

# PLANNING REPORT



AN COIMISIÚN PLEANÁLA

LDG-083260-25.

AN COIMISIÚN PLEANÁLA  
LDG- ~~Fee pay 00008~~  
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01 OCT 2025  
Fee: € 220 Type: Cheque  
Time: 15:26 By: In person

## SECTION 5 REFERRAL – DECLARATION OF EXEMPTED DEVELOPMENT

Dublin City Council Reg. Ref. 0359/25

97 North Circular Road, Drumcondra, Dublin 9

October 2025

SUBMITTED ON BEHALF OF:  
JMA Ventures Limited,  
Tullyvoge, Tydavnet,  
Co. Monaghan

85 Merrion Square, Dublin 2, D02 FX60  
+353 (0)1 539 0710 info@hpd.c.ie www.hpd.c.ie

**HUGHES**  
**PLANNING**  
& DEVELOPMENT CONSULTANTS

## 1.0 Introduction

This referral to An Bord Pleanála, pursuant to Section 5(3)(a) of the Planning and Development Act 2000 (as amended), has been prepared by Hughes Planning and Development Consultants, 85 Merrion Square, Dublin 2, on behalf of JMA Ventures Limited, Tullyvogey, Tydavent, Co. Monaghan, and relates to a Section 5 Declaration made by Dublin City Council on 4<sup>th</sup> September 2025 under Reg. Ref. 0359/25, regarding the use of No. 97 North Circular Road, Dublin 7, to provide medium to long-term accommodation to homeless persons.

The property management and staff provision will solely be the responsibility of our client, the property owner. Staff will visit the site to carry out maintenance and cleaning works only. No element of care, be it social, physical or emotional, will be provided to residents at this property, nor will any non-governmental organisation or approved housing body be involved in the daily operation of the property.

We request that An Coimisiún Pleanála review the Section 5 Declaration issued by Dublin City Council and make a determination that providing medium to long-term accommodation to homeless persons at 97 North Circular Road does not constitute development. In the interests of clarity, we would ask the following question to An Bord Pleanála:

*"Whether the continued use of a residential building, where care is not provided, to house homeless persons, is or is not development?"*

The prescribed fee of **€220.00** is enclosed, along with a copy of the declaration issued by Dublin City Council. This report sets out the rationale for hoarding to be used as exempted development during the carrying out of renovation works. We request that An Coimisiún Pleanála set aside the decision of Dublin City Council and issue a declaration stating that the continued use of a residential property to accommodate protected persons does not constitute development.

### 1.1 Section 5 Declaration of Dublin City Council

On the 4<sup>th</sup> September 2025, Dublin City Council refused a declaration of exemption for the use of 97 North Circular Road to provide accommodation to homeless persons under Reg. Ref. 0359/25 (See Appendix A). The Planning Authority determined that a material change of use would occur as the proposed use would contravene condition 2 of the Reg. Ref. 2926/20 & ABP-308189-20. The claim it would also result in an intensification of the use on the site due to the number of bed spaces in each unit.

It is submitted that the planning authority has erred in its assessment of the application. Having reviewed the report of the planning officer, it is quite apparent that the planning authority did not consider the question put before them and instead incorrectly assessed the use of the property. It is submitted that the property is not being used to provide emergency accommodation, and this is stated in the contract agreed between the appellant and the Dublin Region Homeless Executive.

This report will assess the proposed use in the context of the Planning and Development Act 2000 (as amended) and relevant case law.

### 1.2 Summary of Grounds for Referral

The applicant's grounds for referral can be summarised by the following points:

- The use of the property to provide long-term accommodation to homeless persons where care is not provided does not constitute emergency homeless accommodation and therefore does not contravene condition 2.
- It is submitted that a dwelling can be used to house individuals who may also be listed on the homeless register. There will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying the building, which should never be taken into consideration when having regard to whether a change of use has occurred.

The proposed use of the dwelling will not add strain to existing services nor will it increase traffic volumes, noise or waste at the site. Therefore, there will not be an intensification of use on the site.

