



Birmingham
City Council

BIRMINGHAM CITY COUNCIL

- And -

[PROVIDER]

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

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For the avoidance of doubt, please note that the following does not apply to Care Homes With and Without Nursing Providers outside of the Birmingham Council Tax Boundary (Out of City Providers):

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For the avoidance of doubt and in order to determine as to whether the Registered Location of the Care Home With and Without Nursing Provider is outside of the Birmingham Council Tax Boundary please type the postcode into:

<https://www.gov.uk/find-local-council>

LIST OF SCHEDULES APPLICABLE TO THESE ARRANGEMENTS

SCHEDULE 1 -	DEFINITIONS
SCHEDULE 2 -	NOT USED
SCHEDULE 3 -	SERVICE SPECIFICATION FOR CARE AND SUPPORT (SUPPORTED LIVING)
SCHEDULE 4 -	SERVICE SPECIFICATION FOR CARE HOMES WITH AND WITHOUT NURSING
SCHEDULE 5 -	NOT USED
SCHEDULE 6 -	NOT USED
SCHEDULE 7 -	NOT USED
SCHEDULE 8 -	ALLOCATION OF WORK TO PROVIDERS
SCHEDULE 9 -	FINANCE, INVOICING AND PAYMENTS
SCHEDULE 10 -	NON TAKE UP OF THE SUPPORT PACKAGE, ABSENCE OF THE CITIZEN, NOTICE PERIODS, TERMINATION AND RELATED PAYMENTS
SCHEDULE 11 -	CONTRACT MANAGEMENT
SCHEDULE 12 -	SAFEGUARDING SPECIFICATION
SCHEDULE 13 -	BIRMINGHAM GUIDANCE FOR PROVISION OF COMMUNITY EQUIPMENT IN CARE HOMES WITH AND WITHOUT NURSING
SCHEDULE 14 -	FEE STRUCTURE
SCHEDULE 15 -	QUALITY ASSURANCE FRAMEWORK
SCHEDULE 16 -	DATA SHARING AGREEMENT
SCHEDULE 17 -	BIRMINGHAM BUSINESS CHARTER FOR SOCIAL RESPONSIBILITY

ACCEPTANCE STATEMENT

The Provider agrees and acknowledges that by submitting an on-line tender it shall adhere to the terms and conditions and all the relevant Schedules of these Flexible Contracting Arrangements and the Individual Service Order (also referred to in this Contract as an **INDIVIDUAL PLACEMENT AGREEMENT** or **SERVICE AGREEMENT**). The Provider shall also supply the Services as stated in the Provider's tender submission.

PROVIDER QUALITY ASSURANCE STATEMENT

All Providers and Out of City Providers agree to submit a Provider Quality Assurance Statement to Birmingham City Council on an annual basis.

There are three Provider Quality Assurance Statement categories:-

- **Care Homes With and Without Nursing Services**
- **Home Support**
- **Care and Support (Supported Living)**

QUALITY MONITORING VISITS

The Quality Assurance Framework (Schedule 15) states that all Providers will be subject to an annual inspection by the Council, the NHS or the Care Quality Commission. Where the Care Home With and Without Nursing Provider is an Out of City Provider the Council will use its discretion as to whether to conduct a Quality Monitoring Visit or whether other monitoring arrangements (such as liaising with the host local authority) are put into place.

PART A - PARTIES TO THE ArrangementS

THESE ArrangementS are made the last day of April, 2018

BETWEEN:

- (1) **BIRMINGHAM CITY COUNCIL** of the Council House Birmingham B1 1BB ("THE COUNCIL"),
and
(2) **[NAME OF ORGANISATION]** of [formal address to be inserted] ("THE PROVIDER")

PART B - INTRODUCTION AND OUTLINE PROVISIONS

1 Introduction

- 1.1 The Council commissions social care services for children, young people and adults in Birmingham in order to promote Service User choice and control over the services they receive to enable them to stay more independent for longer, in a way which suits them.
- 1.2 The Council seeks to enter into Flexible Contracting Arrangements with Providers of Services and to establish the terms and conditions which will apply to arrangements for individual Service Users (Individual Agreements and/or Third Party Funding Agreement) under these Flexible Contracting Arrangements.
- 1.3 The Council intends, in partnership with Service Users, families and Providers, to operate a quality based approach to the purchase and provision of the Services.
- 1.4 By signing up to this contract the Council and the Provider are making a commitment to partnership working in delivering a flexible, responsive and informed market for safe and quality support services, which supports Service Users with dignity; and maximises the Service Users' involvement and autonomy in their day to day lives.

2 Definitions and Interpretation

It is agreed as follows:

- 2.1 In these Flexible Contracting Arrangements the **words and phrases** used shall have the meanings set out in **Schedule 1** (Definitions).
- 2.2 **Gender, Singular/Plural and Individuals.** Words referring to the masculine gender include the feminine gender, words in the singular include the plural and words referring to individuals shall be treated as including organisations, and vice versa.
- 2.3 **Headings.** Clause and sub clause headings, clause numbers, and the use of bold type or italics are for ease of use only and shall not affect the interpretation of these Flexible Contracting Arrangements.
- 2.4 Certain clauses apply to the provision of a specific Service or Services only. These Flexible Contracting Arrangements are for the provision of:

- **Care Homes With and Without Nursing Services**
- **Care and Support (Supported Living) Services**

- 2.5 Providers shall comply with any and all terms and conditions which apply to the particular Service they provide as indicated in the specific clause.
- 2.6 **Compliance by Employees and Agents.** References to acts or omissions of the Provider shall include its Employees, Agents or Sub-Contractors and it is the Provider's responsibility to ensure its employees, agents and sub-contractors comply with the provisions of these Flexible Contracting Arrangements.
- 2.7 **English law.** This Arrangement shall be governed in accordance with English Law and subject to **clause 30** (Negotiation) the Parties submit to the exclusive jurisdiction of the English Courts.
- 2.7.1 Nothing in these conditions shall prejudice any condition or guarantee (expressed or implied), or right of remedy to which the parties are entitled to under Legislation or common law.
- 2.8 **Amendments to Legislation.** A reference to any Act of Parliament, Order, Regulation, Statutory Instrument, or Guidance shall include any revised or updated version issued. An employee of the Provider shall be able to enforce **clause 43** (Birmingham Care Wage).
- 2.9 **THIRD PARTY Rights.** The parties do not intend that these terms and conditions shall be enforceable by any third parties and the Contracts (Rights of Third Parties) Act 1999 shall not apply to these Flexible Contracting Arrangements provided that any Citizen entering into a Third Party Funding Agreement directly with a Provider under these Flexible Contracting Arrangements shall be able to enforce the obligations of the Provider to perform the Services under these Flexible Contracting Arrangements.
- 2.10 **No Partnership.** Neither the Council nor the Provider has any intention of carrying on business in partnership with the other concerning the Service or any related matter.
- 2.11 **Non-exclusivity.** The Provider does not have any exclusive rights to perform the Service during the Contract Period and the Council shall be entitled to contract with any person other than the Provider for the performance of services which are the same or similar to the Service during the Contract Period. In addition, no minimum volume of work has been granted by the Council to the Provider under this Arrangement. Birmingham Care Wage means a minimum rate of £7.83 per hour (from 1 April 2018) for employees of any age. The Council may vary the Birmingham Care Wage at any time by giving three (3) months' notice in writing.

3 THE FLEXIBLE CONTRACTING ARRANGEMENTS

- 3.1 These Flexible Contracting Arrangements set out the full agreement between the Council and the Provider for the provision of the Service. Subject to **clause 3.2**, these Flexible Contracting Arrangements supersedes any previous arrangements except in the circumstances set out in Schedule 14.

