



**Birmingham**  
City Council

**BIRMINGHAM CITY COUNCIL**

**- And -**

**Company [COMPANY NAME]  
Trading as [CQC PROVIDER NAME AND ID]  
Operating from [CQC LOCATION NAME AND ID]**

For example:

Company [MACC Care Limited]

Trading as [MACC Care Limited CQC Provider ID 1-101641521]

Operating from [Abbey Rose Care Home CQC Location 1-6184228044]

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**THE PROVISION OF HOME SUPPORT FOR CHILDREN  
AND YOUNG PEOPLE WITH DISABILITIES  
AND HOME SUPPORT FOR ADULTS –  
FCA TERMS AND CONDITIONS [2024]**

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**For the avoidance of doubt, please note that the following DOES apply to Home Support providers where the Care Quality Commission Registered Location is outside of the Birmingham Council Tax Boundary (Out of City Providers):**

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## **LIST OF SCHEDULES APPLICABLE TO THESE ARRANGEMENTS**

**SCHEDULE 1 - DEFINITIONS**

**SCHEDULE 2 - SERVICE SPECIFICATION FOR HOME SUPPORT**

**SCHEDULE 3 - NOT USED**

**SCHEDULE 4 - NOT USED**

**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,  
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**SCHEDULE 11 - CONTRACT MANAGEMENT**

**SCHEDULE 12 - SAFEGUARDING SPECIFICATION**

**SCHEDULE 13 – NOT USED**

**SCHEDULE 14 - FEE STRUCTURE**

**SCHEDULE 15 - QUALITY ASSURANCE FRAMEWORK**

**SCHEDULE 16 - DATA SHARING AGREEMENT**

**SCHEDULE 17 - BIRMINGHAM BUSINESS CHARTER FOR SOCIAL RESPONSIBILITY**

## ACCEPTANCE STATEMENT AND CLAUSES OF NOTE

### A1. 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 and agrees that all personnel providing care services on behalf of the Provider to the Council are employees of the Provider (or staff from an agency) and are not self-employed.

### A2. ASSESSMENT AND COMMENCEMENT TIMESCALES

Assessment and commencement timescales as stipulated by the Commissioner must be adhered to. Such timescales are subject to ongoing review and could be changed during the lifetime of the contract.

### A3. NHS EMAIL / SECURE EMAIL

The Provider agrees and acknowledges that by submitting an on-line tender and if successful in that tender application and is awarded a contract; within six months of the contract award (unless arrangements are already in place) the Provider will be using secure email, either via a service-based NHS email account or with their own accredited system (a system which has been accredited as secure with FutureNHS).

### A4. DIGITAL SOCIAL CARE RECORD

The Provider agrees and acknowledges that by submitting an on-line tender and if successful in that tender application and is awarded a contract; within twelve months of the contract award (unless arrangements are already in place) the Provider will be using a Digital Social Care Record.

For the avoidance of doubt a Digital Social Care Record is:

An electronic system that supports the digital recording of care information and care received by an individual, within a social care setting, replacing traditional paper records

On a platform on which other remote tools can integrate

Is person-centred and allows for individual care planning

Enables information to be shared securely and in real-time with authorised individuals across the health and care sector

Can help free time spent by care workers and managers on admin tasks

The Digital Social Care Record provider does not have to be on the Integrated Care System Assured List but must fulfil all the criteria as outlined above.

The Integrated Care System Assured List can be found here:

## A5. ASSISTIVE TECHNOLOGY AND TECHNOLOGY ENABLED CARE

The Provider agrees and acknowledges that by submitting an on-line tender and if successful in that tender application and is awarded a contract that there will be a commitment from the Provider to work with the Council to explore the use of technology in order to:

Enable citizens to become more independent

Improve outcomes for citizens, offer choice and reduce isolation

Potentially reduce the time taken to deliver care to citizens and in doing so deliver efficiencies for both the Provider and the Council

By accepting the contract, the Provider acknowledges that (for hours-based contracts) the number of hours of care is subject to review as a result of a change in care needs or where it is identified that alternative means of providing care and support, such as the use of technology, offer opportunities to improve outcomes and/or reduce costs of care packages.

## A6. DATA SECURITY & PROTECTION TOOLKIT (DSPT)

The Provider agrees and acknowledges that by submitting an on-line tender and if successful in that tender application and is awarded a contract; within twelve months of the contract award (unless arrangements are already in place) the Provider will have achieved the following DSPT compliance: 'STANDARDS MET'.