## 2.0 Site Description

The subject property is located on the northwestern side of North Circular Road, situated approximately 100 metres from the junction of Aughrim Street to the northeast and sits on the junction of Oxmantown Road to the south (please see aerial in Figure 1.0 below). As noted above, the property comprises a terrace building comprising two storeys over a basement, with a pitched roof set behind a parapet level. The building has a total gross floor area of approximately 289.6sq.m. The front façade of the building is defined by a brick finish and an elevated ornate entrance door. The front curtilage contains grass, and one tree stands on the boundary between Nos. 97 and 99. The building is subdivided into 8 no. studio apartments.



Figure 1.0 Aerial photo showing the approximate outline of subject site in red in the context of North Circular Road



Figure 2.0 Image of No. 97 North Circular Road in the context of the built setting which is prevalent on North Circular Road, Dublin 6.

### 3.0 Planning History

A review of the Dublin City Council planning register identified the following planning applications on file:

<b>Reg. Ref. 2926/20/ ABP. Ref. 308189-20</b>	Permission granted by An Bord Pleanála (now An Coimisiún Pleanála) for retention of internal works to improve and repair the pre-63 apartments to provide more comfortable and safer accommodation. Works to repair original features within the property. The alterations resulted in a reduction of units from 10 no. to 9 no.
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### 4.0 Planning Context

The Dublin City Development Plan 2022-2028 is the relevant statutory development plan for the subject site. The following section is a brief zoning review and land use objective for the site.

#### 4.1 Zoning

The subject site is zoned Objective 'Z2 – Residential Conservation Area', under the current Dublin City Development Plan 2022-2028, with the objective *'To protect and/or improve the amenities of residential conservation areas.'*

The decision for development under this zoning designation is one where the development respects the existing setting and character of the area, protects the amenities of the surrounding properties, and is complementary to the existing scale, height, and massing of surrounding properties.

We note that whilst the subject site is not within an Architectural Conservation Area (ACA), nor is it listed as a protected structure in the Dublin City Development Plan 2022-2028.

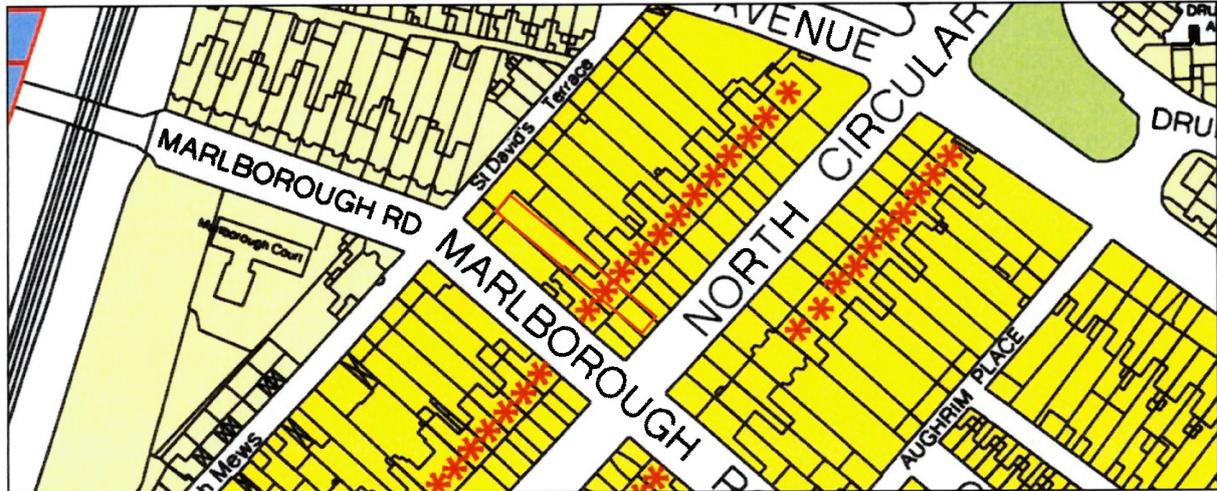


Figure 3.0 Extract from Map Set E of the Dublin City Development Plan illustrating the appraisal site (outlined in pink) situated within lands zoned 'Z2'.

The zoning matrix included in the development plan indicates 'permitted' uses in all designated zones. Permitted in principle uses are generally acceptable subject to the normal planning process and compliance with the relevant policies and objectives, standards and requirements set out in the Development Plan.

