 3 (three) months to meet the KPI Targets for any 1 (one) or more of the KPIs then Magenta Living may serve on the Provider a notice specifying the improvement in performance that Magenta Living requires (“**a KPI Improvement Notice**”).

## If following the service of a KPI Improvement Notice the Provider does not improve performance above KPI Targets throughout 2 (two) of the 3 (three) months following that in which the KPI Improvement Notice is served or fails to sustain performance above the KPI Targets for 9 (nine) of the 12 (twelve) months after service of a KPI Improvement Notice this shall be deemed to be a material breach of this Agreement by the Provider and Magenta Living shall be entitled to terminate this Agreement and all Instructions issued under it in accordance with Clause 13.2.15 [*Termination*].

# INTELLECTUAL PROPERTY

## The Provider warrants that all Materials (save to the extent that any duly appointed Subcontractors have been used to produce them) are the Provider’s own original work and that in any event their use in connection with the Services will not infringe any Intellectual Property Rights of any third party.

## All Intellectual Property Rights in any Materials which are produced or developed for or in connection with the Services are to belong to the Party that developed them.

## Each Party grants the other Party an irrevocable, non-exclusive, royalty free licence to copy and use (including the right to licence others to do so) all Materials in which it has Intellectual Property Rights in connection with the Services, but this licence is not to extend to:

### copying or using those Materials other than in connection with the Services; or

### selling, transferring or otherwise disposing of or granting any ownership rights in those Materials.

## Each Party shall 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 Services of which it becomes aware.

## The Provider shall indemnify and hold harmless Magenta Living and each Magenta Living Group Organisation against any Liability or damages (including 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 Materials by Magenta Living or a Magenta Living Group Organisation infringes the Intellectual Property Rights of that third party.

# Confidentiality

## Subject to Clause 7.3 each Party shall keep confidential and secure from disclosure any Confidential Information communicated to it by the other on the basis that it is confidential.

## Neither Party shall use or exploit the other Party’s Confidential Information for any purpose other than as set out in this Agreement

## Confidential Information may be disclosed:

### to the extent reasonably required by either Party to perform its obligations under this Agreement on a confidential basis to persons performing those obligations;

### if it is in the public domain other than as a result of a breach of this Clause 7;

### where its disclosure is required by any court order or legal or regulatory obligation of the Party making the disclosure (including under Data Protection Law) or required by any Regulatory Body (including, in relation to Freedom of Information Law, a disclosure made in accordance with this Clause 7);

### if it is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party;

### to a Party’s professional advisers for the purposes of taking advice on this Agreement;

### under the Dispute Resolution Procedure; and/or

### by any Party for the purpose of the examination, certification and/or audit of that Party’s accounts.

## Where a disclosure of Confidential Information is made under Clause 7.2 (other than under Clauses 7.3.2, 7.3.3 or 7.3.4) 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 7.

## Each Party must notify the other Party promptly and in any event within 2 (two) Working Days of becoming aware of any unauthorised access, copying use or disclosure of the other Party’s Confidential Information.

## The Provider shall provide such assistance as Magenta Living reasonably requires to enable Magenta Living to comply with Freedom of Information Law.

## Where the Provider receives a Request for Information relating to information held on behalf of Magenta Living the Provider shall:

### transfer the Request for Information to Magenta Living as soon as practicable and in any event within 5 (five) Working Days of receiving the Request for Information; and

### provide Magenta Living with a copy of all such information in such form as may be required within 10 (ten) Working Days of the notification under Clause 7.7.1.

## The Provider acknowledges that Magenta Living is responsible for determining in its absolute discretion (but having regard to any guidance or Codes of Practice issued by the Information Commissioner or the Ministry of Justice):

### whether any information is exempt from disclosure under Freedom of Information Law

### in the case of a qualified exemption, whether the public interest in disclosing the information is greater than the public interest in maintaining the exemption; and

### whether any information is to be disclosed in response to a Request for Information.

## The Provider shall not respond directly to a Request for Information unless expressly authorised to do so by Magenta Living.

## Where it receives a Request for Information relating to any Confidential Information, Magenta Living shall (unless it has decided not to disclose that information either because Freedom of Information Law does not apply or because it is exempt from disclosure under Freedom of Information Law) use reasonable endeavours to:

### notify the Provider of that Request for Information in accordance with Part VII of the Code of Practice issued by the Secretary of State under Section 45 of FOIA; and

### consider any representations made by the Provider before disclosing that Confidential Information under Freedom of Information Law.

## If Magenta Living decides to disclose any Confidential Information under Freedom of Information Law, Magenta Living shall use reasonable endeavours to notify the Provider of this decision before making the disclosure.

## Where the Provider holds information on behalf of Magenta Living, the Provider shall:

### have regard to any Code of Practice issued under Section 46 of FOIA or equivalent provisions under Freedom of Information Law;

### comply with any practice recommendation issued to it under Section 48 of FOIA or equivalent provisions under Freedom of Information Law; and

### comply with any retention and destruction of information policy which Magenta Living notifies to it.

## For a period of 6 (six) years after termination of this Agreement the Provider shall maintain full records of:

### this Agreement;

### all Services provided under it;

### all payments made by Magenta Living; and

### any expenditure of the Provider that Magenta Living has reimbursed.

## Whenever requested by Magenta Living the Provider shall make any records it maintains under Clause 7.4 available for inspection and analysis by that Magenta Living’s internal or external auditors or representatives of any Regulatory Body to which Magenta Living is subject.

## The Provider shall not, without the prior written approval of Magenta Living:

### publish alone or in conjunction with any other person, any articles relating to the Services; or

### impart to any publication, journal or newspaper or any radio or television programme any information regarding the Services.

# DATA PROTECTION

## Each Party shall comply with Data Protection Law when Processing Personal Data under this Agreement. This includes complying with the Data Protection Principles and upholding the rights of Data Subjects under Data Protection Law.

## Each Party shall ensure they have all necessary and appropriate legal bases required for the lawful Processing of Personal Data under this Agreement (including any transfer of Personal Data to the other Party). Personal Data shall be treated as Confidential Information.

## Under this Agreement:

### Magenta Living is the Data Controller of Personal Data concerning Residents and the Provider will be Processing that information as Data Processor on behalf of Magenta Living; and

### the Provider is the Data Controller of Personal Data concerning Staff, but Magenta Living will be Data Controller of any such Personal Data that is processed by them.

## 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 by the Provider on behalf of Magenta Living under this Agreement are set out in the Data Processing Table below.

|  |  |
| --- | --- |
| **Subject matter of Processing (including types of Personal Data that may be Processed):** | Personal Data including names, addresses and contact details for any Residents including any special requirements in relation to dealing with those Residents or providing the Services which may necessitate Processing of Special Category Data provided to the Provider for the purposes of enabling the Provider to evaluate and price Instructions. |
| **Nature and purpose of Processing:** | Interrogation of the Personal Data for the purpose of assessing and pricing the Services, including ensuring the health and safety of both Residents and Staff providing the Services, monitoring Resident satisfaction and correcting any Personal Data found to be incorrect. |
| **Duration of Processing:** | During the Framework Period and for 20 (twenty) Working Days from its end (within which it is to be returned or destroyed.) |

## Where the Provider Processes Personal Data of which Magenta Living is the Data Controller the Provider shall:

### do so and shall ensure that each member of Staff Processing that Personal Data does only on written instructions from Magenta Living (the first such instructions being those set out in this Agreement) as revised by Magenta Living from time to time (where applicable) in accordance with Clause 8.13;

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

### immediately inform Magenta Living if the Provider thinks that it has been given an instruction which does not comply with Data Protection Law;

### not by any act or omission cause Magenta Living or any other person to be in breach of any Data Protection Laws;

### take all reasonable steps to ensure the reliability and integrity of all persons (including Staff) whom that Party authorises to Process the Personal Data and ensure that those persons:

#### are subject to a binding contractual or statutory obligation of confidentiality;

#### do not Process, publish, disclose or divulge any of the Personal Data other than in accordance with this Agreement or the written instructions of Magenta Living; and

#### undergo adequate training in Data Protection Law, the confidentiality, security, use, care, protection and handling of Personal Data and the Provider’s obligations as Data Processor under this Agreement;

### limit access to Personal Data of which Magenta Living is Data Controller to those members of Staff who need access to it in order to provide the Services;

### fully cooperate with and assist Magenta Living, 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;

### Process the Personal Data in such a manner that ensures that at all times Magenta Living complies with Data Protection Law;

### promptly and in any event within 2 (two) Working Days, 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 Living and not respond to or otherwise deal with such communication except as instructed by Magenta Living or as required by Data Protection Law;

### provide such information and cooperation and take such action as Magenta Living reasonably requests in relation to each Data Subject Access Request, within such timescales as Magenta Living reasonably requires;

### maintain complete, accurate and current records of any Processing of Personal Data it carries out on behalf of Magenta Living which are sufficient to demonstrate compliance by Magenta Living and the Provider with Data Protection Law and containing such information as Magenta Living may reasonably require;

### on request, provide Magenta Living promptly with all information that Magenta Living needs to show that both Magenta Living and Provider have complied with their data protection obligations under this Agreement and Data Protection Law; and

### at the option of Magenta Living, either irretrievably delete or return all Personal Data to Magenta Living by the date set out in the Data Processing Table for this Agreement in Clause 8.4 (unless the Provider is required by Law to retain that Personal Data).

## The Provider shall maintain appropriate technical and organisational measures in accordance with the requirements for the security of Processing under Data Protection Law to protect Personal Data against unauthorised or unlawful Processing and against accidental or unlawful loss, alteration, disclosure, damage or, destruction having regard to:

### the state of technological development;

### the cost of implementing any measures;

### the nature, scope, context and purpose of the Processing of the Personal Data concerned; and

### 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.

## Security measures maintained under Clause 8.6 shall:

### to the greatest extent possible involve pseudonymisation and encryption of Personal Data;

### ensure the ongoing confidentiality, integrity, availability and resilience of the Provider’s technical and IT Systems;

### ensure that the availability of and access to Personal Data can be restored promptly following a physical or technical incident; and

### include regular testing, assessing and evaluating of the effectiveness of the technical and organisational measures to ensure the security of Processing.

## The Provider shall not transfer any Personal Data outside of the United Kingdom and European Economic Area without the prior written consent of Magenta Living. Where Magenta Living consents to such a transfer, such transfer shall be governed by the most recent (at the time of such transfer) standard contractual conditions issued or approved by the Information Commissioner’s Office for such Personal Data transfer.

## The Provider shall notify Magenta Living immediately and in any event within 12 (twelve) hours, if the Provider becomes aware of any Personal Data Breach (however caused). Such notification must:

### describe the nature of the breach including the categories and number of Data Subjects and Personal Data concerned;

### communicate the name and contact details of all persons from whom more information can be obtained about the breach;

### detail any investigations the Provider has undertaken;

### describe the likely consequences of the breach; and

### describe the measures taken by the Provider and the measures which the Provider wishes Magenta Living (at the expense of the Provider) to take to address the breach and mitigate its possible adverse effects.

## The Provider shall give Magenta Living immediate and full co-operation and assistance in relation to any such Personal Data Breach including:

### taking all reasonable steps Magenta Living requires to assist in the containment, mitigation, remediation and investigation of such breach;

### providing assistance with notifying the Information Commissioner’s Office or affected Data Subjects of any breach of Data Protection Law;

### providing Magenta Living promptly with all relevant information in the Provider’s possession; and

### where the Personal Data Breach involves Personal Data being lost, damaged, corrupted or unusable, promptly restoring that Personal Data at the Provider’s expense.

## The Provider shall provide reasonable assistance to Magenta Living where Magenta Living is required by Data Protection Law to carry out any privacy impact assessment or data protection impact assessment in relation to Processing Personal Data or in relation to any prior consultation with a Regulatory Body regarding high risk Processing.

## Magenta Living or an auditor acting on behalf of Magenta Living may inspect and audit the Provider’s facilities for Processing the Personal Data of which Magenta Living is Data Controller and the Provider’s records of that Processing to ensure they comply with this Agreement and Data Protection Law. The Provider shall provide Magenta Living or the auditor with access during Normal Working Hours to all facilities, equipment, premises and sites where the Provider holds Personal Data or Processing records in connection with this Agreement and to all Staff involved in that Processing. If any audit or inspection reveals a material non-compliance by Provider with Data Protection Laws or this Clause 8, the Provider shall pay Magenta Living the reasonable costs of the audit and/or inspection.

## Magenta Living may revise their 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 or be regarded as a variation to this Agreement. Magenta Living 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.

## If the Provider is in breach of Data Protection Law or this Clause 8, Magenta Living may suspend the transfer of Personal Data to the Provider until the breach is remedied to Magenta Living’s satisfaction.

## Nothing in this Agreement 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 Clause 8 does not comply with Data Protection Law, Magenta Living may amend that part (to the minimum necessary to ensure such compliance) by giving the Provider at least 20 (twenty) Working Days’ notice. Such amendment shall not entitle the Provider to any additional payment or be regarded as a variation to this Agreement.

## Magenta Living may replace this Clause 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. Such amendment shall not entitle the Provider to any additional payment or be regarded as a variation to this Agreement.

# equality and diversity

## The Provider shall comply with its obligations under Equality and Diversity Law and use all reasonable endeavours to assist Magenta Living to fulfil its duties under Equality and Diversity Law in relation to the delivery of the Services

## The Provider shall, as far as possible comply with all applicable guidance issued by the Equalities and Human Rights Commission and its predecessors.

## The Provider must set out its policy on equality and diversity:

### in instructions to those concerned with recruitment, training and promotion;

### in documents available to Staff, recognised trade unions or other representative groups; and

### in recruitment advertisements or other literature.

## The Provider must, on request, provide Magenta Living with examples of the instructions and other documents, recruitment advertisements or other literature.

## The Provider must notify Magenta Living within 2 (two) Working Days of first becoming aware of any investigations or proceedings brought against the Provider for a breach of Equality and Diversity Law.

## If a finding of unlawful discrimination is made against the Provider by any court or employment tribunal, or an adverse finding is made in any formal investigation by any Regulatory Body responsible for enforcing Equality and Diversity Law, the Provider must take appropriate steps to prevent any repetition of the unlawful discrimination.

## The Provider shall, on request, provide Magenta Living with details of any steps taken under Clause 9.6.

## Magenta Living may from time to time require the Provider to monitor its workforce according to such categories as Magenta Living reasonably specifies in writing to the Provider.

## In providing the Services, the Provider shall undertake and require Subcontractors to undertake measures to improve the representation of groups that are under-represented amongst Staff delivering the Services compared to their representation in the population (either generally or in the areas in which the Services are being undertaken), so as to minimise any imbalance in the composition of those Staff.

## In providing the Services, the Provider shall undertake and shall require Subcontractors to undertake measures to:

### eliminate unlawful discrimination (including harassment and victimisation) or any other conduct prohibited by Equality and Diversity Law within Staff delivering the Services;

### deliver equality of opportunity particularly for people from groups that are under-represented amongst Staff delivering the Services in recruitment, pay, training and transfer and promotion to and within that workforce; and

### promote and foster good relations between Staff delivering the Services who share a protected characteristic under Equality and Diversity Law and those who do not have that characteristic.