For the avoidance of doubt, information on the DSPT can be found here

<https://www.digitalsocialcare.co.uk/data-security-protecting-my-information/data-security-and-protection-toolkit/>

The 'standard' of the Provider can be checked at:

<https://www.dsptoolkit.nhs.uk/OrganisationSearch>

## A7. HEALTHWATCH FEEDBACK

The Provider agrees and acknowledges that by submitting an on-line tender and if successful in that tender application and is awarded a contract; the Provider will use and promote the Healthwatch feedback tools and use data collected to improve services.

## A8. ACCEPTANCE ONTO THIS FLEXIBLE CONTRACTING ARRANGEMENT

The Council will only allow Provider locations that meet all of the following criteria on to the Flexible Contracting Arrangement at all times:

Provider locations which have a Care Quality Commission quality rating at the time of any tender submission – those unrated by the Care Quality Commission will not be able to enter

Provider locations which are not recorded as 'dormant' by the Care Quality Commission at the time of any tender submission – those registered as 'dormant' by the Care Quality Commission will not be able to enter

Provider locations that have the Care Quality Commission service type of 'Homecare Agencies' and the registration of Personal Care

Provider locations wishing to support Children who have the Care Quality Commission Service User Band or 'Specialism' of 'Children 0-18 years' or 'Services for Everyone' at the time of any tender submission

Provider locations which are rated by the Care Quality Commission as either Good or Outstanding (this includes where the Care Quality Commission have applied an 'inherited rating') at the time of any tender submission – those rated as Inadequate or Requires Improvement by the Care Quality Commission will not be able to enter

Provider to have a CQC registered location within 2 (two) miles of the Birmingham Council Tax boundary

For the avoidance of doubt, should the Providers' status in relation to any of the above criteria change between tender submission and onboarding to the Flexible Contracting Arrangement, the Council reserves the right to use the latest information available from legitimate sources to assess eligibility and to take into account any changes

## **A9. RE-OPENING OF THIS FLEXIBLE CONTRACTING ARRANGEMENT**

If required, new Providers will be onboarded to this Flexible Contracting Arrangement at such a time that additional capacity may be needed (subject to the relevant entry criteria being met). Reopening and the reasons for re-opening will be at the sole discretion of the Council and it is expected that the Flexible Contracting Arrangement may reopen in the following circumstances (for the avoidance of doubt, these circumstances may never arise and are dependent on the number of Providers onboarded to the Flexible Contracting Arrangement):

Where Providers have been decommissioned, which takes the number of Provider lots below the minimum number quoted in the Commissioning Strategy

Where Providers have terminated their contracts / exited the market, which takes the number of Provider lots below the minimum number quoted in the Commissioning Strategy

Where the number of Children's Providers is below the minimum number quoted in the Commissioning Strategy

Where supply is insufficient to meet demand

As a result of additional demand e.g., Winter Pressures / Pandemic

Where Providers are removed due to being inactive and which takes the number of Provider lots below the minimum number as quoted in the Commissioning Strategy. This will include Providers who have not bid on any new referrals or have bid but withdrawn offers without acceptable reason (within a six-month period). For the avoidance of doubt, removal of the Provider from these Flexible Contracting Arrangements applies to Providers with or without packages of care.

#### **A10. QUICK DISCHARGE SERVICE PLUS ARRANGEMENTS**

This Flexible Contracting Arrangement allows for additional capacity, when needed, to the Quick Discharge Service.

Providers signed up to this Flexible Contracting Arrangement will be able to request access to Quick Discharge Plus referrals as part of the tender application process. This allows for additional capacity, when needed, to the Quick Discharge Service (which is covered by a separate Flexible Contracting Arrangement).

The Quick Discharge Service is covered by a separate Flexible Contracting Arrangement and Providers picking up Quick Discharge Plus packages of care will not be required to deliver against the additional requirements of the Quick Discharge specification.

For the avoidance of doubt, Quick Discharge Plus providers will be paid the £1 premium (no other QDS fee enhancements will apply). The Quick Discharge Service acceptance times for picking up / starting packages of care will apply but the other elements (working to individual rehab goals) of the Quick Discharge Service will not apply.