- 3.2 Subject to **clause 3.1**, the standard of care set out in these Flexible Contracting Arrangements shall apply to all Individual Agreements.
- 3.3 Where Citizens elect, they shall be entitled to enter into a Third Party Funding Agreement with the Provider, and any applicable notice periods in **Schedule 10** shall apply.
- 3.4 These Flexible Contracting Arrangements comprise of:-
- 3.4.1 Flexible Contracting Arrangements terms and conditions;
 - 3.4.2 The Service Specifications (**SCHEDULES 3 and 4**). Service Specifications shall apply to the specific Services to be provided under the Individual Agreement or Third Party Funding Agreement and the Support Plan and;
 - 3.4.3 All other Schedules to the Flexible Contracting Arrangements.

4 ARRANGEMENT PERIOD AND EXTENSION

- 4.1 Subject to **clause 4.2** the Flexible Contracting Arrangements shall commence on 01 April 2018 and shall automatically expire on 31 March 2021 without the need for either party to give notice, unless terminated earlier in accordance with its terms.
- 4.2 The Flexible Contracting Arrangements may be extended for two (2) further periods after 31 March 2021 of up to twelve (12) months each by the Council giving the Provider three (3) months' prior written notice of its intention to extend the Flexible Contracting Arrangements.

PART C - PARTIES' OBLIGATIONS

5 CARE QUALITY COMMISSION REGISTRATION

- 5.1 The Provider must:
- 5.1.1 be registered and maintain Registration under the Health and Social Care Act 2008 (and subsequent amendments) for the duration of these Flexible Contracting Arrangements;
 - 5.1.2 comply with all entry standards and conditions as outlined in the application process under the Micro Procurement process to join and deliver Services under the Flexible Contracting Arrangements;
 - 5.1.3 notify the Council in writing immediately it becomes aware its Registration is being investigated, or is being suspended or cancelled;
 - 5.1.4 notify the Council in writing immediately in the event that it seeks to withdraw or cancel its Registration; and
 - 5.1.5 notify the Council in writing immediately if it is entering into negotiations for the transfer or sale of its business to another Provider.

6 COMPLIANCE WITH RELEVANT LEGISLATION, EQUALITIES AND SAFEGUARDING

6.1 The Provider shall:

- 6.1.1 comply with all relevant Legislation applicable to the performance of the Service as set out in the relevant Service Specification;
- 6.1.2 comply with the Council's multi agency policies for Safeguarding in accordance with **Schedule 12**; and
- 6.1.3 establish policies to ensure compliance with this **clause 6** together with training for all relevant employees. Copies of such policies shall be made available to the Council as part of the entry standards and conditions and reviewed in accordance with **Schedule 11**.

6.2 The Provider shall retain in the appropriate format a copy of all relevant policies and procedures made available to its staff, including but not limited to: Mental Capacity, Safeguarding, manual handling, medications management, nutrition, tissue viability, recruitment and dignity and respect and shall make copies of such policies available to the Council upon request.

7 SERVICE DELIVERY STANDARDS

- 7.1 The Provider shall perform the Service in accordance with the relevant Service Specification and the applicable Individual Agreement or Third Party Funding Agreement as amended from time to time.
- 7.2 The Provider must act in accordance with up to date Legislation and good practice in respect of Safeguarding and the Mental Capacity Act 2005, as set out in the applicable Service Specification. Principles of the Mental Capacity Act 2005 are set out in **Schedule 12**.
- 7.3 In performing the Service, the Provider shall treat all Service Users in accordance with the requirements of these Flexible Contracting Arrangements including without limitation treating Service Users, families, professionals etc. with dignity and respect.

8 CONFIDENTIALITY OBLIGATIONS, THE DATA PROTECTION ACT 1998, THE EU GENERAL DATA PROTECTION REGULATION 2016/679 AND MEDIA DISCLOSURES

- 8.1 The Provider is a Data Processor and Data Controller (as defined under the Data Protection Act 1998 ("DPA") in respect of any Personal Data (including sensitive Personal Data) provided by the Council, the Service User or third parties such as GPs, health Providers or relatives in relation to the Service Users.
- 8.2 The Provider will comply with the provisions of the Data Protection Act 1998 together with all subordinate legislation, directions of any competent privacy regulator, common law decisions, relevant regulatory guidance and codes of practice. In addition, the Provider will comply with any amendments made by the General Data Protection Regulation and laws implementing or supplementing the General Data Protection Regulation throughout the duration of these Flexible Contracting Arrangements.

CONFIDENTIALITY

- 8.3 Other than as allowed in these Flexible Contracting Arrangements, Confidential Information is owned by the Party that discloses it (the “Disclosing Party”) and the Party that receives it (the “Receiving Party”) has no right to use it.
- 8.4 Subject to **clauses 8.3** and **8.5** the Receiving Party agrees to:
- 8.4.1 to use the Disclosing Party’s Confidential Information only in connection with the Receiving Party’s performance under these Flexible Contracting Arrangements;
 - 8.4.2 not to disclose the Disclosing Party’s Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and;
 - 8.4.3 to maintain the confidentiality of the Disclosing Party’s Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- 8.5 The Receiving Party may disclose the Disclosing Party’s Confidential Information:
- 8.5.1 in connection with any dispute resolution under **clause 8.2** (Negotiation);
 - 8.5.2 in connection with any litigation between the Parties;
 - 8.5.3 to comply with the Law;
 - 8.5.4 to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information, be under a duty no less onerous than the Receiving Party’s duty set out in **clause 8.5**; and
 - 8.5.5 to comply with a regulatory bodies request.
- 8.6 The obligations in **clause 8.4** and **clause 8.5** will not apply to any Confidential Information which:
- 8.6.1 is in or comes into the public domain other than by breach of these Flexible Contracting Arrangements; or
 - 8.6.2 the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - 8.6.3 the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- 8.7 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of **clauses 8.4** and **8.5**.
- 8.8 The Parties acknowledge that damages would not be an adequate remedy for any breach of this **clause 8** by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of **clauses 8.4** and **8.5**.

- 8.9 **Clauses 8.4 and 8.5** shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- 8.10 The obligations in **clauses 8.4 and 8.5** shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Provider and where reasonably practicable shall consider any representations made by the Provider.

THE DATA PROTECTION ACT 1998, THE EU GENERAL DATA PROTECTION REGULATION (GDPR)

- 8.11 The Parties acknowledge their respective duties under the DPA and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 8.12 To the extent that the Provider is acting as a Data Processor and Data Controller on behalf of the Council, the Provider shall, in particular, but without limitation, comply with the provisions of the Data Processing Agreement annexed in **Schedule 16** to these Flexible Contracting Arrangements.
- 8.13 To the extent that any Council data is held and/or processed by the Provider, the Provider shall supply that Council data (including personal data) to the Council as requested by the Council, in an open and/or non-proprietary format without any digital restrictions management systems implemented, e.g. csv files at no cost to the Council.
- 8.14 The Provider shall indemnify and keep indemnified the Council against all actions, proceedings, costs, claims, demands, liabilities, fines, Losses and expenses whatsoever, whether arising in tort (including negligence), default or breach of these Flexible Contracting Arrangements, or breach of its statutory duty or breach of an obligation under the DPA, save to the extent that the same is directly caused by or directly arises from the negligence, breach of these Flexible Contracting Arrangements or breach of statutory duty or breach of an obligation under the DPA by the Council.