# SUBCONTRACTING & ASSIGNMENT

## The Provider may not assign, transfer, subcontract or deal in any other manner with its rights and obligations under this Agreement or any part, share or interest in this Agreement without the prior written consent of Magenta Living but this does not prevent the Provider exercising its legal right to factor its right to payment under this Agreement. Subcontracting shall not relieve the Provider from Liability for the performance of its obligations to Magenta Living under this Agreement and the Provider shall be liable to Magenta Living for the performance of its Subcontractors.

## Magenta Living may assign or transfer the benefit of all or any of its rights under this Agreement. An assignment by Magenta Living (or by the Provider following Magenta Living’s prior written consent) will be effective when written notice of it is served on the Provider (or Magenta Living, as applicable).

## Where the Provider enters into a Subcontract, the Provider shall include in that Subcontract provisions:

### requiring invoices to be considered and verified in a timely fashion;

### requiring the payment of valid and undisputed invoices within 30 (thirty) calendar days;

### 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;

### enabling the Subcontract to be terminated if the Subcontractor fails to comply with any obligations under any environmental, social or employment Law in performing the Subcontract; and

### requiring the Subcontractor to include provisions having the same effect as this Clause 10.3 in any Subcontract the Subcontractor enters into relating to the Services.

## The Provider shall not allow a Subcontractor to Process any Personal Data of which Magenta Living is Data Controller without the prior written consent of Magenta Living to that Subcontractor doing so. Where the Provider wishes a Subcontractor to be able to do so the Provider shall provide Magenta Living with such evidence as Magenta Living requires in order to be satisfied that the proposed Subcontractor is capable of complying with the Provider’s obligations under this Agreement and under Data Protection Law in relation to that Personal Data.

## Where Magenta Living allows a Subcontractor to Process Personal Data in accordance with Clause 10.4, the Provider shall:

### include provisions identical to those in Clause 8 [*Data Protection*] in the Subcontract with that Subcontractor; and

### provide in the Subcontract that Magenta Living may enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999.

## Where Staff need to access Magenta Living’s premises under this Agreement the Provider must notify Magenta Living in writing within 5 (five) Working Days of the Framework Commencement Date of 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:

### any change to that information; and

### the names, contact details and (if known) details of legal representatives of any new Subcontractors.

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

### implement due diligence procedures for its Subcontractors;

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

#### have been convicted of any offence involving slavery or human trafficking; or

#### 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;

### require all Subcontractors to notify them promptly in writing if the Subcontractor becomes aware of or has any reason to believe that the warranty in Clause 10.7.2 is or may become untrue. The notice must set out full details of the circumstances making the warranty untrue or potentially untrue;

### require all Subcontractors to include provisions having the same effect as this Clause 10.7 in all Subcontracts (at any stage of remoteness from Magenta Living in the supply chain) relating to the Services; and

### promptly pass to Magenta Living a copy of any notice from a Subcontractor under Clause 10.7.3.

## The Provider shall maintain control over and ensure adequate liaison with Subcontractors to ensure compliance with this Agreement. Any obligation on the Provider not to do anything in this Agreement is to include an obligation on the Provider to procure that all Subcontractors and Staff do not do it.

## The Provider shall terminate a Subcontract (at the Provider’s own cost) within 20 (twenty) Working Days of being requested to do so by Magenta Living if:

### the actions or omissions of the Subcontractor have led to the Provider being in material breach of this Agreement;

### the Subcontractor or anyone for whom the Subcontractor is responsible has acted fraudulently or made a fraudulent misrepresentation in connection with the Services or this Agreement;

### the Subcontractor or anyone for whom the Subcontractor is responsible has offered or agreed to give any person working for or engaged by Magenta Living any gift or consideration in relation to this Agreement as set out in Clause 12.1 [*Corruption, Bribery and Conflicts*];

### there is (in the reasonable opinion of Magenta Living) an actual or potential conflict between the interests of the Subcontractor and those of Magenta Living;

### the Subcontractor is in breach of Health and Safety Law or is considered by Magenta Living to be working or to have worked in a way that does not fully comply with Health and Safety Law, any Code of Practice approved in relation to Health and Safety Law or Good Professional Practice in relation to health and safety;

### the Subcontractor commits a material breach of Data Protection Law (including any Personal Data Breach or any breach which Magenta Living, as Data Controller, is required to report to the Information Commissioner);

### there is a change of control of the Subcontractor (as defined in section 1124 Corporation Tax Act 2010) which Magenta Living has not approved in advance; or

### the Subcontractor is found to have committed any offence involving slavery or human trafficking or to have breached environmental, social or labour laws.

# FORCE MAJEURE

## Subject to the Provider complying with Clauses 11.2 to 11.5 (inclusive), neither Party is to be liable to the other for any failure or delay in performing its obligations under this Agreement due to Force Majeure.

## The Provider shall inform Magenta Living immediately of any actual or potential industrial action, by Staff or others, which might affect its ability at any time to perform its obligations under this Agreement.

## The Provider shall maintain a disaster recovery plan (“**the Disaster Recovery Plan**”) setting out the procedures to be followed if any Force Majeure or other circumstances outside the Provider’s control mean that the Provider is not able to provide the Services in accordance with this Agreement. The Provider shall test and refresh its Disaster Recovery Plan at least once every 12 (twelve) months.

## A Party subject to Force Majeure must give written notice to the other Party within 2 (two) Working Days of becoming aware of Force Majeure and must use all reasonable endeavours to mitigate its severity.

## If Force Majeure occurs the Provider shall:

### implement the procedures in the Disaster Recovery Plan;

### as far as practicable, continue to provide the Services in accordance with the Disaster Recovery Plan (where applicable) and this Agreement; and

### restore the provision of the Services to normal as soon as practicable and within any period set out in the Disaster Recovery Plan (where applicable).

## The Party subject to Force Majeure is not entitled to payment from the other Party for extra costs and expenses incurred because of Force Majeure. The Fee payable for the Services shall also be reduced by such amount as is fair and reasonable to reflect the reduction in the Services undertaken or their performance during the period of Force Majeure.

## 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. The Party notifying the other Party of Force Majeure must notify that Party as soon as it considers the Force Majeure no longer applies.

## Either Party may terminate this Agreement by giving immediate notice to the other Party if Force Majeure which completely prevents that Party from complying with its obligations under this Agreement continues for a period of 3 (three) months or more.

# CORRUPTION, BRIBERY AND CONFLICTS

## The Provider shall not and shall procure that Staff do not commit any offence under the Bribery Act 2010. Magenta Living may terminate this Agreement for default by the Provider immediately by written notice and recover from the Provider the amount of any loss resulting from such termination if:

### the Provider commits an offence under the Bribery Act 2010 or any Law concerning fraudulent or corrupt acts in relation to this Agreement or any other contract with Magenta Living;

### the Provider has offered or given or agreed to give Magenta Living, or any person connected with any gift or consideration of any kind as an inducement or reward for:

#### doing or not doing or having done or not having done any action in relation to the obtaining or execution of this Agreement or any other contract with Magenta Living; or

#### showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with Magenta Living; or

### the acts referred to in Clauses 12.1.1 or 12.1.2 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).

## The Provider shall not do anything which would place Magenta Living in breach of the prohibition in Section 122 of the Housing and Regeneration Act 2008 or Magenta Living’s Probity Policy.

## The Provider shall take and require all Subcontractors to take all reasonable steps, in accordance with Good Professional Practice, to prevent fraud and bribery in connection with this Agreement. The Provider shall notify Magenta Living immediately if it has reason to suspect that any fraud or bribery (including any breach of Clause 12.1) has occurred, is occurring or is likely to occur.

## If the Provider or any of its Staff commits any fraud or bribery (including any breach of Clause 12.1) in relation to this or any other contract with Magenta Living, Magenta Living may recover from the Provider in full any loss sustained by Magenta Living in consequence of such fraud.

## The Provider shall cooperate fully with Magenta Living, its auditors and/or any Regulatory Body in relation to any investigation into fraud or bribery in connection with this Agreement.

## The Provider shall take appropriate steps to ensure that the Provider is not placed in a position where (in the reasonable opinion of Magenta Living) there is or may be an actual conflict, or a potential conflict between the pecuniary or personal interests of the Provider or of any of its Staff and the obligations owed to Magenta Living under this Agreement or any Instruction issued under it.

## The Provider shall promptly notify and provide full particulars to Magenta Living if any conflict referred to in Clause 12.6 above arises or is reasonably foreseeable to arise and shall take all steps reasonably required by Magenta Living to mitigate the effects of any such conflict of interests.

# TERMINATION

## Magenta Living may terminate this Agreement by giving not less than 3 (three) months’ written notice to the Provider. After the receipt of the notice under this Clause 13.1, the Provider shall not be under any obligation to accept any further Instructions unless they can be completed before the end of the revised Framework Period.

## Magenta Living may, without prejudice to any other right or remedy, terminate this Agreement either with immediate effect or with effect from a future date specified by Magenta Living by giving the Provider written notice if:

### the Provider is in material breach of this Agreement which is not remedied to the satisfaction of Magenta Living within 10 (ten) Working Days from the receipt of a written notice from Magenta Living notifying the Provider of the breach and stating that if it is not remedied this Agreement may be terminated for the Provider’s material breach;

### the Provider or anyone for whom the Provider is responsible acts fraudulently or made a fraudulent misrepresentation in connection with the Services;

### the Provider or anyone for whom the Provider is responsible offers or agrees to give any person working for or engaged by Magenta Living any gift or consideration in relation to this Agreement or any other contract between the Provider and Magenta Living as set out in Clause 12.1 [*Corruption, Bribery and Conflicts*] or commits any offence under the Bribery Act 2010;

### there is (in the reasonable opinion of Magenta Living) an actual or potential conflict between the interests of the Provider and the duties owed to Magenta Living under this Agreement;

### the Provider makes a false or fraudulent claim for payment under this Agreement;

### the Provider or a Subcontractor is in breach of Health and Safety Law or is considered by Magenta Living to be working or to have worked in a way that does not fully comply with Health and Safety Law or any guidance or best practice approved in relation to Health and Safety Law;

### any of the Insurances required the Provider is required to maintain under the Instruction Terms ceases to be available at commercially reasonable rates;

### the Provider purports to assign, subcontract, novate or create any form of security over its rights under this Agreement without Magenta Living’s written consent;

### the warranty in Clause 3.1 [*Provider’s Warranties and Obligations*] is or becomes untrue in any material respect;

### the Provider or a Subcontractor commits a material breach of Data Protection Law (including any Personal Data Breach or any breach) which Magenta Living, as Data Controller, is required to report to the Information Commissioner;

### the Provider or a Subcontractor breaches the Law in relation to the Services;

### the Provider or a Subcontractor commits or is found to have committed any of the offences listed in Regulation 57(1) of the Public Contracts Regulations 2015, any of the Provider’s directors, officers or senior managers commit or are found to have committed any of those offences or a Court orders that this Agreement is set aside because it has been subject to a substantial modification;

### there is a change of control of the Provider (as defined in section 1124 Corporation Tax Act 2010) which Magenta Living has not approved in advance;

### the Provider or a Subcontractor is found to have committed any offence involving slavery or human trafficking or to have breached environmental, social or labour Laws;

### the Provider fails to improve or sustain improved performance in accordance with Clause 5.8 [*Performance Monitoring*] following the service of a KPI Improvement Notice under Clause 5.7 [*Performance Monitoring*]; or

### any Instruction is terminated by Magenta Living for material breach by the Provider.

## The Provider may, without prejudice to any other right or remedy, terminate this Agreement immediately by written notice if:

### fails to pay any undisputed amount due to the Provider properly due and payable under an Instruction (subject to any deductions which Magenta Living may be entitled to make) by the date specified in a written notice from the Provider served after the final date on which the amount is due and warning that this Agreement may be terminated if such sum is not paid by the date specified (which must be at least 30 (thirty) Working Days after the date of the notice); or

### Magenta Living without good reason, commits a material breach of this Agreement which substantially prevents the Provider from complying with the Provider’s obligations under this Agreement and fails to remedy that material breach within 20 (twenty) Working Days of written notice from the Provider served on Magenta Living stating that if it is not remedied this Agreement will be terminated for material breach by Magenta Living.

## Either Party may terminate this Agreement immediately by written notice to the other if the other is the subject of any insolvency related procedure including:

### suspending or threatening to suspend, payment of its debts or being unable or deemed unable to pay its debts within section 123 of the Insolvency Act 1986;

### commencing negotiations with any of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any compromise or arrangement with any or all of its creditors;

### applying to court for, or obtaining, a moratorium under the Insolvency Act 1986;

### having a petition filed, passing a resolution, or having an order made for its winding up (except for the purposes of an amalgamation or reconstruction of a solvent company);

### giving or receiving notice of any intention to appoint or appointing or having appointed an administrator, receiver, receiver and manager or administrative receiver or applying for or being the subject of an administration order;

### having a creditor take possession of, or distress, execution, sequestration or other such process levied or enforced on or sued against, the whole or any part of its assets and such attachment or process not being discharged within 10 (ten) Working Days;

### ceasing to trade or threatening to cease to trade;

### failing within the time provided for payment to honour any guarantee or indemnity it has given which has fallen due and been called upon;

### (where the Provider is an individual):

#### being the subject of a bankruptcy petition or order;

#### having a receiver appointed over his/her assets;

#### making an arrangement with creditors; or

#### being deemed unable to pay his/her debts within section 268 of the Insolvency Act 1986;

### (where that Party is a partnership, other than a limited liability partnership) having one of its partners subject to any of the insolvency events in Clause 13.4.9 applying to individuals;

### has a debt relief order made in respect of them; or

### is the subject of any equivalent or similar event in England & Wales or in any other legal jurisdiction.

# CONSEQUENCES OF TERMINATION

## On termination of this Agreement under Clause 13 [*Termination*] the Provider shall deliver or procure the delivery of all Materials relating to the Services generally (if any) to Magenta Living for Magenta Living to retain.

## Termination of an Instruction for whatever reason does not automatically terminate this Agreement unless this Agreement is terminated in accordance with Clause 13 [*Termination*].

## Termination of this Agreement (for any reason) shall be without prejudice to the rights and remedies of each Party in relation to any breach of contract, negligence, omission or default of the other before termination.

## This Agreement shall continue to bind each Party following termination of this Agreement or any Instruction under it for as long as necessary to give effect to their respective rights and obligations under it.

## Termination of this Agreement does not automatically terminate any Instructions under it.

## The Provider warrants that there will be no Staff who transfer to Magenta Living or any Successor Provider under TUPE from the Provider or any Subcontractor at the end of Framework Period or on the completion or termination of the last Instruction under it. If any such Staff do transfer, the Provider shall indemnify Magenta Living and any Successor Provider in against all Liability arising from:

### any costs of dismissing any such person (on any basis) at any time within the 3 (three) months following the last day of the Framework Period or, if later, from the date on which it was discovered they transferred to Magenta Living or the Successor Provider under TUPE;

### all costs of Magenta Living or the Successor Provider employing such person up to the point of their dismissal; and

### where the Employment Tribunal orders the reinstatement of any such person, all costs of Magenta Living or the Successor Provider employing them for a period of 12 (twelve) months from the last day of the Framework Period.

