

**Licence for a Commercial Space in Housing & Care 21 Extra Care Facility**

**This Licence supersedes any license or agreement issued previously**

**Please ensure that all fields are completed on the next page before the document is signed and dated.**

**If you are unsure what to do please contact Housing & Care 21's legal team.**

**All proposed licensees must have public liability insurance for the proposed activity.**

**DATE** ..... **2017**

The parties to this Agreement:

<b>Housing &amp; Care 21</b>	<b>Housing &amp; Care 21</b> , a community benefit society registered with number IP16791R, whose registered office is at Tricorn House, Hagley Road, Birmingham B16 8TP
<b>the Licensee</b>	[ ] (registered with company number ) whose registered address is at [ ]

IN WITNESS the parties or duly authorised representatives have executed this Agreement on the date of this Agreement.

Signed by .....

For and on behalf of **Housing & Care 21**

Signed by .....

For and on behalf of the **Licensee**

It is agreed as follows:

1. The following definitions shall apply to this Agreement

<b>“Accessways”</b>	means the roads, paths, entrance halls, corridors, lifts and staircases of the Premises the use of which is necessary to obtain access to and egress from the Commercial Space or those of them that afford reasonable access and egress thereto and therefrom and that Housing & Care 21 from time to time in its absolute discretion designates on 28 days' notice to the Licensee
<b>“Agreement”</b>	means this licence
<b>“Commencement Date”</b>	
<b>“Commercial Space”</b>	means the kitchen area at the Property as designated by Housing & Care 21
<b>“Court Manager”</b>	the court manager at the Property appointed by Housing & Care 21
<b>“Designated Hours”</b>	the designated hours are from [ ] on [ ] of every week of the Licence Period or such other days and times as may be agreed by the Court Manager
<b>“Equipment”</b>	means fixtures, fittings and chattels belonging to Housing & Care 21 that are located within the Commercial Space
<b>“Facilities”</b>	means the facilities to be provided by Housing & Care 21 as set out in Schedule 3
<b>“Goods and/or Services”</b>	means the services and/or products to be provided under and in accordance with this Agreement pursuant to Schedule 1
<b>“Group Member”</b>	means any subsidiary of Housing & Care 21, any body of which Housing & Care 21 is a subsidiary (“holding company”) and any subsidiary of any holding company in each case from time to time
<b>“Housing &amp; Care 21 Employees”</b>	means the employees and officers from time to time of Housing & Care 21 and those of its Group Members
<b>“Licence Fee Payment Date”</b>	the 1 <sup>st</sup> day of every month (or such other date as may be designated by Housing & Care 21)
<b>“Licence Fee”</b>	the licence fee is £[ ] plus VAT (if any) per month for the Licence Period, payable on the Licence Fee Payment Date from the Commencement Date (the “ <b>Initial Licence Fee</b> ”) thereafter the licence fee is subject to annual review in accordance with the provisions of Schedule 4 hereto
<b>“Licence Period”</b>	the licence period is for from the Commencement Date
<b>“Permitted Use”</b>	kitchen and catering services

<b>“Property”</b>	Cambrian Green Court
<b>“Service Users”</b>	means all those persons who visit or are residing at the Property with the permission of Housing & Care 21.
<b>“Subsidiary”</b>	means a body corporate which is a subsidiary within the meaning of the Companies Act 1985 and /or the Friendly and Industrial and Provident Societies Act 1968 and or the Housing Act 1996.
<b>“Utility Fee”</b>	means the sum of £[ ] plus VAT (if any) per month, (or such other sum as may be charged under clause 5.4 of this Agreement) payable monthly from the Commencement Date on the Licence Fee Payment Date
<b>“VAT”</b>	means valued added tax or any other similar tax of a similar nature

The Schedules to this Agreement form part of this Agreement and shall have full force and effect as if expressly set out in the body of this Agreement (and any reference to this Agreement shall include them). In the event of any conflict between the main body of this Agreement and any Schedules the main body of this Agreement shall take precedence.

Any reference to legislation includes any statute, statutory provision, subordinate or delegated legislation, regulation, rule, directive, or code of practice (generally or specifically); and reference to any legislation is to such legislation as amended modified, re-enacted or consolidated from time to time and to any legislation replacing it or made under it.

Where any party comprises more than one person, the obligations and liabilities of that party under this agreement are to be joint and several obligations and liabilities of those persons

## **2. GRANT OF LICENCE**

2.1. Subject to the terms and conditions of this Agreement, Housing & Care 21 gives the Licensee the right, for the Licence Period and during the Designated Hours, in common with Housing & Care 21 and all others authorised by Housing & Care 21 so far as is not inconsistent with the rights given, to use the Commercial Space for the Permitted Use.

