

**SCHEDULE 16 [2023]**

**DATA SHARING AGREEMENT**

**Between**

**BIRMINGHAM CITY COUNCIL**

**- and -**

**[xxxxxxxxxxxxxxxxxxxxxx]**

**DATA SHARING AGREEMENT REFERENCE: 209653**

**FLEXIBLE CONTRACTING ARRANGEMENTS FOR THE PROVISION OF CARE HOMES WITH AND WITHOUT NURSING SERVICES AND CARE AND SUPPORT (SUPPORTED LIVING) [2023]**

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This Data Sharing Agreement dated 03 April 2023 sets out the terms and conditions under which Personal Data held by either the Council and/or the Receiver 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. [xxxxx], a company incorporated in England (company number [xxxx]) and having its registered office at [xxxxx] ("**the Receiver**") and
2. Birmingham City Council, Council House, Victoria Square, Birmingham B1 1BB ("**the Council**")

the above *persons/organisations* are hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

- (1) The Council is a Local Authority that is responsible to its citizens for the provision of Care Homes With and Without Nursing Services and Care and Support (Supported Living). For that purpose, the Council holds and processes personal data (including Special Category 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 Arrangements for the provision of Care Homes With and Without Nursing Services and Care and Support (Supporting Living).
- (3) The Parties have agreed to enter into this Agreement to facilitate the lawful processing of Personal Data (including Special Category Data) as particularised in Schedule 1 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 Data Sharing 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:

**Agreed Purposes:** means the performance by each Party of its obligations under this Data Sharing Agreement, and access to, Personal Data (including the Shared Personal Data) to facilitate the achievement of the New Service which is the subject of this Data Sharing Agreement.

**Main Agreement:** means-The Flexible Contracting Arrangements for the Provision of Care Homes With and Without Nursing Services and Care and Support (Supported Living) 2023.

**Commissioner:** the Information Commissioner (see Article 4(A3), UK GDPR and section 114, DPA 2018).

**Controller:** takes the meaning given in the Data Protection Legislation.

**Data Sharing Agreement:** means this data sharing agreement, its schedules and any other documents attached to, or referred to as forming part of this agreement.

**Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and the guidance and codes of practice issued by the Commissioner and which are applicable to a party

**Data Protection Officer:** takes the meaning given 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 (pseudonymising and encrypting Personal Data);
- (b) treating and safeguarding the Personal Data as strictly private and confidential;
- (c) minimising disclosure of the Personal Data to third parties to the fullest extent possible except where disclosure is required by law;
- (d) allowing access to the Personal Data strictly on a 'need to know' basis employing appropriate access controls at all times;
- (e) copying, reproducing and/or distributing the Personal Data only to the extent necessary for performance of the services; and
- (f) maintaining adequate back-ups for the Personal Data to enable the Personal Data to be recovered in the event of damage or loss.

**Data Subject:** takes the meaning given in the Data Protection Legislation.

**Data Subject Access Request:** a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

**Data Subject Request:** any valid request by or on behalf of a Data Subject in exercise of their rights under Chapter III of the UK GDPR (including a Data Subject Access Request).

**EU GDPR:** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regards to the processing of personal data and on the free movement of such data (General Data Protection Regulation).

**Permitted Recipients:** the Parties to this Data Sharing Agreement, the employees of each Party, and any subcontractor of a Party, validly engaged to act as a Processor on behalf of a Party in respect of its Processing pursuant to this Data Sharing Agreement, in accordance with clause 9 and other provisions of this Data Sharing Agreement.

**Personal Data:** takes the meaning given in the Data Protection Legislation and includes Special Category Personal Data.

**Personal Data Breach:** takes the meaning given in the Data Protection Legislation.

**Processing** (and derivatives thereof): takes the meaning given in the Data Protection Legislation.

**Processor:** takes the meaning given in the Data Protection Legislation.

**Shared Personal Data:** the Personal Data to be shared between the Parties under this Data Sharing Agreement, being any Personal Data contained within the Subject Matter Data provided by the Council to the Receiver, and any Personal Data added by the Receiver thereto or derived therefrom.

**Special Category Personal Data:** Personal Data falling within the special categories of personal data specified in Article 9.1 of the UK GDPR.