## The rights and remedies provided in this Agreement are cumulative and do not exclude any other rights and remedies under the general law.

# THIRD PARTIES

## Any Magenta Living Group Organisation shall be entitled to rely on the following clauses of this Agreement:

### Clause 1 [*Definitions*];

### Clause 3 [*Provider’s Warranties and Obligations*];

### Clause 4 [*Allocation of Instructions*];

### Clause 6 [*Intellectual Property*];

### Clause 7 [*Confidentiality*];

### Clause 8 [*Data Protection*];

### Clause 9 [*Equality and Diversity*];

### Clause 14 [*Consequences of Termination*];

### this Clause 15; and

### Clauses 19 [*Entire Agreement and Variations*] to 23 [*Law and jurisdiction*] (inclusive).

## Subject to Clause 15.1, no person other than Magenta Living shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

# WAIVER AND SEVERABILITY

## A failure or delay in exercising any rights, powers or privileges under this Agreement will not operate as a waiver of them.

## All remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## 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).

## Any waiver of a breach of this Agreement is not to be effective unless given in writing signed by the Party waiving its entitlement.

## No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Agreement.

## 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.

## If any term of this Agreement is illegal, void or unenforceable, it shall be deemed to have been modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, such term shall be deemed to have been deleted and the remainder of this Agreement will continue in force as though that term had not been included in it.

# EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE

## Nothing in this Instruction requires:

### Magenta Living or the Provider to act in any way which is inconsistent with its obligations under the Law generally; or

### Magenta Living to act in any way which is outside its legal powers or inconsistent with its legal or regulatory obligations as a charitable registered provider of social housing.

## Subject to Clause 17.1, each Party undertakes to do all things and execute all further documents that the other may reasonably require to give effect to this Agreement.

# VARIATIONS

## No variation of this Agreement is to bind any Party and no person has authority on behalf of any Party to agree to any variations to this Agreement except where the amendment is agreed to by a formal “variation agreement” in writing that is described as such and is signed by both Parties. In particular, no person other than the Representatives of Magenta Living and the Provider have authority on behalf of either Party to agree any amendment to this Agreement.

## No consents to any variation to this Agreement are required from any person who is not a Party to it.

# ENTIRE AGREEMENT

## Subject to Clause 19.2 this Agreement and the Instructions issued under it set out the whole agreement between the Parties in relation to the Services. This Agreement supersedes and extinguishes all prior negotiations, commitments, representations and warranties relating to its subject matter which any Party has made orally or in writing.

## Each Party warrants that it has not entered into this Agreement or any Instruction 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 19.2 excludes any liability for fraudulent misrepresentation).

# NO PARTNERSHIP OR AGENCY

## Nothing in this Agreement is to constitute or be deemed to create any joint venture or any partnership under 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.

## No Party shall hold itself out as the agent of any other or have any authority to bind the other except to the extent that this Agreement expressly provides otherwise.

# NOTICES

## Notices or other communications under this Agreement must be in writing. Subject to Clause 21.5 and will be duly served if given by and sent to the nominated representative of the Party to be served (being Magenta Living or the Provider) 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 the address for service. | 48 (forty eight) 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 (twenty one) 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. | Transmission report showing a successful transmission to the correct email address and evidence of the email having been opened. |

## Each Party’s address for service is its registered office where it has one. Where the Provider does not have a registered office, the Provider’s address for service is the address set out at the start of this Agreement or such other address as it notifies to Magenta Living in writing.

## The email addresses for service under this Agreement are:

### for Magenta Living, [ ];

### for the Provider, [ ]..

## Each Party may change its email address for service by prior written notice to the other Party.

## This Clause 21 does not apply to the service of legal proceedings or to notices served in legal proceedings

# DISPUTES

## Each Party must attempt to resolve any Disputes which it has with the other amicably but nothing in this Clause 22 is to prevent the exercise by a Party of its rights under Clause 22.8 or under these Instruction Terms generally.

## If a Party considers that a Dispute has arisen it may write a letter to the other Party specifying:

### what the Dispute is alleged to be;

### what steps should be taken to resolve the Dispute; and

### within what reasonable period such steps should be taken.

## If the breach is not remedied or the Dispute not resolved within the period set out in the letter, then representatives of the Parties must seek to resolve the Dispute in accordance with the table below.

|  |  |  |
| --- | --- | --- |
| **Magenta Living** | **Provider** | **Time to reach agreement** |
| Magenta Living’s Representative | Provider’s Representative | 5 (five) Working Days |
| Service Head | [ ] | 5 (five) Working Days |
| Relevant Director | [ ] | 5 (five) Working Days |

## The individuals/postholders named in the table in Clause 22.3 shall have the period stated in it to agree a solution with the individual/postholder stated alongside their respective names, failing which the Dispute is to be escalated to the next named individuals/postholders (if any).

## Clauses 22.1 to 22.4 do not apply to any Disputes over a decision to terminate this Agreement or over any Party’s entitlement to do so.

## A court or other dispute resolution forum to which a Dispute is referred may take into account the Parties’ compliance with Clause 22.1 to 22.4 when considering the award of legal costs.

## Any compromise of a Dispute which is certified in writing by solicitors advising Magenta Living on that Dispute as a settlement which is based on a permissible interpretation of the respective rights and obligations of the Parties under this Agreement is to be regarded as having been derived from the terms of this Agreement and is not to be regarded as a variation to it.

## Magenta Living or Provider may at any time refer a Dispute to adjudication under the Construction Act and any such adjudication will be carried out pursuant to the Adjudication Rules of the Technology and Construction Solicitors Association current at the time of the Dispute.

## The Parties shall continue to comply with all their obligations under this Agreement regardless of the nature of the Dispute and despite the referral of the Dispute for resolution under this Clause 22.

## No action or proceedings under or in respect of this Agreement shall be brought against the Provider after the expiry of 12 (twelve) years from the end of the Framework Period (but this shall not apply to Services provided under any Instruction).

# GOVERNING LAW, JURISDICTION AND LIMITATION

## The formation, construction, performance, validity and all aspects of this Agreement are to be governed by English law.

## The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any Dispute under this Agreement.

## It is expressly agreed that irrespective of how any contract called off from this Agreement is formed, the limitation period for any action for a breach of this Agreement or any Instruction under it will be a period of 12 (twelve) years from the date of any breach of this Agreement or that Instruction.

# COUNTERPARTS

## This Agreement 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.

**IN WITNESS** both Parties have executed and delivered this Agreement as a deed on the date set out at the start of it.

# 

1. Specification

[***See attached Specification***]

1. PRiCING SCHEDULE

**[*See attached Pricing Schedule*]**

1. KPIs

| **No.** | **KPI** | **How measured** | **Measurement frequency** | **Minimum Performance Level** |
| --- | --- | --- | --- | --- |
| 1. |  |  |  |  |
| 2. |  |  |  |  |
| 3. |  |  |  |  |

1. Work Allocation Procedure
2. LOTS
   1. This Framework is divided into 2 Lots, as follows:
      1. Lot 1: Void Properties - Providers (ranked in descending order):
         1. [ ];
         2. [ ];
         3. [ ];
         4. [ ];
         5. [ ]; and
      2. Lot 2: Other Properties - Providers (ranked in descending order):
         1. [ ];
         2. [ ];
         3. [ ];
         4. [ ];
         5. [ ].
3. PRE-ALLOCATION CHECKS
   1. Magenta Living may check each Provider’s compliance with the Minimum Selection Requirements from time to time.
   2. When calling off Services, Magenta Living shall exclude a Provider from eligibility to be awarded Services where:
      1. their Framework Agreement or Other Framework Agreement has been terminated;
      2. they have indicated to Magenta Living that they do not wish to undertake those particular Services or Services of the nature being called-off;
      3. they have a conflict of interest in relation to those Services that Magenta Living considers cannot be overcome by measures less intrusive than the exclusion of the Framework Provider from the call-off;
      4. they do not meet the Minimum Selection Requirements at the time at which the Services are being called-off;
      5. a KPI Improvement Notice has been served in relation to them at any time in the [no] months immediately preceding the date of the call-off; or
      6. that Provider responds to an Instruction in accordance with Paragraph 3.5 [*Work Allocation Procedure*] to say that they are unable or do not wish to undertake that Instruction.
4. WORK ALLOCATION PROCEDURE
   1. Whenever Magenta Living wishes to call-off Services under either Lot then subject to Paragraphs 2.2 [*Pre-allocation checks*] and 3.2, those Services shall be allocated to the Provider that was assessed (using the award criteria used to set up this Framework) as having submitted the most economically advantageous tender for this Framework for that Lot.
   2. If an Instruction is terminated because of the default, insolvency or corruption of a Framework Provider identified under Paragraph 3.1 or other circumstances referred to in Paragraph 19.1 [*Termination*] of Schedule 6 [*Instruction Terms*] apply to that Framework Provider or if this Agreement or an Other Framework Agreement with that Provider is terminated, all Instructions allocated after the date of such termination shall be allocated to the Framework Provider assessed as having submitted the next most economically advantageous tender for the Framework for that Lot.
   3. The process in Paragraphs 3.1 and 3.2 is to be followed until a Framework Provider to undertake an Instruction is identified.
   4. Where Magenta Living has identified the Framework Provider to which an Instruction is to be issued, (determined under Paragraphs 3.1 to 3.3 above) Magenta Living shall issue an Instruction in the form of an electronic order to that Framework Provider
   5. If the Provider to whom an Instruction is issued is unable to or does not wish to undertake an Instruction that has been issued to them, the Provider must notify Magenta Living of this as soon as possible and in any event within 2 (two) Working Days of the date of the Instruction being issued to them. In such circumstances, that Instruction is to be allocated to the Framework Provider assessed as having submitted the next most economically advantageous tender for the Framework for that Lot (determined in accordance with Paragraphs 3.1 to 3.3 (inclusive) above), but this shall not impact on the allocation of any future Instructions other than the one refused by that Framework Provider.
5. TERMS OF EACH INSTRUCTION
   1. All Services are to be provided on the terms of Schedule 6 [*Instruction Terms]* of the Framework Agreement which terms are deemed to be incorporated into each Instruction. Together, Schedule 6 [*Instruction Terms]* and each Instruction comprises a separate called-off contract to provide the Services as set out in this Framework Agreement.
   2. In the event of discrepancies between an Instruction and Schedule 6 [*Instruction Terms]* of the Framework Agreement the terms of the Instruction take precedence over and shall be regarded as a variation (for that Instruction only) of the discrepant terms of the Framework Agreement.
6. Instruction

Each Instruction shall be in the form of an electronic Order containing the following information or such other information as Magenta Living determines from time to time.

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Address | Post Code | UPRN | Property Category | Void Date | Work Requested | Date Requested Asbestos Team | Time Sent | Department | Requested By | Contractor | Priority | Request to Contractor Date | Details of Work Requested | Additional Comments |

1. Instruction Terms

The following terms (“**these Instruction Terms**”) shall be incorporated into each Instruction:

1. DEFINITIONS
   1. In this Instruction (unless the context requires otherwise):

|  |  |
| --- | --- |
| “CDM Regulations” | means the Construction (Design and Management) Regulations 2015; |
| “CIS” | means HMRC’s Construction Industry Scheme; |
| “Code of Practice” | any code of recommended practice produced by a Regulatory Body (including the HSE and the Information Commissioner) or industry representative body including the Construction Leadership Council; |
| “Confidential Information” | means information that ought because of its nature to be considered as confidential (however it is conveyed or on whatever media it is stored) including Personal Data, financial information, information whose disclosure would, or would be likely to, prejudice the commercial interests or reputation of any person, and information specifically designated by any Party as confidential; |
| “Construction Act” | means the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009); |
| “Data Controller” | has the meaning given under Data Protection Law; |
| “Data Processor” | has the meaning given under Data Protection Law; |
| “Data Processing Table” | means the table set out Paragraph 10.4 [*Data Protection*] setting out the subject matter, nature, purpose and duration of Personal Data Processing under an Instruction by the Provider as Data Processor; |
| “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 UK data protection or related privacy Law in force in England and Wales; |
| “Data Protection Principles” | means the principles applicable to the protection of Personal Data under Data Protection Law; |
| “Data Subject” | has the meaning given under Data Protection Law; |
| “Data Subject Access Request” | means a request by a Data Subject under Data Protection Law to access their Personal Data; |
| “DBS Check” | means a check with the Disclosure and Barring Service (or any statutory successor to the Disclosure and Barring Service) of the most extensive kind available (if any) in relation to any (actual or prospective) member of Staff having regard to the Services they are to provide under this Instruction and including any update to that check, whether through the Disclosure and Barring Service update service or through a further check being made; |
| “Disaster Recovery Plan” | means the disaster recovery plan maintained by the Provider under Clause 11.3 [*Force Majeure*] of the Framework Agreement; |
| “Dispute” | means either a dispute concerning this Instruction or an allegation by a Party that the other has committed a breach of this Instruction; |
| **“Dispute Escalation Table”** | means the dispute escalation table set out Paragraph 28.3 *[Disputes]*; |
| “Dispute Resolution Procedure” | means the procedure set out in Paragraph 28 *[Disputes]*; |
| “Equality and Diversity Law” | means all Law preventing unlawful discrimination including discrimination based on colour, race, nationality, ethnic or national origins, gender, marital or civil partnership status, pregnancy or maternity, paternity, sexual orientation, gender reassignment, religion or belief, age, disability, part time or temporary status or any other protected characteristic; |
| “Fee” | means the amount payable to the Provider for the proper performance of the Services as set out in the Instruction and as calculated under Schedule 2 [*Pricing Schedule*] to the Framework Agreement*;* |
| “Force Majeure” | has the meaning given in Paragraph 17 [*Force Majeure*]; |
| “Framework Agreement” | means the Framework Agreement under which the Instruction is issued; |
| “Freedom of Information Law” | means the Freedom of Information Act 2000, the Environmental Information Regulations 2004 and any equivalent freedom of information Law (including where limited to Residents) to the extent that Magenta Living becomes a designated body under that Law or subject to such freedom of information Law during the period over which an Instruction is carried out; |
| “General Principles of Risk Prevention” | means the general principles of risk prevention set out in Schedule 1 to the Management of Health and Safety at Work Regulations 1999; |
| “Good Professional Practice” | means those standards, practices, methods and procedures and exercising that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced professional of the same discipline or profession as the Provider engaged in providing similar services and under similar circumstances to the Services being provided under this Instruction; |
| “Health and Safety Law” | means all Law related to the protection of health and safety including protecting the environment, preventing disease and avoiding industrial accidents and including all applicable Codes of Practice; |
| “HSE” | means the Health and Safety Executive or any body that succeeds to its functions or replaces it; |
| “Instruction Commencement Date” | means the date set out in an Instruction as the day on which an Instruction is to commence; |
| **“Instruction** **Completion Date”** | means the date on which the Services under an Instruction are completed in accordance with that Instruction; |
| **“Instruction** **Completion Deadline”** | means the period within which the Services under an Instruction must be completed, as set out in the Specification and/or the Instruction; |
| “Instruction Period” | means the period from the Instruction Commencement Date to the Termination Date; |
| “Insurances” | means the insurance policies the Provider is required to maintain under Paragraph 16 [*Insurance*]; |
| “Intellectual Property Rights” | means all intellectual property rights including patents, inventions, trademarks, service marks, logos, designs, design rights (whether registered or not) and all applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations in any Materials whether registrable or not in any country (including the UK) and the right to sue for passing off and all renewals and extensions of such rights; |
| **“Interest Rate”** | means 5% (five per cent) above the Bank of England base rate*;* |
| “IT System” | means Magenta Living’s IT System or the Provider’s IT System (as applicable); |
| “Key Persons” | means those employees of the Provider listed in the Instruction (if any) as replaced from time to time in accordance with Paragraph 4 *[Staff];* |
| “Law” | means:   * 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 retained European Union law in force in England under the European Union (Withdrawal) Act 2018 (whilst applicable); * any EU/UK Trade and Co-operation Agreement (so far as directly applicable under the European Union (Future Relationship Act) 2020); * any applicable judgement of a relevant court of law which is a binding precedent in England; and * any determination, direction, statutory guidance or Code of Practice having the force of Law; |
| “Liability Cap” | means the amount set out in the Instruction as the maximum Liability of the Provider to Magenta Living for a breach of this Instruction or other circumstances described in Paragraph 15.6 [*Liability*]; |
| “Magenta Living’s Data” | means all data, information, records and documentation in any electronic or tangible form relating to Residents (where applicable), the Properties or the Services (including the identity of the Staff providing specific Services) that is held on Magenta Living’s IT System, the Provider’s IT System or in paper form; |
| “Magenta Living Group Organisation” | means Magenta Living’s subsidiaries, holding companies or societies of which it is a subsidiary together with all subsidiaries of such holding companies or societies (in each case as defined in section 1159 of the Companies Act 2006 or sections 100 and 101 of the Co-operative and Community Benefit Societies Act 2014) and their successors in title; |
| “Magenta Living’s IT System” | means the information, communications and technology systems used by Magenta Living (including any web portal) and in particular any such system used, in particular the IT system for monitoring and coordinating the Services; |
| “Materials” | means all documents, drawings, plans, data, information, text, diagrams, bills of quantities, valuations, designs, specifications, schedules, reports, calculations’ images, records or sound embodied in any electronic or tangible medium and other materials and any designs or inventions produced by or on behalf of the Provider in connection with an Instruction or the Services; |
| “Normal Working Hours” | means 08.00 to 17.00 hours on Working Days; |
| “Party” | in relation to this Instruction means Magenta Living and the Provider and their successors and permitted assignees and **‘Parties’** shall be construed accordingly; |
| “Personal Data” | means personal data, within the meaning given by Data Protection Law, which is obtained or Processed in connection with the Services or this Instruction; |
| “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 these Instruction Terms including any personal data breach (as defined under Data Protection Law); |
| “Policies” | means the versions of the following Magenta Living policies in force when any Services are provided:   * Asbestos Safety Policy; * Safeguarding Policy; * Complaints Policy; * Lone Worker Policy; and * Code of Conduct; |
| “Processing” | has the meaning given under Data Protection Law and “**Process**” and “**Processed**” shall be construed accordingly; |
| “Property” | means a property owned or managed by Magenta Living or a Magenta Living Group Organisation at which the Services are to be provided; |
| “Provider’s IT System” | means the information technology system (being software, hardware, any interfaces, and any combination of them) used by the Provider in connection with the Services; |
| “Provider’s Tender” | means the tender submitted by the Provider in relation to the framework as set out in Schedule 7 [*Provider’s Tender*] of the Framework Agreement; |
| “Services” | means the services to be provided in accordance with this Instruction*;* |
| “Regulatory Body” | means any governmental, local government, administrative or regulatory body (including the Regulator of Social Housing and the Information Commissioner) with oversight over the Services, Data Protection Laws, Magenta Living, any Magenta Living Group Organisation or the Provider or from whom permission is required to provide the Services; |
| “Regulatory Requirements” | means the requirements of the Law in relation to the Services including the requirements of any Regulatory Body (including the Regulator of Social Housing) to which Magenta Living, any Magenta Living Group Organisation receiving the Services or the Provider is subject; |
| “Request for Information” | means a request for information made under Freedom of Information Law; |
| “Resident” | means a tenant, leaseholder or occupier of a Property; |
| “Special Category Data” | means special category data, within the meaning given by Data Protection Law which is obtained or Processed in connection with this Instruction; |
| “Specification” | means;   * the specification and requirements for carrying out the Services set out in Schedule 1 [*Specification*] to the Framework Agreement; and * all instructions (if any) given to the Provider by Magenta Living in accordance with this Instruction as to how the Services are to be provided; |
| “Staff” | means all persons employed or used by the Provider or a Subcontractor in providing the Services or performing the Provider’s obligations under this Instruction; |
| “Standards” | means all quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other equivalent body (and their successor bodies) that are relevant to the Services; |
| “Subcontract” | means those permissions, consents, approvals, licences, certificates and permits (if any) in legally effective form that are necessary from any Regulatory Body lawfully to commence, carry out and complete the Services in accordance with these Instruction Terms; |
| “Subcontractor” | means a person appointed by the Provider with the approval of Magenta Living to perform part of the Services; |
| “Successor Provider” | means any organisation, body or service provider including Magenta Living, which provides services equivalent to the Services under this Instruction after the Termination Date; |
| “Tax” | means any form of taxation including corporation tax, income tax, VAT and all forms of tax collection including IR35, the CIS and the VAT reverse charge; |
| “Termination Date” | means (as applicable) the date on which all of the Services to be undertaken under the Instruction are completed or the date on which this Instruction is terminated under Paragraph 19 [*Termination*]; |
| “TUPE” | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended); and |
| “Working Day” | means any day other than a Saturday, Sunday or bank or local government holiday. |

* 1. In this Instruction:
     1. references to Clauses and Schedules are (unless stated otherwise) references to clauses and schedules of the Framework Agreement;
     2. any reference to Paragraphs (unless stated otherwise) are references to paragraphs of these Instruction Terms;
     3. the contents section, headings and references to them are not to affect its interpretation;
     4. references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;
     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;
     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 Instruction;
     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 Instruction;
     8. references to a legal entity include a firm, partnership, company, cooperative and community benefit society, corporation, association, organisation, government, state, agency, foundation, trust, unincorporated body and any organisation having legal capacity (in each case whether or not having separate legal personality) and its successors (including any that takes over responsibility for its functions), permitted assignees and transferees;
     9. references to a person include an individual and any of the bodies referred to in Paragraph 1.2.8;
     10. references to “**writing**” include electronic communications and other modes of representing words in visible and recordable form except where this Instruction states otherwise;
     11. 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;
     12. references to any document are (unless specified) references to such document as amended or supplemented from time to time; and
     13. terms defined in the Framework Agreement that are not separately defined in these Instruction Terms are to have the same meanings in these Instruction Terms.
  2. Where this Instruction requires something to be done:
     1. it must be done in accordance with this Instruction;
     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
     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.
  3. All the Provider’s obligations, duties and responsibilities under this Instruction are separate obligations, duties and responsibilities owed to Magenta Living.
  4. The Provider confirms that the Provider:
     1. has taken such steps as the Provider wishes to take to verify the accuracy of any information provided by Magenta Living and has not relied on any information provided by Magenta Living;
     2. has made its own assessment of the costs of and risks of providing the Services;
     3. has made all due allowances for its costs of providing the Services within the Fee set out in Schedule 2 [*Pricing Schedule*] of the Framework Agreement*;* and
     4. has obtained or will obtain all necessary permissions and rights from all Regulatory Bodies necessary or desirable for providing the Services.