Permitted in Principle

Land uses which are classified as 'Permitted in Principle' will normally be permitted, subject to compliance with relevant policies, standards and requirements contained in the Plan. According to the Development Plan, uses which are 'Permitted in Principle' on land zoned 'Z2' are as follows:

*'Bed and breakfast, building for health, safety, and welfare of the public, childcare facility, embassy residential, guesthouse, home-based economic activity, medical and related consultants, open space, public service installation, **residential.**'*

We note that residential use is a permissible use on the subject lands. As such, the proposed use of the house is in accordance with 'Z2' zoning object of the Dublin City Development Plan 2022-2028.

**5.0 Grounds for Referral**

Under Section 2(1) of the Planning and Development Act 2000 (as amended), 'development' is assigned the meaning set out under Section 3 (1) as follows: -

*"In this Act, 'development' means, except where the context otherwise requires, the carrying out of works on, in, over or under land or the making of any material change in the use of any structures or other land."*

This declaration seeks clarification on the continued use of No. 97 North Circular Road, Dublin 7, as a multi-unit residential property that provides accommodation to homeless persons but does not provide care. From the outset, it is contended that this does not constitute development as no change of use has occurred.

It is noted that legislation does not define the phrase 'material change of use' as used in Section 2(1) of the Act. To determine the materiality of the change, the practical impacts and effects of the proposed change of use, and whether it would have led to materially different planning considerations by the Planning Authority, are considered in this determination.

It is submitted that there will be no discernible change to the use of the building other than the socio-economic class associated with the inhabitants occupying the building, which should not be taken into consideration when having regard to whether a material change of use has occurred, as evidenced by the Supreme Court *Dublin Corporation v Moore* [1984] ILRM 339 in which the judge stated:

*"I can well understand the objection voiced by Mr Heneghan in his affidavit, to which I have referred - the residents of a quiet suburb naturally resent the presence of what may well be out of keeping with what they conceive to be the standards appropriate to the neighbourhood. There cannot, however, be one law for Cabra and another for Clondalkin - yet others for Finglas and Foxrock. Considerations of this kind are not appropriate to planning law - if they were, they might well offend against rights of equality."*

It is considered that if this were a planning application for a dwelling, the planning authority would not include conditions prohibiting accommodation to people of particular socioeconomic backgrounds.

The subject site is a residential building which has 9 no. self-contained studio apartments. A communal outdoor amenity area is provided at the rear of the property for use by residents. Residents are free to enter and exit the property throughout the day like any tenant renting from a private landlord. Staff employed by our client will be present in the property, with their duties comprising the cleaning and maintenance of the property. This building provides long-term accommodation with residents living there for a minimum of 12 months as per the agreement with Dublin City Council. Most residents have been living there for c. 3 years. Therefore, **the property is being used as intended, i.e. a multi-unit residential property providing long-term accommodation to people who happen to be listed on Dublin City Council's homeless register.**

It is submitted that the continued use of the property to provide residential accommodation is not development as no material change of use has occurred.

It is noted that the planning authority determined that the continued use of **No. 34 North Circular Road (Reg. Ref. 0267/24)** to provide accommodation to homeless persons, which does not provide care, did not constitute a change of use and therefore, **did not constitute development**. This decision has been included in Appendix A for convenience.

In considering the above, it is submitted that the use of No. 97 North Circular Road as a long-term residential building to house homeless persons, which does not provide care, does not constitute a change of use and therefore, does not constitute development in accordance with the Planning and Development Act 2000 (as amended).

## 5.1 Pre-Existing Conditions

As per the permission Reg. Ref. 2926/20/ ABP. Ref. 308189-20, Condition 2 states:

*This permission does not authorise a material change of use of the property. No material change of use, including as emergency homeless accommodation, shall be affected unless otherwise authorised by a prior grant of planning permission.*

Article 9(1)(a)(i) of the Planning and Development Regulations 2001-2025 places a restriction on exemptions when the carrying out of such development *would contravene a condition attached to a permission under the Act or be inconsistent with any use specified in the permission under the Act.*

The restriction under Article 9(1)(a)(i) of the Regulations does not apply in this instance as no development has occurred. Therefore, Condition 2 of the permission has not been contravened.