#### **A11. FACTORING ARRANGEMENTS**

The Provider has an obligation to advise the Council in writing (via email to [operationalcommissioning@birmingham.gov.uk](mailto:operationalcommissioning@birmingham.gov.uk)) when factoring arrangements are put in place. For the avoidance of doubt, a factoring arrangement is an agreement under which a legal entity acquires, by way of assignment rights relating to outstanding debts, invoices, or accounts receivable from another legal entity, in this instance, you the Provider.

#### **A12. NON-PAYMENT OF INVOICES BY THE COUNCIL DUE TO DELAYED SUBMISSION**

The Home Support Provider has six (6) months from the end of the appropriate invoice period, described in paragraph 4 of Schedule 9, to submit an invoice requesting payment. Where the Home Support Provider fails to submit an invoice within the aforementioned time period, the Council will not make payment.

#### **A13. PROVIDER QUALITY RATING AS DETERMINED BY THE COUNCIL**

For the avoidance of doubt, from the date of award of the Home Support Flexible Contracting Arrangement [2024], a Home Support Location's CQC quality rating at the date of contract



award shall be used to calculate the Location's Overall Provider Quality Rating, until such time as the Council or NHS carry out a Quality Monitoring Visit or the CQC carry out an inspection and a new rating is awarded. From that point onwards the most recent of the ratings (as set out in Schedule 15) will be used to determine the Overall Provider Quality Rating. For clarification, Quality Monitoring Visits carried out by the Council or NHS prior to the date of contract award will not be used to determine the Overall Provider Quality Rating.

#### **A14. NO CLEAR DIFFERENCE BETWEEN THE OVERALL PROVIDER QUALITY RATINGS**

Where there is no clear difference between the Overall Provider Quality Ratings of more than one Provider making an offer for the package, the following processes to determine the successful bidder will apply:

- a. Home Support and Home Support Quick Discharge Service Plus – the Provider with the highest rated customer feedback will win the tender. The customer feedback rating for this purpose will be calculated as described in accordance with the Council's published guidance (which may be varied from time to time at the Council's sole discretion).
- i. For the avoidance of doubt, for a period of 6 months only from the date of award of the Home Support Flexible Contracting Arrangement [2024], customer feedback ratings will not be used to determine the successful bidder. During this period the successful bidder will be that which submitted the offer first. After 6 months has elapsed from the date of contract award customer feedback shall be used to determine the successful bidder.

## PART A - PARTIES TO THE ARRANGEMENT

**THIS Arrangement** is made the twelfth day of July, 2024.

### 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 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 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.
- 1.5 This contract also allows for the Local Authority to work with the Integrated Commissioning Board (NHS Birmingham and Solihull ICB) in order to extend these arrangements to ICB funded patients on the basis that the ICB would introduce additional due diligence and competency arrangements which would need to be satisfied before Providers could receive referrals from the ICB.

### 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:
- **Home Support for Children and Young People with Disabilities**
  - **Home Support for Adults**
- 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 and in accordance with their Award Notice.
- 2.6 **Compliance by Employees and Agents.** References to acts or omissions of the Provider shall include its Employees, personnel and employed Agents and it is the Provider's responsibility to ensure its employees, personnel and employed Agents 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 42** (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. An employee of the Provider shall be able to enforce **clause 42** (Birmingham Care Wage).
- 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.

### **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 These Flexible Contracting Arrangements comprise of:-
- 3.3.1 Flexible Contracting Arrangements terms and conditions;
  - 3.3.2 The Service Specification (**SCHEDULE 2**). The Service Specification shall apply to the specific Services to be provided under the Individual Agreement and the Support Plan and;
  - 3.3.3 All other Schedules to the Flexible Contracting Arrangements;
  - 3.3.4 The tender submission.