1. THE PROVIDER’S OBLIGATIONS
   1. Magenta Living appoints the Provider to provide the Services on the terms of this Instruction. This Instruction will commence on the Instruction Commencement Date and will end on the Termination Date.
   2. Magenta Living may cancel an Instruction in respect of Services at any time before the Services have been provided. Where Magenta Living does so, Magenta Living must pay the Provider its reasonable out-of-pocket costs (if any) for the cancelled Instruction.
   3. The Provider shall provide the Services under this Instruction:
      1. using the reasonable skill, care and diligence to be expected of a properly qualified and competent professional experienced in carrying out work of a similar size, scope and complexity to the Services;
      2. in accordance with all applicable Law, Regulatory Requirements and Standards;
      3. in accordance with these Instruction Terms;
      4. in accordance with Good Professional Practice and the Provider’s Tender;
      5. in accordance with the Policies;
      6. by the Instruction Completion Deadline as set out in the Specification and/or the Instruction;
      7. only during Normal Working Hours (unless Magenta Living agrees otherwise) and in a manner that causes the minimum inconvenience and nuisance to Residents;
      8. within a culture and working environment in which health and safety is paramount to everybody involved with the Services;
      9. in accordance with risk assessments and method statements prepared by the Provider for the Instruction;
      10. in accordance with a system of quality control designed to ensure that Good Professional Practice is followed; and
      11. in accordance with any reasonable instructions given by Magenta Living’s Representative and any working arrangements reasonably requested by the Resident.
   4. Without prejudice to Paragraph 2.3, the Provider shall:
      1. keep Magenta Living fully informed of the progress of the Services;
      2. notify Magenta Living in writing of the reason and impact of any delay if the Provider is prevented or delayed in performing the Services for any reason and use all reasonable endeavours to resume and expedite the performance of the Services so as to complete them by their Order Completion Deadline (where possible or, where this is not possible, as soon as possible thereafter);
      3. provide Magenta Living or any person specified by Magenta Living with such information as Magenta Living may reasonably require the Provider to provide in connection with the Services; and
      4. liaise and communicate with Magenta Living with a view to ensuring that Magenta Living is regularly provided with progress reports on the Services and any actual or likely problems in their delivery.
   5. The Provider warrants that:
      1. it has the competence, resources and capacity to comply with, and will comply with any guidance (including any Code of Practice) applying to the Services issued by any Regulatory Body (including the HSE) under the Health and Safety at Work etc Act 1974;
      2. it will provide all information which might reasonably affect the health and safety of Staff involved in providing any of the Services to all those responsible for the design of any aspect of those Services; and
      3. in relation to all work involving asbestos comprised in the Services which is required to be undertaken by a licensed contractor, it is itself so licensed or will employ an appropriately licensed Subcontractor for those Services.
   6. Where the CDM Regulations apply to an Instruction, the Provider warrants that the Provider:
      1. has the skills, knowledge, experience and organisational capability to act as a designer for all works related to the Services in a manner that secures the health and safety of any person affected by those works;
      2. has allocated and will allocate adequate resources to enable it to comply with its obligations as a designer under the CDM Regulations; and
      3. has the competence, resources and capacity to, and shall, observe, perform and discharge and shall procure the observance and performance of any Code of Practice for the time being approved by the HSE pursuant to the Health and Safety at Work etc Act 1974 in connection with the CDM Regulations.
   7. Magenta Living will notify the Provider at the time of issuing an Instruction whether or not the CDM Regulations require the appointment of a principal designer and principal contractor in relation to the Services. In such circumstances, the Provider shall co-operate with the principal contractor, the principal designer and any other consultants or contractors employed or engaged by Magenta Living in connection with the Services or any works associated with the Services, so far as is reasonably necessary to enable each of them to comply with their respective obligations under the CDM Regulations.
   8. When providing the Services the Provider must ensure that:
      1. at all times safe systems of work are adopted and all appropriate risk assessments and method statements have been prepared and are kept available;
      2. the Services are 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;
      3. any construction phase plan (as defined in the CDM Regulations) applicable to those Services is complied with;
      4. all appropriate safety signs are used, and appropriate safety precautions are taken;
      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 the Resident and such other persons in advance;
      6. nothing is done that may injure the stability of any Property, or any other building, boundary wall, fence or railings;
      7. no permanent damage is caused to lawns, flower beds, plants, trees or paving during the Services and any damage caused is rectified to the satisfaction of Magenta Living and, where applicable, the Resident;
      8. where the Services involve the Provider disconnecting any facilities for lighting, heating, power, drinking water and/or sanitation, at the end of every Working Day either those facilities are restored or the Resident(s) of the Property are provided with alternative facilities for lighting, heating, power, drinking water and sanitation;
      9. where a Property is unoccupied on completion of the Services or at the end of each Working Day, that the Property is secured, all doors and windows are locked, and any temporary door and window coverings are reinstated as necessary; and
      10. records are kept of any accidents, incidents and health and safety “near misses” in connection with the Services.
   9. The Provider must provide all tools, plant, equipment and/or vehicles necessary or desirable to undertake the Services and ensure that they are regularly maintained and kept in a safe serviceable and clean condition. These tools, plant, equipment and vehicles shall be at the sole risk of the Provider including whilst they are at a Property. On written request from Magenta Living, the Provider shall promptly remove from Magenta Living’s Properties any equipment or vehicles that are hazardous, unsafe or unclean and replace them with equipment or vehicles that are safe and clean.
   10. The Provider must provide such information, co-operation and assistance as Magenta Living reasonably requests to comply with its obligations to consult tenants’ associations, and Residents (including leaseholders) who pay variable service charges in relation to the Services. This assistance must be provided in sufficient time to enable Magenta Living to comply with those obligations.
   11. The Provider must inform Magenta Living immediately:
       1. if the Provider becomes aware of any matter (including burglary, vandalism accidents, losses of keys or passes or breach of Law) affecting or likely to affect the provision or performance of the Services or any of the Properties at which the Services are being provided;
       2. of any incident that occurs during the provision of the Services which causes or could cause personal injury or property damage in connection with the Services;
       3. of any circumstances concerning the Services which might justify Magenta Living taking action to protect its interests (including its reputation) or which may lead to a Dispute; and/or
       4. of any matter which causes or is likely to cause a delay in the completion of the Services beyond their Instruction Completion Deadline.
   12. If the Provider gives notice Magenta Living under Paragraph 2.11.4 and the cause of the delay is Force Majeure, Magenta Living shall fix such later Instruction Completion Deadline for those Services as may be fair and reasonable in the circumstances.
   13. Any Dispute over whether or not the Services are complete or over the Instruction Completion Date are to be dealt with under the Dispute Resolution Procedure.
2. REGULATORY REQUIREMENTS
   1. The Provider shall comply with any direction that Magenta Living gives in relation to the Services in order:
      1. to enable Magenta Living to comply with the Human Rights Act 1998;
      2. to prevent a breach of Health and Safety Law;
      3. to comply with the requirements of any Regulatory Body; or
      4. to secure that the Services are provided in accordance with the Instruction and these Instruction Terms.
   2. The Provider shall notify Magenta Living immediately of:
      1. of any material health and safety hazards the Provider or Staff encounter at any of the Properties (and the Provider shall adopt all appropriate safety measures to manage such hazards appropriately);
      2. any divergence the Provider discovers between the Regulatory Requirements and its obligations under this Instruction (and the Provider must comply with any direction of Magenta Living following such notification);
      3. of any breach of Law, Regulatory Requirements, or these Instruction Terms by the Provider (including where due to the actions or omissions of a Subcontractor); and/or
      4. any investigation by a Regulatory Body in connection with the Services or the Provider.
   3. Magenta Living may suspend the provision of the Services by the Provider if Magenta Living considers the Provider may have breached these Instruction Terms.
   4. Both Parties must seek to maintain a culture and working environment in which health and safety is paramount to everybody involved with the Services.
3. STAFF
   1. Subject to the consent of the Resident, Magenta Living (on behalf of Magenta Living Group Organisation which owns the Properties, if they are not owned by Magenta Living) licenses the Provider and Staff to go into the Properties set out in the Instruction to provide the Services as set out in the Instruction. The Provider shall:
      1. be responsible for all liaison with the Resident(s) of any occupied Property at which Services are to be provided;
      2. notify Magenta Living if the Provider is unable to gain access to a Property after having made reasonable attempts to do so; and
      3. ensure that all keys, passes and other means of access provided by Magenta Living to the Provider are kept secure and loaned only to Staff who have proved themselves to be trustworthy.
   2. The Provider shall ensure all Staff providing the Services:
      1. are recruited in accordance with safer workforce practices which include background checks on all new recruits;
      2. 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 Services in a manner that secures the health and safety of any person working at or present at the Property whilst the Services are being undertaken;
      3. are provided with appropriate supervision, instructions and information including in relation to health and safety, so that the Services can be carried out, so far as reasonably practicable, without risks to health and safety;
      4. have, to the extent that the Provider is lawfully able to obtain one, been the subject of a DBS Check of the most extensive kind available for that member of Staff in the light of the Services they will undertake under this Instruction which discloses that there are no concerns in relation to their working alongside children or vulnerable adults;
      5. are given suitable induction and refresher 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 Services and information necessary for them to be able to comply with Health and Safety Law;
      6. act in the best interests of Magenta Living;
      7. comply with all applicable Health and Safety Law;
      8. comply with Equality and Diversity Law;
      9. are paid in accordance with the Law (including having such deductions as are required to be made under Tax and social security Laws made from their pay and accounted for to HMRC);
      10. comply with the Policies;
      11. comply with any instruction given by Magenta Living’s Representative in accordance with these Instruction Terms;
      12. are properly and presentably dressed in appropriate uniforms or workwear;
      13. are provided with and use appropriate personal protective equipment;
      14. carry with them appropriate identification as approved by Magenta Living from time to time;
      15. maintain the highest standards of hygiene and courtesy; and
      16. use reasonable endeavours to liaise with any consultant or contractor appointed by Magenta Living in connection with the Services or related works.
   3. The Provider must not employ any person who is a board member or employee of Magenta Living or a close relative of any such person without the written consent of Magenta Living.
   4. The Provider shall procure that the Key Persons are made available when and for so long as reasonably required to perform the Services. The Provider shall not remove any of the Key Persons from providing the Services without Magenta Living’s prior written approval other than where they leave the Provider’s employment or are long term absent due to sickness, maternity or paternity leave or other reason (in which case the Provider shall propose an appropriate substitute in accordance with Paragraph 4.5).
   5. Where Magenta Living wishes the Provider to replace any of the Key Persons, or immediately after the Provider becomes aware of a need to replace any of the Key Persons, the Provider shall propose an alternative with equivalent seniority and experience as the person they are replacing. If approved by Magenta Living, such person will then become a Key Person. Other than in an emergency (including where the Key Person is unexpectedly no longer employed by the Provider) the Provider shall ensure that (at the Provider’s own cost) there is a handover period between the Key Person being removed and the replacement.
   6. Magenta Living may require any person performing the Services generally or delivering the Services to be removed from performing them if Magenta Living considers that person’s performance, conduct, professionalism or ability is or has been unsatisfactory. On such request the Provider shall promptly remove such person and provide a replacement (in accordance with Paragraph 4.5 where the person removed is a Key Person).
   7. The Provider shall not solicit, employ or engage any of Magenta Living’s employees at any time during the Instruction Period or within 6 (six) months of the Termination Date other than through an open advertisement which is responded to by them.
   8. The Provider shall take appropriate steps to ensure that the Provider is not placed in a position where (in the reasonable opinion of Magenta Living) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or any of the Provider’s staff involved in carrying out the Services and the obligations owed to Magenta Living under this Instruction.
   9. The Provider shall promptly notify and provide full particulars to Magenta Living if any conflict referred to in Paragraph 4.9 above arises or is reasonably foreseeable to arise and should take all steps reasonably required by Magenta Living to mitigate the effects of any such conflict of interests.
   10. The Provider shall not and shall procure that persons connected with it or other persons who are performing Services connected to this Instruction do not commit any offence under the Bribery Act 2010.
   11. The Provider warrants that:
       1. neither the Provider nor any of the Provider’s officers or employees have been convicted of any offence involving slavery or human trafficking or 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; and
       2. neither the Provider nor any person connected to the Provider has committed an act of bribery as described in Paragraph 18.1 [*Corruption, bribery and conflicts*].
   12. The Provider shall notify Magenta Living promptly in writing if the Provider becomes aware of or has any reason to believe that the warranty in Paragraph 4.11 is or may become untrue. The notice must set out full details of the circumstances making the warranty untrue or potentially untrue.
   13. The Provider shall:
       1. maintain a written safeguarding policy that enables Staff to raise safeguarding concerns in an appropriate and confidential manner;
       2. ensure the effective dissemination of that policy to all Staff through providing appropriate training and (including update training) at regular intervals;
       3. comply with all applicable local authority requirements and procedures for dealing with allegations of abuse and for reporting safeguarding concerns;
       4. maintain accurate and up-to-date records of safeguarding decision making; and
       5. notify Magenta Living immediately of any safeguarding concerns within a Property visited by the Provider in order that Magenta Living may raise this with the applicable local authority.
   14. The Provider must maintain accurate records of the members of Staff providing the Services each of them undertake. The Provider must give Magenta Living a list of all Staff who are delivering the Services within 10 (ten) Working Days of a request by Magenta Living.
   15. The Provider warrants that there will be no Staff who transfer to Magenta Living or any Successor Provider under TUPE from the Provider or any Subcontractor on or around the Termination Date. If any such Staff do transfer, the Provider must indemnify Magenta Living and at Magenta Living ’s request any Successor Provider against all liabilities (subject to Magenta Living taking reasonable steps to mitigate their liability) arising from:
       1. any costs of dismissing any such person (on any basis) at any time within the 3 (three) months following the Termination Date or, if later, from the date on which it was discovered they transferred to Magenta Living or Successor Provider under TUPE;
       2. all costs of Magenta Living or Successor Provider employing such person up to the point of their dismissal; and
       3. where the Employment Tribunal orders the reinstatement of any such person, all costs of Magenta Living or Successor Provider employing them for a period of 12 (twelve) months from the Termination Date.
4. MAGENTA LIVING’S REPRESENTATIVE AND OBLIGATIONS
   1. Magenta Living’s Representative may exercise any and all of the functions and rights of Magenta Living under this Instruction or the Framework Agreement.
   2. At the request of the Provider, Magenta Living shall supply to the Provider any information in Magenta Living ’s possession (subject to the confidentiality and data protection requirements set out in this Instruction) that is necessary and relevant for the provision of the Services. The information shall be supplied within a reasonable time, having regard to the time and nature of the request.
5. PERFORMANCE MONITORING AND COMPLAINTS
   1. The Provider shall provide such monitoring information about the Provider’s performance of the Services as Magenta Living requires from time to time (including for the purpose of monitoring performance through the KPIs under the Framework Agreement). Such monitoring may include auditing the Provider’s operations, facilities and working conditions and the Provider’s quality, environmental, ethical and health and safety procedures and systems.
   2. The Provider must grant access to Magenta Living to any premises from which the Instruction is undertaken or administered.
   3. Whenever required by Magenta Living, the Provider and Magenta Living shall jointly review the monitoring information provided under Paragraph 6.1 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. The Provider shall undertake appropriate remedial actions to address any issues or failures identified by an inspection or audit under Paragraph 6.1 to the reasonable satisfaction of Magenta Living.
   5. The Provider must:
      1. deal with any complaints received in connection with the Services in a prompt, courteous and efficient manner;
      2. keep written records of all complaints received and of the action taken in relation to each of them;
      3. keep those records available for inspection by Magenta Living at any reasonable time;
      4. promptly provide all information Magenta Living requires in order to deal with any complaints Magenta Living receives in connection with the Services or the Provider; and
      5. co-operate with Magenta Living in responding to ombudsman enquiries in relation to the Services and reimburse Magenta Living any compensation recommended to be paid as a result of the Provider’s default.
6. FEE
   1. Magenta Living shall pay the Fee to the Provider as full remuneration for the proper performance of the Services in accordance with this Instruction. The Fee is to be calculated in accordance with Schedule 2 [*Pricing Schedule*].
   2. The Fee is an inclusive payment for the Services. It includes all costs, expenses, disbursements and overheads incurred by the Provider in providing the Services.
   3. All costs, fees and disbursements expressed to be payable by or to the Provider are exclusive of VAT unless otherwise stated. VAT shall be payable by Magenta Living on receipt of a valid VAT invoice from the Provider.
   4. The Provider shall issue an invoice to Magenta Living within 10 (ten) Working Days of the end of each calendar month for all Services (or stages at which instalments of the Fee are payable) completed (and any disbursements payable by Magenta Living under Paragraph 7.2) during that month. The due date for payment of the Fee is 9 (nine) calendar days after the receipt by Magenta Living of a valid VAT invoice for such amounts from the Provider. The final date for each such payment is the date 21 (twenty-one) calendar days after the due date.
   5. Magenta Living shall, not later than 5 (five) calendar days after the date on which a payment becomes due, give a payment notice to the Provider specifying the amount (if any) of the payment that Magenta Living considers to be due at the payment date in respect of the payment and basis on which that sum is calculated. If such amount is less than the amount of the Provider’s invoice the Provider shall issue a credit note for the difference within 7 (seven) calendar days of Magenta Living’s payment notice.
   6. Magenta Living shall be entitled to pay less than any sum notified in a payment notice under this Instruction (which may be a zero or negative figure) subject to Magenta Living giving a notice, not later than 3 (three) days before the final date for payment of that sum, specifying:
      1. the amount Magenta Living considers to be due on the date the notice is served; and
      2. the basis on which that amount is calculated.
   7. Magenta Living may set off any money it is owed by the Provider against any amounts due to the Provider under this Agreement subject, where the Construction Act applies to the Services, to Magenta Living serving a notice of intention to pay less under Paragraph 7.6.
   8. Where at any time Magenta Living is a ‘contractor’ under the CIS:
      1. any obligation of Magenta Living to make any payment under this Instruction is subject to the CIS;
      2. the Provider must provide such information as Magenta Living requires from time to time to verify the deduction status of the Provider; and
      3. the Provider must notify Magenta Living in writing if at any time its CIS status changes.
   9. If Magenta Living does not pay any undisputed sum by its final date for payment, that sum shall carry interest from the final date for payment until the date of actual payment at the Interest Rate.
7. INTELLECTUAL PROPERTY
   1. The Provider as beneficial owner grants to Magenta Living an irrevocable, royalty-free, non-exclusive licence to use and to reproduce all Materials for any purpose whatsoever connected to the Services and such other purposes as are reasonably foreseeable including the future maintenance, modification, letting, reinstatement or repair of the Property to which the Services have been undertaken. Such licence shall carry the right to grant sub-licences and be transferable to third parties.
   2. All Intellectual Property Rights in any Materials which are produced or developed for or in connection with the Services are to belong to the Party that developed them.
   3. If Magenta Living so requests by reasonable written prior notice and undertakes in writing to pay the Provider’s reasonable copying charges, the Provider shall promptly supply Magenta Living with conveniently reproducible copies (including copy negatives and CAD disks) of all such Materials as Magenta Living requires.
   4. The Provider shall have no liability for any loss or damage whatsoever caused by any person using any Materials for any purpose not connected with the Services unless the Provider authorises such use and confirms that the Materials are suitable for such use.
   5. The Provider warrants to Magenta Living that the Materials (save to the extent that any duly appointed Subcontractors have been used to produce them) are its own original work and that, in any event, their use in connection with the Services will not infringe any Intellectual Property Rights of any third party. Where the Provider has made the Materials available to Magenta Living under Paragraph 8.1 the Provider shall indemnify and hold harmless Magenta Living against any liability or damages (including 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 Materials by Magenta Living under Paragraph 8.1 infringes the Intellectual Property Rights of that third party.
   6. The Provider shall at its own expense execute such documents and perform such acts as may be required fully and effectively to assure to Magenta Living the rights referred to in Paragraph 8.1.
8. CONFIDENTIALITY AND SECURITY OF INFORMATION
   1. Subject to Paragraph 9.3 each Party shall keep confidential and secure from disclosure any Confidential Information communicated to it by the other on the basis that it is confidential.
   2. Neither Party shall use or exploit the other Party’s Confidential Information for any purpose other than as set out in this Instruction.
   3. Confidential Information may be disclosed:
      1. to the extent reasonably required by either Party to perform the Services under this Instruction to persons performing those Services;
      2. if it is in the public domain other than as a result of a breach of this Paragraph 9;
      3. where its disclosure is required by any court order or legal or regulatory obligation of the Party making the disclosure (including under Data Protection Law) or required by any Regulatory Body (including, in relation to Freedom of Information Law, a disclosure made in accordance with this Paragraph 9);
      4. if it is already lawfully in the possession of the receiving party, before its disclosure by the disclosing Party;
      5. to a Party’s professional advisers for the purposes of taking advice on this Instruction;
      6. under the Dispute Resolution Procedure; or
      7. by either Party for the purpose of the examination, certification and/or audit of that Party’s accounts.
   4. Where a disclosure of Confidential Information is made under Paragraph 9.3 (other than under Paragraphs 9.3.2, 9.3.3 or 9.3.4) 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 Paragraph 9.
   5. Each Party must notify the other Party promptly and in any event within 2 (two) Working Days of becoming aware of any unauthorised access, copying use or disclosure of the other Party’s Confidential Information.
   6. The Provider shall not, without the prior written approval of Magenta Living:
      1. advertise, publicly announce, provide any publicity or publish alone or in conjunction with any other person, any articles or other illustrations relating to the Services; or
      2. impart to any publication, journal or newspaper or any radio or television programme any information regarding the Services.
   7. Magenta Living must be given a reasonable opportunity to provide a quote in any press release or media communication by or on behalf of the Provider or a Subcontractor concerning the Services.
   8. The Provider shall perform its obligations under this Instruction in a way that enhances the reputation of Magenta Living. The Provider shall not do anything that embarrasses Magenta Living or undermines the reputation of Magenta Living either with Residents or generally.
   9. The Provider shall provide such assistance as Magenta Living reasonably requires to enable Magenta Living to comply with Freedom of Information Law.
   10. Where the Provider receives a Request for Information relating to information held on behalf of Magenta Living the Provider shall:
       1. transfer the Request for Information to Magenta Living as soon as practicable and in any event within 5 (five) Working Days of receiving the Request for Information; and
       2. provide Magenta Living with a copy of all such information in such form as may be required within 10 (ten) Working Days of the notification under Paragraph 9.10.1.
   11. The Provider acknowledges that Magenta Living is responsible for determining in its absolute discretion (but having regard to any guidance or Codes of Practice issued by the Information Commissioner or the Ministry of Justice):
       1. whether any information is exempt from disclosure under Freedom of Information Law;
       2. in the case of a qualified exemption, whether the public interest in disclosing the information is greater than the public interest in maintaining the exemption; and
       3. whether any information is to be disclosed in response to a Request for Information.
   12. The Provider shall not respond directly to a Request for Information unless expressly authorised to do so by Magenta Living.
   13. Where it receives a Request for Information relating to any Confidential Information, Magenta Living shall (unless it has decided not to disclose that information either because Freedom of Information Law does not apply or because it is exempt from disclosure under Freedom of Information Law) use reasonable endeavours to:
       1. notify the Provider of that Request for Information in accordance with Part VII of the Code of Practice issued by the Secretary of State under Section 45 of FOIA; and
       2. consider any representations made by the Provider before disclosing that Confidential Information under Freedom of Information Law.
   14. If Magenta Living decides to disclose any Confidential Information under Freedom of Information Law, Magenta Living shall use reasonable endeavours to notify the Provider of this decision before making the disclosure.
   15. Where the Provider holds information on behalf of Magenta Living, it shall:
       1. have regard to any Code of Practice issued under Section 46 of FOIA or equivalent provisions under Freedom of Information Law;
       2. comply with any practice recommendation issued to it under Section 48 of FOIA or equivalent provisions under Freedom of Information Law; and
       3. comply with any retention and destruction of information policy which Magenta Living notifies to it.
9. DATA PROTECTION
   1. Each Party shall comply with Data Protection Law when Processing Personal Data under this Instruction. This includes complying with the Data Protection Principles and upholding the rights of Data Subjects under Data Protection Law.
   2. Each Party shall ensure they have all necessary and appropriate legal bases required for the lawful Processing of Personal Data under this Instruction (including any transfer of Personal Data to the other Party). Personal Data shall be treated as Confidential Information.
   3. Under these Instruction Terms:
      1. Magenta Living is the Data Controller of Personal Data concerning Residents and the Provider will be Processing that information as Data Processor on behalf of Magenta Living; and
      2. the Provider is the Data Controller of Personal Data concerning Staff, but Magenta Living will be Data Controller of any such Personal Data that is processed by them.
   4. 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 by the Provider on behalf of Magenta Living under these Instruction Terms are set out in the Data Processing Table below:

|  |  |
| --- | --- |
| **Subject matter of Processing (including types of Personal Data that may be Processed):** | Personal Data including names, addresses and contact details for any Residents including any special requirements in relation to dealing with those Residents or providing the Services which may necessitate Processing of Special Category Data. |
| **Nature and purpose of Processing:** | Interrogation of the Personal Data for the purpose of providing the Services, including ensuring the health and safety of both Residents and Staff providing the Services, monitoring Resident satisfaction with the Services and correcting any Personal Data found to be incorrect whilst providing the Services. |
| **Duration of Processing:** | During the Instruction Period and for 20 (twenty) Working Days from its end (within which it is to be returned or destroyed.) |

* 1. Where the Provider Processes Personal Data of which Magenta Living is the Data Controller the Provider shall:
     1. do so and shall ensure that each member of Staff Processing that Personal Data does only on written instructions from Magenta Living (the first such instructions being those set out in these Instruction Terms) as revised by Magenta Living from time to time (where applicable) in accordance with Paragraph 10.13;
     2. promptly comply with Magenta Living’s written instructions and requirements from time to time, including any requests to amend, delete or transfer Personal Data;
     3. immediately inform Magenta Living if the Provider thinks that it has been given an instruction which does not comply with Data Protection Law;
     4. not by any act or omission cause Magenta Living or any other person to be in breach of any Data Protection Laws; and
     5. take all reasonable steps to ensure the reliability and integrity of all persons (including Staff) whom that Party authorises to Process the Personal Data and ensure that those persons:
        1. are subject to a binding contractual or statutory obligation of confidentiality;
        2. do not Process, publish, disclose or divulge any of the Personal Data other than in accordance with these Instruction Terms or the written instructions of Magenta Living; and
        3. undergo adequate training in Data Protection Law, the confidentiality, security, use, care, protection and handling of Personal Data and the Provider’s obligations as Data Processor under these Instruction Terms;
     6. limit access to Personal Data of which Magenta Living is Data Controller to those members of Staff who need access to it in order to provide the Services;
     7. fully cooperate with and assist Magenta Living, 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;
     8. Process the Personal Data in such a manner that ensures that at all times Magenta Living complies with Data Protection Law;
     9. promptly and in any event within 2 (two) Working Days, 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 Living and not respond to or otherwise deal with such communication except as instructed by Magenta Living or as required by Data Protection Law;
     10. provide such information and cooperation and take such action as Magenta Living reasonably requests in relation to each Data Subject Access Request, within such timescales as Magenta Living reasonably requires;
     11. maintain complete, accurate and current records of any Processing of Personal Data it carries out on behalf of Magenta Living which are sufficient to demonstrate compliance by Magenta Living and the Provider with Data Protection Law and containing such information as Magenta Living may reasonably require;
     12. on request, provide Magenta Living promptly with all information that Magenta Living needs to show that both Magenta Living and Provider have complied with their data protection obligations under this Instruction and Data Protection Law; and
     13. at the option of Magenta Living, either irretrievably delete or return all Personal Data to Magenta Living by the date set out in the Data Processing Table for this Instruction in Paragraph 10.4 (unless the Provider is required by Law to retain that Personal Data).
  2. The Provider shall maintain appropriate technical and organisational measures in accordance with the requirements for the security of Processing under Data Protection Law to protect Personal Data against unauthorised or unlawful Processing and against accidental or unlawful loss, alteration, disclosure, damage or, destruction having regard to:
     1. the state of technological development;
     2. the cost of implementing any measures;
     3. the nature, scope, context and purpose of the Processing of the Personal Data concerned; and
     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.
  3. Security measures maintained under Paragraph 8.6 [*Intellectual Property*] shall:
     1. to the greatest extent possible involve pseudonymisation and encryption of Personal Data;
     2. ensure the ongoing confidentiality, integrity, availability and resilience of the Provider’s technical and IT Systems;
     3. ensure that the availability of and access to Personal Data can be restored promptly following a physical or technical incident; and
     4. include regular testing, assessing and evaluating of the effectiveness of the technical and organisational measures to ensure the security of Processing.
  4. The Provider shall not transfer any Personal Data outside of the United Kingdom and European Economic Area without the prior written consent of Magenta Living. Where Magenta Living consents to such a transfer, such transfer shall be governed by the most recent (at the time of such transfer) standard contractual conditions issued or approved by the Information Commissioner’s Office for such Personal Data transfer.
  5. The Provider shall notify Magenta Living immediately and in any event within 12 (twelve) hours, if the Provider becomes aware of any Personal Data Breach (however caused). Such notification must:
     1. describe the nature of the breach including the categories and number of Data Subjects and Personal Data concerned;
     2. communicate the name and contact details of all persons from whom more information can be obtained about the breach;
     3. detail any investigations the Provider has undertaken;
     4. describe the likely consequences of the breach; and
     5. describe the measures taken by the Provider and the measures which the Provider wishes Magenta Living (at the expense of the Provider) to take to address the breach and mitigate its possible adverse effects.
  6. The Provider shall give Magenta Living immediate and full co-operation and assistance in relation to any such Personal Data Breach including:
     1. taking all reasonable steps Magenta Living requires to assist in the containment, mitigation, remediation and investigation of such breach;
     2. providing assistance with notifying the Information Commissioner’s Office or affected Data Subjects of any breach of Data Protection Law;
     3. providing Magenta Living promptly with all relevant information in the Provider’s possession; and
     4. where the Personal Data Breach involves Personal Data being lost, damaged, corrupted or unusable, promptly restoring that Personal Data at the Provider’s expense.
  7. The Provider shall provide reasonable assistance to Magenta Living where Magenta Living is required by Data Protection Law to carry out any privacy impact assessment or data protection impact assessment in relation to Processing Personal Data or in relation to any prior consultation with a Regulatory Body regarding high risk Processing.
  8. Magenta Living or an auditor acting on behalf of Magenta Living may inspect and audit the Provider’s facilities for Processing the Personal Data of which Magenta Living is Data Controller and the Provider’s records of that Processing to ensure they comply with these Instruction Terms and Data Protection Law. The Provider shall provide Magenta Living or the auditor with access during Normal Working Hours to all facilities, equipment, premises and sites where the Provider holds Personal Data or Processing records in connection with these Instruction Terms and to all Staff involved in that Processing. If any audit or inspection reveals a material non-compliance by Provider with Data Protection Laws or this Paragraph 10, the Provider shall pay Magenta Living the reasonable costs of the audit and/or inspection.
  9. Magenta Living may revise their 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 or be regarded as a variation to these Instruction Terms. Magenta Living 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. If the Provider is in breach of Data Protection Law or this Paragraph 10, Magenta Living may suspend the transfer of Personal Data to the Provider until the breach is remedied to Magenta Living’s satisfaction.
  11. Nothing in these Instruction Terms 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 Paragraph 10 does not comply with Data Protection Law, Magenta Living may amend that part (to the minimum necessary to ensure such compliance) by giving the Provider at least 20 (twenty) Working Days’ notice. Such amendment shall not entitle the Provider to any additional payment or be regarded as a variation to these Instruction Terms.
  12. Magenta Living may replace this Paragraph 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. Such amendment shall not entitle the Provider to any additional payment or be regarded as a variation to these Instruction Terms.

