

SCHEDULE 16 – DATA SHARING AGREEMENT



Data Sharing Agreement

Between

BIRMINGHAM CITY COUNCIL

- and -

[PROVIDER]

AGREEMENT REFERENCES:

FLEXIBLE CONTRACTING ARRANGEMENTS FOR THE PROVISION OF CARE HOMES WITH AND WITHOUT NURSING SERVICES AND CARE AND SUPPORT (SUPPORTED LIVING)

FRAMEWORK AGREEMENT FOR THE PROVISION OF HOME SUPPORT FOR CHILDREN AND YOUNG PEOPLE WITH DISABILITIES AND HOME SUPPORT FOR ADULTS

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This Agreement dated 30 April 2018 sets out the terms and conditions under which personal data held by either Birmingham City Council and/or the Provider will be shared with each other. This Data Sharing Agreement is entered into with the purpose of ensuring compliance with the Data Protection Legislation.

The Parties

1. Birmingham City Council, of the Council House, Birmingham B1 1BB (“The Council”)

and

2. Name the Provider whose registered address is at address (“The Provider”)

the above organisations are hereinafter referred to individually as a “Party” and collectively as the “Parties”. “Third Party means any party other than a Party to this Agreement.

Purpose

- (1) The Council is a Local Authority that is responsible to its citizens for the provision of Care Homes With and Without Nursing Services, Home Support for Children and Young People with Disabilities, Home Support for Adults and Care and Support (Supported Living). For that purpose, the Council holds and processes personal data (including sensitive Personal Data) relating to those citizens in accordance with the legal obligations imposed on it under the Data Protection Legislation.
- (2) The Provider is working with, and is contracted by, the Council to provide the Services on behalf of the Council as set out in the Flexible Contracting Arrangement or Framework Agreement for the provision of Care Homes With and Without Nursing Services, Home Support for Children and Young People with Disabilities, Home Support for Adults and Care and Support (Supporting Living).
- (3) The Parties (as set out above) have agreed to enter into this Agreement to facilitate the lawful processing of Personal Data (including Sensitive Personal

Data) as particularised in Schedule 2 of this Agreement by the Provider, in course of providing the contracted Services on behalf of the Council.

IN CONSIDERATION of the respective undertakings, warranties and representations given by each of the Parties as set out in this Agreement it is hereby agreed as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 The following words and phrases shall have the following meanings unless the contrary intention is expressly stated:

“Agreement” means this Agreement, its Schedules and any other documents attached to, or referred to as forming part of this Agreement

“Data Protection Legislation” means, for the periods in which they are in force in the United Kingdom, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time

“Data Subject” has the meaning as set out in the Data Protection Legislation

“Data Security Obligations” means technical and organisational processes and procedures that will protect the Personal Data against unauthorised or unlawful processing and accidental loss, theft, use, disclosure, destruction and/or damage and which include:

- (a) technical security measures;
- (b) treating and safeguarding the Data as strictly private and confidential;
- (c) minimising disclosure of the Data to third parties to the fullest extent possible;
- (d) allowing access to the Data strictly on a 'need to know' basis employing appropriate access controls at all times;

- (e) copying, reproducing and/or distributing the Data only to the extent necessary for performance of the Services; and
- (f) maintaining adequate back-ups for the data to enable the Data to be recovered in the event of damage or loss

The minimum standards that the Council requires the Provider to meet in order to comply with the Data Security Obligations are detailed at Schedule 3 of this Agreement

“**GDPR**” means (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which comes into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (regulation (EU) 2016/679)

“**Personal Data**” has the meaning as set out in the Data Protection Legislation that are under the control of the Council and in respect of which it proposes to share with the Provider, the details of which are set out in Schedule 2 of this Agreement as amended from time to time by the agreement of the Parties and Personal Data that is processed by the Provider during the course of the provision of the Services

“**Processing**” has the meaning as set out in the Data Protection Legislation

“**Data Controller**” has the meaning set out in the Data Protection Legislation

“**Framework Agreement**” means the Agreement for the provision of Home Support for Children and Young People with Disabilities and Home Support for Adults.

