

SCHEDULE 11 – CONTRACT MANAGEMENT

1. Performance - Contract Management
 - 1.1. The key objectives of contract management are to ensure that Providers actively engage with the Council and Health colleagues in order to:-
 - 1.1.1. provide quality services with processes for continuous improvement;
 - 1.1.2. provide safe services;
 - 1.1.3. support service users in meeting their assessed needs and identified outcomes;
 - 1.1.4. monitor the quality of their own Service;
 - 1.1.5. collect market intelligence data;
 - 1.1.6. understand the Provider's role in delivering and maintaining acceptable levels of performance and quality, whilst recognising the Council's role as commissioner and market steward to assure quality across the whole market; and
 - 1.1.7. develop an environment for continuous innovation.
 - 1.2. The Provider's provision of services under the Flexible Contracting Arrangement and Framework Agreement and Individual Agreements shall be monitored by the Council against the required outcomes for the Service which is defined in the Service Specification, the requirements of the service user's Support Plan and in Schedule 15 - Quality Assurance Framework.
 - 1.3. The Council and NHS shall use a common Quality Assurance Framework detailed in Schedule 15 to structure the assessment of provider performance.
 - 1.4. The assessment of provider quality will be used as part of the Micro Procurement process for supplier selection.
 - 1.5. The Quality Assurance Framework may be reviewed at the sole discretion of the Council at any time, to include new data sources or make amendments to existing ones. Any changes will be communicated to providers.
 - 1.6. Providers will also be asked to complete a set of Market Intelligence Questions (quarterly or as required) which will be used as part of the intelligence available to 'risk-rate' providers and will be used to help fulfil the Council's Care Act duty to ensure there are sustainable services of a good quality available to meet the needs of citizens, whether receiving support from the Council, or funding their own care.
2. Contract Review
 - 2.1. The Council may undertake a review of the Provider's performance of the Service (in whole or in part) under the Flexible Contracting Arrangement or the Framework Agreement and any Individual Agreement at any time.

- 2.2. The Provider shall meet with the Council or NHS Officer where required to review and discuss the Provider's performance of the Individual Agreement(s).
- 2.3. Where the Council has received notification of concerns relating to performance and delivery against the Individual Agreement the Council may require the Provider to attend a Contract Management Review Meeting without prior notification and the Provider must comply with any such request.
- 2.4. The Council shall also be entitled to initiate a Contract Review at any time during the term of this Agreement in response to:
 - 2.4.1. any breach of the terms of the Agreement or any Individual Agreement by the Provider; and/or
 - 2.4.2. any representations or complaint which is received by the Council with regard to the Provider's performance of the Flexible Contracting Arrangement or the Framework Agreement and any Individual Agreement.
- 2.5. Birmingham City Council and NHS Officers may undertake announced or un-announced monitoring visits at any time and the provider shall grant access to their premises as required.
- 2.6. The Provider shall afford all reasonable cooperation, resources, reports, paperwork and facilities to enable the Council and NHS to carry out Contract Reviews, and provide the Council with any information required as part of the Contract Review process.
3. Concerns regarding the performance of a Provider
 - 3.1. The Council may wish to investigate a concern or an alleged breach of the Flexible Contracting Arrangement or the Framework Agreement or Individual Agreement, or any other event including force majeure, which if substantiated would entitle the Council to terminate the Flexible Contracting Arrangement or the Framework Agreement or Individual Agreement with that Provider.
 - 3.2. Failure by the Provider to maintain the required standards of the provision of the Service including those listed in the Quality Assurance Framework Schedule 15 will be considered a breach of the Flexible Contracting Arrangement or the Framework Agreement and the Council shall be entitled to follow any of the contract management actions as detailed in Section 4 below.
4. Contract Management Actions
 - 4.1. The Council or NHS may undertake any of the following actions (in no particular order) where a concern or an alleged breach of this Agreement or any Individual Agreement has been identified:
 - 4.1.1 The Provider may be invited to a Contract Management Review Meeting to consider any concerns raised and identify a course of action.
 - 4.1.2 Depending on the concern, the meeting may be led by a health professional where the concern is specific to clinical (nursing) services.