9 FREEDOM OF INFORMATION ACT (FOIA), TRANSPARENCY AND OPEN DATA

- 9.1 The Parties acknowledge their respective duties under the FOIA and must give all reasonable assistance to each other where appropriate or necessary to comply with such duties.
- 9.2 The Provider acknowledges that the Council is subject to the requirements of the FOIA and will assist and co-operate with the Council to enable the Council to comply with its disclosure obligations under the FOIA. Accordingly the Provider agrees:

- 9.2.1 that these Flexible Contracting Arrangements and any other recorded information held by the Provider on the Council's behalf for the purposes of these Flexible Contracting Arrangements are subject to the obligations and commitments of the Council under the FOIA;
- 9.2.2 that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA is a decision solely for the Council;
- 9.2.3 that if the Provider receives a request for information under FOIA or the General Data Protection Regulations, where it is either:
 - 9.2.3.1 not directly subject to the obligations imposed under FOIA; or
 - 9.2.3.2 where the information requested is held solely on behalf of the Council, in the course of providing services pursuant to the Flexible Contracting Arrangements;
- 9.2.4 it will advise the requestor to make the request directly to the Council, in so far as the information relates to information held, gathered, obtained or processed solely on behalf of the Council, and thus the Provider is not obliged to disclose that information.
- 9.2.5 that the Council, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the FOIA, and regulation 16 of the Environmental Information Regulations 2004, may disclose information concerning the Provider and these Flexible Contracting Arrangements either without consulting with the Provider, or following consultation with the Provider and having taken its views into account; and
- 9.2.6 to assist the Council in responding to:
 - 9.2.6.1 a request for information;
 - 9.2.6.2 a request for an internal review against a decision not to disclose; or
 - 9.2.6.3 an investigation by the information commissioner's office in relation to a complaint against the failure to respond to a request,
- 9.3 by processing information or environmental information (as the same are defined in the FOIA) in accordance with a records management system that complies with all applicable records management recommendations and codes of conduct issued under section 46 of the FOIA, and providing copies of all information requested by a Council within five (5) working days, in a non-proprietary format, of being notified of such request and without charge, together with any details of, together with comments and reasons as to why, in the opinion of the Provider, any or all of the information requested should be withheld, for consideration by the Council.
- 9.4 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of these Flexible Contracting Arrangements is not Confidential Information.

- 9.5 Notwithstanding any other provision of these Flexible Contracting Arrangements, the Provider hereby consents to the publication of these Flexible Contracting Arrangements in its entirety, including from time to time agreed changes to these Flexible Contracting Arrangements, to the general public, subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.
- 9.6 In preparing a copy of these Flexible Contracting Arrangements for publication pursuant to **clause 9.5** the Council may consult with the Provider to inform its decision making regarding any redactions but the final decision in relation to the disclosure or non- disclosure of any information shall be at the Council's absolute discretion.
- 9.7 The Provider must assist and co-operate with the Council to enable the Council to publish these Flexible Contracting Arrangements.
- 9.8 In order to comply with the Government's policy on transparency in the areas of contracts and procurement the Council will be disclosing information on its website in relation to monthly expenditure over £500 (five hundred pounds) in relation to these Flexible Contracting Arrangements. The information will include the Provider's name and the monthly Charges paid. The Parties acknowledge that this information is not Confidential Information or commercially sensitive information.
- 9.9 The Parties recognise and accept that the Council is subject to the provisions of the Protection of Freedoms Act, which imposes an obligation on the Council to consider any requests to reuse (for commercial or non-commercial gain) information held or collected on behalf of the Council ("the Right to Data"), save where that information is exempt from disclosure under FOIA.
- 9.10 Wheresoever possible, the Provider recognises and accepts that the Council retains and acquires the sole intellectual property rights in respect of information held or collected on its behalf by the Provider (including personal data) in the course of the Provider providing the Services.

10 WHISTLEBLOWING POLICY

- 10.1 The Provider shall:
- 10.1.1 develop, maintain and promote a policy ('Whistleblowing Policy') and practical working arrangements to enable its Employees, Service Users, families and general members of the public to report in confidence any concerns in relation to the provision of the Service including any breaches of legislation, good practice or breach of its Data Protection Policy;
 - 10.1.2 appoint suitable nominated persons within its organisation to be contacted in respect of any whistleblowing concerns. Such persons will deal with any issues in accordance with the Providers Whistleblowing Policy.
 - 10.1.3 ensure that any Employee, Service User, family member or members of the public reporting a matter under its Whistleblowing Policy is not discriminated against;

- 10.1.4 ensure that all Employees, Service Users, families or members of the public are made aware of its Whistleblowing Policy; and
- 10.1.5 ensure that any investigation is started within 24 hours and in accordance with Birmingham's Safeguarding Policy. This can be found at <http://www.birmingham.gov.uk/safeguardingadults> (adults) and <http://www.birmingham.gov.uk/safeguarding> or <http://www.lscbbirmingham.org.uk/> (children and young people)

11 SAFE RECRUITMENT AND SAFEGUARDING CHECKS

- 11.1 The Provider shall check the identity of all Employees and confirm that they have the right to work in the United Kingdom (UK) in accordance with the Immigration Act 2016.
- 11.2 The Provider shall have policies and procedures that require it to:
 - 11.2.1 ensure that all Employees have a satisfactory Enhanced Disclosure and Barring Service (DBS) check ("Enhanced DBS Check") before they commence unsupervised work, and that it is a condition of all Employees contracts of employment that their continued employment as Employees is subject to a satisfactory Enhanced DBS Check;
 - 11.2.2 review Enhanced DBS Checks for all Employees at least once in every three (3) years; and take appropriate action where a positive disclosure is found;
 - 11.2.3 maintain records of all DBS Checks requested and received in accordance with the DBS Code of Practice (including any updates to the Code);
 - 11.2.4 be responsible for any costs incurred in or associated with carrying out DBS Checks;
 - 11.2.5 ensure that, in addition to an Enhanced DBS Check for Employees, it obtains a satisfactory employee reference from the Care Worker's previous employer which is signed by a person with authority to provide such a reference on behalf of the previous employer and is provided on the official letterhead of the previous employer. Where such an employee reference cannot be obtained, a character reference must be obtained.
- 11.3 Subject to **clause 11.4**, the Provider may allow Care Workers to provide the Service under the supervision of a Care Worker who has received a clear Enhanced DBS check to adult Service Users prior to completion of an Enhanced DBS Check, but the continuation of the Service provision by that individual is conditional upon receipt of a satisfactory Enhanced DBS Check.
- 11.4 Where a Care Worker has regular unsupervised contact with children whilst providing a Service to an adult Service User, a satisfactory Enhanced DBS check must be obtained before the Care Worker is permitted to provide the Service.
- 11.5 With reference to **clause 20** (Sub-Contracting), the Provider shall ensure that any properly appointed sub-contractors, agents or self-employed workers shall have carried out

appropriate checks into identity, right to work in the UK, Enhanced DBS Checks, reference checks and Safeguarding vetting prior to carrying out the Service or any part of the Service.

11.6 The Provider shall ensure that any volunteers or trainees who have unsupervised contact with Service Users have received an appropriate Enhanced DBS Check and references.

11.7 Deprivation of Liberty Safeguards (DoLS)

11.7.1 The Care Homes With and Without Nursing (Managing Authorities) should inform family members before they send a Deprivation of Liberty Safeguards referral to Birmingham City Council (the Supervisory Body).

11.7.2 The Care Home With and Without Nursing should send a Deprivation of Liberty Safeguards renewal request 28 days before the expiry of the current Standard Authorisation and must notify Birmingham City Council, that a Reauthorisation is being applied for.