**Subject Matter Data:** Means the Portal, (currently CareMatch) and secure email.

**Supervisory Authority:** the Commissioner or where appropriate another data protection authority.

**UK GDPR:** Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018.

1.2 In this Data Sharing Agreement:

1.2.1 references to clauses and schedules are references to the clauses and schedules of this schedules of this Data Sharing 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 Data Sharing Agreement shall commence on 03 April 2023.

## **3. THE BASIS FOR SHARING**

3.1 The Parties recognise and accept that:

3.1.1 The Council is permitted to share the Subject Matter Data (including the Shared Personal Data) with the Receiver

and

3.1.2 The Receiver is permitted to process the Subject Matter Data, including Processing the Shared Personal Data; and

3.2 The Parties further recognise and accept that:

3.2.1 The Receiver is permitted to share the Shared Personal Data with the Council

and

3.2.2 The Council is permitted to Process the Shared Personal Data;

under Data Protection Legislation by virtue of the lawful basis of Article 6 1 (a) of the UK GDPR. The provisions used by the Parties to legitimise their Processing of any Special Category Personal Data among the Shared Personal Data is that contained in Article 9 (2) (h) of the UK GDPR and; and their Processing of any criminal convictions or offences data among the Shared Personal Data is that contained in Article 10 of the GDPR; ; and in both cases as those provisions are applied in accordance with Paragraph 2 (2) (e) of Part 1 Schedule 1 of the Data Protection Act 2018.

## **4. DATA ROLES**

4.1 Each Party acknowledges that the Council will regularly disclose to the Receiver Shared Personal Data collected by the Council for the Agreed Purposes.

4.2 The Parties acknowledge and accept that upon receipt of the Shared Personal Data from the Council, the Receiver is a Controller their own right in respect of the Shared Personal Data. The Council is a Controller in respect of the Shared Personal Data

which is processed by the Receiver during the course of this Data Sharing Agreement

4.3 Each Party has a valid registration with the Information Commissioner's Office.

4.4 Effect of non-compliance with Data Protection Legislation.

4.4.1 Each Party shall comply with all the obligations imposed on a Controller under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one Party shall, if not remedied within 30 days of written notice from the other Party, give grounds to the other Party to terminate this Data Sharing Agreement with immediate effect.

## **5. THE COUNCIL'S OBLIGATIONS**

5.1 The Council will ensure that:

5.1.1 the Shared Personal Data has:

- a) been collected and processed in accordance with the Data Protection Legislation as applicable to that Shared Personal Data;
- b) been obtained using a lawful basis upon which to share the Shared Personal Data with the Receiver for the duration and purpose of this Data Sharing Agreement; and
- c) been collected with all necessary appropriate consents and notices in place to enable the lawful transfer of the Shared Personal Data to the Receiver;

5.1.2 that if any Personal Data is updated, the Council will notify this to the Receiver to ensure data accuracy; and

5.1.3 the Council shall notify the Receiver as and when it requires access to the Shared Personal Data, setting out the reasons why the information is required, pursuant to and in compliance with the provisions of this Data Sharing Agreement.

## **6. THE RECEIVER'S OBLIGATIONS**

6.1 The Receiver accepts that, as a Controller, it is legally liable for any unauthorised loss or disclosure of any Shared Personal Data provided by the Council that occurs once the information has been transferred by the Council to it under the terms of this Data Sharing Agreement and in respect of the Shared Personal Data which is processed by it in the course of the provision of the new service.

6.2 The Receiver accepts that it is bound to comply with the Data Security Obligations, as set out in Schedule 3 of this Data Sharing Agreement and that it will co-operate with the Council in providing information to evidence its continued compliance with the Data Security Obligations. The Receiver further accepts that in the event that it fails to comply with the Data Security Obligations, the Council or a 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, each Party shall as soon as possible notify the other of any communications it receives from third parties (including regulatory bodies) or a Data Subject relating to the Shared Personal Data which suggest non-compliance by the Council or the Receiver or any other person with the Data Protection Legislation.
- 6.4 The Receiver undertakes that it will implement procedures so that any third party it authorises to have access to the Shared Personal Data, including Processors, will respect and maintain the confidentiality and security of the Shared Personal Data. Any person acting under the authority of the Receiver, including a Processor, shall be obligated to process the Shared Personal Data only on instructions from the Receiver. This provision does not apply to persons authorised or required by law or regulation to have access to the Shared Personal Data.
- 6.5 At the request of the Council the Receiver shall restrict, rectify or erase any Personal Data in accordance with a Data Subject Request, and notify Permitted Recipients of the Shared Personal Data of any such restriction, rectification or erasure.