In a similar vein, Article 10 of the regulations states that *development, which consists of a change of use within any one of the classes of use specified in Part 4 of Schedule 2, shall be exempted development for the purposes of the Act, provided that the development, if carried out would not contravene a condition attached to a permission under the Act.*

Again, this does not apply to the subject property, as no development has taken place, as no change of use has occurred.

The applicant has an agreement with Dublin City Council to provide accommodation for homeless persons. The contract does not pertain to emergency homeless accommodation as the tenants are all availing of long-term tenancies.

It is noted that no definition of emergency homeless accommodation exists in Irish legislation; however, we consider that emergency homeless accommodation refers to the provision of homeless services providing overnight accommodation on a night-by-night basis **and** the provision of care to homeless persons.

As per the Planning and Development Regulations 2001 (as amended), this use is defined under Class 9, Part 4 of Schedule 2 of the Regulations, i.e. *'the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)'*. It was determined by An Bord Pleanála in a case (ABP. Ref. 308189) that a homeless hostel and the provision of emergency accommodation come under Class 9. The Inspector's Report states:

*On the question of the change of use from the established use of the property (i.e. bedsits/apartments) to emergency homeless accommodation, I have reviewed 'section 5' referral cases to the Board. A recent relevant case (307064-20) has determined that a homeless hostel comes under Class 9, Part 4 of Schedule 2 of the Planning and Development Regulations 2001 (as amended), i.e. 'the provision of residential accommodation and care to people in need of care (but not the use of a house for that purpose)'.*

We also refer to a recent Section 5 declaration made by Dublin City Council under Reg. Ref. 0185/21. The Planning Authority was asked to make a declaration as to:

*'whether the use of residential building to provide long-term homeless accommodation to Dublin City Council is or is not development and whether development constitutes exempted development or does not constitute exempted development.'*

The Planning Authority declared that no material change of use had occurred and therefore the use did not constitute development in respect of the meaning set out in Section 3 (1) of the Planning and Development Act, 2000 (as amended) with the Planning Report stating:

*Based on the above, the Planning Authority concurs with the applicant's assertion that the building is being used as a long-term residential building and residential is a permissible land use in Z2 zoned areas. In arriving at this conclusion, the Planning Authority has considered alternative applicable land use definitions and classes including Class 9 together with the definition of "Buildings for the Health, Safety or Welfare of the Public" set out in the Development Plan and "care" as set out in the Regulations.*

*Having regard to the fact that no physical, intellectual or social care appears to be provided to residents of the building, it is, therefore, reasonable to conclude that the use of the building continues to be for residential purposes, which so happens to be provided to persons who are homeless but do not necessarily require short term, emergency accommodation and/or care.*

Upon review of the decision by Dublin City Council, the subject site could be used to continue to provide short to long-term occupancy to any individual, regardless of their status on the Dublin City homeless register, as this constitutes residential accommodation use and not emergency homeless

accommodation due to the absence of care services as defined under Class 9, Part 4 of Schedule 2 of the Regulations.

Furthermore, it is noted that Dublin City Council differentiates between accommodation and emergency accommodation in their contract. It is noted that the contract (Appendix B) agrees that No 97 North Circular Road will provide long-term accommodation. Therefore, the current use does not contravene Condition 2.

## 5.2 Intensification of Use

With regard to the intensification of the use, it is submitted that the increase in residents at the property does not constitute an intensification of the use. The remarks of Clarke J. in *Cork County Council v. Slattery Pre-Cast Concrete* [2008] IEHC 291 are relevant in assisting the planning authority in determining whether an intensification of an established use is material:

*"The assessment of whether an intensification of use amounts to a sufficient intensification to give rise to a material change in use must be assessed by reference to planning criteria. Are the changes such that they have an effect on the sort of matters which would properly be considered from a planning or environmental perspective? Significant changes in vehicle use (and in particular heavy vehicle use that might not otherwise be expected in the area) are one such example, changes in the visual amenity or noise are others.*

The question as to whether an intensification of an existing use at a property constitutes a material change of use is one to be assessed in light of the practical effects of that intensification on relevant planning considerations. These considerations include, but are not limited to, increased vehicular traffic, noise, pressure on infrastructure, visual impact, and impact on the amenity of surrounding residents.