11.7.3 The Care Home With and Without Nursing homes must notify Birmingham City Council immediately, when a Service User moves who is awaiting a Deprivation of Liberty Safeguards Standard Authorisation.

12 EMPLOYMENT, TRAINING AND SUPERVISION OF SUITABLE STAFF

12.1 The Provider shall ensure that it employs suitably qualified and experienced staff [as required by the Care Quality Commission under Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 18] for the purposes of providing the Service; and will ensure their continued professional development through appropriate training and supervision.

12.2 The Provider must have a business continuity plan to in order to ensure the continued provision of the Service in the event that any Employees are unable to provide the Service to the Service User or in the event of a Force Majeure, which may include arrangements with other agencies in accordance with **clause 20** (Sub-Contracting).

12.3 The Provider shall ensure that any personnel who are engaged in providing the Service as a result of the operation of **clause 12.2** meet the same qualification, experience and suitability requirements as permanent staff as set out in **clause 12.1** and the relevant Service Specification.

12.4 The Provider shall, support the Council in its aims to support apprentices and those seeking to return to work and shall establish arrangements to advertise any job vacancies on recognised web sites and support and engage such groups.

12.5 The Provider shall ensure that Employees are made aware and demonstrate understanding of its policies in relation to treatment of Service Users including equal opportunities, Safeguarding, the Mental Capacity Act 2005 and dignity and respect, and are appropriately trained and monitored in line with the relevant Service Specification.

13 EQUAL OPPORTUNITIES

- 13.1 The Provider shall ensure that a Service User has a copy, in a format and/or language that the Service User can understand, of all relevant information relating to the Service that is to be provided to him/her.
- 13.2 The Provider shall ensure that all policies in relation to the provision of the Service are readily available to the Service User or his representative, if required.
- 13.3 All of the Provider's working practices should take account of / be adapted to meet Service Users' needs.
- 13.4 Equality Act 2010 and Equality Policy:
 - 13.4.1 The Provider shall adopt a policy to comply with its statutory obligations under the Equality Act 2010 and with all regulations and Codes of Practice, made under the Equality Act 2010;
 - 13.4.2 The Provider shall set out its policy to comply with its statutory obligations under the Equality Act 2010, which shall include:
 - 13.4.2.1 instructions to those concerned with recruitment, training and promotion;
 - 13.4.2.2 documents available to employees, recognised trade unions or other representative groups of employees;
 - 13.4.2.3 in recruitment advertisements or other literature and the Provider shall, on request, provide the Council with examples of such instructions documents, recruitment advertisements and other literature.
 - 13.4.3 Unlawful Discrimination
 - 13.4.3.1 The Provider will not discriminate, as defined by the Equality Act 2010, against another person because that person possesses a single protected characteristic or a combination of protected characteristics which include age, disability, gender reassignment, marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex, and sexual orientation.
 - 13.4.4 Indirect Discrimination
 - 13.4.4.1 The Provider shall not indirectly discriminate, as defined by the Equality Act 2010, against a person by applying to that person a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of that person. The relevant protected characteristics are age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation.

13.4.4.2 The Provider shall comply with the Equality Act 2010 and examine its provisions, criteria and practices (and where necessary amend them) to ensure they are not discriminatory.

13.4.5 Duty to make Adjustments

13.4.5.1 The Provider shall make such reasonable adjustments as may be required by the Equality Act 2010 and, in particular, shall have regard to Section 20 of the Act which requires adjustments to be made in respect of disabled persons.

13.4.6 Employment

13.4.6.1 The Provider shall comply with Part 5 (Work) of the Equality Act 2010 and, in particular, Section 39 concerning discrimination against applicants and employees. The Provider shall not discriminate, as defined by the Equality Act 2010, in deciding to whom to offer employment, the terms upon which it offers employment, or the way in which it affords or does not afford access to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service.

13.4.7 Performance of the Arrangement

13.4.7.1 The Provider shall ensure that its employees in providing the Service under this Arrangement comply with Part 3 (Services and Public Functions) of the Equality Act 2010 and, in particular, shall not discriminate against a person as defined by the Equality Act 2010:

13.4.7.1.1 in refusing to provide such person Services under the Arrangement;

13.4.7.1.2 by harassing a person requiring or being provided with Services under the Arrangement;

13.4.7.1.3 as to the terms on which it provides such Services to such person;

13.4.7.1.4 by terminating the provision of such Services to such person; or

13.4.7.1.5 by subjecting such person to any other detriment.

13.4.7.2 The Provider will carry out such monitoring as it shall consider reasonably necessary in accordance with its policy or is reasonably required by the Council to ensure that **clause 13.4.7.1** is being complied with by the Provider and the Employees.

13.4.8 Unlawful racial discrimination

13.4.8.1 In the event of any finding of unlawful discrimination being made against the Provider in the last three (3) years by any court or employment tribunal, or of an adverse finding in any formal investigation by the Equalities and Human Rights Commission (or its predecessor bodies) over the same period, the Provider shall take appropriate steps to prevent repetition of any unlawful discrimination and the Provider shall, on request, provide the Council with details of the steps it has taken to prevent repetition of the same.

13.4.9 Equality and Human Rights Commission Codes of Practice

13.4.9.1 The Provider shall, so far as is possible, comply with any statutory codes of practice on employment, equal pay and services, public functions and the Public Sector Equality Duty issued by the Equality and Human Rights Commission in respect of the Equality Act 2010. The Provider shall also provide such other information as the Council may reasonably request, from time to time, for the purpose of assessing such compliance.

14 SERVICE USER'S MONEY, PROPERTY, GIFTS AND LEGACIES (ADULTS)

14.1 Where the Provider or an Employee is engaged or involved in the management of any Service User's finances or makes purchases on behalf of the Service User or manages any Service User's money, all transactions shall be clearly and separately recorded, audited and available for inspection by the Authorised Officer.

14.2 The Provider shall establish a policy for the acceptance of gifts and legacies from Service Users which shall include requirements that:

14.2.1 a gift or legacy may only be accepted where this is of an appropriate value;

14.2.2 any decline of a gift or legacy shall be communicated in a polite manner so as not to offend the giver of the gift and/or hospitality and so that they understand there are high corporate and ethical standards to be maintained;

14.2.3 an Employee, agent or sub-contractor shall not directly or indirectly request a gift or legacy; and

14.2.4 the Provider shall maintain a register of all offers, acceptances of gifts and legacies and refusals which shall include the name of the Service User, the date, the person who received or refused the gift or legacy and the amount.

14.2.5 The register required under **clause 14.2.4** shall be available for inspection by the Authorised Officer on giving reasonable notice.

15 PUBLICATION OF CONTACT DETAILS

15.1 The Provider shall ensure that it is contactable in an emergency by the Service User, their carer or relevant third party and the Council on a 24 hour basis.

