



# Care and Support Services (1318) National Flexible Framework

## **PART 2B – SCHEDULES 1-6 OF THE FLEXIBLE FRAMEWORK TERMS**

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<b>TENDER:</b>	Care and Support Services
<b>FRAMEWORK REFERENCE:</b>	1318
<b>PERIOD:</b>	01 April 2020 – 31 March 2024 (Commencement Date for New Entrants to be confirmed at time of award)
<b>SCHEDULE:</b>	Schedule 1
<b>Service Specification</b>	

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## **1. Introduction**

- 1.1 This Service Specification (the Specification) provides examples of the types of Services to be delivered under the Care and Support National Flexible Framework. The Specification has been developed from extensive consultation with a range of partners to ensure emphasis is on the person requiring a Service (“Supported Person”) and the Outcomes they wish to achieve.
- 1.2 Services will support a Supported Person to achieve the best possible quality of life, in terms of their personal aspirations, choices and abilities, that enables them to live independently and safely within their own home for as long as practicable. Services will be flexible and adaptable to changes in a Supported Person’s assessed need or personal choice. A Supported Person requiring support and/or their Representative should be fully involved in developing and shaping their Support Plans throughout the duration of their support.
- 1.3 This Invitation to Tender (ITT) uses the term Council as this is the contracting party, however the reference to Council recognises that the Integration Authority directs the Council under the banner of the Health and Social Care Partnership to deliver on their intentions as per their Strategic Plan.
- 1.4 This Specification and the Individual Support Agreements (ISAs) called off under the Flexible Framework Terms will support the achievement of personal Outcomes and Integration Authorities strategic commissioning plans.
- 1.5 The Flexible Framework will seek to support the delivery of the Scottish Government’s National Performance Framework and the Health and Social Care Standards. The National Performance Framework aims to reduce inequalities and gives equal importance to economic, environmental and social progress. It aims to increase the wellbeing and give opportunities to people living in Scotland.
- 1.6 A number of Councils have worked closely with Providers to develop responder services. While this is not in scope of the Services to be purchased from the Flexible Framework, this may be an option Councils may explore with a Supported Person and Providers and would complement the Care and Support Service provided.

## **2. Key Principles of Care and Support Services**

- 2.1 People should be supported to have control of their life. The ethos of this Specification is to focus on the attainment of personal Outcomes. A personalised strengths-based approach is required, recognising that each person is unique and will have different needs and requirements. Councils and Providers should work together to empower people.
- 2.2 The Public Bodies (Joint Working) (Scotland) Act 2014 provides the framework for the integration of health and social care in Scotland. Integration of health and social care has been introduced to change the way Services are delivered, with greater emphasis on supporting people in their own homes and communities and less inappropriate use of hospitals and care homes.
- 2.3 The Health and Social Care Standards set out what we should expect when using health, social care or social work services in Scotland. They seek to provide better Outcomes for everyone and to ensure that individuals are treated with respect and dignity and that the basic human rights we are all entitled to are upheld. These Standards will underpin the delivery of Services agreed under the terms of this Flexible Framework.

- 2.4 The Social Care (Self-directed Support) (Scotland) Act 2013 gives people a range of options for how their social care is delivered, empowering people to decide how much ongoing control and responsibility they want over their own support arrangements.
- 2.5 Collaboration will underpin the delivery of all Services purchased from the Flexible Framework. The Councils using the Flexible Framework are committed to working together with a Supported Person, Providers and other partners to develop innovative solutions to the challenges faced in the delivery of Services.
- 2.6 Positive Risk Taking is promoted and innovative solutions to Service delivery are expected to be explored by Councils and Providers throughout the Duration of the Flexible Framework.

### **3. Overview of Service Requirements**

- 3.1 Providers are required to provide a Service to people identified by the Council as requiring a level of support to meet their planned Outcomes. This could include working with an individual:
- To enable them to live within their own home as independently as possible;
  - To work with them, their families, family carers and their representatives in planning the provision of care;
  - To work in partnership with other departments, agencies and Providers to plan for and deliver effective Services; and
  - To provide a flexible Service to prevent inappropriate admission to hospital and facilitate early discharge.

Examples of the types of support that may be required in the delivery of the Service are detailed in Appendix 1 (Examples of elements of Care and Support to be delivered) of this document.

### **4. People Requiring Support**

- 4.1 The Service will be for adults normally over the age of 18 who have been assessed by the Council as requiring and being eligible for Services. However, the Service may be required for anyone over the age of 16 where an assessment identifies the need for support.

Appendix 1 (Examples of elements of Care and Support to be delivered) of this document provides key elements of Care and Support which may be required.

### **5. Minimum Requirements of the Service**

#### **5.1 Care Inspectorate Registration**

All Services will be appropriately registered by the Care Inspectorate.

Providers should refer to the Care Inspectorate guidance<sup>1</sup> on registering a service available from the Care Inspectorate (where the link, below, shows the version of this available at time of publication of the Tender) and ensure they have the appropriate Registrations required to deliver the relevant Care and Support Service. This Specification should be interpreted in accordance with the currently applicable Registration requirements of the Care Inspectorate which will take precedence over

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<sup>1</sup> <http://www.careinspectorate.com/index.php/register-a-care-service>

anything written herein. It should be noted that individual Council may set minimum Care Inspectorate grades in order to allocate business in their own Council areas.

## **5.2 Compliance with the Health and Social Care Standards:**

All Services will comply with the Health and Social Care Standards.

## **5.3 Scottish Social Services Council (SSSC)**

Staff involved in the provision of the Service will either be registered with the Scottish Social Services Council and/or any other appropriate body. This will include working within timescales as set by the SSSC and/or other appropriate body. Providers and their Staff will comply with the SSSC Code of Practice<sup>2</sup>, available from the SSSC (where the link, below, shows the versions available at time of publication of the Tender).

## **5.4 Self-directed Support**

This Flexible Framework is predominantly for those people using Self-directed Support (SDS) Option 3, but Councils may access the Service at the direction of those Supported Persons positively choosing a Provider to help them achieve their Outcomes (SDS Option 2). All Services will be delivered in line with the Social Care (Self-directed Support) (Scotland) Act 2013.

## **5.5 Health and Safety**

As detailed in the Flexible Framework terms and conditions, all Services will be delivered in line with Health and Safety legislation and best practice. Providers will ensure their Staff are appropriately trained in health and safety requirements to be able to support people.

## **5.6 Medication Management Compliance**

- 5.6.1 All Services will be delivered in line with the Councils local policy for medication management and the Care Inspectorate standards.
- 5.6.2 All Staff undertaking tasks related to medication management must be suitably trained to do so.
- 5.6.3 As detailed in the Flexible Framework Terms, Providers will hold and maintain relevant insurances related to the medication management where appropriate. Such insurances and appropriate levels will be agreed with the individual Purchaser before an ISA is agreed.

## **6. Availability of the Service**

- 6.1 The Service delivered will be tailored to meet the assessed needs and agreed Outcomes for the Supported Person. Services may be required over 24 hours a day, 7 days a week. For the avoidance of doubt this may include weekends and public holidays. The level and type of Service provided will form the ISA and will be regularly reviewed, updated and agreed with the Supported Person.
- 6.2 In line with the strategic direction of Scottish Government in the National Clinical Strategy for Scotland policy, Councils and Providers will seek to support the targets for effective, high quality hospital discharge.

## **7. Policies and Procedures**

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<sup>2</sup> <https://www.sssc.uk.com/the-scottish-social-services-council/sssc-codes-of-practice/>

- 7.1 The Provider will ensure appropriate policies and procedures are in place to deliver the Service. This will include embedding policies and procedures in day to day practice and ensuring an effective quality assurance process. Whilst not exhaustive, a list of the policies and procedures that Providers might be expected to have are detailed at Appendix 2 (Policies and Procedures) of this Schedule 1 – Service Specification. Providers will ensure their policies and procedures are regularly reviewed and amended to ensure they reflect Law and Guidance including any changes in best practice.
- 7.2 As detailed in the Flexible Framework Schedule 4 – Individual Support Terms (ISTs), the Provider must have an Adult Support and Protection policy and procedure that likewise accords with the Adult Support and Protection policy and procedure of the Council purchasing the Service. The Provider will also have a Child Protection policy and procedure in place, that will also accord with the Council policy and procedure.

## **8. Technology Enabled Care**

- 8.1 Providers will continually innovate to find new ways of delivering the Service that meets the Outcomes of the person receiving the Service. This will always ensure that human rights are central to Service delivery.
- 8.2 The successful introduction of technology enabled care (including equipment known as telecare) will require a cooperative partnership between the Council, Provider and the person requiring a Service. The use of technology enabled care to increase an individual's independence, enhance their support and experiences, should be used where appropriate, both in relation to communication and to support daily living.
- 8.3 Councils are increasingly encouraging the creative use of technology enabled care to support people to meet their desired Outcomes. The Provider will support and promote the use of technology enabled care where appropriate. The introduction of new technology for the Supported Person will be agreed as part of the Support Plan. Examples of different technology enabled care which may be used is available at Appendix 3 (Examples of Technology Enabled Care) of this document.

## **9. Approach to Fair Work Practices and Workforce Matters**

### **9.1 Fair Work Framework**

The Fair Work Convention produced a Fair Work Framework<sup>3</sup> identifying five main dimensions that define fair work. Providers will be required to demonstrate how they will meet these requirements, supported by the Council throughout the period of delivering the Service. Responding to the challenges in recruitment and retention in the sector will require a collective response. The five dimensions of the Fair Work Framework are:

#### **a) Security**

Security of employment, work and income are important foundations of a successful life. This can be achieved through, for example:

- Fair pay for example the real Living Wage;
- No inappropriate use of zero-hour contracts or exploitative work patterns;
- Collective arrangement for pay and conditions;

<sup>3</sup> <https://www.fairworkconvention.scot/the-fair-work-framework/>

- Building stability into contractual arrangements;
- Flexible working to align with family and caring commitments;
- Employment security arrangements;
- Fair opportunity for pay progression; and
- Sick pay and pension.