1. MAGENTA LIVING’S DATA
   1. Where the Provider stores Magenta Living’s Data on the Provider’s IT System in connection with the Services, the Provider:
      1. acknowledges that Magenta Living’s Data belongs solely to Magenta Living;
      2. shall not remove any copyright or proprietary notices contained in or relating to Magenta Living’s Data;
      3. shall provide, maintain and update the Provider’s IT System so that, throughout the Instruction Period, it is suitable for managing and monitoring the provision of the Services and, where applicable, for keeping Magenta Living’s Data up to date in connection with this;
      4. shall grant Magenta Living access to the Provider’s IT System (other than when it is necessary to close down the Provider’s IT System to rectify a fault or undertake maintenance and Magenta Living is given reasonable notice of this “down time”, other than in an emergency, where Magenta Living must be notified as soon as the “down time” occurs);
      5. warrants that granting Magenta Living access to the Provider’s IT System to the extent required by this Instruction does not breach any Intellectual Property Rights of any third party;
      6. shall store Magenta Living’s Data safely and separately from any data not relating to Magenta Living or the Services;
      7. shall preserve the integrity of Magenta Living’s Data and prevent it from corruption or loss;
      8. shall not modify, alter, delete or overwrite any of Magenta Living’s Data otherwise than in accordance with this Instruction without the prior written consent of Magenta Living;
      9. shall maintain a back-up and records of Magenta Living’s Data it has so modified, deleted or added to for a minimum of 3 (three) months after the modification or deletion; and
      10. shall reconstitute or recover Magenta Living’s Data that is lost, corrupted or degraded whilst it is maintained on the Provider’s IT System to its state immediately before the corruption or loss and meet any costs Magenta Living incurs in connection with this.
   2. Where the Provider accesses Magenta Living’s IT System or interfaces the Provider’s IT System with Magenta Living’s IT System in connection with the Services, the Provider shall:
      1. regularly check any software and transfer media used in connection with this Instruction (including any software and transfer media used on or connected to Magenta Living’s IT System) with an up-to-date virus checker from an industry accepted anti-virus software vendor;
      2. not introduce any virus, Trojan horse, malware, keylogger or other harmful software into Magenta Living’s IT System;
      3. access and use Magenta Living’s IT System only for the purpose of and to the extent required for the Services; and
      4. if any of Magenta’s Living’s Data is lost or corrupted as a result of the Provider’s acts or omissions, meet all costs of Magenta Living in restoring or procuring the restoration of that Magenta Living’s Data to its state immediately before the corruption or loss.
   3. The Provider must notify Magenta Living promptly and, in any event, within 2 (two) Working Days if it becomes aware of any actual, potential or threatened breach of Paragraphs 11.1 or 11.2.
2. RECORDS AND AUDIT
   1. Throughout the Instruction Period and for a period of 7 (seven) years after termination of this Instruction the Provider shall maintain full records of:
      1. this Instruction;
      2. the Services provided under it;
      3. all payments made by Magenta Living to the Provider under it; and
      4. any expenditure of the Provider that each Magenta Living has reimbursed.
   2. Whenever requested by Magenta Living, the Provider shall make any records it maintains under Paragraph 12.1 available for inspection and analysis by Magenta Living, Magenta Living’s internal or external auditors or representatives of any Regulatory Body to which Magenta Living is subject.
   3. The Provider shall permit Magenta Living, its auditors, representatives of its Regulatory Body and all persons authorised by Magenta on reasonable notice during Normal Working Hours, but without notice in case of any reasonably suspected fraud, bribery or other breach of Law:
      1. to access and take copies of the Provider’s records maintained under Paragraph 12.1 and any other relevant information held at the Provider's premises; and
      2. to meet with Staff to audit the Provider’s compliance with its probity obligations under this Instruction.
   4. The audit rights under Paragraph 12.3 shall continue for 7 (seven) years after the termination of this Instruction. The Provider shall give all necessary assistance to the conduct of such audits during the Instruction Period and for a period of 7 (seven) years after the Termination Date.
   5. If an audit under Paragraph 12.3 reveals that:
      1. the Provider has overcharged Magenta Living for the Services, the Provider shall pay to Magenta Living the amount overpaid within 20 (twenty) Working Days of Magenta Living notifying the Provider of the overpayment. Magenta Living may deduct the relevant amount from any other amount due to the Provider if the Provider fails to make this payment; and
      2. Magenta Living has underpaid the Provider for the Services, Magenta Living shall pay the Provider the shortfall (less the cost of audit incurred by Magenta Living if the underpayment is the Provider’s fault) in the next payment under Paragraph 7 [*Fee*] or (if no further payments are due to the Provider), within 20 (twenty) Working Days of Magenta Living notifying the Provider of the amount of the underpayment.
   6. Each Party shall bear their own costs of an audit under Paragraph 12.3 unless the audit identifies a fault by the Provider leading to a correction under Paragraph 12.5. Where the audit identifies the underpayment or overpayment is the Provider’s fault, the Provider shall reimburse Magenta Living’s reasonable costs and expenses of the audit to Magenta Living.
3. EQUALITY AND DIVERSITY
   1. The Provider shall comply with its statutory obligations under Equality and Diversity Law and use all reasonable endeavours to assist Magenta Living to fulfil its duties under Equality and Diversity Law in relation to all Services and, accordingly, the Provider shall not unlawfully treat any person less favourably than any other because of that person's colour, race, nationality, ethnic origin, gender, marital status, maternity, paternity, sexual orientation, gender reassignment, religion or belief, age, disability, part time or temporary status or any other protected characteristic.
   2. The Provider shall, as far as possible comply with all applicable Codes of Practice and guidance issued by the Equalities and Human Rights Commission and its predecessors.
   3. The Provider must set out its policy on equality and diversity:
      1. in instructions to those concerned with recruitment, training and promotion;
      2. in documents available to Staff, recognised trade unions or other representative groups; and
      3. in recruitment advertisements or other literature.
   4. The Provider must, on request, provide Magenta Living with examples of the instructions and other documents, recruitment advertisements or other literature.
   5. The Provider must notify Magenta Living within 2 (two) Working Days of first becoming aware of any investigations or proceedings brought against the Provider for a breach of Equality and Diversity Law.
   6. If a finding of unlawful discrimination is made against the Provider concerning the Services by any court or employment tribunal, or an adverse finding is made in any formal investigation by any Regulatory Body responsible for enforcing Equality and Diversity Law, the Provider must take appropriate steps to prevent any repetition of the unlawful discrimination.
   7. The Provider shall, on request, provide Magenta Living with details of any steps taken under Paragraph 13.6.
   8. Magenta Living may from time to time require the Provider to monitor its workforce according to such categories as Magenta Living reasonably specifies in writing to the Provider.
   9. In providing the Services, the Provider shall undertake and require Subcontractors to undertake measures to improve the representation of groups that are under-represented amongst Staff delivering the Services compared to their representation in the population (either generally or in the areas in which the Services are being undertaken), so as to minimise any imbalance in the composition of those Staff.
   10. In providing the Services, the Provider shall undertake and shall require Subcontractors to undertake measures to:
       1. eliminate unlawful discrimination (including harassment and victimisation) or any other conduct prohibited by Equality and Diversity Law within Staff delivering the Services;
       2. deliver equality of opportunity particularly for people from groups that are under-represented amongst Staff delivering the Services in recruitment, pay, training and transfer and promotion to and within that workforce; and
       3. promote and foster good relations between Staff delivering the Services who share a protected characteristic under Equality and Diversity Law and those who do not have that characteristic.
4. SUBCONTRACTING AND ASSIGNMENT
   1. The Provider may not assign, transfer, subcontract or deal in any other manner with its rights and obligations under this Instruction or any part, share or interest in this instruction without the prior written consent of Magenta Living but this does not prevent the Provider exercising its legal right to factor its right to payment for this Instruction. Subcontracting shall not relieve the Provider from Liability for the performance of its obligations to Magenta Living under this Instruction and the Provider shall be liable to Magenta Living for the performance of its Subcontractors.
   2. Magenta Living may assign or transfer the benefit of all or any of its rights under this Instruction. An assignment by Magenta Living (or by the Provider following Magenta Living’s prior written consent) will be effective when written notice of it is served on the Provider (or Magenta Living, as applicable).
   3. Magenta Living may require the Provider to enter into a deed of novation to transfer or extend both Magenta Living’s rights and obligations under this Instruction to any registered provider of social housing. The deed of novation must be in such form as Magenta Living reasonably requires.
   4. Where the Provider enters into a Subcontract in connection with the Services, the Provider shall include in that Subcontract provisions:
      1. requiring invoices to be considered and verified in a timely fashion;
      2. requiring the payment of valid and undisputed invoices within 30 (thirty) days of receipt;
      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;
      4. enabling the subcontract to be terminated if the Subcontractor fails to comply with any obligations under any environmental, social or employment Law in performing the Subcontract; and
      5. requiring the Subcontractor to include provisions having the same effect as this Paragraph 14.4 in any subcontract (at any stage of remoteness in the supply chain) relating to the Services.
   5. The Provider shall not allow a Subcontractor to Process any Personal Data of which Magenta Living is Data Controller without the prior written consent of Magenta Living to that Subcontractor doing so. Where the Provider wishes a Subcontractor to be able to do so the Provider shall provide Magenta Living with such evidence as Magenta Living requires in order to be satisfied that the proposed Subcontractor is capable of complying with the Provider’s obligations under these Instruction Terms and under Data Protection Law in relation to that Personal Data.
   6. Where Magenta Living allows a Subcontractor to Process Personal Data in accordance with Paragraph 14.5, the Provider shall:
      1. include provisions identical to those in Paragraph 10 [*Data Protection*] in the Subcontract with that Subcontractor; and
      2. provide in the Subcontract that Magenta Living may enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999.
   7. Where Staff need to access Magenta Living’s premises to provide the Services the Provider must notify Magenta Living in writing within 5 (five) Working Days of the Instruction Commencement Date of 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:
      1. any changes to that information; and
      2. the names, contact details and (if known) details of legal representatives of any new Subcontractors.
   8. The Provider shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this Instruction the Provider shall:
      1. implement due diligence procedures for its Subcontractors;
      2. require all Subcontractors to warrant that, neither the Subcontractor nor any of the Subcontractor’s officers or employees:
         1. have been convicted of any offence involving slavery or human trafficking; or
         2. 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;
      3. require all Subcontractors to notify them promptly in writing if the Subcontractor becomes aware of or has any reason to believe that the warranty in Paragraph 14.8.2 is or may become untrue. The notice must set out full details of the circumstances making the warranty untrue or potentially untrue;
      4. require all Subcontractors to include provisions having the same effect as this Paragraph 14.8.2 in all subcontracts (at any stage of remoteness in the supply chain) relating to the Services.
      5. promptly pass to Magenta Living a copy of any notice from a Subcontractor under Paragraph 14.8.3.
   9. The Provider shall maintain control over and ensure adequate liaison with Subcontractors to ensure compliance with this Instruction. Any obligation on the Provider not to do anything in this Instruction is to include an obligation on the Provider to procure that all Subcontractors and Staff do not do it.
   10. The Provider shall terminate a Subcontract (at the Provider’s own cost) within 20 (twenty) Working Days of being requested to do so by Magenta Living if:
       1. the actions or omissions of the Subcontractor have led to the Provider being in material breach of this Instruction;
       2. the Subcontractor or anyone for whom the Subcontractor is responsible has acted fraudulently or made a fraudulent misrepresentation in connection with the Services or this Instruction;
       3. the Subcontractor or anyone for whom the Subcontractor is responsible has offered or agreed to give any person working for or engaged by Magenta Living any gift or consideration in relation to the Framework Agreement or this Instruction as set out in Paragraph 18.1 [*Corruption, bribery and conflicts*];
       4. there is (in the reasonable opinion of Magenta Living) an actual or potential conflict between the interests of the Subcontractor and those of Magenta Living;
       5. the Subcontractor is in breach of Health and Safety Law or is considered by Magenta Living to be working or to have worked in a way that does not fully comply with Health and Safety Law, any Code of Practice approved in relation to Health and Safety Law or Good Professional Practice in relation to health and safety;
       6. the Subcontractor commits a material breach of Data Protection Law (including any Personal Data Breach or any breach which Magenta Living, as Data Controller, is required to report to the Information Commissioner);
       7. there is a change of control of the Subcontractor (as defined in section 1124 Corporation Tax Act 2010) which Magenta Living has not approved in advance; or
       8. the Subcontractor is found to have committed any offence involving slavery or human trafficking or to have breached environmental, social or labour laws.
5. LIABILITY
   1. Neither Party excludes ore limits liability to the other Party for:
      1. death or personal injury caused by its negligence;
      2. fraud or fraudulent misrepresentation; or
      3. any other Liability which cannot be limited or excluded by Law.
   2. Subject to Paragraphs 15.6 and 15.7, the Provider shall pay to Magenta Living sum equal to the amount of any Liability which Magenta Living or a Magenta Living Group Organisation may suffer in connection with a breach of this Instruction by the Provider or its Subcontractor.
   3. The Provider shall not be responsible for any Liability to the extent that it is caused by the negligence or wilful misconduct of Magenta Living or by breach by Magenta Living of its obligations under this Instruction.
   4. The Provider shall indemnify Magenta Living against Liability for the death of or personal injury to any person arising out of or in the course of the Services unless it was due to the negligence or default of Magenta Living.
   5. The Provider’s obligations under this Instruction shall not be lessened or affected by:
      1. any power or duty of Magenta Living, or any other person engaged by Magenta Living to grant or withhold approval of, or object to, any matter in connection with the Services,
      2. the grant of, or failure to grant, such approval, or the making of, or failure to make, such objection; or
      3. any inspection, or non-inspection of a Property in respect of which the Services have been undertaken by Magenta Living, by any other person engaged by Magenta Living or by any Regulatory Body.
   6. Subject to Paragraph 15.7, the Provider’s maximum Liability to Magenta Living for any one claim resulting from an individual breach of contract, breach of duty or act of negligence or other Liability arising out of an individual Instruction shall be limited to the amount set out in Paragraph 16 [*Insurance*] as the required minimum Insurance level for the type of Liability incurred, but this shall not include or apply to any sums that are payable by the Provider to Magenta Living under:
      1. Paragraph 4 [*Staff*]; or
      2. Paragraph 8 [*Intellectual Property*].
   7. Neither Party shall be liable to the other for pure economic loss, loss of business, depletion of goodwill or loss of anticipated savings other than as expressly provided in these Instruction Terms in each case whether direct, indirect or consequential (but this shall not apply in relation to Paragraph 4 [*Staff*] or Paragraph 8 [*Intellectual Property*]).
   8. No action or proceedings under or in respect of this Instruction shall be brought against the Provider after the date 12 (twelve) years from the Termination Date.
6. INSURANCE
   1. Subject to such Insurances being available in the market at commercially reasonable rates and on commercially reasonable terms the Provider shall maintain the following insurances (“**the Insurances**”) with the minimum levels of cover set out below:
      1. Public liability £5 million pounds (five million pounds) for each and every claim;
      2. Employer’s liability and motor insurances – as required by Law; and
      3. Professional indemnity £2 million pounds (two million pounds) for each and every claim.
   2. The Insurances shall be maintained with a substantial and reputable insurance company. Any increased or additional premium or adverse terms required by insurers because of the Provider’s own claims record or other acts, omissions or matters specific to the Provider shall be deemed to be within commercially reasonable rates and terms.
   3. Whenever required to do so by Magenta Living, the Provider shall provide Magenta Living with documentary evidence that the Insurances referred to in Paragraph 16.1 are being properly maintained and that premium payments are up to date.
   4. If any of the Insurances required by this Paragraph cease to be available at commercially reasonable rates and on commercially reasonable terms, the Provider shall notify Magenta Living immediately and the Parties shall discuss the best way to protect their respective positions. In these circumstances Magenta Living may terminate this Instruction under Paragraph 19.1.10 [*Termination*].
   5. The requirement to maintain the insurances in accordance with this Paragraph 16 shall continue despite termination of the Provider’s engagement under this Instruction (irrespective of the reason for such termination including breach by Magenta Living).
   6. If the Provider fails to maintain any of the Insurances (except following a notification under Paragraph 16.4) Magenta Living may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
   7. The Provider shall not to do anything or omit to do anything, which could make the Insurances under Paragraph 16.1 void, voidable or unenforceable.
7. FORCE MAJEURE
   1. Subject to the Provider complying with Paragraphs 17.2 to 17.4 (inclusive), neither Party is to be liable to the other for any failure or delay in performing its obligations under this Instruction due to any cause beyond its reasonable control (**“Force Majeure”**) including governmental actions, war, riots, terrorist attacks, civil commotion, fire, flood, epidemic, pandemic, labour disputes (other than labour disputes involving Staff of that Party or its Subcontractor), currency restrictions and Act of God.
   2. The Provider shall inform Magenta Living immediately of any actual or potential industrial action, by Staff or others, which might affect its ability at any time to perform its obligations under this Instruction.
   3. A Party subject to Force Majeure must give written notice to the other Party within 2 (two) Working Days of becoming aware of Force Majeure and must use all reasonable endeavours to mitigate its severity.
   4. If Force Majeure occurs the Provider shall:
      1. implement the procedures in the Disaster Recovery Plan;
      2. as far as practicable, continue to provide the Services in accordance with the Disaster Recovery Plan (where applicable) and these Instruction Terms; and
      3. restore the provision of the Services to normal as soon as practicable and within any period set out in the Disaster Recovery Plan (where applicable).
   5. The Party subject to Force Majeure is not entitled to payment from the other Party for extra costs and expenses incurred because of Force Majeure. The Fee payable for the Services shall also be reduced by such amount as is fair and reasonable to reflect the reduction in the Services undertaken or their performance during the period of Force Majeure.
   6. 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. The Party notifying the other Party of Force Majeure must notify that Party as soon as it considers the Force Majeure no longer applies.
   7. Either Party may terminate this Instruction by giving immediate notice to the other Party if Force Majeure which completely prevents a Party from complying with its obligation under this Instruction continues for a period of 3 (three) months or more.
8. CORRUPTION, BRIBERY AND CONFLICTS
   1. Magenta Living may terminate this Instruction for default by the Provider immediately by written notice and recover from the Provider the amount of any loss resulting from such termination if:
      1. the Provider commits an offence under the Bribery Act 2010 or any Law concerning fraudulent or corrupt acts in relation to this Instruction or any other contract with Magenta Living;
      2. the Provider has offered or given or agreed to give Magenta Living, or any person connected with any gift or consideration of any kind as an inducement or reward for:

#### doing or not doing or having done or not having done any action in relation to the obtaining or execution of this Instruction or any other contract with Magenta Living; or

#### showing or not showing favour or disfavour to any person in relation to this Instruction or any other contract with Magenta Living; or

* + 1. the acts referred to in Paragraphs 18.1.1 or 18.1.2 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).
  1. The Provider shall not do anything which would place Magenta Living in breach of the prohibition in Section 122 of the Housing and Regeneration Act 2008 or Magenta Living’s Probity Policy.
  2. The Provider shall take and require all Subcontractors to take all reasonable steps, in accordance with Good Professional Practice, to prevent fraud and bribery in connection with these Instruction Terms. The Provider shall notify Magenta Living immediately if it has reason to suspect that any fraud or bribery (including any breach of Paragraph 18.1) has occurred, is occurring or is likely to occur.
  3. If the Provider or any of its Staff commits any fraud or bribery (including any breach of Paragraph 18.1) in relation to this Instruction or any other contract with Magenta Living, Magenta Living may recover from the Provider in full any loss sustained by Magenta Living in consequence of such fraud.
  4. The Provider shall cooperate fully with Magenta Living, its auditors and/or any Regulatory Body in relation to any investigation into fraud or bribery in connection with this Instruction.
  5. The Provider shall take appropriate steps to ensure that they are not placed in a position where (in the reasonable opinion of Magenta Living) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the obligations owed to Magenta Living under this Instruction.
  6. The Provider shall promptly notify and provide full particulars to Magenta Living if any conflict referred to in Paragraph 18.6 above arises or is reasonably foreseeable to arise.