- 15.2 In the event of any changes to the Provider's registered office address or contact details or contact person the Provider shall update and notify the Council of all changes immediately via email at ShapingtheMarket@birmingham.gov.uk

16 CHANGE OF CIRCUMSTANCES

- 16.1 The Provider shall notify the Social Worker or duty worker via telephone or email of all changes in the Service User's circumstances which may affect the Assessment and/or Support Plan, level of charge, or which may require the Service User's needs to be reassessed. This includes where the charges for the Service are to change and any such variation in the charges payable for the Service shall be implemented in accordance with **Schedule 9**.
- 16.2 Notification under **clause 16.1** must be made within the timescales in the table set out in **clause 16.7** below.
- 16.3 In the case of notification outside of office hours (8.45 am to 5.15 pm on a Monday, 8.45 am to 4.15 pm on a Friday), the Provider should contact the Council's emergency duty team on 0121 675 4806 (or such other number as is notified to the Provider).
- 16.4 The Council may issue forms for the purposes of notification under this clause 16 or any other notification requirement which the Provider shall use as required.
- 16.5 Any financial benefit accrued by the Provider from not notifying a change of circumstances, whether intentional or not, may be reclaimed by the Council.
- 16.6 The Provider shall notify the Social Worker or duty worker of non-take up of service using the relevant form. Failure to notify the Social Worker or Duty Worker of changes may result in delays in payment. All other events, including those in the table in **clause 16.7** below, shall be notified to the Social Worker or Duty Worker in writing.
- 16.7 Notifications should be given to the Council as follows:

Adults

IMMEDIATELY	WITHIN 24 HOURS
<ol style="list-style-type: none">1. Allegation of Abuse of a Service User2. Inappropriate restraint of a Service User3. Where a Service User is missing	<ol style="list-style-type: none">1. Significant change to the physical condition or mental health of the Service User2. Admission of a Service User to hospital3. Voluntary discharge by a Service User and/or their representative4. Serious accident to a Service User (refer to Service Specifications for Serious Incident protocols)5. The death of a Service User

Children

IMMEDIATELY	THE SAME WORKING DAY	BEFORE 12 NOON THE NEXT WORKING DAY
1. Service User is missing or can not be contacted 2. Allegation of Abuse to Service User 3. The death of a Service User 4. Serious accident to a Service User 5. Non-delivery of the ordered Service 6. Any misconduct on the part of the Service Provider's Employees which directly affects a Service User	1. Admission of a Service User to hospital. 2. Significant change to the physical condition or mental health of the Service User 3. Cancellation of service by a Service User and/or their representative (or prior to the next visit if failure to provide the Service would result in significant risk to the Service User)	1. Formal complaints received from the Service User 2. Any variation in the Service provided 3. Any Service that has been sub-contracted

- 16.8 **Schedule 9** shall apply to any period of absence of the Service User although the Provider will not be entitled to any payments for the period of absence in accordance with **Schedule 9** if it fails to notify any such absences in accordance with this **clause 16**.

17 REVIEW AND/OR CHANGES OF THE SERVICE USER'S SUPPORT PLAN AND/OR SERVICE PROVISION

- 17.1 The Council will Review and/or Reassess Service Users' needs in accordance with their Support Plan and may in its sole discretion vary a Support Plan as a result.
- 17.2 Such a Review and/or Reassessment will take into account information provided by the Provider.
- 17.3 Where the Service User's circumstances or needs change, the Council will agree amendments to the provision of the Service where relevant.
- 17.4 Changes to the provision of the Service may also occur:
- 17.4.1 Where the planned delivery of the Service has been disrupted or has not taken place;
- 17.4.2 Where there is a change in circumstances. The Provider shall notify the Council of any changes in accordance with **clause 16**;

17.4.3 Where an emergency situation is discovered when the Provider's Care Worker arrives to carry out the requirements of an Individual Service Order. In these circumstances, the Provider and the Care Worker shall deal with the emergency situation and the Council will pay for the additional hours of Service incurred in that one episode in accordance with **Schedule 9**.

17.4.4 Where the Service User does not require the Service due to any planned (for example for holidays or respite care) or unplanned absences, the Service will be suspended for the relevant period.

17.5 Payment will be adjusted in accordance with **Schedule 9** (Finance, Invoicing and Payments).

18 INSURANCE

18.1 The Provider shall for the duration of the Flexible Contracting Arrangements, maintain such insurances as are necessary to cover the liability of the Provider in any one instance in the respect of the performance of this Arrangement, including but not limited to:

Public Liability Insurance (including Loss or damage to Service Users' personal effects)	To a minimum of £10,000,000
Employers liability insurance (including volunteers)	To be as a minimum in accordance with statutory legislation

18.2 The Provider shall where requested by the Authorised Officer provide evidence of such insurance, policies and receipts for premiums paid.

18.3 The Provider shall be liable for all injuries to persons (whether or not employed by the Provider) and for damage to property arising out of the provision of the Service included in this Arrangement, and shall indemnify the Council against all actions, claims, damages and reasonable expenses in regard thereto.

18.4 In the event of a claim each of the Provider and the Council shall co-operate in the provision of information requested by the other, subject to Legislation. The Provider shall where reasonably requested by the Council, support the Council in any press and media enquiries.

18.5 In the event of a claim made by a Service User in respect of loss or damage to Service Users' personal effects, the Provider shall be held responsible to the extent it is demonstrated beyond reasonable doubt that the Provider or its Employees failed to, or omitted to act reasonably in the protection of the Service Users personal effects or the Provider or its Employee is found to have committed or contributed to the loss or damage to the Service Users personal effects, reasonably whether resulting by the Providers or Employees own acts, or omissions, and/or negligence.

19 RESPITE CARE, TEMPORARY CARE, INTERIM CARE OR SUPPORT SERVICES

19.1 Where Individual Agreements are entered into for either short term respite care for a period of up to eight (8) weeks, temporary care for a period of up to twelve (12) months or Interim

Care for a period of up to six (6) weeks, the Service User shall receive the Service in accordance with the terms of this Arrangement.

20 SUB-CONTRACTING

- 20.1 The Provider shall ensure that appropriate arrangements are in place to ensure continuity of the Service if its Employees are unavailable due to emergency or any planned or unplanned absences.
- 20.2 Where the Provider is unable to provide the Service, the Provider may discharge its obligations under this Arrangement by arranging for the Service to be carried out by another Provider or Sub-Contractor provided that:
- 20.2.1 the Provider has obtained prior permission from a Council Commissioning Officer;
 - 20.2.2 if it is to provide Personal Care, the Sub-Contractor or alternative Provider is Registered with the Care Quality Commission and its employees are Criminal Records Checked to Enhanced Disclosure Level (Enhanced DBS);
 - 20.2.3 the Provider shall remain liable for its obligations under this Arrangement in relation to the Service provided by the Sub-Contractor;
 - 20.2.4 any additional costs incurred in relation to the appointment of the Sub-contractor will be the responsibility of the Provider;
 - 20.2.5 the appointment of a Sub-Contractor in accordance with this **clause 20** shall last no more than a period of four (4) weeks, unless agreement to extend the appointment is approved by the Council.
- 20.3 In the case of extreme emergency the Provider may appoint a Sub-Contractor without obtaining prior permission from the Council subject to **clauses 20.2.2 to 20.2.5**, but must notify the Council in writing within 24 hours of this situation arising.

21 ASSIGNMENT/NEW BUSINESS OWNER

- 21.1 Dealing by the Council
- 21.1.1 The Council shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Arrangement or any part thereof to any contracting Council, private sector body or any other body established under statute ("**transferee**") provided that the Provider's consent is sought and obtained (such consent not to be withheld unreasonably) and any such assignment, novation or other disposal shall not increase the burden of the Provider's obligations under this Arrangement.
 - 21.1.2 The Council shall be entitled to disclose to any transferee any Confidential Information of the Provider, which relates to the performance of the Contract by the Provider. In such circumstances the Council shall authorise the transferee to use such Confidential Information only for purposes relating to the performance

of the Arrangement and for no other purposes and shall take all reasonable steps to ensure that the transferee accepts an obligation of confidence.

21.2 Dealing by the Provider

21.2.1 The Provider shall not assign, delegate, transfer, change, novate or otherwise dispose of all or any of its rights and responsibilities under this Arrangement without the Council's prior written consent, such consent not to be unreasonably withheld. For the avoidance of doubt "otherwise dispose of all or any of its rights and responsibilities under this Arrangement" shall include the actions described in **clauses 21.2.2.4, 21.2.2.5 and 21.2.2.6** below.