The proposed use has been assessed in the context of the issues listed in the above case law:

### Traffic Volumes:

As noted, the house would accommodate 32 persons across 9 no. units. Given the status of the residents as homeless and the location of the property in a highly accessible area, it is reasonable to assume that car ownership and usage at the house would be extremely low. It is noted that the house is located near a bus stop, which is served by Dublin Bus Routes 11 and 11b. The number of staff will be minimal and mostly comprise cleaning and security staff. It is considered that there will not be a noticeable increase in traffic volumes at the site.

### Water Services:

Regarding foul water, it is noted that the subject site has access to an adequate public sewage network and treatment plant at Ringsend, which is currently being upgraded to cater for a population of over 2.4 million people; therefore, we do not consider that additional people living in this dwelling will result in issues in the sewer network.

### Waste Collection:

With regards to waste collection, no change is proposed to the current waste collection system at the subject site. It is noted that regular-sized wheel bins will be used and will be collected from the adjoining public footpath weekly as per the current arrangements for the house. It is not anticipated that the increase in residents will result in excessive waste at the house that cannot be dealt with by the current waste collection set-up at the house.

### Noise:

The proposed use will not affect noise levels in the area that may be detrimental to the amenity of adjoining dwellings. As noted, the house will be used to provide accommodation to adults. It is

anticipated that any increase in noise would be in keeping with any residential development, with the noise of residents coming and going likely to be the greatest source of noise.

Having regard to the above, it is our opinion that the increase in residents at this property does not constitute an intensification of the use. It is our client's submission that the practical differences in the current use of the entirety of 97 North Circular Road as a private accommodation for persons seeking international protection are, to all intents and purposes, almost indiscernible from its established use.

#### **Number of Residents:**

This Section 5 application pertains to the use of a multi-unit residential property to provide accommodation to homeless persons only. It is considered that the number of residents living in the property should fall within the scope of this application. Nonetheless, it is noted that the property is subdivided into 9 no. 1-bed units with between 3 and 4 people sharing each one. This is considered an acceptable level of occupancy

Whilst it is clearly a matter for the Board to determine, in accordance with the law set out above, it is our submission that the lack of practical effects of the new use, in line with the judgments of the High Court in *Slattery Pre-Cast Concrete* and *Molloy*, means that no material change of use will occur at 97 North Circular Road. Given the lack of any material change in use, no development requiring planning permission pursuant to the terms of the Planning and Development Act, 2000, has taken place or is proposed to take place in this regard.

#### **6.0 Conclusion**

It is intended to use the subject site at 97 North Circular Road, which is a multi-unit residential building, to provide long-term accommodation to homeless persons. This property will not provide care to residents. The building has been in use as a residential building since its construction in the early 1900s, and the continued use of the building to provide residential accommodation does not constitute development as no change of use has occurred, nor have any works been carried out to the property. As shown above, the proposed use will not result in an intensification of use at the site and we submit that Dublin City Council has erred in its assessment of the application for a declaration under Section 5 of the Act.

Therefore, the question before the Board is:

*"Whether the continued use of a residential building, where care is not provided, to house homeless persons, is or is not development?"*

Accordingly, we request that An Coimisiún Pleanála set aside the decision of Dublin City Council and decide that the proposed development **does not constitute development**.

We trust that the Commission will have regard to this submission and look forward to the decision in due course.

  
Kevin Hughes MIPI MRTPI  
Director for HPDC

**Appendix A**

Decision of Dublin City Council.



Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

An Roinn Pleanála & Forbairt Maoine, Bloc 4, Urrár 3, Oifigi na Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department, Block 4, Floor 3, Dublin City Council, Civic Offices, Wood Quay, Dublin 8

T: (01) 222 2288

E: [planning@dublincity.ie](mailto:planning@dublincity.ie)

05 Sep 2025

Hughes Planning and Development Consultants  
85 Merrion Square, Dublin 2  
D02FX60

Application Number	0359/25
Application Type	Section 5
Registration Date	13-Aug-2025
Decision Date	04-Sep-2025
Decision Order Number	P4459
Location	97, North Circular Road, Dublin 7
Proposal	EXPP: PROTECTED STRUCTURE: Whether the continued use of a residential building, where care is not provided, to house homeless persons, is or is not development?
Applicant Details	JMA Ventures Limited

- **If you have any queries regarding this Decision, please contact the email shown above**

**Note**

Any person issued with a declaration on development and exempted development, may, on payment of the prescribed fee, refer a declaration for review by An Bord Pleanála within four weeks of the date of the issuing of the declaration.