#### **4 ARRANGEMENT PERIOD AND EXTENSION**

- 4.1 Subject to **clause 4.2** the Flexible Contracting Arrangements shall commence on 12 July 2024 and shall automatically expire on 30 June 2029 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 one (1) further period after 30 June 2029 of up to two (2) years 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, Care Act 2014 and Health and Care Act 2022 (and subsequent amendments) for the duration of these Flexible Contracting Arrangements.
  - 5.1.2 Only Care Providers with a CQC registered location within 2 (two) miles of the Birmingham Council Tax boundary (and subject to all other relevant entry criteria being met) will be accepted onto this Flexible Contracting Arrangement;
  - 5.1.3 'Regulated activities' and 'service types' linked to CQC registration must reflect the services being delivered and must be maintained throughout the period of the contract;
  - 5.1.4 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;
  - 5.1.5 where the Council is made aware that CQC registration has been made 'dormant' the Council reserves the right to take the appropriate steps in order to remove the Provider from these Flexible Contracting Arrangements (removal of the Provider applies to Providers with or without packages of care);

- 5.1.6 notify the Council in writing immediately it becomes aware its Registration is being investigated, or is being suspended or cancelled;
- 5.1.7 notify the Council in writing immediately in the event that it seeks to withdraw or cancel its Registration; and
- 5.1.8 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.

### **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 all 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 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 and Council Officers with dignity and respect.

## **8 CONFIDENTIALITY**

- 8.1 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.
- 8.2 Subject to **clauses 8.1** and **8.3** the Receiving Party agrees to:
  - 8.2.1 to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under these Flexible Contracting Arrangements;

- 8.2.2 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;
- 8.2.3 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.
- 8.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
  - 8.3.1 in connection with any litigation between the Parties;
  - 8.3.2 to comply with the Law;
  - 8.3.3 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 8.3**; and
  - 8.3.4 to comply with a regulatory bodies request.
- 8.4 The obligations in **clause 8.2** and **clause 8.3** will not apply to any Confidential Information which:
  - 8.4.1 is in or comes into the public domain other than by breach of these Flexible Contracting Arrangements; or
  - 8.4.2 the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
  - 8.4.3 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.
- 8.5 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 8.2** and **8.3**.
- 8.6 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 8.2** and **8.3**.
- 8.7 **Clauses 8.2** and **8.3** shall not limit the Public Interest Disclosure Act 1998 in any way whatsoever.
- 8.8 The obligations in **clauses 8.2** and **8.3** 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.

- 8.9 To the extent that the Provider is acting as 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.
- 8.10 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.
- 8.11 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)

- 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.
- 9.1.1 The Provider must reply to requests for information within 5 days, in order that the Council can meet the requirement to respond to requests for information within 20 days. Any failure to respond within these timescales will be considered a breach of this Arrangement and managed in accordance with **Schedule 11** (Contract Management).
- 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 within 5 days 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 (Local Government Transparency Code 2015) the Council will be disclosing information on its website in relation to monthly expenditure over £5000 (five thousand pounds) and all Individual Service Orders called off from the contract each month 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.lscpbirmingham.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 Providers are expected to apply the same processes for staff recruited from abroad (including refugees) as they would for staff recruited in England and Providers must follow the Care Quality Commission (CQC) recruitment guidance and best practice (which includes best practice for DBS Checks and Criminal Records Checks For Overseas Applicants;
  - 11.2.3 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;
  - 11.2.4 maintain records of all DBS Checks requested and received in accordance with the DBS Code of Practice (including any updates to the Code);
  - 11.2.5 be responsible for any costs incurred in or associated with carrying out DBS Checks;
  - 11.2.6 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 employed agents, employees or personnel 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.

## 12 EMPLOYMENT, TRAINING AND SUPERVISION OF SUITABLE STAFF

- 12.1 The Provider shall ensure that it employs suitably qualified, employed and experienced staff as required by the Care Quality Commission under the Care Act 2014 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 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). The business continuity plan must be reviewed annually or after any event that questions or challenges the continuity of the service and available to Commissioners upon request.
- 12.3 The Provider shall ensure that any personnel on a fixed term contract or any other contract where the personnel is deemed to be employed by the Provider and 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 (as set out in the Birmingham Business Charter for Social Responsibility) 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. All such actions will be set out in the Provider's Social Value Action Plans as required in accordance with **clause 43**.
- 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.
- 12.6 The Provider shall ensure that any and all Employees and/or personnel providing care services on behalf of the Provider are employed by the Provider (or are staff from an agency) and are not self-employed.

## 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 them.
- 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 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, personnel or employed agent 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 contact details or contact person the Provider shall update and notify the Council of all changes immediately via the CareMatch portal.