2.2. This Agreement shall commence on the Commencement Date and shall continue for the Licence Period unless the Licensee’s rights under this Agreement are determined in accordance with clause 7 herein.

## **3. USE OF THE COMMERCIAL SPACE**

3.1. The Accessways and use of the same shall be confirmed by the Court Manager and shall only be permitted at reasonable times in relation to the Designated Hours to enable delivery, storage, preparation and/or the provision of the Goods and/or Services.

3.2. For the avoidance of doubt, the Licensee shall not have exclusive possession of the Commercial Space; and Housing & Care 21 reserve the right to move the Commercial Space. Any right to remain in occupation shall automatically terminate on termination of this Agreement.

3.3. The Licensee agrees with Housing & Care 21 not to:

- 3.3.1. alter or add to the Commercial Space or any service media within it;
- 3.3.2. display any sign outside or inside of the Commercial Space without Housing & Care 21's written consent;
- 3.3.3. do or omit to do anything in or around the Property which causes nuisance annoyance damage loss or inconvenience to Housing & Care 21 or any person or adjoining premises;
- 3.3.4. cause any damage to the Commercial Space or the service media serving the Property or overload it or them; or
- 3.3.5. allow to be done, do or omit to do, anything which may constitute a breach of any statutory requirement affecting the Commercial Space or invalidate or void any insurance policy for the Property or increase any insurance premiums.

#### **4. GENERAL OBLIGATIONS**

- 4.1. Unless otherwise agreed in writing with Housing & Care 21 and in addition to obligations contained elsewhere in this Agreement, the Licensee will during the continuance of this Agreement:
  - 4.1.1. diligently provide the Goods and/or Services set out in Schedule 1 to the Agreement and otherwise fulfil its obligations to a high standard and consistent with standards that would commonly be expected of a professional business;
  - 4.1.2. fulfil the obligations set out in Schedule 2;
  - 4.1.3. comply (and procure that its employees and agents comply) with all legislation applicable in the United Kingdom to the provision of the Goods and/or Services and the occupation and use of the Commercial Space;
  - 4.1.4. obtain and comply with all licences, consents and permits necessary for it to be able to lawfully comply with its obligations under this Agreement which shall include, for the avoidance of doubt, where the Permitted Use dictates, the registration by the Licensee, at its cost, of the Commercial Space or the Permitted Use with the local authority or any other regulatory body not less than 28 days prior to commencement of provision of the Goods and/or Services from the Commercial Space;
  - 4.1.5. on request by Housing & Care 21, attend meetings with Housing & Care 21 to review the provision of the Goods and/or Services and the Licensee's performance and such other matters as each of the parties may wish to address. Produce annual accounts which will be made available to Housing & Care 21 staff to view on request at the Licensee's cost;
  - 4.1.6. provide Goods and/or Services at the Licensee's then prevailing rates for all Service Users and Housing & Care 21 Employees. For the avoidance of doubt, unless otherwise agreed in writing with Housing & Care 21, the Licensee will be responsible for agreeing the price and payment terms with any person for these Goods and/or Services as provided by the Licensee. Housing & Care 21 accepts no responsibility or liability whatsoever in respect of the payment for or otherwise in relation to the provision of these Goods and/or Services by the Licensee;

- 4.1.7. notify Housing & Care 21 of any loss or damage of or to the Equipment at the Property provided by Housing & Care 21 and make good such loss or damage to the satisfaction and at the direction of Housing & Care 21;
  - 4.1.8. keep the Commercial Space and the Property secure against unauthorised access and notify Housing & Care 21 promptly following any suspected or actual breach and otherwise comply with any security policy notified in writing by Housing & Care 21 to the Licensee from time to time;
  - 4.1.9. not disclose or allow access to any personal data provided by Housing & Care 21 or acquired by the Licensee during the continuance of this Agreement other than to a person employed by the Licensee during the normal hours of business. Any such disclosure of or access to personal data shall be made in confidence and shall extend only so far as that which is specifically necessary for the purposes of this Agreement;
  - 4.1.10. not change, encumber or otherwise deal with the Equipment made available to the Licensee by Housing & Care 21 under this Agreement and use the same in accordance with any instructions issued by Housing & Care 21 from time to time in writing or otherwise in accordance with manufacturers instructions solely for the purpose of providing the Good and/or Services;
  - 4.1.11. not bring any equipment onto the Commercial Space without the consent of Housing & Care 21;
  - 4.1.12. observe any reasonable rules and regulations Housing & Care 21 makes and notifies to the Licensee from time to time, governing the Licensee's use of the Commercial Space or the Accessways;
  - 4.1.13. pay to Housing & Care 21 on an indemnity basis all costs, fees, charges, disbursements and expenses properly and reasonably incurred by Housing & Care 21 in relation to or incidental to the recovery or attempted recovery of any sums due under this Agreement or any other steps taken in connection with the enforcement of the covenants on the part of the Licensee contained in this Agreement.
- 4.2. Subject to the Licensee's compliance with the provisions of this Agreement, Housing & Care 21 will during the continuance of this Agreement:-
- 4.2.1. provide the Commercial Space and the Equipment located within it;
  - 4.2.2. insure the Building of which the Commercial Space forms part;
  - 4.2.3. endeavour to provide the Facilities.