## **7. OBLIGATIONS**

- 7.1 Where either Party receives Shared Personal Data that includes Personal Data from a third party, then either Party has in place arrangements with those third parties which are adequate to permit each Party to share such third party Personal Data for the Agreed Purposes and otherwise in accordance with this Data Sharing Agreement;
- 7.2 Each Party shall:
- 7.2.1 Ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
  - 7.2.2 Give full information to any Data Subject whose Personal Data may be processed under this Data Sharing Agreement of the nature of such processing. This includes giving notice that, on the termination of this Data Sharing Agreement, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
  - 7.2.3 Process the Shared Personal Data only for the Agreed Purposes;
  - 7.2.4 Not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
  - 7.2.5 Ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this Data Sharing Agreement;
  - 7.2.6 Ensure that it has in place appropriate technical and organisational measures

to protect against any Personal Data Breach of the Shared Personal Data;

7.2.7 Not transfer any Personal Data outside the United Kingdom unless the transferor ensures that the transfer is to a country approved as providing adequate protection or there are other appropriate safeguards in place pursuant to Articles 44-49 UK GDPR.

## **8. WARRANTIES**

8.1 Each Party warrants that entering into and undertaking the activities set out in this Data Sharing Agreement will not cause it to be in breach of any other contract or order of any competent court or regulatory authority.

8.2 Each Party warrants and undertakes to the other Party that:

8.2.1 it shall provide a copy of this Data Sharing Agreement to the Supervisory Authority where required;

8.2.2 it shall maintain an applicable registration with the Supervisory Authority as necessary to process the Shared Personal Data for the Agreed Purposes;

8.2.3 it has the right, power and authority to enter into this Data Sharing Agreement and to perform its obligations under this Data Sharing Agreement;

8.2.4 to its knowledge there are no threatened or pending or actual court or regulatory actions, suits or proceedings against or affecting that Party that might affect the ability of that Party to meet and carry out its obligations under this Data Sharing Agreement;

8.2.5 it is solvent and able to perform all of its obligations under this Data Sharing Agreement;

8.3 Where the Receiver is not established in the UK, the Receiver warrants that it has designated in writing a representative in the UK where Article 3 (2) of the UK GDPR applies.

## **9. USE OF PROCESSORS**

9.1 Each Party accepts that as a Controller it is entitled to use Processor(s) to process the Shared Personal Data provided under this Data Sharing Agreement or Shared Personal Data processed by it in the course of the provision of the New Service. The Parties acknowledge and accept that as Controllers, they are legally required to comply with all aspects of the Data Protection Legislation. In allowing the Processing of the Shared Personal Data by a Processor, each Party must therefore:

9.1.1 ensure that it chooses a Processor providing sufficient guarantees in respect of the technical and organisational security measures governing the Processing to be carried out in accordance with Data Protection Legislation

which are no less onerous than the Data Security Obligations as these are set out at Schedule 3; and

9.1.2 take reasonable steps to ensure the Processor's compliance with those measures, which includes monitoring the organisational and technical security measures of the Processor and maintaining documentary evidence of its compliance monitoring; and

9.1.3 ensure that the Processing is carried out under a contract which:

- a) is made or evidenced in writing; and
- b) under which the Processor is to act only on instructions from the Controller; and
- c) requires the Processor to comply with obligations equivalent to those imposed upon the Party by the sixth Data Protection principle (security principle).

9.2 Each Party must be able to provide written evidence to the other Party of its compliance with clause 9 within 7 days of the request.

## **10. REVIEW / VARIATION**

10.1 The provisions of this Data Sharing Agreement shall be reviewed on the first of:

10.1.1 the anniversary of this Data Sharing 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 Data Sharing Agreement.

