



# Birmingham City Council

## **Notice of Contract Variation and Contract Extension to Flexible Contracting Arrangements for the Provision of Care Homes With and Without Nursing Services and Care and Support (Supported Living)**

### **CONTRACT VARIATION**

Dated this the 07 day of April 2021

Variation to the Flexible Contracting Arrangements between:

1. **BIRMINGHAM CITY COUNCIL** of the Council House, Victoria Square, Birmingham B1 1BB (“**the Council**”)

and

2. **Providers signed up to the Flexible Contracting Arrangements, Company details and address (as per original contract unless changed)** (“**the Service Provider**”)

### **WHEREAS**

- A. On the 30th April of 2018 the Council established a contract relating to the provision of Care Homes With and Without Nursing services and Care and Support (Supported Living).
- B. The Council and the Provider now wish to amend the Agreement in the manner hereinafter appearing pursuant to Clause 32.3 of the Flexible Contracting Arrangement.
- C. In accordance with Clause 32.3 of the Flexible Contracting Arrangement, the changes shall come into effect after 28 days of issue of the Notice of Contract Variation (07th day of April 2021) and during this 28-day notice period Service Providers can feedback any concerns to the Council.
- D. The reasons for the Contract Variation are in order to;
  - correct uncertainty as to CQC registration requirements for Supported Living providers;
  - correct uncertainty as to the role of Service Providers as either Data Controllers or Data Processors; and
  - amend the fees paid to ‘Out of City’ provision.
- E. This contract variation should also be read in conjunction with the Notice of Extension

dated 07 April 2021 issued pursuant to Clause 4.2.

**IT IS HEREBY AGREED AS FOLLOWS:**

**1. To amend the Flexible Contracting Arrangements**

Following a clarification of the Care Quality Commission registration requirements for Supported Living providers with the Registration Manager, ASC West Midlands, Regulatory Customer & Corporate Operations for the Care Quality Commission; the Council is no longer allowing Supported Living providers to join the Flexible Contracting Arrangements that do not have Supported Living as their service type/descriptor. This can be resolved by making an application to CQC to amend the statement of purpose. Providers already signed up to the Flexible Contracting Arrangements will be contacted in due course to address this issue.

**2. To amend the Flexible Contracting Arrangements**

From:

8.1 The Provider is a Data Processor and Data Controller (as defined under the Data Protection Act 1998 (“DPA”) in respect of any Personal Data (including sensitive Personal Data) provided by the Council, the Service User or third parties such as GPs, health Providers or relatives in relation to the Service Users.

8.12 To the extent that the Provider is acting as a Data Processor and Data Controller on behalf of the Council, the Provider shall, in particular, but without limitation, comply with the provisions of the Data Processing Agreement annexed in **Schedule 16** to these Flexible Contracting Arrangements.

To:

8.1 The Provider is a Data Controller (as defined under the Data Protection Act 2018 (“DPA”) in respect of any Personal Data (including sensitive Personal Data) provided by the Council, the Service User or third parties such as GPs, health Providers or relatives in relation to the Service Users.

8.12 To the extent that the Provider is acting as a Data Controller on behalf of the Council, the Provider shall, in particular, but without limitation, comply with the provisions of the Data Processing Agreement annexed in **Schedule 16** to these Flexible Contracting Arrangements.

**3. To amend Schedule 16 (Data Sharing Agreement Between Birmingham City Council and [Provider])**

From:

4.1 The Parties acknowledge and accept that upon receipt of the Personal Data from the Council, the Provider is deemed to be a Data Controller in its own right in respect of the Personal Data. As the Provider is providing the Service on behalf of the Council, the Council is a Joint Data Controller in respect of the Personal Data which is processed by the Provider in the course of the provision of the Service.

To:

- 4.1 The Parties acknowledge and accept that upon receipt of the Personal Data from the Council, the Provider is deemed to be a Data Controller in its own right in respect of the Personal Data.

**4. To amend Schedule 14 (Fee Structure)]**

From:

6.1.2 Out of City Providers delivering Care Homes With and Without Nursing services for people over 65 years old, the Council will pay the Usual Rate set by the host local authority in which the Provider is located. In situations where the host local authority does not have a Usual Rate or that rate is not easily identifiable then the Standard Residential Fee and Standard Nursing Fee shall apply.

To:

6.1.2 Out of City Providers delivering Care Homes With and Without Nursing services for people over 65 years old, the Council will pay the Usual Rate set by the host local authority in which the Provider is located, where that usual rate is higher than the Standard Residential Fee and Standard Nursing Fee. In situations where the host local authority does not have a Usual Rate, that rate is not easily identifiable or the rate is lower than that paid by Birmingham City Council then the Standard Residential Fee and Standard Nursing Fee shall apply.

The above fee change will apply to placements made from the date of this Notice and will not apply to existing/historic arrangements.

- 5. Save as expressly provided in this Variation, the Agreement shall remain as drawn and shall continue in full force and effect.**

Dated this the 07 day of April 2021

Extension to the Flexible Contracting Arrangements between:

1. **BIRMINGHAM CITY COUNCIL** of the Council House, Victoria Square, Birmingham B1 1BB (“**the Council**”)

and

2. **Providers signed up to the Flexible Contracting Arrangements, Company details and address (as per original contract unless changed)** (“**the Service Provider**”)

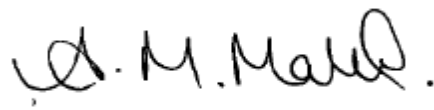
#### **WHEREAS**

- A. On the 30th April of 2018 the Council established a contract relating to the provision of Care Homes With and Without Nursing services and Care and Support (Supported Living).
- B. The Council now wish to extend the Agreement in the manner hereinafter appearing pursuant to Clause 4.2 of the Flexible Contracting Arrangement
- C. Whilst Clause 4.2 requires the Council to give three months notice of this change, due to the exceptional circumstances of the Covid-19 pandemic, the Council has decided to extend the Flexible Contracting Arrangement with effect from the date of this Notice. The changes shall therefore come into effect immediately although Service Providers can feedback any concerns to the Council within 28 days of the issue of this communication.
- D. The reasons for the immediate Contract Extension are in order to assist with market stability and to ensure the best use of available resources.

#### **IT IS HEREBY AGREED AS FOLLOWS:**

Extend the Flexible Contracting Arrangement for a period of two years until 30 April 2023.

Signed on behalf of

A handwritten signature in black ink, appearing to read 'A. M. Malik'.

**BIRMINGHAM CITY COUNCIL**

Name in full:

Alison Malik

Position:

Head of Commissioning