**b) Respect**

Fair work is work in which Staff are respected and treated respectfully, whatever their role and status. This can be achieved through for example:

- Considering the concerns of others;
- Respect of behaviours and attitudes;
- Policies and procedures that are understood and applied that respect health, safety and wellbeing;
- Respect of workers' personal and family lives; and
- Opportunities for flexible working.

**c) Opportunity**

Fair opportunity allows Staff to access and progress in work and employment and is a crucial dimension of fair work. This can be achieved through for example:

- Robust recruitment and selection procedures;
- Training and development opportunities;
- Promotion and progression practices;
- Buddying and mentoring; and
- Engaging with diverse and local communities.

**d) Fulfilment**

It is widely accepted that fulfilment is a key factor in both individual and organisational wellbeing. This includes the opportunity to use one's skills, to be able to influence work, to have some control and to have access to training and development. This can be achieved through, for example:

- Effective skills use;
- Autonomy, opportunities to problem solve and make a difference; and
- Investing in training, learning and skills development and career advancement.

**e) Effective Voice**

The ability to speak, individually or collectively, for example through a recognised trade union, and to be listened to, is closely linked to the development of respectful and reciprocal workplace relationships. Effective voice underpins the other dimensions of fair work and real dialogue between organisational stakeholders can help deliver on opportunity, security, fulfilment and respect.

This can be achieved through for example:

- Enabling Staff to have a voice at all levels;



- Openness, transparency, dialogue and tolerance of different views;
- Formal and informal structures; and
- Union recognition and collective bargaining.

## **10. Sustainability, Community and Social Benefits**

10.1 Community benefits provide a means of achieving sustainability in public contracts. They include targeted recruitment and training, small business and social enterprise development and community engagement. Councils and Providers will work together to develop appropriate approaches to community benefits. Some examples of the types of community benefits Providers will be expected to deliver under the Flexible Framework are detailed below.

- Training and work experience;
- Community projects, social inclusion and wellbeing activity;
- Mentoring and education;
- Capacity building in the community; and
- Supporting and working with SMEs, third sector organisations and supported businesses where appropriate.

## **11. Flexible Framework Management**

11.1 Effective Framework management is essential to ensure all Parties to the Flexible Framework are working together to ensure the Flexible Framework terms are met.

11.2 Scotland Excel will convene a meeting with Providers annually to discuss the practical operation of the Flexible Framework and explore potential improvements for any future Frameworks. Additional meetings may be convened at intervals to be agreed, or as required to support delivery of Services. The approach to Framework management will be a collaborative and supportive approach including a range of stakeholders such as Supported Persons, Councils and Providers.

11.3 Scotland Excel will hold forums for Councils and Providers to meet to discuss the Flexible Framework. This will provide an opportunity to share best practice and raise issues.

11.4 Providers will supply management information relating to the Flexible Framework to Scotland Excel in a format and at a frequency as agreed with a technical group established during Flexible Framework mobilisation. The information Providers may be asked to submit may include, but is not limited to:

- Change Indicators (Staff turnover etc.);
- Community Benefits;
- Duty of Candour/Significant Incidents;
- Fair Work Practices;
- Financial Probity;
- Framework Spend;
- National Policy & Procedures/ Insurances;
- Number of People Supported;



- Numbers of Hours to remain sustainable;
- Payment of the real Living Wage;
- Trend Analysis; and
- Use of Technology.

## **12. Local Contract Monitoring**

- 12.1 Effective contract monitoring is essential to ensure all Parties are working together to support and meet the needs of the Supported Person. The management and monitoring of the delivery of the Service requires a partnership approach between the Supported Person, the Council and Provider.
- 12.2 The Council and Provider will seek the views of the Supported Person and, where appropriate, those of their relatives, advocates, or other significant people as part of the contract monitoring process.
- 12.3 The Council and the Provider will meet at intervals, to monitor and review the Service/ISAs as required. The Council will be responsible for convening these meetings and will include representatives from its commissioning and operations.
- 12.4 Councils may hold local joint forums with Providers to discuss potential innovations in the delivery of the Service including continuous improvement opportunities.
- 12.5 The Provider will provide data necessary to support contract monitoring at a frequency and in a format agreed with the Council.
- 12.6 Providers will have a process in place to monitor the Supported Person's Outcomes. As a minimum this will include:
- Reviews of Support Plans as determined through Care Inspectorate requirements; and
  - Aggregation of the achievement of individual Outcomes across Supported People using the Service, to support development of the Service, frequency to be determined by the Council and Provider.

## **13. Service Standards**

- 13.1 Providers will operate a system of quality assurance, and evidence how Service quality is measured, and continuous improvements are delivered within the Service. This may include:
- Surveys to establish the Supported Person's views about the Services they receive;
  - Use of the comments and complaints procedure to reflect on the outcome of any action and change to the Service;
  - Surveys for gathering the views of other professionals which should be used to develop the Service;
  - Protocols for answering formal queries by the Council in respect of individual Supported People;
  - A system for collecting and providing information to the Council as required about Staff training, development and induction, including levels of training undertaken and percentages of Staff trained; and

- A communications system must be provided in each Supported Person's home, to keep an ongoing record of the Service provided and any refusals of agreed Service, any financial transactions and regular feedback from the Supported person on the Service.

13.2 To ensure that the Supported Person's safety and security is maintained in their homes all Providers will produce identity cards for all Staff entering Supported Person's homes. The cards should display:

- A photograph of the member of Staff;
- The name of the person and employing organisation in large print;
- The contact number of the Provider organisation;
- The date of issue and an expiry date, which should not exceed thirty-six (36) months from the date of issue; and
- For people with special communication requirements, the Provider shall ensure that there are clear and agreed ways of identifying Staff from the organisation.

## **14. Notifications to Care Management**

14.1 Providers must have in place a system to notify the Council and the Supported Person's Representative of any significant incident (including but not limited to):

- Any significant incident, including allegations or evidence of abuse or harm relating to the Supported Person;
- Maladministration of the Supported Person's funds or property, or serious loss or damage to property;
- Significant changes in the Supported Person's needs or circumstances;
- Any permanent change in the named member of Staff responsible for an overview of the Service for the Supported Person;
- Formal complaints in respect of any aspect of the Supported Person's Service, subject to the consent of the Supported Person and/or their Representative;
- Unplanned absence of the Supported Person;
- Failure to provide the Service to the Supported person, missed, late, void or 'no response' calls;
- The Supported Person's attendance at an accident and emergency facility or admission to or return from hospital as an in-patient, including identification of whether that admission was as an emergency;
- Maladministration of medicines including neglect to administer and refusal of Supported Person to comply with administration based on risk and noted in the Support Plan; and
- Death of the Supported Person.

## **15. Role of Unpaid Carers**

15.1 The Carers (Scotland) Act 2016 is designed to support carers' health and wellbeing and help make caring more sustainable.

- 15.2 Unpaid carers are the largest group of Providers of care in Scotland and should be recognised as equal partners in providing vital Care and Support. Carers should be supported to carry out their caring role.
- 15.3 Carers, and the people they support, must be at the centre of Service planning, delivery and review. They should have the opportunity to define their contribution to the Service of the Supported Person, know what to expect and be clear about the support they are entitled to.
- 15.4 Providers should consider how they consult and engage with unpaid carers where appropriate to do so in the delivery of the Services.

## Appendix 1 of Service Specification – Examples of elements of Care and Support to be delivered

### 1. General

This Specification is for Services for people with a range of needs. A personalised strengths-based approach is required, recognising that each person is unique and will have different needs and requirements. **The information detailed below will not necessarily be required in all circumstances and seeks to provide examples of a range of support requirements.**

The **examples** of the tasks and supports listed below may be undertaken with and for individuals, maximising opportunities for them to take control over their own lives and to direct and manage the support they receive.

**It is also important to emphasise that the list below is not prescriptive and should not preclude imaginative and alternative solutions which may better suit an individual.**

The precise details of the types of support required will need to be negotiated and agreed between the individual, their relatives and carers, advocates and the Provider in order to achieve the Outcomes stated in the Support Plan.

**With the evolving personalisation of Services, there is an expectation that all Providers deliver Services that are adaptable and flexible, that can support and facilitate individuals to meet the challenges of daily living, whilst enabling them to live as engaged and active citizens.**

The following are outcomes that Providers **may be required** to evidence:

**i. Active Citizens** - The Provider recognises that each Supported Person will have their own interests and preferences and that these should be supported whenever possible. Where the Provider feels existing care arrangements can be improved upon, the Provider will consult with the Care Manager on the feasibility of such a change.

**ii. Healthy** - The Provider will support Supported People to improve and maintain their health through the planning of regular consultations with the appropriate generic Service agencies. These can be, but are not limited to the following:

- Registration with GP;
- Dentist;
- Optician; and/or
- Audiologist.

The Provider shall notify the Care Manager of significant risks to the health, safety and wellbeing of the Supported Person that are identified in the course of providing the Service. Where appropriate, with the Supported Person's consent, the Provider will make referrals to other agencies that may assist in minimising these risks.

**The range of supports listed below are neither exhaustive nor needed in all cases and will depend on the persons requirements, identified through care assessment as most likely to meet their agreed needs and Outcomes and as identified in their Support Plan.**

## Appendix 1 of Service Specification – Examples of elements of Care and Support to be delivered (continued)

### 2. Elements of Care and Support

The following are **examples** of elements of Care and Support that a Council may expect the Provider to deliver. If these activities are required to meet the Supported Persons desired Outcomes, these will be set out in the Supported Person's Support Plan.