10.2 The Parties can vary the terms of this Data Sharing Agreement by prior written agreement.

## **11. MUTUAL ASSISTANCE**

11.1 In the event of either Party becoming aware of, or having a reasonable suspicion that, a Personal Data Breach in respect of the Shared Personal Data Processed under this Data Sharing Agreement has occurred, it shall adopt the Breach Notification Procedure contained at Schedule 4 of this Data Sharing Agreement, and, with immediate effect, and no later than **24 hours** after becoming aware of the data breach or loss event, notify:-

11.1.1 the other Party of the known or suspected Personal Data Breach;

11.1.2 report the Personal Data Breach to the Information Commissioner's Office, unless an agreement is reached with the other Party that the nature and scope of the Personal Data Breach is insufficient to justify the Information Commissioner's Office's attention, such decision to be reached after considering the Information Commissioner's Office's published guidance on Personal Data Breach reporting in force from time to time;

- 11.2 Each Party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each Party shall:
- 11.2.1 consult with the other Party about any notices given to Data Subjects in relation to the Shared Personal Data;
  - 11.2.2 promptly inform the other Party about the receipt of any Data Subject Request;
  - 11.2.3 provide the other Party with reasonable assistance in complying with any Data Subject Request;
  - 11.2.4 not disclose or release any Shared Personal Data in response to a Data Subject Access Request without first consulting the other Party wherever possible;
  - 11.2.5 assist the other Party, at the cost of the other Party, in responding to any Data Subject Request and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, Personal Data Breach notifications, Data Protection Impact Assessments and consultations with a Supervisory Authority;
  - 11.2.6 use compatible technology for the Processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from Shared Personal Data transfers;
  - 11.2.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for audits by the other Party or the other Parties designated auditor; and
  - 11.2.8 as provided at Schedule 2 the other Party with contact details of at least one employee as a point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a Personal Data Breach, and the regular review of the Parties' compliance with Data Protection Legislation.

## **12. INDEMNITY**

12.1 Each Party shall indemnify the other Party against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the indemnified Party arising out of or in connection with the breach of this Data Sharing Agreement and/or the Data Protection Legislation by the indemnifying Party, its employees, subcontractors or agents, provided that the indemnified Party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it. The liability of the indemnifying Party under this clause shall be subject to the limits set out in the Main Agreement.

### **13. RETENTION AND DISPOSAL**

- 13.1 The Parties shall retain and dispose of the Shared Personal Data in accordance with the retention periods and disposal methods identified at Schedule 1.

### **14. TERMINATION**

- 14.1 This Data Sharing Agreement shall terminate:
- 14.1.1 unless earlier terminated in terms of clause 4.4.1- upon the termination date agreed in the Main Agreement, or automatically on termination or expiry of the Main Agreement;
- 14.2 If any of the following events including that specified at clause 4.4.1 shall occur namely if the Receiver-
- 14.2.1 commits a material breach of any of its obligations under this Data Sharing Agreement PROVIDED THAT if the breach is capable of remedy the Council's Representative shall first have served a written notice on the Receiver specifying such breach and requiring the same to be remedied within 14 days and the Receiver shall have failed to remedy the same;
  - 14.2.2 makes a misrepresentation in any information, whether provided orally or in writing, to the Council with respect to any information provided to or requested by the Council with respect to this Data Sharing Agreement
  - 14.2.3 has any of its directors or partners convicted of dishonesty;
  - 14.2.4 becomes bankrupt or makes a composition or arrangement with its creditors, or has a proposal in respect of its company for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986;
  - 14.2.5 has an application under the Insolvency Act 1986 in respect of its company to the Court for the appointment of an administrator or administrative receiver;
  - 14.2.6 has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed;

- 14.2.7 has a provisional liquidator, receiver or manager of its business or undertaking duly appointed;
- 14.2.8 has an administrative receiver, as defined in the Insolvency Act 1986, appointed;
- 14.2.9 has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge;
- 14.2.10 is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator or administrative receiver, or which entitle the Court to make a winding-up order; or then the Council may, without prejudice to any other right or remedy under this Data Sharing Agreement, terminate the Agreement immediately by a written notice to the Receiver.