## **5. FEES**

- 5.1. In consideration of the grant by Housing & Care 21 of the rights specified in clause 3 the Licensee agrees to pay Housing & Care 21 the Licence Fee, together with any VAT, in advance on the first day of each month, the first payment, or a due proportion of it apportioned on a day-to-day basis to be made on the Licence Fee Payment Date.
- 5.2. The Licence Fee shall be reviewed in accordance with the provisions of Schedule 4.
- 5.3. The Licensee will not enter into any profit sharing agreement with Service Users.

- 5.4. The Licensee must pay, and must indemnify the Housing & Care 21 against, all rates, taxes, assessments, duties, charges, impositions and outgoings that are now or at any time during the Licence Period may be charged, assessed or imposed on the Commercial Space and resulting from or attributable to the Licensee's occupation and pay a fair and reasonable proportion apportioned in respect of the Commercial Space of costs incurred by Housing & Care 21 in connection with clause 4.2 of this Agreement.

For the avoidance of doubt, the Licensee shall provide and pay for all food, beverages and refreshments and ingredients used in the provision of the Goods and/or Services.

## **6. INDEMNITY AND INSURANCE**

- 6.1. The Licensee shall indemnify and keep indemnified Housing & Care 21 and each of its Group Members in respect of all liabilities, loss, damage, costs, claims, demands, expenses, fines and other penalties (including legal and other professional fees and expenses) which Housing & Care 21 or each of its Group Members may incur or sustain arising from or relating to any act or omission of the Licensee or any employee, volunteer or other person engaged by or working for the Licensee connected with the provision of the Goods and/or Services or otherwise from the occupation or the use of the Commercial Space or the Property by the Licensee.

- 6.2. The Licensee warrants that before the execution of this Agreement he has disclosed to Housing & Care 21 in writing any conviction relating to the Licensee or any employee of the Licensee intending to use the Commercial Space (a "Conviction") and will give immediate notice to Housing & Care 21 of a Conviction which shall occur during the Licence Period

- 6.3. The Licensee will maintain insurance cover in respect of its liabilities under this Agreement and at law on the following basis:

6.3.1. legal liability to its employees as may be required;

6.3.2. legal liability to third parties in the sum of £1million per incident or series of incidents arising from the same event;

6.3.3. public liability and property damage in the sum of £1million per incident or series of incidents arising from the same event;

6.3.4. other risks commonly associated with the retail industry;

and will maintain such policies in force during the continuance of this Agreement noting Housing & Care 21's interest thereon and producing evidence of the same to Housing & Care 21 upon request.

## **7. TERMINATION AND REMEDIES**

- 7.1. This agreement can be terminated at any time by Housing & Care 21 by giving at least three month's prior written notice to the Licensee.

- 7.2. This Agreement may be terminated immediately by Housing & Care 21 by notice in writing to the Licensee if:

7.2.1. the Licensee is in breach of its obligations in this Agreement and, where a breach is capable of remedy, fails to remedy such breach within 14 days of receiving written notice of the breach from Housing & Care 21 or following remedy such breach re-occurs; or