- Access a range of community activities, such as education, leisure and recreational that promote independence and growth;
- Assistance with administration of medication, such as tablets, eye/ear drops, application of creams/lotions, simple dressings, and to have policies and procedures in place to support this;
- Assistance with budgeting, paying bills and dealing with benefits issues;
- Assistance with doing laundry associated with medical conditions including incontinence for example bed changing, washing and drying laundry, preparing soiled laundry for collection and on occasions laundering soiled items;
- Assistance with food/diet, such as food preparation, special diets, encouragement and motivation to eat/drink, management of meal services. This may include assisting and involving Supported Persons in preparing meals and enabling them to maintain an adequate diet and fluid intake;
- Assistance with mobility in line with safe moving and handling techniques, including transfers (hoist), advice/personal support, reminding and using safety devices;
- Assistance with oxygen administration or tracheostomy, where appropriate and where there is an appropriate care protocol in place with appropriate training from health care Staff;
- Assistance with putting on appliances with the appropriate training, such as callipers or artificial limbs with appropriate training from health care Staff; and
- Assistance with skin care, where assessed and where there is an appropriate care protocol in place;
- Informal day to day advice on drug/alcohol misuse;
- Informal day to day advice on personal hygiene and appearance;
- Maintaining the safety and security of the Supported Person's home or tenancy for example night settling and making the home safe and secure before leaving;
- Percutaneous endoscopic gastrostomy (PEG) feeding when oral intake is not possible, or alternative feeding methods with appropriate training from health care Staff. For example, nasogastric intubation or orogastric intubation.
- Personal Care and Support, such as assistance with getting up/going to bed, personal hygiene, bathing, showering, nail filing, continence management, toileting, dressing, catheter/stoma care and bed changing;
- Shopping, prescription collection where the Supported Person is not able to physically manage these tasks;
- Support to maintain cleanliness of their home;

- Supporting and facilitating access to social, vocational and recreational activities; and
- Supporting People to access support with their health.

**Please note the above list is for example only and is not exhaustive.**

## Appendix 2 of Service Specification – Policies and Procedures

Further to Schedule 1 – Service Specification section 7, Provider’s policies and procedures may be requested by the Council throughout the period of provision of the Service and as part of ongoing monitoring. Examples of policies that may be required are:

<b>Policy/Procedure</b>
Accidents/Incidents
Adult/Child Protection
Complaints
Confidentiality
Dealing with Emergencies
Disciplinary
Equality and Diversity
General Data Protection Regulation
Health and Safety
Infection Control
Lone Working
Maintaining Professional Boundaries
Positive Behaviour Support
Managing Persons’ Monies
Medication Policy
Moving and Handling
Restrictive Practice Policy
Record Keeping
Recruitment and Selection
Risk Assessment
Slips, Trips and Falls
Staff Supervision including Appraisal
Staffing and Training
Whistle Blowing



## **Appendix 3 of Service Specification – Examples of Technology Enabled Care**

Further to Schedule 1 – Service Specification section 8, Councils are increasingly encouraging the creative use of assistive technology for Supported People to help meet their desired Outcomes. The Provider will support and promote the use of assistive technology where appropriate. The introduction of new technology for the Supported Person will be agreed as part of the Supported Person’s Support Plan. Examples of different assistive technology which may be used are detailed below:

<b>Equipment</b>
Dispersed alarm units
Alarm triggers
Health and social care peripherals and accessories
Environmental devices
GPS devices with ancillary monitoring and telecare mobile phones
Lifestyle monitoring with ancillary monitoring service
Key storage compartments
Call systems, for grouped housing
“Smart home” equipment

**[End of Schedule 1 – Service Specification.]**

<b>TENDER:</b>	Care and Support Services
<b>FRAMEWORK REFERENCE:</b>	1318
<b>PERIOD:</b>	01 April 2020 – 31 March 2024 (Commencement Date for New Entrants to be confirmed at time of award)
<b>SCHEDULE:</b>	Schedule 2

**New Entrants to the Flexible Framework Guidance Note**

**1. Introduction**

In order to respond to potential changes in Services and promote access and choice of Services over the four (4) year Duration of the Flexible Framework, Scotland Excel will re-open the Flexible Framework for New Entrants to be added. This Schedule 2 sets out the process that will be followed.

The process will be conducted in a fair, open and transparent manner. In summary, New Entrants will be subject to the same minimum requirements as those who responded to the initial Contract Notice establishing the Flexible Framework.

**2. New Entrants to the Flexible Framework**

Applicants seeking admission as a New Entrant to the Flexible Framework will be required to complete the same process as existing Providers. This ensures fairness, consistency and transparency.

A new Contract Notice will be issued inviting interested Providers to submit a response should they wish to participate in the Flexible Framework. This Contract Notice will include the equivalent of the full suite of procurement documents issued with the original Invitation to Tender (ITT) with the necessary changes (e.g. to reflect the timing of the process or other changes such as changes to Law or agreed changes to the Flexible Framework, and so on).

Where Scotland Excel intends to re-open the Flexible Framework to New Entrants the actual timescales for this will be dependent on the circumstances and demand, but the anticipated timescale/period is as follows:

<b>Commencement Date</b>	<b>Flexible Framework Opens</b>	<b>Tender Returns</b>	<b>Tenders Evaluated</b>	<b>Successful Tenderers Added to the Flexible Framework</b>
Month 1	Beginning of Month 4	Beginning of Month 5	End of Month 5	Month 6

This will be repeated throughout the Duration of the Flexible Framework to allow New Entrants' to be available on the Flexible Framework every six (6) month period. Scotland Excel reserves the right to re-open the Flexible Framework to New Entrants in accordance with the procedure set out herein at any time throughout its Duration.

**[End of Schedule 2 – New Entrants to the Flexible Framework Guidance Note.]**

<b>TENDER:</b>	Care and Support Services
<b>FRAMEWORK REFERENCE:</b>	1318
<b>PERIOD:</b>	01 April 2020 – 31 March 2024 (Commencement Date for New Entrants to be confirmed at time of award)
<b>SCHEDULE:</b>	Schedule 3

## Calling Off from the Flexible Framework Guidance Note

### 1. Introduction

- 1.1 This Schedule 3 – Calling Off from the Flexible Framework Guidance Note is intended as guidance for those Parties using the Flexible Framework. While this Flexible Framework is for requirements under Self-directed Support Option 3, each of the Call Off processes identified can and should allow choice and control for people requiring a Service.
- 1.2 Councils may choose to use any of the processes identified in this Schedule 3 to agree an Individual Support Agreement (ISA). Under each of the processes identified, and as a matter of best practice, Councils will have open communication, engagement and dialogue with Supported Persons and Providers to achieve the best Outcome for the Supported Person. Councils may also choose to invite Providers to attend meetings to discuss local area requirements.
- 1.3 ISAs shall be awarded by Councils by either:
- 1.3.1 A Supported Person Selected Service made to an eligible identified Provider on the Flexible Framework by following the Flexible Framework Terms;
  - 1.3.2 A Council Direct Service Matching Process made to an eligible identified Provider on the Flexible Framework by following the Flexible Framework Terms; or
  - 1.3.3 A Council Enhanced Matching Process of all Providers delivering Services within the Geographical Area which are capable of meeting the requirement.

### 2. Calling Off from the Flexible Framework – General Points

- 2.1 Providers may provide the Service encompassing either Care at Home or Supported Living Services or both. The information submitted by Tenderers in their Tender Response to Scotland Excel may be considered by Councils when they are Calling Off from the Flexible Framework, as outlined, below, in accordance with the terms of the Flexible Framework.
- 2.2 In Calling Off from the Flexible Framework, Councils will consider the appropriate process to ensure the best Outcome for the person requiring a Service. The Council therefore reserves the right to enter into negotiations, to award in part or in whole, or not to make any awards.
- 2.3 All information submitted by a Provider in accordance with Clause 2.1, above, will be made available to Councils to help inform local Call Offs from the Flexible Framework. Awards of ISAs will be made on the basis of the best price quality ratio reflecting current

Care Inspectorate grades (quality) and tendered rates (price) that best meet the Supported Persons needs and Outcomes assessed by the Council.

- 2.4 A Call Off based on this Flexible Framework shall under no circumstance entail substantial modifications to the terms laid down in the Flexible Framework. For the avoidance of doubt, neither the Council making the Call Off nor the Provider performing the Call Off shall include in the Call Off, terms that are substantially different from those laid down in the Flexible Framework.
- 2.5 It is the Council's responsibility under Regulation 38 of the Public Contracts (Scotland) Regulations 2015 to fulfil the obligations imposed by said Regulations in respect of any part of the Flexible Framework procedure that the Council as the contracting authority conducts itself. This includes when it re-opens competition (a Council Enhanced Matching Process) under the Flexible Framework. Accordingly, it will be for the Council to determine the suitability or appropriateness of any refinement of the terms and conditions of the Flexible Framework or any change sought (for the purposes of an Enhanced Matching Process) in accordance with the award criteria used to establish the Flexible Framework and the terms of the Flexible Framework.
- 2.6 It is the case, however, that the award criteria relating to the procurement of the proposed Flexible Framework will have been identified and refined on a national basis including, for example, taking account of the needs of up to thirty-two (32) Councils and, therefore, the Flexible Framework award criteria may not precisely fit an individual Council's requirements for a particular Service or Supported Persons or Persons. It will be the decision of that Council as to the method of selecting a Provider which departs from the general principles set out in this document.
- 2.7 It is envisaged that the processes outlined in this Schedule 3 will be followed by Councils to conduct a Call Off from the Flexible Framework.

### **3. Supported Person Selected Service**

- 3.1 Councils may shortlist Providers based on the information submitted by Providers in their completed Tenderer Response Template (Part 3A of the ITT) submitted to Scotland Excel in response to this ITT.
- 3.2 Councils may consider:
- Services provided;
  - Which Care Groups the Provider has indicated they can support; and
  - Which Geographical Areas the Provider has indicated they can deliver Services.
- 3.3 Provider information including associated costs may be shared with the Supported Person for a Service to be selected on their direction.