21.2.2 The Provider must give three months written notice to the Council if:

21.2.2.1 There is a change in the control of the majority of the shares in the Provider;

21.2.2.2 It merges with another organisation;

21.2.2.3 It transfers any material part of its business to another organisation;

21.2.2.4 It is an Industrial and Provident Society and it intends to transfer its engagements under section 51(1) of the Industrial and Provident Societies Act 1965 to another organisation;

21.2.2.5 It is a company and it intends to convert its company into a registered society in terms of Section 53 of the Industrial and Provident Societies Act 1965;

21.2.2.6 It is a registered society and it converts itself, in terms of Section 52 of the Industrial and Provident Societies Act 1965, into a company or amalgamate with or transfer its engagements to a company under the Companies Act.

22 CHARGES TO THE SERVICE USER AND THIRD PARTY FUNDING AGREEMENT

22.1 There will be no charges to the Service User or third parties other than in accordance with this **clause 22**.

22.2 Where the Service is arranged by the Council:

22.2.1 The Service User will be assessed for his/her financial liability by the Council. The Service User will be notified of any amounts or charges due and the collection of such amounts or charges is the responsibility of the Council. The charges will be in accordance with the Social Care Contributions policy adopted by the Council at the time that the Service is provided.

22.2.2 The Council is required to ensure that all Service Users are charged fairly for the Service. In order to comply with this requirement, any changes to the Service ordered or delivered must be notified within the timescales set out in **Schedule**

10 (Non take up of the Service, Absence of the Service User, Termination, Respite, Notice Periods and Related Payments).

- 22.2.3 Where the Service User requests a Service which is additional to that which the Provider is obligated to provide under the Individual Agreement, payment of the additional costs related to the change in the Service will be his/her personal responsibility or where this is not permitted under applicable Legislation or Department of Health or other government guidance the responsibility of a third party. Wherever practicable, an estimate of such costs shall be provided to the Service User or relevant third party by the Provider before any commitment to the additional Service is made. The Council shall not be liable for any costs incurred in the provision of such additional Service.
- 22.2.4 The Provider shall inform the Social Worker and/or Care Manager of any request for additional Services.
- 22.2.5 In relation to Service User choice of a Provider this will be carried out in accordance to **Schedule 8** (Allocation of Work).
- 22.2.6 Where any amounts payable in accordance with **clause 22.2.3** or **22.2.5** are payable by a third party and not the Service User personally, **clause 22.6** shall apply.

22.3 Moving to a Direct Payment

- 22.3.1 Where the Service User chooses to take their Individual Budget in the form of a Direct Payment, responsibility for payment will transfer to the Service User. In the event of non-payment for the Service or other care services funded by the Service User's Direct Payment, the Provider shall notify the Social Worker or duty worker immediately.

22.4 The Service User shall not be charged for any Service delivered directly or by a third party instructed by the Provider, where that Service can be provided free by the NHS.

22.5 The Provider is responsible for any and all costs of meeting the Service User's needs as identified within the Support Plan.

22.6 Third Party Funding

- 22.6.1 Where the Service User chooses the provision of a Service which is above their agreed Individual Budget amount pursuant to **clause 22.2.3** above or where the Council has identified a Provider who can meet the needs of the Service User at a rate identified within the micro-tender process under this Arrangement, but the Service User elects an alternative Provider which is more expensive, in line with the Choice Directive, the Council may agree an Individual Agreement which is subject to a Third Party Funding Agreement being entered into.
- 22.6.2 The third party will be responsible for paying the difference between the Council's identified rate (via the micro-tender process) and the rate of the Provider selected by the Service User and/or their representatives.

- 22.6.3 The third party to the Third Party Funding Agreement referred to in **clause 22.6.2** shall be solely responsible for any agreed Third Party Top Up payment; and the Third Party Funding Agreement is an arrangement solely between the third party and the Provider. This Agreement should only be reviewed on an annual basis, usually prior to 1st April. This review should include formal dialogue (ideally face to face) between the Provider and the third party with a view to establishing whether the proposed increase is affordable to the contributor(s). The Provider should, during the review, outline the associated costs which require them to request an increase in third party contribution e.g. hairdresser increasing their rate, newspaper delivery cost increasing etc.
- 22.6.4 Third Party Top-Up / Third Party Funding Arrangements cannot be charged for Care and Support (Supported Living).

23 INVOICING AND PAYMENT

- 23.1 The Provider and the Council shall comply with the provisions of **Schedule 9** (Finance, Invoicing and Payment).

24 CONTRACT MANAGEMENT AND RECORD KEEPING ARRANGEMENTS

- 24.1 The Provider shall throughout the term of the Flexible Contracting Arrangements and throughout the duration of any Individual Agreement or Third Party Funding Agreement, demonstrate and maintain a properly documented and effective system of quality assurance in relation to the Services.
- 24.2 The Provider shall at all times co-operate with the Council's processes for monitoring and evaluating the quality of the Service and compliance with these Flexible Contracting Arrangements and any Individual Agreement or Third Party Funding Agreement in whatever way is reasonably requested by the Council, including the compliance by the Provider with the performance monitoring arrangements which are set out in **Schedule 11** (Contract Management) and Schedule 15 (Quality Assurance Framework).

25 SUSTAINABILITY AND BEST VALUE

- 25.1 The Provider shall ensure that it is familiar with the Council's aims for a Sustainable Birmingham and shall ensure that in its performance of the Service, it uses working methods, equipment, materials and consumables which minimise environmental impact. Further information can be obtained at <http://www.sustainabilitywestmidlands.org.uk>.
- 25.2 The Provider shall work with the Council or an organisation nominated by the Council for the purpose of identifying areas for improvement or efficiency in the delivery of the Service including but not limited to changes in working practices or use of equipment to support the Council's Best Value Duty.
- 25.3 The Commissioner responsible for the provision of equipment, that is loaned through the Community Equipment Service, to the Provider will as required carry out audits and checks on equipment that remain on loan or that may not have been returned to the service.
- 25.4 The deployment of alarm system services is a limited resource within Birmingham City Council and, where appropriate to the care delivery model, there is an expectation that all

Providers have a hard wired alarm system in place. If a Service User requires use of that system, this should be provided at no additional cost to the Service User or the Council.

- 25.5 The funding of alarm system services by Birmingham City Council will be limited to Service Users with an assessed eligible need and will be defined in their support plan following a Social Care Worker Assessment. Any additional funding request must be reviewed and assessed by a Social Care Worker ensuring that the equipment is deployed in an effective and efficient way and ensuring one system only is used to prevent Service User confusion.

26 PUBLICATION OF PROVIDER'S DETAILS AND FEEDBACK

- 26.1 The Council provides a Marketplace where Providers can advertise their services to the general public. Providers shall ensure that the information contained on this site (and any subsequent replacement sites) is kept to up to date.
- 26.2 In association with the Marketplace the Council shall be entitled to publish comments and feedback in relation to the Provider from Service Users from time to time.
- 26.3 Feedback from Service Users (and families etc.) as recorded on Healthwatch will also feed into the Provider Quality Rating as outlined in **Schedule 15**.

27 PROCEDURES FOR DEALING WITH BREACH OF THIS ARRANGEMENT

- 27.1 The procedures for issues in respect of a breach of this Arrangement are detailed in **Schedule 11** (Contract Management).