- 7.2.2. there has been a complaint by a Service User or a Housing & Care 21 Employee of a serious nature in connection with the Licensee and/or its provision of Goods and/or Services or, in the reasonably held opinion of Housing & Care 21, an unacceptable level of complaints from Service Users and Housing & Care 21 Employees in respect of the Licensee and/or its provision of the Goods and/or Services; or
  - 7.2.3. any distress, execution or other process is levied upon any of the assets of the Licensee; or
  - 7.2.4. the Licensee ceases, or threatens to cease, to carry on the Permitted Use at the Commercial Space;
  - 7.2.5. Housing & Care 21 becomes aware, by the receipt of notice from the Licensee or otherwise, of a conviction which they, in their absolute discretion, believe exposes any Service User or Housing & Care 21 Employee to the risk of harm to person or property;
- 7.3. Termination shall be without prejudice to any rights of Housing & Care 21 or its Group Members or the liabilities of the Licensee accrued at the date of termination and to any remedy which Housing & Care 21 or its Group Members may have.
  - 7.4. On termination of this Agreement all rights of the Licensee hereunder shall cease and the Licensee shall remove all of its equipment (if any) kept on the Property and all rubbish in each case as soon as practicable and in a manner and at times agreed in writing with Housing & Care 21 and shall yield up the Commercial space and all Housing & Care 21's Equipment making good any damage or disrepair and otherwise leaving the same in a clean and tidy state.

## **8. CONFIDENTIALITY AND ANNOUNCEMENTS**

- 8.1. Both parties agree to keep the terms of this Agreement strictly confidential.
- 8.2. The Licensee shall not make any announcement or statement to the Press, broadcasting media or otherwise relating directly or indirectly to its relationship with Housing & Care 21 without the prior written consent of Housing & Care 21.

## **9. NOTICES**

- 9.1. Any notice or other document to be given under this Agreement shall be in writing, specify the full address of the Property and shall be deemed duly given:
- 9.2. If delivered personally at or sent by prepaid first class post, registered post or the recorded delivery service or facsimile transmission to the address and marked for the attention of the relevant party set out below or to such other address and/or number as such party may be notice to the other party expressly substitute:

### **Housing & Care 21**

Name: the Court Manager

Address: Cambrian Green Court

### **Licensee**

The name and address of the Licensee as previously detailed in this Agreement.

## **10. GENERAL**

- 10.1. This Agreement does not constitute a partnership, joint venture, or agency between the parties and neither of them has the authority to bind the other in any way by virtue of this Agreement.
- 10.2. No exercise or failure to exercise or delay in exercising any right, power or remedy vested in either party shall constitute a waiver by that party of that or any other right or remedy or otherwise prejudice any right of that party.
- 10.3. This Agreement sets out the entire agreement between the parties and supersedes all prior discussions and agreements between them. Any amendments to this Agreement must be in writing and signed by each party.
- 10.4. This Agreement is personal to the Licensee. The Licensee shall not assign, transfer, charge or deal in any other manner with this Agreement or its rights under this Agreement or any part of it nor delegate all or any part of its obligations under this Agreement without the prior written consent of Housing & Care 21. For the avoidance of doubt, Housing & Care 21 may assign the benefit of this Agreement without the consent of the Licensee and further the Licensee shall cooperate and assist Housing & Care 21 to novate this Agreement to another registered social landlord at the cost of Housing & Care 21 if Housing & Care 21 should request it to do so.
- 10.5. Housing & Care 21 is not to be liable for the death of, or injury to, the Licensee or the Licensee's employees and customers or for damage to any property of theirs or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by them in the exercise or purported exercise of the rights granted by this Agreement
- 10.6. Nothing in this Agreement or in any consent granted Housing & Care 21 is to imply or warrant that the Commercial Space may lawfully be used for the Permitted Use
- 10.7. Any Group Member of Housing & Care 21 may enforce the provision of this Agreement in addition to Housing & Care 21 but otherwise, a person who is not a party to this Agreement shall have no rights under the Licences (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.
- 10.8. If any provision of this Agreement shall be held to be illegal or unenforceable, the enforceability of the remainder of this Agreement shall not be affected.
- 10.9. This Agreement is governed by and shall be construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.
- 10.10. The parties to this Agreement confirm it is not their intention to nor do they consider this Agreement to create any tenancy or lease of the property.

## **11. EXCLUSION OF SECTIONS 24-28 OF THE LANDLORD AND TENANT ACT 1954**

The parties to this Agreement confirm it is not their intention to, nor do they consider this Agreement to create any tenancy or lease of the Commercial Space. However, in the event that a court finds this Agreement to create a tenancy, the parties confirm that:

- 11.1. On [ ] Housing & Care 21 served notice on the Licensee pursuant to the provisions of the Landlord and Tenant Act 1954 ("LTA 1954") Section 38A(3) and the Licensee has made a statutory declaration pursuant to schedule 2 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003; and
- 11.2. the parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to any tenancy created by this Agreement.