## **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 464 9001 (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
1. Allegation of Abuse of a Service User 2. Inappropriate restraint of a Service User 3. Where a Service User is missing	1. Significant change to the physical condition or mental health of the Service User 2. Admission of a Service User to hospital 3. Voluntary discharge by a Service User and/or their representative 4. Serious accident to a Service User (refer to Service Specifications for Serious Incident protocols) 5. The death of a Service User

- 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 and notify the Provider of any such changes.
- 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. These arrangements must be set out in a Business Continuity Plan as required by clause 12.2.
- 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 written 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 at all times remain liable for its obligations, breaches and claims that may arise under this Arrangement in relation to the Service provided by the Sub-Contractor or alternative Provider;
  - 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 in writing by the Council.
  - 20.2.6 the Provider shall ensure and procure that the appointed Sub-Contractor or alternative Provider agrees to the same terms and conditions as the Provider when providing Services under this Contract.
- 20.3 In the case of extreme emergency the Provider may appoint a Sub-Contractor without obtaining prior written 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 Subject to the provisions of The Business Contract Terms (Assignment of Receivables) Regulations 2018 relating to assignment, 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.

The Provider shall notify the Authorised Officer of any such assignment during the Contract Term. Failure to notify the Authorised Officer of any such assignment during the Contract Term is a material breach.

- 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 TOP UP FUNDING AGREEMENT**

- 22.1 There will be no charges to the Service User or third parties by the Provider for Home Support packages of care.
- 22.2 Moving to a Direct Payment
- 22.2.1 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.
- 22.3 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.
- 22.4 The Provider is responsible for any and all costs of meeting the Service User's needs as identified within the Support Plan.

## **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, 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 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).
- 24.3 All Home Support Providers are required to have an Electronic Call Monitoring System and for the data captured by that system to be routinely available to the Council. Any access request for information must be responded to within one working day unless the Provider provides a legitimate reason for this failure which is acceptable to the Council. Electronic Call Monitoring must be in place and fully operational at the commencement of this contract.

## 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> and at [Climate change | Birmingham City Council](#).
- 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 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.

## 26 PROCEDURES FOR DEALING WITH BREACH OF THIS ARRANGEMENT

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

## 27 COMPLAINTS BY THE SERVICE USER

- 27.1 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.
- 27.2 The Provider's complaints procedure shall be consistent with the following provisions:
- 27.2.1 all complaints must be recorded; and
- 27.2.2 all complaints must be investigated and resolved immediately.
- 27.3 The Service User has the right, at any time to refer the matter to their Allocated Worker or the Council's Adult Complaints 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) or by emailing [ComplaintsAdults@birmingham.gov.uk](mailto:ComplaintsAdults@birmingham.gov.uk) and [https://www.birmingham.gov.uk/forms/form/177/en/childrens\\_social\\_care\\_comments\\_complaints\\_and\\_complaints](https://www.birmingham.gov.uk/forms/form/177/en/childrens_social_care_comments_complaints_and_complaints) or by emailing [CYPFSSCustomerRelations@birmingham.gov.uk](mailto:CYPFSSCustomerRelations@birmingham.gov.uk) (children and young people).
- 27.4 Where the Council is investigating the complaint, it may require the Provider to produce information or allow Employees to be interviewed. The Provider must provide all requested information and respond to requests to interview employees within 7 days, in order that the Council can meet the requirement to respond to complaints and complete investigations

within 20 days. Any failure to respond within these timescales will be considered a breach of this Arrangement and managed in accordance with **Schedule 11** (Contract Management).

- 27.5 The Service User may also refer the matter to the Care Quality Commission for its attention/information.
- 27.6 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).
- 27.7 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).
- 27.8 If the complaint finds that damage or loss to the personal possessions of the Service User is due to the actions of or failure to act by the Provider, the Provider shall reimburse the Service User or their agent the value of any loss or damage suffered by the Service User.
- 27.9 The Provider will be asked to provide details of complaints as part of the Provider Quality Assurance Statement process as detailed in **Schedule 15**.
- 27.10 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. The provider must comply with the [Resources for care providers - Local Government and Social Care Ombudsman](#)

## **28 NEGOTIATION**

### **28.1 Nature of Dispute**

- 28.1.1 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 forty five (45) days and such dispute or difference shall be referred in writing to the parties' representatives under **clause 28.2**.