28 COMPLAINTS BY THE SERVICE USER

- 28.1 If a Service User has a complaint against a Provider or any of his/her Employees, the Provider shall ensure that the Service User can use the Provider's complaints procedure in the first instance. The Provider shall immediately investigate the complaint and take such corrective action as is appropriate.
- 28.2 The Provider's complaints procedure shall be consistent with the following provisions:
- 28.2.1 all complaints must be recorded; and
- 28.2.2 all complaints must be investigated and resolved immediately.
- 28.3 The Service User has the right, at any time to refer the matter to their Allocated Worker or the Council's Customer Care and Citizen Involvement Team. In such circumstances, the complaint will be resolved under the Council's own statutory complaints procedure. The Council's comments, compliments and complaints procedure can be accessed at <http://www.birmingham.gov.uk/AdultCustomerCare> <http://www.birmingham.gov.uk/AdultCustomerCare> (adults) and https://www.birmingham.gov.uk/forms/form/177/en/childrens_social_care_comments_compliments_and_complaints or by emailing CYPFSSCustomerRelations@birmingham.gov.uk (children and young people).
- 28.4 Where the Council is investigating the complaint, it may require the Provider to produce information or allow Employees to be interviewed.

- 28.5 The Service User may also refer the matter to the Care Quality Commission for its attention/information.
- 28.6 In cases where complaints are not resolved the Service User has the right to take his/her complaint to the Local Government and Social Care Ombudsman (LG&SCO).
- 28.7 If a complaint is found by the Council to be either proven or of sufficient concern, the Council may take action in accordance with **Schedule 11** (Contract Management).
- 28.8 The Provider will be asked to provide details of complaints as part of the Provider Quality Assurance Statement process as detailed in **Schedule 15**.
- 28.9 Upon determination of any case by the Ombudsman in which the Provider has been involved or has been implicated, the Council will forward copies of these determinations to the Provider. The Provider shall indemnify the Council against any compensation damages, costs or expenses which the Council shall incur or bear in consequence of any claim of maladministration where such maladministration arises from the negligent act or omission by or on behalf of the Provider resulting from failure to observe and perform the obligations under these Flexible Contracting Arrangements.

29 NEGOTIATION

29.1 Nature of Dispute

- 29.1.1 if any dispute or difference of any kind whatsoever shall arise between the Council and/or the Authorised Officer on its behalf, and the Provider in connection with or arising out of this Arrangement including any dispute as to any decision, instruction or certificate of the Authorised Officer (whether during the progress of this Arrangement or after its termination, cancellation or completion) the parties will attempt to settle it within twenty one (21) days and such dispute or difference shall be referred in writing to the parties' representatives under **clause 29.2**.

29.2 Meeting of Parties' Representatives – First Level

- 29.2.1 Any dispute or difference referred under **clause 29.1** shall be discussed by the parties' representatives who shall be: -
- 29.2.1.1 The Council's representative shall be a Commissioning Officer; and
- 29.2.1.2 The Provider's Representative shall be [name or designation].
- 29.2.2 who shall meet within seven (7) days of the written reference under **clause 29.1** to attempt to resolve the dispute.

29.3 Escalation of Dispute

- 29.3.1 If the dispute is not resolved at the meeting convened under **clause 29.2** or if the parties fail to meet within seven (7) days (or such later period as they shall agree prior to the expiry of the seven (7) day period) the escalation shall continue with the same maximum time interval up to the second and third management level. If

the unresolved dispute is having a material effect on the performance of this Arrangement, the parties shall use their respective best endeavours to reduce the elapsed time in reaching a resolution of the dispute.

29.4 Second Level and Third Level

29.4.1 The parties' representatives at the second and third level are: -

PARTIES' REPRESENTATIVES' TABLE		
	COUNCIL	PROVIDER
Second Level	<i>Service Commissioning Brokerage (children and young people)</i> <i>Lead or Manager</i>	[name or designation]
Third Level	<i>Assistant Director</i>	[name or designation]

29.4.2 If any of the parties' representatives identified in the Parties' Representatives' Table is unable to attend a meeting, a substitute may attend, provided that such substitute has at least the same seniority and is authorised to settle the unresolved dispute.

29.5 Resolution

29.5.1 Each party will use all reasonable endeavours to reach a resolution through this Dispute Resolution Procedure. The specific format for such resolution will be left to the reasonable discretion of the relevant management level, but may include the preparation and submission of statements of fact or of position or mediation.

30 MEDIATION

30.1 Initiation

- 30.1.1 Either of the parties may initiate mediation by giving an ADR Notice to the other in writing requesting mediation in accordance with **clause 30.1**. A copy of the ADR Notice shall also be sent to CEDR.

30.2 Amendments to Model Procedure

- 30.2.1 The procedure in the Model Procedure shall be amended to take account of:-
 - 30.2.1.1 any relevant provision in this Arrangement; and
 - 30.2.1.2 any other additional Arrangement which the parties may enter into in relation to the conduct of the mediation.

30.3 Conduct of Mediation

- 30.3.1 If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within fourteen (14) days from the date of the ADR Notice, CEDR will at the request of either party, decide that point for the parties having consulted them.

30.4 Timing of Mediation

- 30.4.1 The mediation will start not later than 4 weeks after the date of the ADR Notice or as agreed between the Parties, agreement not to be unreasonably withheld.

30.5 Restriction on Termination

- 30.5.1 Neither of the parties may terminate the mediation until each of the parties has made its opening presentation and the mediator has met each of the parties separately for one hour. Thereafter Paragraph 14 of the Model Procedure will apply.

31 ARBITRATION

31.1 Reference of Disputes

- 31.1.1 If a dispute shall arise under this Arrangement between the Council and/or the Authorised Officer and the Provider then such dispute may be referred to an arbitrator to be agreed between the parties, or if the parties fail to agree upon an arbitrator within fourteen (14) days of one party serving upon the other a written notice to concur in the appointment of an arbitrator, then the arbitrator shall be appointed by the President or the Vice President of the Chartered Institute of Arbitrators.

31.2 Arbitration Act 1996

- 31.2.1 The Arbitration Act 1996 shall apply to such arbitration.

31.3 Powers of Arbitrator

- 31.3.1 The arbitrator shall have power to open up, review and revise any certificate, opinion or decision of the Authorised Officer.

31.4 Appeal

- 31.4.1 The parties hereby agree and consent pursuant to Sections 45(2)(a) and 69(2)(a) of the Arbitration Act 1996 that either party: -

31.4.1.1 may appeal to the High Court on any question of law arising out of an award made in an arbitration under this Arrangement;

31.4.1.2 may apply to the High Court to determine any question of law arising in the course of the reference;

31.4.1.3 and the parties agree that the High Court should have jurisdiction to determine any such question of law.

31.5 Finality

- 31.5.1 Subject to **clause 31.4** the award of the arbitrator shall be final and binding on the parties.

31.6 Limitation on Costs

- 31.6.1 The parties agree that the maximum recoverable costs which may be awarded to the successful party in the arbitration shall not exceed one half of the sum claimed by the Claimant in the arbitration ("the Claim Sum"). The Claim Sum is the aggregate of the total damages specified in the Claimant's Points of Claim or Statement of Case, and the total interest so specified (excluding in both cases any sums which are not quantified) notwithstanding any subsequent amendment of the same.

31.7 Allocation of Costs

- 31.7.1 The parties agree pursuant to Sections 61 and 62 of the Arbitration Act 1996 that, if the total sum (including interest) awarded to the Claimant in the arbitration (less any sum (including interest) awarded to the Respondent in a counterclaim in the arbitration) does not exceed 20% of the Claim Sum as defined by Clause 32.6 then the arbitrator in determining how costs are to be allocated shall not (if he is minded to make an award in the Claimant's favour) award the Claimant more than the lesser of: -

31.7.1.1 50% of the maximum recoverable costs as defined and limited by reference to **clause 31.6**;

31.7.1.2 50% of the Claimant's recoverable costs.