## **SCHEDULE ONE**

### **THE GOODS AND/OR SERVICES**

The Licensee shall provide a service providing food and/or drink in accordance with the Permitted Use to all Service Users and Housing & Care 21 Employees of a type first approved by Housing & Care 21 by application in writing comprising the following:

1. Meals and beverages available during the hours of 12:00pm to 14:00pm during the Designated Hours with meals comprising:
  - 2.1. a main course;
  - 2.2. a light or soft meal choice suitable for those with eating difficulties;
  - 2.3. an alternative main choice, for example a vegetarian or ethnic diet choice;
  - 2.4. a hot pudding;
  - 2.5. a cold sweet alternative;

in each case using fresh produce to the extent reasonably practicable and providing a nutritional balance.
2. Services and products that are within the legal remit of the business to sell to be available for a minimum of [ ] days per week during the Designated Hours. The Licensee may open on a public holiday, Saturday and Sunday if local planning regulations allow and this is agreed with the Court Manager where the Commercial Space is located.
3. The Licensee should demonstrate systems to ensure customer satisfaction with the service being provided. These should include regular meetings with Housing & Care 21 Employees and Service Users.
4. These systems will be an integral part of an appraisal system notified by Housing & Care 21 to the Licensee from time to time and otherwise to be carried out in accordance with clause 4.1.5.

## **SCHEDULE TWO**

### **LICENSEE'S OBLIGATIONS**

The Licensee shall:

1. at all times keep in good and substantial repair and condition and clean all:
  - a. areas of the Commercial Space;
  - b. all equipment in the Commercial Space including the Equipment;

and ensure that all rubbish and other waste materials are promptly and efficiently removed from all temporary areas to the refuse and waste bins on a regular basis being not less than daily;

2. at the request of Housing & Care 21, remove any member of the Licensee's staff from the Commercial Space within five days of Housing & Care 21 making such request;
3. redecorate the Commercial Space in the last 12 months of the Licence Period to the same colours and finish as evident at the Commencement Date;
4. generally not act in any way which is likely to discredit Housing & Care 21 or bring it into disrepute nor cause offence or disturbance to the Service Users;
5. restock the Commercial Space at the cost to the Licensee as necessary to ensure uninterrupted provision of the supply of Goods and/or Services;
6. reimburse Housing & Care 21 for any lost keys that are required to be replaced; and
7. not change the provider of any utilities supplied to the Property at any time.

## **SCHEDULE THREE**

### **FACILITIES (kitchen)**

1. The supply of gas, electricity and water to the Commercial Space (if applicable). All such utilities will be paid for by the Licensee.
2. Housing & Care 21 shall make available the Equipment at the Licensee's risk but which shall at all times remain the property of Housing & Care 21 and may include, where available, (but not exclusively) the following:
  - a. Oven
  - b. Fridge
  - c. Microwaves (if any)
  - d. Work surfaces
  - e. Shelving (if any) and any storage space at the Commercial Space
  - f. Cutlery, crockery and associated dining equipment
  - g. fire extinguisher or fire extinguishing equipment available within the Commercial Space or the Property.

## SCHEDULE 4

### LICENCE FEE REVIEW PROVISIONS

#### 1. Licence Fee Review

The Licence Fee shall be reviewed in accordance with this Schedule.

#### 2. 'The Base Figure'

'The Base Figure' means the Retail Prices Index ("the Index") for the month preceding the Commencement Date or otherwise as has been agreed.

#### 3. Ascertaining the Licence Fee

Until the first anniversary of the Commencement Date the Licence Fee is to be the Initial Licence Fee and thereafter at each anniversary of the Commencement Date ("the Review Date") the Licence Fee is to be a sum equal to the greater of the Licence Fee immediately before the relevant Review Date or multiplying the Licence Fee at the Commencement Date by the Index for the month preceding the relevant Review Date and dividing the result by the Base Figure.

#### 4. Changes in the Index

If the reference base used to compile the Index changes after the date of this Licence, the figure taken to be shown in the Index after the change is to be the figure that would have been shown in the Index if the reference base current at the date of this Licence had been retained.

#### 5. Arbitration of problems

If it becomes impossible to calculate the Licence Fee for any Review Period by reference to the Index or if any dispute or question whatever arises then the Licence Fee for that review period or the disputed matter is to be determined by an arbitrator to be appointed either by agreement between the parties or by the President for the time being of the Royal Institution of Chartered Surveyors on the application of either Housing & Care 21 or the Licensee in accordance with the Arbitration Act 1996. The arbitrator is to have full power to determine a reasonable licence fee for the Commercial Space on such dates as he considers appropriate, having regard to the purposes and intent of the provisions in this Agreement for the review of the Licence Fee.