### **4. Council Direct Service Matching Process**

- 4.1 In circumstances where the Supported Person requests that the Council selects a provider on their behalf, Councils may select from the shortlist of providers using the criteria identified below.
- Services provided;
  - Which Care Groups the Provider has indicated they can support;
  - Which Geographical Areas the Provider has indicated they can deliver Services; and

- Ability to meet the Supported Person’s personal Outcomes within the budget identified through the assessment process.
- 4.2 If the above requirements can be met by one Provider only, it is likely that Provider will be selected.
- 4.3 Should a number of Providers meet the requirements stated above, the Council will consider any other requirements it deems appropriate from the list below to make a direct Service match. Councils will make award decisions in order to ensure the needs and/or Outcomes of the Supported Person are met. In doing this Councils may take account of the specificities of the Services and the requirements and needs of Supported Persons which may include consideration of the following (without limitation):
- Capacity to provide a Service within the desired timescales;
  - Care Inspectorate Grades\*;
  - The risk profile of Services operating in the area and the need to ensure sustainability;
  - The Providers ability to offer innovative solutions and/or work with technology solutions;
  - The Provider currently delivering the Service (if arrangement is pre-existing) and requirement for continuity of provision;
  - The cost of the Service;
  - The Provider’s approach to Fair Work Practices, sustainability, community and social benefits; and
  - Any other considerations important to meet the outcomes of the Supported Person.

\* In accordance with Clause 9.4 of the IST, Purchasers may set a locally acceptable minimum Care Inspectorate grade and may only enter into ISAs with Providers which meet the required grades. Where a local minimum Care Inspectorate grade requirement has been set, the Purchaser will provide details of this in writing to the Provider.

## **5. Council Enhanced Matching Process**

- 5.1 Although the proposed Flexible Framework has been put in place to meet all the reasonably identified needs of each individual Council, circumstances may arise where a Council considers that not all of the terms of the proposed Call Off are laid down in the Flexible Framework. Thus, a direct award Call Off may not be possible or necessarily represent Best Value and the option of a Call Off by an Enhanced Matching Process has to be pursued. Councils may invite Providers to complete an Enhanced Matching Process Template (that will be shared with successful Providers to the Flexible Framework) to identify the Provider best able to meet the persons assessed needs.
- 5.2 Councils may use any of the requirements included under section 4 for the purpose of evaluating responses.
- 5.3 The Flexible Framework will be awarded based on the most economically advantageous offer(s). The evaluation award criteria and weightings that apply to the tender evaluation process to award participation on the Flexible Framework is: Technical – weighted at 90% and Commercial – weighted at 10%.

- 5.4 In conducting an Enhanced Matching Process, the ratio can be changed as required by Councils to reflect the needs/Outcomes of the Supported Person subject to the proviso that technical criteria will always receive the more significant weighting, reflecting the advertised basis for award of the Flexible Framework.
- 5.5 In conducting this process, the following best practice approach should be followed where possible:
- Use the Further Service Matching Template to notify Providers;
  - Consider the appropriate timescale for Provider responses; and
  - When conducting this process, ensure that all Providers who meet the requirements set out in 3.2 are given the opportunity to respond.

## **6. Block Contracts**

- 6.1 Councils may decide to enter into a number of Block Contract arrangements under this Flexible Framework, where the Council determines that this is the best way of meeting the needs and/or Outcomes of Supported Persons.
- 6.2 Where this is the preferred approach, a Council may utilise the provisions under this Schedule 3, section 4 and 5 to allocate a Block Contract to a Provider for an identified level of Service requirements.

## **7. Individual Support Agreement (ISA)**

- 7.1 Where the Council determines to make an award to a Provider under this Flexible Framework it will enter into an Individual Support Agreement with the Provider on the basis of the template set out in Schedule 5 – Individual Support Agreement or an equivalent developed by the Council.

**[End of Schedule 3 – Calling Off from the Flexible Framework Guidance Note.]**

<b>TENDER:</b>	Care and Support Services
<b>FRAMEWORK REFERENCE:</b>	1318
<b>PERIOD:</b>	01 April 2020 – 31 March 2024 (Commencement Date for New Entrants to be confirmed at time of award)
<b>SCHEDULE:</b>	Schedule 4
<b>Individual Support Terms</b>	

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<b>PART B</b>	<b>Deals with finance</b>
<b>PART C</b>	<b>Sets out Service requirements</b>
<b>PART D</b>	<b>Protects information</b>
<b>PART E</b>	<b>Explains how changes are dealt with</b>
<b>PART F</b>	<b>Details the Law</b>
<b>PART G</b>	<b>Sets out liabilities</b>
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## PART A - GENERAL

### **1. Identified and Defined Terms**

- 1.1 This document forms the Individual Support Terms (“IST”) for the Care and Support Services (1318) Flexible Framework Agreement (“the Flexible Framework”) and applies to every Individual Support Agreement (“ISA”) made between the Purchaser and Provider under the Flexible Framework as detailed in Clause 14 (Individual Support Agreement Procedures) herein.
- 1.2 The definitions and interpretations defined in Schedule 6 – Identified and Defined Terms and Clause 1 (Interpretation) of the Flexible Framework Terms shall apply with the necessary changes to this IST, except where the context otherwise requires. For the avoidance of doubt, any reference to a Clause shall be construed as a reference to a Clause herein unless otherwise stated and any reference to the Service Specification means a reference to Schedule 1 – Service Specification to the Flexible Framework unless otherwise stated.
- 1.3 The Parties shall exercise their powers, obligations or discretions in terms of the Flexible Framework in a reasonable manner and in accordance with their statutory and regulatory obligations.
- 1.4 Common Clauses
- 1.4.1 The following Clauses in the Flexible Framework Terms are hereby taken to form part of this IST with the necessary changes applied such as (where the context allows) the substitution of ‘Purchaser’ for ‘Scotland Excel’, the substitution of ‘Individual Support Terms’ for ‘Flexible Framework Terms’ and so on:
- i) Clause 2 (Flexible Framework Status and Duration)
  - ii) Clause 17 (Freedom of Information)
  - iii) Clause 18 (Publicity and Audit)
  - iv) Clause 19 (Waiver)
  - v) Clause 20 (Severability)
  - vi) Clause 21 (Remedies Cumulative)
  - vii) Clause 26 (Law of Scotland)
  - viii) Clause 27 (Best Value)
  - ix) Clause 28 (Assistance in Legal Proceedings)
  - x) Clause 29 (Human Rights)
  - xi) Clause 31 (Health and Safety)
  - xii) Clause 33 (Corruption and Collusion)
  - xiii) Clause 34 (Prevention of Fraud)
  - xiv) Clause 35 (Conflicts of Interest)

### **2. Individual Support Agreement (ISA) Status and duration**

- 2.1 Under the terms of the Flexible Framework established by Scotland Excel, Purchasers may enter into ISAs for Adults as and when required with Providers participating in the

Flexible Framework in order to meet the Outcomes of a Supported Person.

- 2.2 In general, the Flexible Framework Terms sets out the rights and obligations between Scotland Excel, acting on behalf of Purchasers, and the Provider in terms of the operation and management of the Flexible Framework. The ISTs set out the rights and obligations between the Purchasers and Providers relative to the ISA.
- 2.3 The Purchaser recognises the role of Scotland Excel in managing the Flexible Framework and will endeavour to avoid unnecessary duplication of information requests from the Provider and requesting information in other formats where possible.
- 2.4 ISAs entered into under the Flexible Framework are subject to the IST. The Service to be provided under an ISA is set out in the Flexible Framework including as more particularly described in Schedule 1 – Service Specification forming part of the Flexible Framework.
- 2.5 The expected duration of the ISA entered into will be as set out in the ISA where appropriate and known. Services extending beyond the End Date of the Flexible Framework will be dealt with in accordance with Clause 25 (Individual Support Agreements Extending Beyond the Duration of the Flexible Framework).
- 2.6 For the avoidance of doubt, the Purchaser may agree such amendments to the IST by way of the ISA as may be necessary to reflect the requirements of the Supported Person including relative to the Social Care (Self-directed Support) (Scotland) Act 2013.

### **3. Purchaser’s Obligations**

- 3.1 Purchasers may choose to enter into ISAs with a Provider but are not bound to do so. Where an ISA is entered into by a Purchaser, it will be governed by these ISTs.
- 3.2 The Fees payable in respect of an ISA will be calculated in accordance with Schedule 7 – Financial Information to the Flexible Framework. Purchasers will be liable to pay the Fees in accordance with the terms herein.
- 3.3 The Purchaser will ensure the Supported Person’s Care Manager and other relevant Staff are aware of their obligations under the ISTs and any ISA.

### **4. Provider’s Obligations**

- 4.1 The Provider will have a duty of care for the Supported Person for the duration of the ISA.
- 4.2 The Provider shall perform its obligations:
  - i) In accordance with the Flexible Framework and the requirements of each ISA;
  - ii) With appropriately experienced, qualified and trained Staff;
  - iii) In accordance with Good Social Care Practice;
  - iv) In compliance with all applicable Laws and Guidance; and
  - v) In accordance with the Health and Social Care Standards and any requirements made by relevant Regulatory Bodies including the Care Inspectorate and the Scottish Social Services Council (SSSC).
- 4.3 The Provider must provide the Service to the Supported Person in accordance with the requirements of the IST and the ISA. Without prejudice to the former, the Service must be provided as detailed in Schedule 1 – Service Specification and the Provider’s Tender offer (as accepted by Scotland Excel in its award) together with any other

requirements for the Supported Person which form part of the Service.