## **15. PREVENTION OF CORRUPTION**

- 15.1 The Council shall be entitled forthwith to terminate this Data Sharing Agreement by delivery of written notice to the Receiver if the Receiver shall have:-
  - 15.1.1 offered, promised or given a financial or other advantage to another person; and either:
  - 15.1.2 the Receiver intends the advantage to induce a person to perform improperly a relevant function or activity in relation to the obtaining or execution of the Data Sharing Agreement or any other contract with the Council; or
  - 15.1.3 the Receiver knows or believes that the acceptance of the advantage would itself constitute the improper performance of the relevant function or activity in relation to the obtaining or execution of the Data Sharing Agreement or any other contract with the Council; or
  - 15.1.4 If the like act or acts shall have been done by any person employed by the Receiver or associated with the Receiver (whether with or without the knowledge of the Receiver); or

15.1.5 the Receiver or any person employed by the Receiver or associated with the Receiver shall have:-

- 15.1.5.1 committed an offence or offences under the Bribery Act 2010; or
- 15.1.5.2 given any fee or reward to an officer of the Council the acceptance of which is an offence under Section 117(2) Local Government Act 1972.

## 16 CONSEQUENCES OF TERMINATION BY THE COUNCIL

16.1 Following termination of this Data Sharing Agreement the Council shall:-

16.1.1 be able to require the Receiver to assign to the Council and if so required the Receiver shall assign without delay to the Council the benefit of any agreement for the supply of the Receiver's materials or the hiring of any Receiver's equipment and/or the performance of Processing for the purposes of this Data Sharing Agreement which the Receiver may have entered into;

16.2 On termination or expiry of this Data Sharing Agreement, the Receiver shall provide an up to date version of the Shared Personal Data, and, and shall procure that it, together with any agents and/or Processor it engages shall promptly deliver, or procure the prompt delivery, to the Council of all other copies of the Shared Personal Data together with, materials, documentation (including all copies in every form and media) in its power, possession or control, which contain that Shared Personal Data or data derived from the Shared Personal Data.

## 17 NOTICES

17.1 All notices to be given by a Party under this Data Sharing Agreement will be in writing, in English and will be addressed to the other Party at the address shown below (as may be changed by the relevant party giving notice to the other in accordance with this clause 17):

|            | <b>For the Council</b> | <b>For the Receiver</b> |
|------------|------------------------|-------------------------|
| Address:   | [ client to complete]  | [ client to complete]   |
| email:     |                        |                         |
| Attention: |                        |                         |

17.2 Notices may be served by hand, registered post or email and will be deemed to have been served as follows:

- 17.2.1 **if delivered by hand or registered post:** at the time of delivery provided it is delivered before 5.00pm on a business day (being a week day other than a bank holiday) and, if not, on the next business day; and
- 17.2.2 **if sent by email:** upon receipt by the sender of a successful confirmation of receipt from the recipient confirming that the email has been transmitted to the correct address.

## 18 MISCELLANEOUS

- 18.1 **Assignment and subcontracting.** Save for subcontracting by the Receiver to a Processor validly appointed in terms of clause 9, neither the Receiver nor any Processor of the Receiver shall be entitled to subcontract or assign its rights or benefits and/or transfer its obligations or burdens under this Data Sharing Agreement or any other agreement under which the Personal Data are or are to be Processed in each case, whether in whole or in part, without the prior written consent of the Council.
- 18.2 **Entire agreement.** This Data Sharing Agreement and the documents referred to in it constitute the entire understanding and agreement of the Parties in relation to the Processing of the Personal Data described in it and supersede all prior Data Sharing Agreements, discussions, negotiations, arrangements and understandings of the Parties and/or their representatives in relation to such Processing. However, nothing in this Data Sharing Agreement shall exclude or limit either Party's liability for fraudulent misrepresentation in relation to this Data Sharing Agreement whether occurring before or after the Commencement Date.
- 18.3 **Further Assurance.** Each Party will do and execute and/or arrange for the doing and executing of, any act and/or document reasonably requested of it by any other Party to implement and give full effect to the terms of this Data Sharing Agreement.
- 18.4 **Survival.** Termination or expiry of this Data Sharing Agreement for any reason will not affect any rights or liabilities that have accrued prior to such termination or expiry, or the coming into force, or continuance in force, of any term that is expressly or by implication intended to come into, or continue in force, on or after termination or expiry.
- 18.5 **Waiver.** Delay in exercising, or failure to exercise, any right or remedy in connection with this Data Sharing Agreement will not operate as a waiver of that right or remedy.
- 18.6 **Severance.** The Parties intend each provision of this Data Sharing Agreement to be severable and distinct from the others. If a provision of this Data Sharing Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the Parties will work together in good faith to agree a provision that reflects the original intention of the Parties as a substitute for the affected term.