**NOTIFICATION OF DECLARATION ON DEVELOPMENT AND EXEMPTED DEVELOPMENT**

In pursuance of its functions under the Planning & Development Act 2000 (as amended), Dublin City Council has by order dated 04-Sep-2025 decided to issue a Declaration that the proposed development is NOT EXEMPT from the requirement to obtain planning permission under Section 32 of the Planning & Development Act 2000 (as amended) for the following reason:

It is recommended that the applicant be informed that the intensification of the use of a residential building, where it is stated that care is not provided, to house homeless persons does constitute a material change of use, and as such is classed as development under section 3(1) of the Planning and development Act 2000.

The applicant should be advised that the proposal would not be considered exempted development as per Article 9(1)(a)(i) of the Planning and Development Regulations 2001 (as amended),

Ceannofic, Oifigi na Cathrach, An Ché Adhmaid, Bhaile Átha Cliath 8, Éire  
Head Office, Civic Offices, Wood Quay, Dublin 8, Ireland

NOT1section5(Refuse Exemption)

T. 01 222 2222 W. [www.dublincity.ie](http://www.dublincity.ie)



Comhairle Cathrach  
Bhaile Átha Cliath  
Dublin City Council

An Roinn Pleanála & Forbairt Maoin, Bloc 4, Uirlár 3, Oifigi na  
Cathrach, An Ché Adhmaid, Baile Átha Cliath 8.

Planning & Property Development Department Block 4, Floor 3,  
Dublin City Council, Civic Offices, Wood Quay, Dublin 8.

T: (01) 222 2288

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05-Sep-2025

Signed on behalf of Dublin City Council

  
For Administrative Officer

NOT1section5(Refuse Exemption)

Ceannofig, Oifigi na Cathrach, An Ché Adhmaid, Bhaile Átha Cliath 8, Éire  
Head Office, Civic Offices, Wood Quay, Dublin 8, Ireland

T: 01 222 2222 W: [www.dublincity.ie](http://www.dublincity.ie)

## **Appendix B**

Extract from the applicant's contract with Dublin City Council.

HCE004/6625

Dec / 11 8205A

**Contract for the Provision of Accommodation for Homeless Persons**

**DUBLIN CITY COUNCIL**

and

**Savareen Limited**

**AGREEMENT**

Relating to the provision of accommodation for Homeless Persons at

**97 North Circular Road, Dublin 7**

THIS AGREEMENT is made on the 30<sup>th</sup> day of November 2022

**BETWEEN:**

**DUBLIN CITY COUNCIL** of Civic Offices, Wood Quay, Dublin 8 (the "Council");

And

**SAVAREEN LIMITED** having its registered office at 12 Crowe Street, Dundalk, County Louth (the "Provider")

(each a "Party" and together "the Parties").

**WHEREAS:**

- A. The Dublin Region Homeless Executive (the "DRHE") is responsible for the planning, co-ordination, and administration of funding in relation to the provision of quality services to people who are homeless in the Dublin area. The Dublin Region Homeless Executive sources accommodation in the private sector for use as emergency and long-term accommodation for Homeless Persons in response to the high numbers of people who continue to present to homeless services.
- B. The Provider has engaged with the Council's Valuers Office, on behalf of the DRHE, and terms and conditions were reached between both parties for the provision of accommodation for persons experiencing homelessness (the "Occupants") at the Providers Premises at 97 North Circular Road, Dublin 7 (the "Premises") and are set out below.
- C. For the purposes of this Agreement, the Council's Primary Contact is [REDACTED] Director, DRHE, Civic Offices, Wood Quay, Dublin [REDACTED] or such other person as the Council may from time to time nominate (the "Council's Contact") ; the Providers Primary Contact is [REDACTED] (the "Provider's Contact").
- D. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
- E. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- F. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.