- 4.4 The Provider shall give Notice to the Purchaser as soon as reasonably practicable if it finds it is unable permanently or temporarily to meet the conditions of the IST or any ISA and a Remedial Action Plan with timescales (where applicable) shall be agreed by both Parties subject to Clause 37 (Breach and Termination).
- 4.5 Where an issue relating to the provision of the Service to a Supported Person concerns or potentially concerns multiple Supported People, the Provider must advise all relevant Purchasers of the concern at the earliest time reasonable.
- 4.6 The Provider confirms to the best of its knowledge that there are no restrictions of any kind which in any way affects its capacity to contract. If any such restrictions exist or arise, the Purchaser shall have the option to terminate the ISA. The Provider shall indemnify the Purchaser in full for any resulting loss.
- 4.7 Without prejudice to Clause 4.6 above, the Provider confirms that to the best of their knowledge, none of the offences detailed in Regulation 58(1), none of the grounds detailed in Regulation 58(3) or 58(8), all of the Public Contracts (Scotland) Regulations 2015, and no breach of the Employment Relations Act 1999 (Blacklists) Regulations 2010 or Section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or the Data Protection Law by unlawfully processing personal data in connection with any blacklisting activities applies to it as at the date of submission of its tender and undertakes to advise the Purchaser if, at any time, subsequently during the term of the ISA, conviction of any said offence or the occurrence of any such ground or the committing of any such breach happens. In the event of any breach of this Clause by virtue of such conviction, such occurrence or such committing, the Purchaser shall have the option to terminate the ISA and the Provider shall indemnify the Purchaser in full for any resulting loss.

## **5. Notices**

- 5.1 Any Notice which is to be given by either Party to another shall be given by letter (sent by hand, post or by the recorded or special delivery service), or by electronic mail unless otherwise agreed between the relevant Parties. The provisions in this Clause do not affect or supersede the obligations of the Provider to comply with Adult Protection procedures.
- 5.2 Notices relating to ISAs shall be sent to the Provider or the Purchaser at the address detailed in the ISA.
- 5.3 Any Notice which contains personal data or special categories of personal data (as defined in Data Protection Law) shall be sent securely in a way which complies with Law and Guidance.
- 5.4 The Notice shall be deemed to have been given:
  - i) Two (2) Working Days after the date of the letter;
  - ii) Four (4) hours after sending in the case of electronic mail between 9am and 5pm on a Working Day or at 10am on the next Working Day when sending is out with these times; or
  - iii) At such sooner time where the recipient acknowledges receipt of the relevant Notice.
- 5.5 The Provider or Purchaser may change its address for Notices by sending written notification to the other Party. The Purchaser shall not be responsible for any failure

to intimate or delay in intimation arising out of or in consequence of the Provider's omitting to advise the Purchaser of a change under this Clause.

- 5.6 Where any Notice required in this IST is sent by a Provider to a Purchaser's out of hours service, this shall not be deemed to have satisfied the Notice requirements under this Clause 5 until the Provider issues written Notice in accordance with this Clause 5.
- 5.7 For the avoidance of doubt, where written Notice has been dispensed with in serving an initial Notice of incidents in accordance with Clause 5, written Notice must be served as soon as reasonably practicable in accordance with the requirements of this Clause 5.

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## PART B – FEES & PAYMENT

### 6. The Fees

- 6.1 The fee in respect of each Service will be the Core Price per Hour as agreed in writing and authorised by the Purchaser to meet the needs and Outcomes of the Supported Person.
- 6.2 The Core Price will comprise either the Base Price per hour alone or the Base Price plus any Local Variable Price agreed in writing and authorised by the Purchaser to meet the needs and Outcomes of the Supported Person as defined in the ISA.
- 6.3 The Core Price may be varied by the Purchaser and Provider relevant to the requirements of the Supported Person and agreed in the ISA.
- 6.4 The Core Price will be calculated in accordance with Schedule 7 – Financial Information, and this Clause 6, taking into account the type of ISA.
- 6.5 The Base Price shall cover all of the provisions of Schedule 1 – Service Specification and the Service as defined and as submitted by the Provider as part of their tender response.
- 6.6 The Local Variable Price shall cover any additional local variable costs relative to additional travel, training or other costs identified in Schedule 7 – Financial Information.
- 6.7 The Purchaser shall pay the Provider the fee in accordance with the terms until the expiry of the relevant Notice periods in accordance with Clause 37 (Breach and Termination) unless otherwise agreed.
- 6.8 Notwithstanding the provisions of this Clause 6, the Purchaser may agree with the Provider that the fee for the Service will be met by an individual budget fixed for the Supported Person forming part of the ISA. Reviews of variations to an ISA entered into on this basis (including to review or vary the individual budget) will be dealt with in accordance with Clause 7.3 (Fee Variations), below, and Clause 19 (Reviews and Variations to the ISA), unless otherwise agreed between the Parties.

### 7. Fee Variations

- 7.1 Where the type of Service changes such as the need for an increase or reduction in Service, or a change in the Outcomes for a Supported Person, resulting in a different Core Price, the Core Price will be varied in accordance with Schedule 7 (Financial Information) and in accordance with this IST.
- 7.2 Where a variation to the Core Price is agreed in accordance with Clause 7 (Fee and Fee Setting) of the Flexible Framework Terms the variation will:
  - i) Apply to any ISA entered into in accordance with this IST, effective from the 1st of April in the same year in which the variation was agreed (“the effective date”); and;
  - ii) Apply to both ISAs in existence at the effective date and any ISAs concluded after the effective date, equally.
- 7.3 The Purchaser reserves the right to terminate the ISA where it considers proposed increases to the fee for the Service to be unreasonable. In accordance with Clause 37 (Breach and Termination), where termination occurs, both Parties shall ensure they work together to support a smooth and effective transition of the care arrangements for each Supported Person.

## **8. Invoices and Billing**

- 8.1 The Purchaser may agree particular billing and payment arrangements which must be stated on the ISA where different from the process detailed in this Clause 8. Such alternative arrangements shall be no more onerous than the process contained herein.
- 8.2 The Purchaser's address to which invoices will be sent, and any additional information required for invoicing purposes, will be stated in the ISA.
- 8.3 Invoices should be submitted in arrears for each calendar month no sooner than the first Day of the next calendar month.
- 8.3.1 Where Providers have agreed previously with Purchasers as to the timing and phasing of payment which diverge from the requirements of this Clause 8, they may continue with these arrangements where they have been agreed as part of the tender process with a view to phased transition to procedures in accordance with Clause 8.1 above.
- 8.4 Valid invoices submitted by the Provider must contain, unless otherwise set out in the ISA, in respect of each Supported Person for whom the Purchaser is liable to make any payment:
- i) The Supported Person's identifying number (all invoices);
  - ii) Date of commencement of the ISA (on the initial invoice only);
  - iii) Dates of any absences from the Service if required in line with the Purchasers local process as identified in Clause 21 (Supported Person's Absence);
  - iv) If the ISA has been terminated during the period of the invoice(s), the date of such termination;
  - v) The period of charge for the ISA;
  - vi) The total Fee due for the period of the invoice for each Supported Person including a breakdown of the Fee.
- 8.5 Payment by the Purchaser will not imply acceptance by the Purchaser that the ISA has been satisfactorily performed.
- 8.6 The Purchaser will make payment of any valid, undisputed invoices no later than thirty (30) Days after receipt.
- 8.7 Should the Provider submit an invoice to the Purchaser which is apparently inaccurate or not in accordance with this Clause 8, the Purchaser may dispute the invoice by giving Notice to the Provider stating the reason for the dispute. The Purchaser may make part payment for any undisputed part of the invoice but shall not be required to make any payment until a valid, undisputed invoice is received.
- 8.8 Should the Provider become aware that any invoice is not accurate; the Provider shall correct the invoice by:
- i) Withdrawing the invoice and re-submitting a valid invoice if practical;
  - ii) Providing a balancing entry on the next invoice; or
  - iii) Providing a refund and credit note where no further invoices are anticipated.
- 8.9 The Fees are exclusive of Value Added Tax (VAT) and the amount of any VAT must be shown separately on each invoice. The Purchaser will pay VAT on that part of the Fee for which the Purchaser has a liability.

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## PART C – SERVICE

### **9. Care Inspectorate Registration and Grades**

- 9.1 Throughout the duration of the ISA, in relation to the Service, the Provider shall:
- i) Hold and maintain Registration with the Care Inspectorate and such other Registration with such Regulatory Bodies as required for the provision of the Service; and
  - ii) Hold and maintain grade 3 or above for all Care Inspectorate quality themes.
- 9.2 Where the Provider is awarded a Care Inspectorate grade of two (2) or below for any quality theme throughout the Duration of the Flexible Framework, this will be treated as a Breach capable of remedy in accordance with Clause 39.3 (Material Breach – Capable of Remedy) of the Flexible Framework Terms. In addition to any other remedies the Purchaser may have including those provided for within these ISTs, the Purchaser may suspend the making of new ISAs with the Provider. In such an event, the provisions of Clause 36 (Suspension) herein will apply throughout any such period.
- 9.3 Following re-attainment of grades of three (3) or above, the Purchaser will review the position and determine what action is appropriate in accordance with these ISTs.
- 9.4 Purchasers may set a locally acceptable minimum Care Inspectorate grade and may only enter into ISAs with Providers which meet the required grades. Where a local minimum Care Inspectorate grade requirement has been set, the Purchaser will provide details of this in writing to the Provider. If a local minimum Care Inspectorate grade requirement is set, this must reflect the minimum requirements of the Flexible Framework.