- 4.1.3 As part of the Contract Management Review Meeting, one or more courses of action may be taken. These contractual compliance interventions may impact upon the assessment of the provider's performance under the Quality Assurance Framework referenced in this Schedule and Schedule 15 – Quality Assurance Framework. The following interventions or courses of action may be taken:-
- 4.1.3.1 No further action because the concern(s) are unfounded or resolved.
 - 4.1.3.2 The Council, NHS or host Local Authority (if applicable) will approve an Improvement Action Plan (IAP) submitted by the provider when it is satisfied the actions and timescales identified are sufficient to deliver the required improvement in services. The Council, NHS or host Local Authority shall act reasonably and in line with the contract terms and conditions when approving an IAP. The IAP shall support the Provider to address the specific concerns about both the delivery of the services and the party's obligations under the Agreement. The Improvement Action Plan will be specific, measurable, achievable, relevant and time bound. This IAP shall be received by the Council within 7 day of the request.
 - 4.1.3.3 Suspension of further Individual Agreements in accordance with section 5 of this Schedule.
 - 4.1.3.4 A notice of breach of the Agreement is issued in accordance with paragraph 5.3 of this Schedule.
 - 4.1.3.5 Termination of the Individual Agreement and/or Flexible Contracting Arrangement or the Framework Agreement in accordance with **Schedule 10** (Non Take up of the Service, Absence of the Service User, Notice Periods and Termination and Related Payments).
 - 4.1.3.6 The Council, NHS or host Local Authority may monitor progress against the Improvement Action Plan to ensure the Provider is making the appropriate/agreed improvement(s). The Council, NHS or host Local Authority shall expect reasonable cooperation from the provider to allow this as detailed in clauses 2.5 and 2.6 of this Schedule
- 4.1.4 Following the initial meeting and actions, a review meeting will be undertaken. As a result of that review meeting one or more of the following courses of action may be taken:-
- 4.1.4.1 Concern(s) are satisfactorily addressed and the issue is deemed to be closed.
 - 4.1.4.2 Remove suspension (if applicable).
 - 4.1.4.3 Recommendations made for further improvement by the Provider via approval of a further Improvement Action Plan.

- 4.1.4.4 Continue suspension for a further period to be determined at the discretion of the Council or NHS.
- 4.1.4.5 A notice of breach of the Agreement is issued in accordance with paragraph 5.7 of this Schedule.
- 4.1.4.6 Termination of Individual Agreement and/or Flexible Contracting Arrangement or the Framework Agreement in accordance with **Schedule 10** (Non Take up of the Service, Absence of the Service User, Notice Periods and Termination and Related Payments).

5 Suspension

- 5.1 The Council and NHS (if applicable) may decide to suspend any further Individual Agreements with a Provider following a Contract Management Review Meeting. In extreme cases, there may be a need for an immediate suspension where there are serious concerns in relation to risks to health, safety and/or the welfare of service users which cannot be immediately remedied.
- 5.2 This suspension may be issued with conditions and/or restrictions attached (for example suspension of all or part of the service) for any of the following reasons:-
 - 5.2.2 The Council and NHS (if applicable) may wish to investigate any concerns that there may be which imposes an immediate and/or serious threat to the health & safety and/or welfare of any service user;
 - 5.2.3 If the Council and NHS (if applicable) wishes to investigate any alleged breach of this Agreement or an issue relating to an Individual Agreement or any other event which, if substantiated, would entitle the Council to terminate the Agreement;
 - 5.2.4 Where the Provider breaches any term or condition of this Agreement, or fails to fulfil any obligation required under an Individual Agreement;
 - 5.2.5 The Provider has failed or is failing to address the concerns identified in the Improvement Action Plan;
 - 5.2.6 A performance failure has been identified through monitoring the quality of service by the Council;
 - 5.2.7 There are documented systemic failures within the respective Service;
- 5.3 Where a suspension is issued, the Council will notify the Provider in writing of its decision to suspend any further Individual Agreement(s) and the reasons for this, within two working days of such a decision being made;
- 5.4 The Provider is expected to inform all service users (including current and future self-funders and Direct Payment recipients) and their representatives of the Suspension of further Individual Agreement(s); and

5.5 The Provider is expected to inform all service users (including current and future self-funders and Direct Payment recipients) and their representatives of the lifting of Suspension arrangements.

5.6 The Suspension may be reviewed at any time.

5.7 Breach of the Agreement:-

5.7.1 A Breach Notice may be issued at any time where the Council has reasonable evidence that the performance of the Provider materially fails to meet the requirements of this Agreement.

5.7.2 The Council may issue a Breach Notice at any time, setting out the performance deficiency or deficiencies and agree the action(s) required to rectify it and timescales. If requirements are not responded to within the timescales set, the Council will consider whether it wishes to continue with its specific business relationship with the Provider and may terminate this Agreement subject to **Schedule 10** (Non Take up of the Service, Absence of the Service User, Notice Periods, Termination and Related Payments).

5.8 Termination

The Council may terminate this Agreement or an Individual Agreement in accordance with the requirements of **Schedule 10** (Non take up of the Service, Absence of the Service User, Notice Periods, Termination and Related Payments) of the Flexible Contracting Arrangement or the Framework Agreement.