- 18.7 **Third party rights.** The Council is entering into this Data Sharing Agreement for the benefit of itself and for the Data Subjects whose Personal Data are to be Processed by the Receiver, each of whom shall be entitled to enforce this Data Sharing Agreement. In all other cases, a person who is not a Party to this Data Sharing Agreement shall not be entitled to benefit or have any rights to enforce any of its provisions and the Contracts (Rights of Third Parties) Act 1999 shall not apply.
- 18.8 **Law and jurisdiction.** This Data Sharing Agreement is governed by and shall be construed in accordance with the laws of England and Wales. Each Party hereby submits to the non-exclusive jurisdiction of the courts of England and Wales.

**Signature**

Name:

(Authorised signatory)

Signature

Date

On behalf of

("the Council")

Name:

(Authorised signatory)

Signature

Date

On behalf of

("the Receiver")

## Schedule 1

### Shared Personal Data and Data Subjects

| Description                   | Details  |
|-------------------------------|--|
| Agreed Purposes               | As defined in clause 1.1   |
| Shared Personal Data          | As defined in clause 1.1.  |
| Types of Shared Personal Data | <p>To be shared with the Provider:</p> <ul style="list-style-type: none"> <li>Name</li> <li>Current/previous address</li> <li>Date of birth</li> <li>Ethnicity</li> <li>Next of Kin</li> <li>Contact details of family</li> <li>Contact details of friends</li> <li>Eligible needs to be met</li> <li>Type of service required</li> <li>Background and current information</li> <li>Desired outcomes and lifestyles and preferences</li> <li>Medical conditions including physical and mental health</li> <li>Contact details of GP</li> <li>Behavioural issues</li> <li>Safeguarding information</li> <li>Conviction Information</li> </ul> |

| Description                | Details  |
|----------------------------|--|
| Categories of Data Subject | <p>Individuals who from time to time are identified as requiring the following Services from the Council:-</p> <p>Care in Care Homes With or Without Nursing Services and Care and Support (Supported Living).</p>   |
| Retention period           | <p>The Receiver undertakes with the Council to retain the documents for so long as the Receiver is liable under the Main Agreement. When that agreement ends, documents should be retained in line with the organisation's data retention policy; unless, and only to the extent that, the Receiver is required by law to maintain the documentation containing Personal Data. The Council will retain the personal data in accordance with the relevant departmental Retention Policy.</p>  |
| Disposal method            | <p>Upon expiry or termination of this Agreement (and further to organisational retention periods being applied) or at the election of the Council, the Receiver shall either securely destroy or securely return to the Council all documents which include or contain Personal Data, unless, and only to the extent that, the Receiver is required by law to maintain the documentation containing Personal Data. Securely destroying will involve shredding paper documents and deletion of emails, in such a way that these cannot be retrieved. The Council will dispose of the personal data in accordance with the relevant departmental Data Disposal Policy.</p> |

## Schedule 2

### Points of Contact

#### 1. Contact points

1.1 The contact point for each Party is (or as notified to the other Party in writing):

1.1.1 The Council's contact Chris MacAdams  
[ShapingtheMarket@birmingham.gov.uk](mailto:ShapingtheMarket@birmingham.gov.uk)

1.1.2 The Receiver's contact point: .....TO BE INSERTED

each of the above being a **Contact Person**.

## Schedule 3

### Data Security Obligations

This schedule satisfies Articles 32(1) and 32(2) of the UK GDPR by addressing:

- *the pseudonymisation and encryption of Personal Data;*
- *the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;*
- *the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident;*
- *a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.*

#### **1 The agreed measures**

- 1.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of sharing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Parties shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, which shall include the measures set out in this Schedule 3 (“Technical and Organisational Measures”).

#### **2. Governance**

- 2.1 Each Party shall appoint a Contact Person to manage the relationship of this Data Sharing Agreement, including the following aspects set out in this paragraph 2 (Governance).
- 2.2 The overall effectiveness of the sharing arrangements set out in this Data Sharing Agreement;
- 2.3 Whether the objectives as set out at Schedule 1 (The Shared Personal Data and Data Subjects) are being met;
- 2.4 Whether the conditions for sharing identified at Schedule 1 (The Shared Personal Data and Data Subjects) remain valid and are appropriate for the Agreed Purposes;
- 2.5 Whether the benefits as set out in Recital (4) of the preamble to this Data Sharing Agreement Schedule 1 (The Shared Personal Data and Data Subjects) are being delivered;
- 2.6. Whether the Technical and Organisational Measures are adequate;
- 2.7 The scope of the Agreed Purposes is still relevant; and

- 2.8 Subject to clause 10.1.2, the review shall take place every twelve months from the Commencement Date of this Data Sharing Agreement.