“**Sensitive Personal Data**” has the meaning as set out in the Data Protection Legislation

“**Flexible Contracting Arrangement**” means the Agreement for the provision of Care Homes With and Without Nursing services and Care and Support (Supported Living)

1.2 In this Agreement:

- 1.2.1 references to clauses and schedules are references to the clauses and schedules of this Agreement;
- 1.2.2 headings shall not affect its interpretation;
- 1.2.3 words importing a gender shall include all genders and references to a 'person' shall include a reference to a body corporate, association or Council;
- 1.2.4 the word 'including' shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word, and the word 'include' and its derivatives shall be construed accordingly.

2 COMMENCEMENT

This Agreement shall commence on 30 April 2018.

3 THE BASIS FOR SHARING

- 3.1 The Parties recognise and accept that
 - 3.1.1 The Council is permitted to share the Data with the Provider and
 - 3.1.2 The Provider is permitted to process the Data; and
- 3.2 The Parties further recognise and accept that
 - 3.2.1 The Provider is permitted to share the Data with the Council; and
 - 3.2.2 The Council is permitted to process the Data;

Under the Data Protection Legislation by virtue of the explicit consent of the data subject and that the processing is necessary for the exercise of statutory functions conferred upon the Council under the Care Act 2014 and other Health Care Legislations.

4 DATA OWNERSHIP

- 4.1 The Parties acknowledge and accept that upon receipt of the Personal Data from the Council, the Provider is deemed to be a Data Controller in its own right in respect of the Personal Data. As the Provider is providing the Service on behalf of the Council, the Council is a Joint Data Controller in respect of the Personal Data which is processed by the Provider in the course of the provision of the

Service.

Each party has a valid Registration with the Information Commissioner's office which covers the intended data sharing pursuant to this Agreement. The Council's Registration Number is 24594350;
The Provider's Registration Number is _____

5 THE COUNCIL'S OBLIGATIONS

- 5.1 The Council warrants that it is lawfully permitted to hold and process the Personal Data and that it has a lawful basis upon which to share the Personal Data with the Provider as set out in clause 3.1 above.
- 5.2 The Council shall notify the Provider as and when it requires access to Personal Data, setting out the reasons why the information is required, pursuant to and in compliance to the provisions of this Agreement.

6 THE PROVIDER'S OBLIGATIONS

- 6.1 The Provider accepts that, as a Data Controller, it is legally liable for any unauthorised loss or disclosure of any Personal Data provided by the Council that occurs once the information has been transferred by the Council to it under the terms of this Agreement and in respect of the Personal Data which is processed by it in the course of the provision of the Services.
- 6.2 The Provider accepts that it is bound to comply with the Data Security Obligations and that it will co-operate with the Council in providing information to evidence its continued compliance with the Data Security Obligations. The Provider further accepts that in the event that it fails to comply with the Data Security Obligations, the Council or the Data Subject may report the failure to the Information Commissioner's Office or instigate legal action in respect of the breach.
- 6.3 To the extent permitted to do so by applicable law, the Provider shall notify the Council of any communications it receives from third parties or the Data Subject relating to the Personal Data which suggest non-compliance by the Council, or the Provider or any other person with the Data Protection Legislation from Data Subjects and regulatory bodies in relation to the Personal Data provided to the

Provider by the Council, under the terms of the Framework Agreement.

7 OBLIGATIONS

- 7.1 Each party shall, in respect of Shared Personal Data, ensure that their privacy notices are clear and provide sufficient information to Data Subjects in order for them to understand what of their Personal Data the Parties are sharing, the circumstances in which it will be shared, the purposes for the data sharing and either the identity with whom the data is shared or a description of the type of organisation that will receive the Personal Data.
- 7.2 Each party undertake to inform Data Subjects of the purposes for which it will process their Personal Data and provide all of the information that it must provide in accordance with The Data Protection Legislation laws, to ensure that the Data Subjects understand how their Personal Data will be processed by the Data Controller.

8 WARRANTIES

- 8.1 Each party warrants that it has full and due authority to enter into this Agreement and that entering into and undertaking the activities set out in this Agreement will not cause it to be in breach of any other contract or order of any competent court or regulatory authority.