### **28.2 Meeting of Parties' Representatives – First Level**

- 28.2.1 Any dispute or difference referred under **clause 28.1** shall be discussed by the parties' representatives who shall be: -
  - 28.2.1.1 The Council's representative shall be a Senior Commissioning Officer; and
  - 28.2.1.2 The Provider's Representative.

28.2.2 who shall meet within fifteen (15) days of the written reference under **clause 28.1** to attempt to resolve the dispute.

### 28.3 Escalation of Dispute

28.3.1 If the dispute is not resolved at the meeting convened under **clause 28.2** or if the parties fail to meet within fifteen (15) days (or such later period as they shall agree prior to the expiry of the fifteen (15) 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.

### 28.4 Meeting of Parties' Representatives –Second Level

28.4.1 Any dispute or difference referred under **clause 28.1** shall be discussed by the parties' representatives who shall be: -

28.4.2 The Council's representative shall be a Commissioning Manager; and

28.4.3 The Provider's Representative

28.4.4 who shall meet within fifteen (15) days of the written reference under clause 28.1 to attempt to resolve the dispute.

### 28.5 Meeting of Parties' Representatives –Third Level

28.5.1 Any dispute or difference referred under **clause 28.1** shall be discussed by the parties' representatives who shall be: -

28.5.2 The Council's representative shall be a Head of Service; and

28.5.3 The Provider's Representative

28.5.4 who shall meet within fifteen (15) days of the written reference under **clause 28.1** to attempt to resolve the dispute.

28.6 If any of the parties' representatives 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.

### 28.7 Resolution

28.7.1 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 position.

28.8 Either party may only proceed to resolve a dispute under **clause 29** (Mediation) or **clause 30** (Arbitration) in the event the dispute is not resolved under this **clause 28** (Negotiation).

## 29 MEDIATION

### 29.1 Initiation

- 29.1.1 Either of the parties may initiate mediation by giving an ADR Notice to the other in writing requesting mediation in accordance with **clause 29.1**. A copy of the ADR Notice shall also be sent to CEDR.

### 29.2 Amendments to Model Procedure

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

### 29.3 Conduct of Mediation

- 29.3.1 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.

### 29.4 Timing of Mediation

- 29.4.1 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.

### 29.5 Restriction on Termination

- 29.5.1 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.

## 30 ARBITRATION

### 30.1 Reference of Disputes

- 30.1.1 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.

### 30.2 Arbitration Act 1996

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

### 30.3 Powers of Arbitrator

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

### 30.4 Appeal

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

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

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

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

### 30.5 Finality

- 30.5.1 Subject to **clause 30.4** the award of the arbitrator shall be final and binding on the parties.

### 30.6 Limitation on Costs

- 30.6.1 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.

### 30.7 Allocation of Costs

- 30.7.1 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 30.6 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: -

30.7.1.1 50% of the maximum recoverable costs as defined and limited by reference to **clause 31.6**;

30.7.1.2 50% of the Claimant's recoverable costs.



## 31 CHANGES TO THE FLEXIBLE CONTRACTING ARRANGEMENTS

- 31.1 If there shall be a Change in Law or a change in Guidance 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.
- 31.2 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.
- 31.3 Where the Council proposes that there should be a change to the Flexible Contracting Arrangement, including all 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.

## 32 TERMINATION OF AN INDIVIDUAL AGREEMENT

- 32.1 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).

## 33 TERMINATION OF THE FLEXIBLE CONTRACTING ARRANGEMENTS

- 33.1 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).

## 34 SUSPENSION OF FURTHER PLACEMENTS AND PACKAGES

- 34.1 Any suspensions of existing or further Individual Agreements will be made in accordance with **Schedule 11** (Contract Management).
- 34.2 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's Authorised Officer may agree an amendment on an individual basis at its sole discretion.

## 35 FORCE MAJEURE & CONTINGENCY PLANNING

- 35.1 The Provider shall establish business continuity plans to ensure the continuation of the provision of the Service in the event of Force Majeure.
- 35.2 Where a Force Majeure event occurs affecting the performance of the Service, the Provider shall:
  - 35.2.1 notify the Council as soon as practical, giving details of the event, its likely duration and the likely effect on performance of the Service;
  - 35.2.2 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.

- 35.3 Subject to **clause 35.2.2** no new Individual Agreement(s) shall be placed or accepted under these Flexible Contracting Arrangements for the duration of the Force Majeure event.
- 35.4 In the event that a reduced Service is provided a proportionately reduced fee for the Service shall be payable.
- 35.5 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.

