

SCHEDULE 11 – CONTRACT MANAGEMENT [2023]

1. Performance - Contract Management

- 1.1. The key objectives of contract management are to ensure that Providers actively engage with the Council and NHS 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 and its partners (including the NHS) 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 Integrated Quality Assurance Framework which will be published. The key contractual elements of which are detailed in Schedule 15 to structure the assessment of Provider quality.
- 1.4. The assessment of Provider quality will be used as part of the Micro Procurement process for supplier selection as set out in Schedule 15 and Schedule 8.
- 1.5. The Integrated 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 via the Council's website.
- 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.
- 2.3. Where the Council has received notification of concerns relating to performance and delivery the Council may require the Provider to attend a Contract Review Meeting. Wherever possible, the Council will provide notice of such meetings and share concerns with the Provider in advance, however in appropriate circumstances, the Council may hold such meetings without prior notification and the Provider must comply with any such request.
- 2.4. The Council shall 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/or any Individual Agreement.
- 2.5. Birmingham City Council and/or NHS Officers may undertake announced or un-announced monitoring visits at any time and the provider shall grant access to their premises as required. The process for these is contained in Schedule 15 and within the Integrated Quality Assurance Framework.
- 2.6. The Provider shall afford all reasonable cooperation, resources, reports, paperwork and facilities to enable the Council and/or NHS to carry out its assessments of performance and provide the Council and/or NHS 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 (but not limited to) 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 Integrated 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 and/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 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 services.
- 4.1.3 As part of the Contract Review Meeting, one or more courses of action may be taken.
- 4.1.4 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 – Integrated Quality Assurance Framework.
- 4.1.5 The following interventions or courses of action may be taken:
 - 4.1.5.1 No further action because the concern(s) are unfounded or resolved.
 - 4.1.5.2 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.
 - 4.1.5.3 The Provider is required to submit further evidence or supply further assurances to the Council and/or NHS about its performance and actions taken.
 - 4.1.5.4 Suspension of further Individual Agreements in accordance with section 5 of this Schedule.
 - 4.1.5.5 A notice of breach of the Agreement is issued in accordance with paragraph 5.3 of this Schedule.
 - 4.1.5.6 Termination of Individual Agreement/s 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).
 - 4.1.5.7 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).
 - 4.1.5.8 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.

- 4.1.5.9 Alternative actions may be required of the Provider by the Council and/or NHS (for example, accessing specific elements of the Integrated Quality Assurance Framework support package) however these actions will be proportionate and reasonable to improve the quality of the Services.
- 4.1.6 The Council and/or NHS will review progress with the required actions and as a result of that review one or more of the following courses of action may be taken:-
 - 4.1.6.1 Concern(s) are satisfactorily addressed and the issue is deemed to be closed.
 - 4.1.6.2 Remove suspension (if applicable).
 - 4.1.6.3 Recommendations made for further improvement by the Provider via approval of a further Improvement Action Plan.
 - 4.1.6.4 Continue suspension for a further period to be determined at the discretion of the Council or NHS.
 - 4.1.6.5 A notice of breach of the Agreement is issued in accordance with section 6 of this Schedule.
 - 4.1.6.6 Termination of Individual Agreement and/or Flexible Contracting Arrangement or the Framework Agreement in accordance with section 7 of this Schedule and 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 Review Meeting. Suspensions will usually be considered in the following circumstances however this remains at the sole discretion of the Council (acting reasonably):
 - 5.1.2 The Council and NHS (if applicable) may wish to investigate any concerns that there may be which poses an immediate and/or serious threat to the health & safety and/or welfare of any service user;
 - 5.1.3 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;
 - 5.1.4 Where the Provider breaches any term or condition of this Agreement, or fails to fulfil any obligation required under an Individual Agreement;
 - 5.1.5 The Provider has failed or is failing to address the concerns identified in the Improvement Action Plan;

- 5.1.6 A performance failure has been identified through monitoring the quality of service by the Council;
- 5.1.7 There are documented systemic failures within the respective Service;
- 5.2 In extreme cases, there may be a need for an immediate suspension prior to a Contract Review Meeting, but only where there are serious concerns in relation to risks to health, safety and/or the welfare of service users which cannot be immediately remedied. Where this clause 5.2 is relied upon, a Contract Review Meeting may be held after the suspension.
- 5.3 Where a Provider is commissioned by the Council and the ICB, a joint suspension may be issued and a Lead Commissioner identified. In this circumstances, the Lead Commissioner will act in accordance with the terms of this Agreement on the Council's behalf.
- 5.4 Any suspension may be issued with conditions and/or restrictions (for example suspension of all or part of the service).
- 5.5 Where a suspension is issued, the Council or ICB will notify the Provider in writing of its decision to suspend any further Individual Agreement(s) and the reasons for this as soon as is reasonably practicable;
- 5.6 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
- 5.7 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.
- 5.8 The Suspension may be reviewed by the Council and/or NHS at any time in accordance with Schedule 15.

6 Breach of the Agreement

- 6.1 A Breach Notice may be issued at any time where the Council and/or NHS has reasonable evidence that the performance of the Provider materially fails to meet the requirements of this Agreement.
- 6.2 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).
- 6.3 Where the Provider has a record of frequent breaches under this Agreement, the Council and/or NHS may conduct a Contract Review Meeting in accordance with this Schedule 11 and 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).

6.4 The Council will publish a summary of any contractual breaches in accordance with Schedule 15.

7. Termination

7.1 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.