9 USE OF THIRD PARTIES

- 9.1 The Council accepts that the Provider is entitled, as a Data Controller, to use Data Processor(s) to process the Personal Data provided under this Agreement or Personal Data processed by it in the course of the provision of the Services. The Provider acknowledges and accepts that as Data Controller, it is legally required to comply with the seventh data protection principle and Integrity and Confidentiality Principle contained in the Data Protection Legislation. In allowing the processing of the Personal Data by a Data Processor, the Provider must therefore: ensure that it chooses a Data Processor providing sufficient guarantees in respect of the technical and organisational security measures governing the processing to be carried out; and

- 9.1.2 take reasonable steps to ensure the Data Processor's compliance with those measures, which includes monitoring the organisational and technical security measures of the Data Processor and maintaining documentary evidence of its compliance monitoring; and
- 9.1.3 ensure that the processing is carried out under a contract which:
 - 9.1.3.1 is made or evidenced in writing; and
 - 9.1.3.2 under which the Data Processor is to act only on instructions from the Provider; and
 - 9.1.3.3 requires the Data Processor to comply with obligations equivalent to those imposed upon the Provider by the seventh Data Protection principle and/or The Integrity and Confidentiality Principle.
- 9.2 Upon a request from the Council, the Provider must provide written evidence to the Council of its compliance with clause 8.1 within 14 days of the request.

10. REVIEW / VARIATION

- 10.1 The provisions of this Agreement shall be reviewed on the first of:
 - 10.1.1 the annual anniversary of this agreement or the last review; and/or
 - 10.1.2 changes to legislation or Court decisions which have a material impact on the provisions of this Agreement
- 10.2 The parties can vary the terms of this Agreement by prior written agreement.

11. BREACH NOTIFICATION

- 11.1 In the event of either party to this Agreement becoming aware or having a reasonable suspicion that a breach of the Data Protection Legislation has occurred in respect of the Personal Data provided by the Council under this Agreement, it shall notify the other party of the breach or suspected breach; as soon as possible and no later than 1 working day after becoming aware or having a reasonable suspicion that a breach has occurred to enable the parties to consider what action is required to resolve the issue in accordance with the Data Protection Legislation

12. TERMINATION

This Agreement shall be binding on the Parties until the Framework Agreement and Flexible Contracting Arrangement is terminated.

Signature

This Agreement is signed:

On behalf of the Provider

Name:

.....

(Authorised Signatory)

Position within
organisation:

.....

Signature:

.....

Date:

.....

SCHEDULE 1

Data Subjects

Individuals who from time to time are identified as requiring the following Services from the Council:-

Care in Care Homes With or Without Nursing, Home Support for Children and Young People with Disabilities. Home Support for Adults, and Care and Support (Supported Living).

SCHEDULE 2

The Personal Data to be shared by the Council to the Provider

Name

Current/previous address

Date of birth

Ethnicity

Next of Kin

Contact details of family

Contact details of friends

Eligible needs to be met

Type of service required

Background and current information

Desired outcomes and lifestyles and preferences

Medical conditions including physical and mental health

Contact details of GP

Behavioural issues

Safeguarding information

Conviction Information

SCHEDULE 3

Minimum requirements for compliance with the Data Security Obligations

- Encryption of all mobile devices to at least 128 bit encryption;
- All electronic devices, including mobile devices, to be recorded on an Asset Inventory which is to be kept up to date at all times;
- Use of unique username and passwords for all staff/contractors with access to Personal Data;
- Passwords which comply with the Council's Password Standard where the Provider's systems support this;
- Secure destruction of devices containing Personal Data when disposed or reassigned;
- Staff/contractors to be bound by legally enforceable duty of confidentiality in respect of Personal Data;
- Implementation of a Security Breach Policy that complies with the Privacy Laws and/or the Council's Information Loss Standard;
- All staff/contractors to be provided with training on the Provider's information security and data protection policies and procedures, including but not limited to being made aware of the requirements of this Agreement, and records of the training to be maintained;
- To have in place a Business continuity Plan which is tested on at least an annual basis, records of which are to be retained for a period of at least 24 months;
- Secure back-up of all electronic data which is regularly tested to ensure accuracy and availability;
- To have and maintain an audit log of individuals with access to Personal Data stored electronically;
- To install and maintain adequate anti-virus software on devices which are processing Personal Data;
- To install and maintain adequate physical security measures to the premises where Personal Data are processed including locks on all doors and windows;

- To implement and carry out a controlled access policy in respect of physical access to the premises where Personal Data are held or processed;
- To have in place a policy in respect of the secure use of email and facsimile for the transmission of Personal Data;
- Paper records including Personal Data to be stored in locked cabinets when not attended to by staff/contractors;
- Secure shredding of paper records including Personal Data