## **36 SEVERENCE**

- 36.1 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.

## **37 ARRANGEMENTS FOR FLEXIBLE CONTRACTING ARRANGEMENTS EXPIRY**

- 37.1 In the event that, on expiry of the Flexible Contracting Arrangements, new Flexible Contracting Arrangements or other forms of contract 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:
- 37.1.1 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
- 37.1.2 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.

## **38 INFORMATION ON RE-TENDERING, EMPLOYMENT, REDUNDANCY RIGHTS AND TUPE**

- 38.1 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.
- 38.2 In the event that TUPE applies upon the termination of the Provider's Service and its transfer either in-house or to a new Sub-Contractor(s), the Provider agrees to indemnify the Council against all TUPE related claims and costs, including legal fees, which arise out of events up to the moment of the TUPE transfer of all or any of the Provider's employees.
- 38.3 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.

- 38.4 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.

## 39 WAIVER

- 39.1 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.

## 40 CHANGE OF ADDRESS

- 40.1 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.

## 41 NOTICES

- 41.1 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.
- 41.2 Such notices shall be deemed to have been received:
- 41.2.1 for e-mails on the time indicated on the Councils computer during working hours or if after this time the following morning
  - 41.2.2 registered or recorded post shall be served at the time the post is signed for.
- 41.3 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.

## 42 BIRMINGHAM CARE WAGE

- 42.1 The Provider shall from the twelfth day of July 2024 ("the **Effective Date**") pay its employees who are undertaking the Services the Birmingham Care Wage. The Birmingham Care Wage is currently determined by the National Living Wage over 23 pay rate and shall remain so for the duration of this agreement. The Council may vary the determining factor of the Birmingham Care Wage at any time by giving three (3) months' notice in writing.
- 42.2 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 which is the subject of the invoice.

## 43 BUSINESS CHARTER AND SOCIAL VALUE POLICY

- 43.1 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 INFECTION PREVENTION AND CONTROL (IPC)**

- 44.1 Providers must ensure that all IPC references made in any Act of Parliament, Order, Regulation, Statutory Instrument, or Guidance including any revised or updated version issued will be followed. This includes guidance and instruction issued locally by the Authorised Officer and the Director of Public Health (or their representative) for Birmingham City Council.
- 44.2 The following is not exhaustive, and Providers must ensure that business continuity plans and Infection Prevention and Control arrangements are reviewed regularly (or after an IPC episode) in order to ensure that all IPC arrangements reflect current legislation, guidance and advice issued locally:
- 44.2.1 Providers must have evidence that Infection Prevention and Control audits have been undertaken, action plans completed, and practices changed or implemented to improve IPC compliance;
  - 44.2.2 It must be evidenced that Staff have been provided with IPC training (including Standard Infection Control Precautions and Hand Hygiene);
  - 44.2.3 The Provider must have a **designated responsible person leading on IPC** (an IPC Champion or the locality manager/department manager/deputy manager);
  - 44.2.4 Clear information must be available detailing **when and how to obtain advice about IPC** (including during out of standard working hours);
  - 44.2.5 The Provider must have a process in place to ensure staff are **offered immunisation** as per current national guidance;
  - 44.2.6 The Provider must have IPC policies in place and these must be easily accessible to staff, including; Standard Infection Control Precautions, Cleaning and Decontamination, Hand Hygiene and management of a blood or body fluid spillage;
  - 44.2.7 The Provider must have a policy for the **management of inoculation injury**;
  - 44.2.8 The Provider must have Personal Protective Equipment (PPE) that is readily available, and it must be evidenced that staff have been trained in the correct usage and Donning/Doffing procedures;
  - 44.2.9 The Provider must complete IPC Risk Assessments for all citizens receiving care in order to identify infection risks (to themselves and others) to reduce the risk of infection transmission.

For the avoidance of doubt, when a Provider is appointed to this Flexible Contracting Arrangement they sign this Agreement. This Agreement, the associated schedules and the processes and procedures published by the Council will advise of the grounds for the termination of the Flexible Contracting Arrangement by the Council. Each instance will be reviewed on a case by case basis but ultimately, where a Provider's previous appointment to the Flexible Contracting Agreement is terminated there can be no re-admission to this Flexible Contracting Arrangement.

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