### **10. Staffing**

- 10.1 The Provider will fulfil its statutory obligations concerning the employment of Staff and at all times will have on duty a sufficient number of suitably trained, qualified and competent Staff in accordance with the Law and Guidance and the requirements of the appropriate Regulatory Bodies and any requirements set out in Schedule 1 – Service Specification together with any specific terms included in the ISA in accordance with the terms of this IST.
- 10.2 The Provider will ensure that in accordance with Clause 10 (Staffing) of the Flexible Framework Terms, all Staff who are required to be Registered, are so Registered with the appropriate Regulatory Bodies. Staff shall hold and maintain the required Registration throughout the duration of the ISA, including without limitation, with the SSSC and any other Regulated Body.
- 10.3 Volunteers may be used in the provision of the Service where they meet the standards of fitness as set out in Regulation 9 of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 but not as a substitute for Staff.
- 10.4 The Provider shall provide the Purchaser on request with full details of all Staff's job descriptions, person specifications and titles and also provide equivalent information in respect of any volunteers or students participating in or involved in the provision of the Service.
- 10.5 Suitably trained and qualified agency workers may be used in the provision of the Service without agreement of the Purchaser, but only where the Provider is

unexpectedly short-staffed and is consequently unable otherwise to provide the Service. The Provider and Purchaser will review the use of agency workers as part of local contract monitoring and will agree a general approach to the use of agency workers where necessary.

- 10.6 The Provider shall at all times be liable for the actions and omissions of agency workers, volunteers or students used in the provision of the Service as though such workers were the Provider's own Staff.
- 10.7 Neither the Provider nor its Staff shall be deemed to be entitled to act or hold themselves out as agents or employees of the Purchaser and the Provider shall at all times be liable for the actions and omissions of its Staff, Sub-Contractors, volunteers and students.
- 10.8 In terms of the Rehabilitation of Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, the Provider shall require any person that it proposes to employ or otherwise use in the provision of the Service, to complete a statement concerning their previous convictions for offences of any description.

**PVG Act**

- 10.9 Before an individual is assigned to the delivery of the Service the Provider shall determine whether the delivery of the Service requires the Individual to undertake Regulated Work with Children and/or Regulated Work with Adults. Where the Service requires the Individual to undertake Regulated Work, the Provider shall ensure the procedures set out herein relative to the PVG Act are adhered to throughout the Duration of the Flexible Framework and for the entire period of any ISA entered into under it.
- 10.10 The Provider acknowledges that it is an offence in terms of section 35 of the PVG Act to offer Regulated Work with Children and/or Regulated Work with Protected Adults to an Individual where the Individual is barred from that work. Should such an Individual be used in the provision of the Service, this will be treated as a Material Breach of contract.
- 10.11 The Provider shall not permit an Individual to carry out the type(s) of Regulated Work required in connection with the delivery of the Service until the Provider has obtained from Disclosure Scotland:
  - 10.11.1 The Individual's Scheme Record for the type(s) of Regulated Work to be undertaken by the Individual in delivering the Service; or
  - 10.11.2 Where the Individual evidences existing membership of the PVG Scheme for the type(s) of Regulated Work to be undertaken by the Individual in delivering the Service, a Scheme Record Update; and
  - 10.11.3 Where a Scheme Record Update obtained in accordance with the preceding Clause above evidences that there is new or existing Vetting Information in relation to the Individual, the Scheme Record of the Individual.
- 10.12 The Provider shall use the contents of the Scheme Record, and/or the Scheme Record Update, where applicable, as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of Supported Persons. Where the contents of the Scheme Record show that the Individual has convictions, reprimands, warnings, cautions or any other relevant information, the Provider shall conduct a risk assessment and use that

assessment to protect the interests of Supported Persons, including, without prejudice to the foregoing generality, prohibiting the subject of the Scheme Record (or Scheme Record Update, as applicable) from providing the Service to Supported Persons.

- 10.13 In the event that the Provider or any agency that it is using to recruit Individuals is notified by Disclosure Scotland that the Individual is barred from PVG Scheme membership for the type(s) of Regulated Work undertaken, the Provider shall immediately remove such an Individual from the provision of the Service. The Provider shall in addition notify the Purchaser immediately of their receipt of such notification from Disclosure Scotland, or from an agency, and confirm what actions have been or will be taken following thereon.
- 10.14 For the delivery of the Services which fall outside of the scope of Regulated Work under the PVG Act, the Provider shall obtain the appropriate level of Disclosure directly from Disclosure Scotland:
- 10.14.1 The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 (as amended) and, for the avoidance of doubt, by reference to any regulations made under that Act and Guidance issued by Disclosure Scotland;
- 10.14.2 The Provider shall use the findings of the Disclosure as part of the process to make recruitment decisions and such suitable arrangements as are necessary for the safeguarding and protection of the interests of Supported Persons. Where the Disclosure shows that the Individual has convictions, reprimands, warnings, cautions or any other relevant information, the Provider shall conduct a risk assessment and use that assessment to protect the Supported Persons including, without prejudice to the foregoing generality, prohibiting the subject of the Disclosure from being involved in the provision of the Service to Supported Persons;
- 10.14.3 The Provider shall recheck the status of their existing Staff, volunteers and anyone else involved in the provision of the Service not less than every three (3) years in order to ensure that their Disclosure is up to date; and
- 10.14.4 To ensure compliance with the requirements of these Clauses and subject to the written consent of the subject of the Disclosure, the Provider will share the findings of the Disclosure with the Purchaser on request.
- 10.15 In the event that the Provider is notified by Disclosure Scotland that the Individual is being considered for listing or is barred from PVG Scheme membership for the type(s) of Regulated Work undertaken, the Provider shall immediately remove an Individual from the provision of the Service. Subject to Law, the Provider shall in addition notify the Purchaser immediately of their receipt of such notification from Disclosure Scotland, or from an agency, and confirm what actions have been or will be taken following thereon.
- 10.16 To ensure compliance with Clauses 10.12 and 10.14, the Provider shall record the fact that a risk assessment has been undertaken and shall on request from the Purchaser disclose that record to it.
- 10.17 Before using the services of agency, sessional or relief staff the Provider shall, as appropriate, either obtain a signed written statement from the agency that is supplying the staff, which confirms that such staff:

- 10.17.1 Are PVG Scheme members holding a Scheme Record in respect of the type(s) of Regulated Work being undertaken in the provision of the Service and have not subsequently been barred; or
- 10.17.2 Have been through the appropriate Disclosure checks with Disclosure Scotland should the provision of Services fall outside of the scope of Regulated Work in terms of the PVG Scheme.
- 10.18 The appropriateness of the signed written statement from an agency further to Clause 10.17.2 shall be construed in accordance with clauses 10.9 to 10.15. A copy of the said statement from the agency shall be supplied to the Purchaser on request.
- 10.19 In the event of the Provider failing to comply with any of the requirements of this Clause or where any person as aforesaid has refused to complete a statement concerning their previous convictions in accordance with Clause 10.8, or in the reasonable opinion of the Purchaser a person is unsuitable to deliver the Service, the Purchaser reserves the right without prejudice to its other legal remedies to require such person to be withdrawn immediately from provision of the Service.
- 10.20 The Purchaser hereby acknowledges that it is an offence under Section 67 of the PVG Act for it to request provision of or otherwise seek sight of a statement of PVG Scheme membership, a Scheme Record or Scheme Record Update for a purpose other than as permitted under the PVG Act.
- 10.21 The Provider hereby acknowledges that it is an offence under Section 66 of the PVG Act for it as a party having access to Disclosure Information under sections 51, 52, 53 or 54 of that Act to disclose it to any other person.
- 10.22 Accordingly, the Provider further acknowledges that it cannot disclose such Disclosure Information to the Purchaser and that the Provider, in carrying out the risk assessment and coming to a decision under Clause 10.16 shall ensure that no Disclosure Information is disclosed in advising the Purchaser, where appropriate, of the outcome of its action under Clause 10.16 other than as permitted under the PVG Act.
- 10.23 The Provider shall record and store information disclosed to it in connection with Disclosures and/or the PVG Scheme as detailed in the Code of Practice published by the Scottish Government under section 122 of Part V of the Police Act 1997 (as may be amended from time to time).
- 10.24 The Provider shall ensure that all Staff are trained to deliver the Service, that they understand their responsibilities through training and guidance and that this is evidenced within Staff training records. The Purchaser may request the Provider to make available Staff training records and the Provider will forthwith comply with such a request.
- 10.25 The Provider shall comply with all Scottish Government and regulatory and statutory requirements in relation to safe recruitment including without prejudice to the foregoing generality the 'Safer Recruitment through better recruitment' and any successor Guidance in relation to those working in social care and social work settings as currently published by the Care Inspectorate and the SSSC:  
<https://hub.careinspectorate.com/media/1608/safer-recruitment-through-better-recruitment.pdf>
- 10.26 The Provider shall ensure that Staff deployed under the contract in the provision of the Service are instructed in relation to all relevant provisions of the contract and will ensure that such Staff are familiar with the Provider's policies and procedures via

continuous supervision and training.

- 10.27 For the purposes of this clause, an “Individual” is any person that the Provider does use or is considering using to provide the Service or any part of on either a paid or unpaid basis and, includes a person recruited directly, or from an employment or similar agency or from any other source.

## **11. Staff Development and Training**

- 11.1 All Care workers are required to be Registered with the SSSC or other appropriate Regulatory Body, or to achieve Registration within six (6) months of taking up employment. Care workers are also required to undertake relevant Continuous Professional Development and maintain Post Registration Training and Learning (PRTL) in keeping with SSSC Codes of Practice. The Provider shall ensure that such Staff are so Registered and conform to all related requirements laid down by the relevant Regulatory Body.
- 11.2 The Provider will ensure that all Staff are trained to deliver the Service to Supported People including taking account of the requirements of Clause 13 (Adults at Risk) and ensuring that this is evidenced within Staff training records. The Purchaser, in investigating any matter relating to Adults at Risk, may request the Provider to make available Staff training records and the Provider will comply timeously with such a request.
- 11.3 The Provider will ensure regular learning and training opportunities are made available to Staff to ensure Staff retain a level of knowledge and competence commensurate with job function and level of responsibility. The Provider will provide training that ensures Staff are informed of changes in relevant Law and Guidance and/or Good Social Care Practice.
- 11.4 The Provider will ensure Staff learning and development is also supported through supervision and reflective practice, with such reflective practice providing the Staff with opportunities to apply training and learning activity upon practice. The Provider will ensure non-qualified Staff are supported to attain any skills and qualifications required of them to meet the registration requirements for the SSSC and any other Regulatory Bodies. The Provider will keep training records for all such Staff and make such records available for inspection by the Purchaser when required.