32 CHANGES TO THE FLEXIBLE CONTRACTING ARRANGEMENTS

- 32.1 If there shall be a change in Legislation or Registration requirements which shall impose new or amended duties upon the Provider or the Council in relation to the performance of the Service, the Council shall be entitled to issue notification of change which the Provider shall comply with.
- 32.2 The Council shall use its best endeavours to give adequate notice of any proposed changes and consult with the Provider prior to the issue of a notification of change.
- 32.3 Where the Council proposes that there should be a change to the Service Specification, Arrangement or Schedules, it shall notify the Provider of the proposed change in writing. Such changes shall come into effect within twenty eight (28) days of the receipt of the notice. Any notice of change shall include reasons for the proposed change.

33 TERMINATION OF AN INDIVIDUAL AGREEMENT

- 33.1 The Individual Agreement may be terminated by any party in accordance with **Schedule 10** (Non take up of the Service, Absence of the Service User, Termination, Respite, Notice Periods and Related Payments).

34 TERMINATION OF THE FLEXIBLE CONTRACTING ARRANGEMENTS

- 34.1 The Flexible Contracting Arrangements may be terminated by either party in accordance with **Schedule 10** (Non take up of the Service, Absence of the Service User, Termination, Respite, Notice Periods and Related Payments).

35 SUSPENSION OF FURTHER PLACEMENTS AND PACKAGES

- 35.1 Any suspensions of existing or further Individual Agreements will be made in accordance with **Schedule 11** (Contract Management).
- 35.2 Where a Provider has been suspended from taking on new Service Users but a change of the Service is required for an existing Service User or a Service User returning from a hospital admission, the Council may agree an amendment on an individual basis at its sole discretion.

36 FORCE MAJEURE & CONTINGENCY PLANNING

- 36.1 The Provider shall establish business continuity plans to ensure the continuation of the provision of the Service in the event of Force Majeure.
- 36.2 Where a Force Majeure event occurs affecting the performance of the Service, the Provider shall:
 - 36.2.1 notify the Council as soon as practical, giving details of the event, its likely duration and the likely effect on performance of the Service;
 - 36.2.2 make reasonable endeavours to minimise the effect of the Force Majeure event on the Service User and to bring the Force Majeure event to a conclusion.

- 36.3 Subject to **clause 36.2.2** no new Individual Agreement(s) shall be placed or accepted under these Flexible Contracting Arrangements for the duration of the Force Majeure event.
- 36.4 In the event that a reduced Service is provided a proportionately reduced fee for the Service shall be payable.
- 36.5 If the period of suspension or reduced Service shall last more than one (1) month, either party may terminate the Individual Agreement and/or the Flexible Contracting Arrangements (which would also include the Individual Agreement) upon giving one (1) months' notice.

37 SEVERENCE

- 37.1 If any part of the Arrangement becomes invalid, illegal or unenforceable, the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their original intentions.

38 ARRANGEMENTS FOR FLEXIBLE CONTRACTING ARRANGEMENTS EXPIRY

- 38.1 In the event that, on expiry of the Flexible Contracting Arrangements, new Flexible Contracting Arrangements is not entered into between the Council and the Provider, those Service Users then currently receiving the Service from the Provider shall be consulted by both the Council and the Provider and allowed to continue receiving the Service on the terms of these Flexible Contracting Arrangements until either:
- 38.1.1 the Service User is reallocated to an alternative Provider by the Council. Written notice will be provided to the Provider and Service User within a reasonable time scale; or
 - 38.1.2 the Council or the Provider may elect not to exercise its right of termination, as set out above, in which case Service Users will receive the Service from the Provider until such time that any right to terminate a Service is exercised. During such a period of continued Service the Flexible Contracting Arrangements Conditions will continue to apply.

39 INFORMATION ON RE-TENDERING, EMPLOYMENT, REDUNDANCY RIGHTS AND TUPE

- 39.1 If the Provider becomes insolvent or goes out of business or the Provider's business is transferred to another owner, the parties hereby agree that TUPE will need to be considered.
- 39.2 Any employment issues or termination of employment of staff engaged by the Provider or any Sub-Contractor in the provision of the Service is the sole responsibility of the Provider or relevant Sub-Contractor.
- 39.3 At any time during the term of this Arrangement, the Council may require the Provider to provide any and all relevant information to assist the Council with any tender or re-tender of the Service or a similar service. The Provider shall provide such information within twenty eight (28) days of being required to do so.

- 39.4 The information provided shall be sufficient to enable the Council to meet its legal obligations and/or to obtain the best value for money reasonably obtainable in a tendering exercise. This obligation shall extend to all workforce information necessary for the Council to comply with its duties under TUPE.

40 WAIVER

- 40.1 Failure by either party to enforce the provisions of this Arrangement shall not be construed as a waiver of any such provision and shall not affect the validity of the Arrangement or any part thereof or the right of the either party to enforce any provision at a later date.

41 CHANGE OF ADDRESS

- 41.1 Each party shall give the other details of the change or acquisition of any address or telephone, email, facsimile or similar numbers as soon as practical and in any event within 48 hours of such change or acquisition.

42 NOTICES

- 42.1 All notices shall be in writing by e-mail within working hours or by post (registered or recorded delivery), to the Authorised Officer of the Council or the Provider's Nominated Manager at the address notified. If the notice includes the transfer of personal details, then **clause 8.4.1** must be complied with.
- 42.2 Such notices shall be deemed to have been received:
- 42.2.1 for e-mails on the time indicated on the Councils computer during working hours or if after this time the following morning
 - 42.2.2 registered or recorded post shall be served at the time the post is signed for.
- 42.3 Where the notice requires a response, then the recipient shall provide a written response within twenty eight (28) days. The period for response may be extended by agreement.

43 BIRMINGHAM CARE WAGE

- 43.1 The Provider shall from the first day of April, 2018 ("the **Effective Date**") pay its employees who are undertaking the Services the Birmingham Care Wage.
- 43.2 The Provider shall submit, with all invoices submitted under **paragraph 4** (Submission of Invoices) of **Schedule 9** (Finance, Invoicing and Payments), confirmation that it has complied with **clause 43.1** in respect of the payment period the subject of the invoice.

44 BUSINESS CHARTER AND SOCIAL VALUE POLICY

- 44.1 Agreement

The Provider agrees to sign up to the Council's Business Charter for Social Responsibility ("the Charter") as set out in **Schedule 17**. The Provider agrees to meet the standards required by the Charter throughout the duration of this Agreement.

44.2 Action Plan

In fulfilling its obligations under the Charter, the Provider shall develop and implement, an action plan, approved by the Council. The Provider's action plan shall include sufficient detail as to how the principles of the Charter shall be implemented during the duration of this Arrangement.

44.3 Annual Charter Statement

The Provider shall provide to the Council on each anniversary date (via email to bbc4sr@birmingham.gov.uk), beginning from the Commencement Date, an annual statement confirming how the principles of the Charter have been implemented or are yet to be implemented.

IN WITNESS whereof the parties hereto have executed this Arrangement the day and year first above written.

THE COMMON SEAL of)
BIRMINGHAM CITY COUNCIL)
was affixed to this contract)
in the presence of: -)

Authorised signatory

Executed and delivered)
as a deed by [name of)
director] on behalf of)
[name of contractor])
in the presence of:-)

Authorised signatory