### **3 Training**

- 3.1 The Parties shall ensure each member of staff completes appropriate mandatory training prior to handling any Personal Data. Such training shall include familiarising such staff with the Party's responsibilities with regard to data protection, information sharing, confidentiality, Technical and Organisational Measures, and governance arrangements required under this Data Sharing Agreement. Such training shall be refreshed at least annually.
- 3.2 The Parties shall maintain written records of completion of such training by each member of staff.

### **4 Data capture and management**

- 4.1 To ensure that the Shared Personal Data is compatible with the data of the Receiver the Council will provide the Shared Personal Data in compatible formats, as agreed between both parties.
- 4.2 To ensure that the Shared Personal Data is accurate and up to date the Parties shall comply with their obligations under clause 6.5 of this Agreement.

### **5 Security management**

- 5.1 The Parties shall ensure the Shared Personal Data is transferred between them using the following security measures:
- Information will be exchanged securely via the CareMatch portal or the Parties will use secure email (The Council has secure email arrangements in place), either via a service-based NHS email account or with their own accredited system (a system which has been accredited as secure with NHSX).
- 5.2 Each Party shall keep the Shared Personal Data securely and in an encrypted form and shall use all reasonable security practices and systems applicable to the use of the Shared Personal Data to prevent and take prompt and proper remedial action against unauthorised access, copying, modification, storage, reproduction, display or distribution of the Shared Personal Data.
- 5.3 Each Party shall ensure continuous system security, by including the use of firewalls, virus detection software, user authentication and other means to prevent unauthorised access to systems.
- 5.4 All Personal Data forming part of the Shared Personal Data which is held electronically will be stored in a secure network area with password protected entry and appropriate back-up functionality.
- 5.5 Each Party's system will be auditable so that it is possible for any auditor to establish who has accessed the system;
- 5.6 All laptops, computers, and any other portable devices used in relation to Processing, storing or transferring the Shared Personal Data will be encrypted;
- 5.7 The printing of paper copies of Personal Data must be kept to a minimum;

- 5.8 Any paper records printed must be kept appropriately secure at all times whether in the office, home or during transit;

**6 Access management**

- 6.1 The Parties shall only permit access to the Shared Personal Data received from the other Party to such staff as:

as allowing access to the Shared Personal Data strictly on a 'need to know' basis employing appropriate access controls at all times.

- 6.2 Each Party shall take reasonable steps to ensure the reliability of its staff who may have access to the Shared Personal Data.

- 6.3 Each Party shall ensure that its staff and anyone acting under its authority who has access to the Shared Personal Data is prohibited from Processing the Shared Personal Data except on the instructions of that Party unless required to do so under applicable law.

## Schedule 4 – Breach Notification Procedure

Immediately upon becoming aware of a known or suspected Personal Data Breach, each Party must:

1. Contact the other Party at [databreachnotification@birmingham.gov.uk](mailto:databreachnotification@birmingham.gov.uk) or at [Receiver's email address for notifications] (as appropriate). Notification via any other method will not be deemed as being valid under this Data Sharing Agreement.
2. Describe the nature of the known or suspected Personal Data Breach and whether it is ongoing or contained.
3. Confirm, where possible:
  - **Categories of affected Data Subjects (for example: employees, service users, elected officials, pupils).**
  - **Number of affected Data Subjects**
  - **Categories of data records concerned (for example: contact details, financial information, health data)**
  - **Number of Personal Data records**
4. Communicate the name and contact details of the Data Protection Officer or other contact point from whom further information can be obtained.
5. Describe the likely consequences of the Personal Data Breach.
6. Describe the measures taken or proposed to be taken to address the Personal Data Breach and/or mitigate its possible adverse effects; and
7. Where it is not possible to provide all of the above information at the same time, provide the information in phases as and when it becomes available and without undue delay.