1. TERMINATION
   1. Magenta Living, without prejudice to any other right or remedy, may terminate this Instruction immediately or with effect from a future date specified by Magenta Living by giving the Provider written notice if:
      1. the Provider is in material breach of this Instruction which is not remedied to the satisfaction of Magenta Living within 10 (ten) Working Days from the receipt of a written notice from Magenta Living notifying the Provider of the breach and stating that if it is not remedied this Instruction may be terminated for the Provider’s material breach;
      2. the Provider without reasonable cause fails to proceed regularly and diligently with the performance of the Services set out in the Instruction;
      3. the Provider without reasonable cause suspends performance of the whole or a part of the Services set out in Instruction before they are completed;
      4. the Provider without reasonable cause refuses or neglects to comply with any instruction which Magenta Living is entitled to give under this Instruction;
      5. the Provider or anyone for whom the Provider is responsible acts fraudulently or makes a fraudulent misrepresentation in connection with the Services;
      6. the Provider or anyone for whom the Provider is responsible offers or agrees to give any person working for or engaged by Magenta Living any gift or consideration in relation to this Instruction or any other contract between the Provider and Magenta Living as set out in Paragraph 18 [*Corruption, Bribery and Conflicts*] or has committed any offence under the Bribery Act 2010;
      7. there is (in the reasonable opinion of Magenta Living) an actual or potential conflict, between the interests of the Provider and the duties owed to Magenta Living under this Instruction;
      8. the Provider makes a false or fraudulent claim for payment under this Instruction;
      9. the Provider or a Subcontractor is in breach of Health and Safety Law or is considered by Magenta Living to be working or to have worked in a way that does not fully comply with Health and Safety Law, any approved Code of Practice in relation to Health and Safety Law or Good Professional Practice in relation to health and safety;
      10. any of the Insurances ceases to be available at commercially reasonable rates;
      11. the Provider purports to assign, subcontract, novate or create any form of security over its rights under this Instruction without Magenta Living’s written consent;
      12. any of the warranties in Paragraph 2.5 or 2.6 [*Provider’s Obligations*] is or becomes untrue in any material respect;
      13. the Provider or a Subcontractor commits a material breach of Data Protection Law (including any Personal Data Breach) or any breach Magenta Living, as Data Controller, is required to report to the Information Commissioner;
      14. the Provider commits or is found to have committed any of the offences listed in Regulation 57(1) of the Public Contracts Regulations 2015, any of the Provider’s directors, officers or senior managers commit or are found to have committed any of those offences or a Court orders that this Instruction is set aside because it has been subject to a substantial modification;
      15. the Provider or a Subcontractor breaches the Law in relation to the Services;
      16. there is a change of control of the Provider (as defined in section 1124 Corporation Tax Act 2010) which Magenta Living has not approved in advance;
      17. the Provider or a Subcontractor is found to have committed any offence involving human trafficking or to have breached environmental, social or labour Laws; or
      18. Magenta Living has terminated the Framework Agreement under Clauses 12 [*Corruption, bribery and conflicts*] or 13.2 or 13.4 [*Termination*] of the Framework Agreement.
   2. The Provider may, without prejudice to any other right or remedy, terminate this Instruction immediately or with effect from a future date specified by the Provider by written notice if Magenta Living has:
      1. not paid the Provider any undisputed amount properly due and payable under this Instruction (subject to any deductions which Magenta Living may be entitled to make) by the date specified in a written notice from the Provider served after the final date on which the amount is due and warning that the Instruction may be terminated if such sum is not paid by the date specified (which must be at least 30 (thirty) Working Days after the date of the notice); or
      2. otherwise, without good reason committed a material breach of this Instruction which substantially prevents the Provider from complying with the Provider’s obligations under this Instruction and fails to remedy that material breach within 20 (twenty) Working Days of written notice from the Provider served on Magenta Living stating that if it is not remedied this Instruction will be terminated for material breach by Magenta Living.
   3. Either Party may terminate this Instruction if the other Party is the subject of any insolvency related procedure including:
      1. suspending or threatening to suspend, payment of its debts or being unable or deemed unable to pay its debts within section 123 of the Insolvency Act 1986;
      2. commencing negotiations with any of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any compromise or arrangement with any or all of its creditors;
      3. applying to court for, or obtaining, a moratorium under the Insolvency Act 1986;
      4. having a petition filed, passing a resolution, or having an order made for its winding up (except for the purposes of an amalgamation or reconstruction of a solvent company);
      5. giving or receiving notice of any intention to appoint or appointing or having appointed an administrator, receiver, receiver and manager or administrative receiver or applying for or being the subject of an administration order;
      6. having a creditor take possession of, or distress, execution, sequestration or other such process levied or enforced on or sued against, the whole or any part of its assets and such attachment or process not being discharged within 10 (ten) Working Days;
      7. ceasing to trade or threatening to cease to trade;
      8. failing within the time provided for payment to honour any guarantee or indemnity it has given which has fallen due and been called upon;
      9. (where the Provider is an individual):
         1. being the subject of a bankruptcy petition or order;
         2. having a receiver appointed over his/her assets;
         3. making an arrangement with creditors; or
         4. being deemed unable to pay his/her debts within section 268 of the Insolvency Act 1986;
      10. (where the Provider is a partnership, other than a limited liability partnership) having one of its partners subject to any of the insolvency events in Paragraph 19.3.9 applying to individuals;
      11. having a debt relief order made in respect of them; or
      12. being the subject of any equivalent or similar event in England & Wales or in any other legal jurisdiction.
2. CONSEQUENCES OF TERMINATION
   1. Termination of this Instruction 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 including:
      1. Paragraph 1 [Definitions];
      2. Paragraph 8 [*Intellectual Property*];
      3. Paragraph 9 [*Confidentiality and Security of Information*];
      4. Paragraph 10 [*Data Protection*]; and
      5. Paragraph 12 [*Records and Audit*].
   2. On termination of the any Instruction that is not completed by the Provider, the Provider must co-operate fully with Magenta Living and / or any Successor Provider in relation to the legal and operational handover of responsibilities between the Provider and Magenta Living or a Successor Provider.
   3. On termination of any Instruction under Paragraph 19.1 [*Termination*] the Provider shall take immediate steps to bring to an end the Services under that Instruction in an orderly manner but with all reasonable speed and economy.
   4. Within 5 (five) Working Days of the Termination Date, the Provider must:
      1. return all Magenta Living’s Data and any Materials provided by Magenta Living and ensure no electronic copies are maintained;
      2. provide copies of all other Materials used in connection with the Services to Magenta Living and delete all Magenta Living’s Data from the Provider’s IT System (other than as required by Paragraph 12 [*Records and audit*]); and
      3. return all keys, passes, door entry codes and other information relating to the Properties.
   5. The Provider must use all reasonable endeavours to procure that the benefit of any guarantees and warranties relating to the Services that are in force on the Termination Date are assigned to Magenta Living or as Magenta Living may instruct.
   6. The Provider shall submit an account for payment of the outstanding Fee that is due under an Instruction which is suspended or terminated, calculated in accordance with Schedule 2 [*Pricing Schedule*] of the Framework Agreement, to Magenta Living within 5 (five) Working Days of any notice of termination, and:
      1. in the case of termination under Paragraph 19.2 for breach by Magenta Living or under Paragraph 19.3 [*Termination*] for the insolvency of Magenta Living, subject to any withholding, deductions or set-offs that Magenta Living is entitled to make under the Instruction, Magenta Living shall pay such amount to the Provider by its due date for payment. The due date for such payment shall be 20 (twenty) Working Days after the date of such account and the final date for such payment shall be 20 (twenty) Working Days thereafter; and
      2. in the case of termination under Paragraph 19.1 [*Termination*] for breach by the Provider of Paragraph 19.3 [*Termination*] for the Provider’s insolvency, Magenta Living shall not be required to pay that account until it has quantified the full amount of its loss and expense as a result of termination and any breaches of this Instruction by the Provider (including the full cost of completion of the Services by others and the retendering costs of the Instruction).
   7. Magenta Living shall not be liable to the Provider for any loss of profit, loss of contracts or other costs, losses and/or expenses arising in connection with such termination.
   8. This Instruction shall continue to bind each Party following termination of this Instruction or any other Instruction as and for as long as necessary to give effect to their respective rights and obligations under it.
   9. Termination of this Instruction shall not automatically terminate the Framework Agreement.
3. WAIVER AND SEVERABILITY
   1. A failure or delay in exercising any rights, powers or privileges under this Instruction will not operate as a waiver of them.
   2. All remedies available to either Party for breach of this Instruction are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
   3. 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).
   4. Any waiver of a breach of this Instruction is not to be effective unless given in writing signed by the Party waiving its entitlement.
   5. No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Instruction.
   6. 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.
   7. If any term of this Instruction is illegal, void or unenforceable, it shall be deemed to have been modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, such term shall be deemed to have been deleted and the remainder of this Instruction will continue in force as though that term had not been included in it.
4. EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE
   1. Nothing in this Instruction requires Magenta Living to act in any way which is inconsistent with its obligations under the Law as a registered provider or as a charity.
   2. Each Party undertakes (subject to Paragraph 22.1) to do all things and execute all further documents that the other may reasonably require to give effect to this Instruction.
5. VARIATIONS
   1. No variation of this Instruction is to bind either Party and no person has authority on behalf of either Party to agree to any variations to this Instruction except where the amendment is agreed to in writing signed by both Parties. In particular, no person other than the Representatives of Magenta Living and the Provider have authority on behalf of either Party to agree any amendment to these Instruction Terms.
   2. No consents to any variation to this Instruction are required from any person who is not a Party to it.
6. ENTIRE AGREEMENT
   1. This Instruction and the Framework Agreement sets out the entire agreement and understanding of the Parties in relation to the Services and supersede any prior oral or written agreements understandings or arrangements relating to the subject matter of this Instruction. No Party shall be entitled to rely on anything which is not stated in this Instruction or which cannot be implied as being reasonably required to give it business efficacy or is otherwise inconsistent with this Instruction.
   2. Each Party warrants that it has not entered into this Instruction 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 Paragraph 24 excludes any liability for fraudulent misrepresentation).
   3. The rights and remedies provided in this Instruction are cumulative and do not exclude any other rights and remedies under the general law.
7. THIRD PARTIES
   1. Any Magenta Living Group Organisation on whose behalf the Services are procured under this Instruction may enforce this Instruction against the Provider.
   2. Subject to Paragraph 25.1, no person other than Magenta Living or Provider shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Instruction.
8. NO PARTNERSHIP OR AGENCY
   1. Nothing in this Instruction is to constitute or be deemed to create any joint venture or any 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.
   2. No Party shall hold itself out as the agent of any other or have any authority to bind the other except to the extent that this Instruction expressly provides otherwise.
9. NOTICES
   1. Notices or other communications under this Instruction must be in writing. Subject to Paragraph 27.4, such notices will be duly served if given by and sent to 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 the address for service. | 48 (forty eight) 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 (twenty one) days of posting. |
| Email (requesting a “read receipt”) 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. | Transmission report showing a successful transmission to the correct email address and evidence of the email having been opened. |

* 1. Each Party’s address for service is its registered office where it has one. Where the Provider does not have a registered office the Provider’s address for service is the address set out at the start of Framework Agreement or such other address as it notifies to Magenta Living in writing.
  2. The email addresses for service are:
     1. for Magenta Living [ ] or such other email address as Magenta Living notifies to the Provider in writing;
     2. for the Provider: [ ].
  3. This Paragraph 27 does not apply to the service of legal proceedings or to notices served in legal proceedings.

1. DISPUTES
   1. Each Party must attempt to resolve any Disputes which it has with the other amicably but nothing in this Paragraph 28 is to prevent the exercise by a Party of its rights under Paragraph 28.8 or under these Instruction Terms generally
   2. If a Party considers either that the other Party has committed a breach of its obligations under this Instruction or that a Dispute has arisen it may write a letter to that Party specifying:
      1. what the breach or Dispute is alleged to be;
      2. what steps that Party should take to remedy the breach or resolve the Dispute; and
      3. within what reasonable period such steps should be taken.
   3. If the breach is not remedied or the Dispute not resolved within the period set out in the letter then representatives of the Parties must seek to resolve the Dispute in accordance with the Dispute Escalation Table set out below:

|  |  |  |
| --- | --- | --- |
| **Magenta Living** | **Provider** | **Time to reach agreement** |
| Magenta Living’s Representative | Provider’s Representative | 5 (five) Working Days |
| Service Head | [ ] | 5 (five) Working Days |
| Relevant Director | [ ] | 5 (five) Working Days |

* 1. The individuals/postholders named in the Dispute Escalation Table shall have the period stated in the Instruction to agree a solution with the individual/postholder stated alongside their respective names, failing which the Dispute is to be escalated to the next named individuals/postholders (if any).
  2. Paragraphs 28.1 to 28.4 do not apply to any Disputes over a decision to terminate this Instruction or over any Party’s entitlement to do so.
  3. A court or other dispute resolution forum to which a Dispute is referred may take into account the Parties’ compliance with Paragraphs 28.1 to 28.4 when considering the award of legal costs.
  4. Any compromise of a Dispute which is certified in writing by solicitors advising Magenta Living on that Dispute as a settlement which is based on a permissible interpretation of the respective rights and obligations of the Parties under it this Instruction is to be regarded as having been derived from the terms of this Instruction and is not to be regarded as a variation to it.
  5. Magenta Living or the Provider may at any time refer a Dispute under this Instruction to adjudication under the Construction Act. Any such adjudication shall be carried out pursuant to the Technology and Construction Solicitors Association Adjudication Rules current at the time of the Dispute.
  6. The Parties shall continue to comply with all their obligations under this Instruction regardless of the nature of the Dispute and despite the referral of the Dispute for resolution under this Paragraph 28.

1. GOVERNING LAW, JURISDICTION and limitation
   1. This formation, construction, performance, validity and all aspects of this Instruction are to be governed by English Law.
   2. The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any Dispute under this Instruction.
   3. It is expressly agreed that the limitation period for any action for a breach of this Instruction will be a period of 12 (twelve) years from the date of any breach.
2. COUNTERPARTS

This Instruction 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 instruction.

1. Provider’s Tender

[***To be inserted***]

|  |
| --- |
| **SIGNED AND DELIVERED WHEN DATED AS A DEED** by  **[…………………………NAME OF ATTORNEY, GROUP A]**  as attorney for **MAGENTA LIVING**  under a power of attorney dated 20 May 2021  in the presence of: |
| ..................................................[SIGNATURE OF ATTORNEY] as attorney for **MAGENTA LIVING**  .................................................................. [SIGNATURE OF WITNESS] |
| ………………………………………………. [NAME OF WITNESS [IN BLOCK CAPITALS]]  ………………………………………………  ………………………………………………. [ADDRESS OF WITNESS]  ………………………………………………. [OCCUPATION OF WITNESS]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **SIGNED AND DELIVERED WHEN DATED AS A DEED** by  **[………………………………NAME OF ATTORNEY, GROUP B]**  as attorney for **MAGENTA LIVING**  under a power of attorney dated 20 May 2021  in the presence of: |
| |  | | --- | | .................................................[SIGNATURE OF ATTORNEY] as attorney for **MAGENTA LIVING**  .................................................................. [SIGNATURE OF WITNESS] | | ………………………………………………. [NAME OF WITNESS [IN BLOCK CAPITALS]]  ……………………………………………….  ………………………………………………. [ADDRESS OF WITNESS]  ………………………………………………. [OCCUPATION OF WITNESS] | |

**EXECUTED AS A DEED** and **)**

**DELIVERED** **WHEN DATED** by )

[PROVIDER] )

in the presence of: )

Director/ Designated Member\*...............................................................................

Director / Secretary / Designated Member\* ...........................................................

***\*use Designated Member for an LLP***

OR (for a company, but not an LLP)

Director ……….…..................................

Witness signature ……….…..................................................

Witness name …..……….…..................................................

Witness address ……….…..................................................

…………………………….…..................................................