## **12. Transport**

- 12.1 Where transport is required, either for Provider’s Staff delivering the Service, or for a Supported Person as part of the ISA, the Provider shall ensure that any vehicles (and any additional equipment on the vehicle) used in connection with the Service are fit for purpose and are insured in accordance with Clause 34 (Indemnity and Insurance).
- 12.2 The Provider shall ensure that all vehicles used in the delivery of the Service (and any additional equipment on the vehicle) are maintained and serviced in accordance with the manufacturer’s instructions, with full records kept to verify this.
- 12.3 The Provider will ensure that account is taken of any risk assessments in respect of transporting the Supported Person and that all of the recommendations in said risk assessment are adhered to at all times. Risk assessments on all ISAs will include risks associated with travel.
- 12.4 The Provider shall ensure that vehicles are always driven safely and with consideration to the Supported Person’s needs. This shall include conforming to all road traffic legislation and drivers never driving whilst under the influence of alcohol or drugs,



excessively tired, or otherwise in circumstances of unreasonable risk.

- 12.5 Where the Provider has arranged transport, the Provider shall ensure that all drivers and escorts involved in transporting a Supported Person must comply with the requirements of the PVG Act as set out in Clause 10 (Staffing).
- 12.6 Where a Supported Person qualifies for transport from the NHS to attend for a clinical appointment/treatment the Provider will, where practicable and in accordance with the Support Plan, ensure this is arranged.

### **13. Adults at Risk**

- 13.1 The Parties agree to adhere to local procedures in relation to Adults at Risk and to work in accordance with any interagency guidelines that are in place from time to time. The Provider shall immediately notify the Purchaser of allegations or evidence of harm, or if it suspects that a Supported Person may be an Adult at Risk.
- 13.2 The Provider shall ensure that information on its policies and procedures for the protection of Adults at Risk is made available to the Purchaser, Staff and anyone else used to provide the Service, the Supported Person and their Representative and that all Staff and anyone else used to provide the Service are trained in these policies and procedures.
- 13.3 Without prejudice to the generality of Clause 13.2 the Provider shall have a policy and procedure for reporting details of any allegation of financial, physical, sexual or any other form of abuse of a Supported Person. The Provider shall immediately inform the Care Manager of any such reports. The disclosure of such reports shall not be regarded as a breach of Clause 27 (Confidentiality).
- 13.4 The Provider shall have in place, implement and regularly review policies and procedures designed to prevent abuse and for responding to actual or suspected abuse, neglect or exploitation.
- 13.5 The Provider shall produce written guidelines which shall be followed by all Staff and anyone else used to provide the Service in identifying, investigating and reporting (both internally and to other external agencies who have legal duties to protect Adults at Risk) abuse or suspected abuse of Adults at Risk in the care of the Provider, which guidelines shall include guidance on:
- i) identifying Adults at Risk;
  - ii) recognising risk from different sources in different situations and recognising abusive behaviour by other Supported Persons, colleagues, and family members;
  - iii) the duty of Staff to report suspected abuse, neglect, harm or exploitation;
  - iv) the duty of the manager of the Service to investigate such reports and communicate information to external agencies who have legal duties to protect Adults at Risk, including informing the Purchaser of the abuse or suspected abuse or any suspicion that a Supported Person may be an Adult at Risk;
  - v) inter-agency information sharing and clarity on confidentiality and disclosure of information in such circumstances;
  - vi) the procedures for reporting abuse or suspected harm or any suspicion that a Supported Person may be an Adult at Risk both internally and to other external agencies who have legal duties to protect Adults at Risk;
  - vii) protection for whistle blowers;

- viii) working within Good Social Care Practice as specified by this IST;
  - ix) adult or child protection, where appropriate.
- 13.6 The Provider shall ensure that Staff and anyone else used to provide the Service shall adhere to the above-mentioned guidelines, which shall emphasise that all those who express concern shall be treated seriously and shall receive a positive response from management at all levels.
- 13.7 The guidelines in Clause 13.5 shall take account of any inter-agency policies operational in the Purchaser's area that relate to the protection of Adults at Risk.
- 13.8 The Provider shall ensure that prompt action is taken in response to individual complaints from or concerns of Staff, volunteers, the Supported Person and/or the Supported Person's Representative. Any such action shall follow the timescales identified within the complaints procedure.
- 13.9 The Provider shall have in place and implement procedures to prevent Staff and anyone else used to provide the Service gaining any personal benefit when working with vulnerable people.
- 13.10 The Provider shall ensure that where there has been harm including neglect or exploitation, or it is established that a Supported Person is an Adult at Risk, an action plan including risk assessment in relation to victim care/support and dealing with perpetrators is incorporated into the Care Plan. The Provider shall use appropriate independent services including independent advocacy, counselling or support services. The action plan shall be constantly monitored.
- 13.11 Without prejudice to other rights and remedies the Purchaser may have for Material Breach of the Flexible Framework available to them under the Flexible Framework or the Law, the Purchaser, having statutory lead responsibility under the Adult Support and Protection (Scotland) Act 2007 to protect Adults at Risk reserves the right, in consultation with the Provider and other statutory bodies, to choose not to make ISAs where there are concerns about the safety and welfare of Adults at Risk and such a decision shall be communicated to the Provider.

## **14. Individual Support Agreement Procedures**

- 14.1 General Provisions
- 14.1.1 Where a Purchaser requires an ISA through the Flexible Framework, it shall use the procedures set out in Schedule 3 – Calling Off from the Flexible Framework Guidance Note.
  - 14.1.2 The Provider shall ensure that information about the Service provided as part of the tender and required by Purchasers for the purpose of Calling Off from the Flexible Framework is kept up to date.
  - 14.1.3 The Provider shall operate a robust referral system to administer new ISAs.
  - 14.1.4 Where an ISA is entered into, it will be governed by the ISTs including Schedule 1 – Service Specification. Any variation to the ISTs will be treated in accordance with Clause 28 (Variations) herein. Any variations necessary to Schedule 1 – Service Specification must be specified clearly in the applicable ISA and will form part of the agreement between the Parties.
- 14.2 The Purchaser will ensure that the needs, Outcomes and choices of all Supported People who require an ISA are met through the process of selection of an appropriate Service in accordance with the Flexible Framework.



- 14.3 The Purchaser and Provider will work together to identify any factors that could impact on the ISA both in terms of Outcomes and cost. The Purchaser and Provider will then agree how to address these issues and include this in the Care Plan and ISA as appropriate prior to the ISA or within ten (10) Working Days of the commencement of the Service where this does not happen in advance (or such other timescales as the Parties may agree).

## **15. Brochure and Introductory Pack**

- 15.1 In order to reflect the Health and Social Care Standards; provide transparency in charges and to allow Supported People to make an informed choice about services that are available to them, the Provider shall provide all Supported People and/or their Representative with a brochure or introductory pack.
- 15.2 The brochure or introductory pack shall set out the Provider's current charges for Supported People and the period/financial year to which these apply.
- 15.3 The brochure or introductory pack supplied to a Supported Person will be presented in a format which is appropriate and accessible to each Supported Person in accordance with Law and Guidance.

## **16. Agreement provided to the Supported Person**

- 16.1 The Provider shall issue an agreement which defines the Service to be provided, to the Supported Person and/or their Representative in accordance with the Health and Social Care Standards prior to the ISA, except in cases of an emergency ISA in which case the agreement shall be issued as soon as is reasonably practicable after the ISA commences.
- 16.2 Information supplied to a Supported Person will be presented in a format which is appropriate and accessible to each Supported Person in accordance with Law and Guidance.
- 16.3 The agreement shall detail the Provider's complaints procedure and the Provider shall assist the Supported Person with following this as necessary, including making available the required materials in media accessible by the Supported Person. Such assistance may, if appropriate, include, arranging independent advocacy or support from an independent agency.
- 16.4 It is a material condition of this Flexible Framework that the Supported Person shall not be required or requested by the Provider to sign any agreement that conflicts with the provisions of the Flexible Framework or IST.

## **17. The Individual Support Agreement (ISA)**

- 17.1 An ISA must be completed for every Call Off from the Flexible Framework or a single ISA may be used for Call Offs entered into as part of a Block Contract agreed in accordance with the terms herein.
- 17.2 Purchasers may agree bespoke procedures for setting up ISAs with a Provider. Such alternative arrangements shall be no more onerous than the process contained in this Clause 17.
- 17.3 The ISA is the contract between the Purchaser and Provider relative to a Call Off made under the Flexible Framework and it sets out the specific arrangements for a Supported Person as to the Service to be provided, in accordance with the Care Plan. The ISA will contain the information required and incorporates this ISTs. The format of the ISA will be as required by the Purchaser and may include electronic information

transmission as agreed with the Provider. The Purchaser may choose to use the form of ISA set out in Schedule 5 – Individual Support Agreement for Care and Support Services or an equivalent.

- 17.4 The Purchaser will agree and complete the ISA in consultation with the Provider for the Supported Person once the Call Off has been agreed in principle.
- 17.5 Where the timescales for the Service are such that it is not possible for the Purchaser to provide all the information required, the Purchaser will indicate on the ISA the timescales for this to be provided or agreed. In an emergency or when the Supported Person is not known to social work services, the Purchaser shall make every effort to provide up to date information about the Supported Person to the Provider within forty-eight (48) hours. Thereafter the Purchaser shall provide to the Provider a comprehensive Care Plan, Risk Assessment, and Risk Management Plan, medical information and any other relevant documents as soon as is possible.
- 17.6 When a Call Off has been undertaken and Provider identified to provide a Service for a Supported Person, the Provider will be supplied with the Supported Person's Care Plan or other relevant information by the Purchaser. The Purchaser and the Provider will negotiate as required any Local Variable Prices to meet the needs and Outcomes of the Supported Person as set out in the Care Plan and in line with the requirements of Schedule 7 – Financial Information.
- 17.7 If the Purchaser is unable to share the Care Plan immediately, the Provider will receive assessment information (which is made available in accordance with all applicable Laws and Guidance) including:
  - i) the circumstances of the referral;
  - ii) the initial Outcomes to be achieved; and
  - iii) an initial assessment of risks.
- 17.8 Following an arrangement made in such circumstances, the Provider should receive an updated Care Plan within ten (10) Working Days of the start date of the Service or in accordance with local practice ensuring this covers the matters set out in Clause 17.3 herein.
- 17.9 The Provider shall provide the Purchaser and Supported Person with an up to date profile of the Service and any additional information to support the process of setting up an ISA, ensuring this includes up to date information.
- 17.10 Once the ISA has commenced, it will be kept under review and updated following the process set out in Clause 19 (Reviews and Variations to the ISA).

## **18. Service Continuity**

- 18.1 The Provider will be mindful of the importance of maintaining continuity of an ISA for the Supported Person and for any Staff involved in the provision of the Service.
- 18.2 The Provider shall monitor the ISA throughout its duration and shall give regular feedback to the Purchaser. The Provider and the Purchaser shall notify the other immediately of any matters affecting the maintenance and stability of the ISA.
- 18.3 If the Supported Person's needs or Outcomes change to the extent that the Provider can no longer meet the Supported Person's assessed needs or if the Provider reasonably anticipates that further supports are required, the Provider shall notify the Purchaser and request a Risk Assessment meeting or review be undertaken within four (4) weeks of the Purchaser receiving such notification, except in emergency

situations when this shall be undertaken as a matter of urgency.

- 18.4 Where the Purchaser agrees that the Supported Person's support needs or Outcomes have changed to the extent referred to in Clause 18.3 above the Purchaser shall confirm this in writing to the Provider with plans for addressing the issues. If the Purchaser does not agree, then the Parties shall resort to the dispute resolution procedure described in Clause 38 (Resolution of Disputes) of the Flexible Framework Terms unless otherwise defined. Alternatively, the Parties may wish to agree to a no-fault termination referred to in Clause 37.15.
- 18.5 If despite any further supports agreed, there continue to be issues about the Provider's ability to meet the needs of the Supported Person due to their specific nature, a further review should be held, and the Provider shall work with the Purchaser to ensure that any actions agreed are acted upon immediately.
- 18.6 No Supported Person will have their Service withdrawn without a review except in exceptional circumstances.
- 18.7 In an emergency situation, all reasonable efforts must be made to contact the Purchaser, through their Out of Hours emergency service where necessary, prior to removal of any Service or the provision of alternative supports. The Provider may not ask a Supported Person to move to another Service, without the agreement of the Purchaser. The Purchaser must consult and seek consent of the Supported Person and their Representative before removing any Service or arranging alternative supports.
- 18.8 In the event that it is agreed at a review, and with the agreement of the Supported Person and the Supported Person's Representative, in the best interests of the Supported Person that an alternative ISA is to be found, both Parties will work together to provide a smooth and planned transition between Services. Selection of any alternative support is at the discretion of the Purchaser. Providers should not assume that any alternative provision will be delivered by them.

## **19. Reviews and Variations to the ISA**

- 19.1 Both the Purchaser and Provider will review the ISA in accordance with this Clause 19. The Provider will be notified of the Supported Person's Care Manager and shall be promptly advised of any changes in key staff. The Provider shall advise the Purchaser of the Staff responsible for any overview of the ISA and advise the Purchaser promptly of any changes.
- 19.2 A Provider and Purchaser may agree to vary the IST for an ISA, where both Parties agree the variation, and this is detailed in the ISA.
- 19.3 Where a Call Off has been made in an emergency and none of the procedures as set out in Clause 17 have been completed, the Purchaser shall ensure that engagement with the Provider to review the suitability of the ISA shall be conducted within ten (10) Working Days of the Service start date or in accordance with Law and Guidance and a decision shall be made thereafter whether to continue the Service and on what basis in order to meet the best interests of the Supported Person.
- 19.4 Review Meetings will be planned in advance, so all Parties have adequate notice and time to prepare. The Supported Person, the Supported Person's Representative, the Purchaser, or the Provider may request a review of the Supported Person's Care and Support needs at any other time having given reasonable notice to the other Parties. Where the circumstances require either the Purchaser or Provider to hold an urgent

Review Meeting, they will notify the other Party as soon as possible and endeavour to agree a mutually convenient time which shall normally be within five (5) Working Days and preferably three (3) Working Days from receipt of such a request, where possible, or as agreed between the Parties.

- 19.5 Review Meetings shall be held in suitable premises that accommodate the requirements of all attendees. The Provider shall ensure that appropriate Staff are available to attend Review Meetings.
- 19.6 Wherever possible and where it is in the interests of the Supported Person, the Purchaser and Provider will endeavour to ensure that any review of the Supported Person's needs and Outcomes by different agencies shall be coordinated. The Purchaser will be responsible for integrating various different plans for the Supported Person into a single Care Plan.
- 19.7 Following Review Meetings, any changes discussed regarding the Care Plan and ISA shall be implemented within the agreed timescales or otherwise as soon as practical, with all relevant documentation updated and agreed by both Parties in writing.
- 19.8 A written copy of the decisions and/or outcomes of the Review Meetings and any resulting amendments as may be necessary to the ISA will be confirmed in writing to the Provider by the Purchaser as soon as possible following the Review Meeting and to those persons to whom the Purchaser has a statutory duty to notify the results of the Review Meeting.
- 19.9 The Provider's involvement in Review Meetings shall include the timely submission of written reports and participation in the meeting as required.
- 19.10 Where, for any reason, either the Purchaser or Provider or Supported Person has concerns about the suitability of the ISA, the Parties will try to address these or plan an alternative Service as part of the review process.

## **20. Local Contract Monitoring**

- 20.1 The Purchaser and Provider shall both be responsible for monitoring the delivery of Outcomes for the Supported Person and shall use all reasonable endeavours to ensure that the Service meets the Supported Person's needs and Outcomes in accordance with Clause 19 (Reviews and Variations to the ISA). The Purchaser and Provider will meet at intervals to monitor and review the Contract.
- 20.2 The Provider will provide the information necessary to support contract monitoring at a frequency and in a format agreed with the Purchaser.
- 20.3 Providers will have a process in place to monitor the Supported Person's Outcomes. As a minimum this will include:
  - 20.3.1 Reviews of Support Plans as determined through the Care Inspectorate requirements; and
  - 20.3.2 Aggregation of the achievement of individual Outcomes across Supported People using the Service, to support development of the Service. The frequency will be determined by the Purchaser and Provider.
- 20.4 The Purchaser and Provider will seek the views of the Supported Person and, where appropriate, those of their relatives, advocates, or other significant people as part of the contract monitoring process at a frequency to be agreed with the Purchaser. The Provider will share this anonymised information with Purchasers.
- 20.5 A technical group will be established with representatives from sector experts to

develop templates to support local contract monitoring.

## **21. Supported Person's Absence**

- 21.1 Where a Supported Person is Absent from their Home (for any reason) during the provision of the Service, including hospitalisation, the Provider will communicate this absence to the Purchaser immediately.
- 21.2 Absence in terms of Clause 21.1, regardless of the period, shall be referred by the Provider to the Purchaser for consideration within the Purchaser's own policies and procedures.
- 21.3 Any changes to the ISA as a result of any Absence will be clearly reflected in the Supported Person's Support Plan or the ISA.

## **22. Reporting of Events**

- 22.1 The Provider shall ensure that it has a policy addressing the action to be taken by Staff upon the occurrence of the events listed in this Clause 22 and shall ensure Staff are aware of the policy as part of the training provided to them by the Provider.
- 22.2 The Provider shall record and report all serious issues including accidents or health and safety issues concerning any Supported Persons.
- 22.3 Additionally, the Provider shall immediately inform by telephone the Supported Person's Care Manager and anyone else identified in the Care Plan or as required by Law and Guidance who should be given notice of any of the following:
  - i) Death of a Supported Person (as detailed further in Clause 22.4, below);
  - ii) Any significant incident or police activity, including allegations or evidence of abuse relating to the Supported Person or the care of the Supported Person;
  - iii) Maladministration of, or Fraud related to, the Supported Person's funds or property, or serious loss or damage to the Supported Person's property;
  - iv) Significant changes in the Supported Person's needs or Outcomes or circumstances;
  - v) Any permanent change in the Key Worker;
  - vi) Formal complaints in respect of any aspect of the Supported Person's care, subject to the consent of the Supported Person and/or the Supported Persons Representative;
  - vii) Absence of the Supported Person from their own Home;
  - viii) The Supported Person's attendance at an Accident and Emergency facility or admission to or return from hospital as an in-patient, including identification of whether that admission was as an emergency.
- 22.4 Where the Supported Person dies whilst the Service is being provided, or is found by Staff, the relevant emergency services should be advised. Thereafter the Provider shall immediately notify the Purchaser by telephoning the Supported Person's Care Manager or in their absence the designated duty person, including out of hours service. The Provider will provide the Purchaser with such details as required, in writing within one Day. The Provider and Supported Person's Care Manager will agree who is best to inform the Supported Person's Representative.
- 22.5 The Provider will co-operate fully with any investigation carried out by the Purchaser or other Regulatory Body where a serious incident, including but not limited to



- incidents listed in Clause 22.3, which have occurred (or where there is reason to believe they may have occurred).
- 22.6 The Provider shall also submit written notification in the event of any incidents detailed in Clause 22.3 to the Purchaser as soon as reasonably practicable.
- 22.7 The Provider must inform the Supported Person's Representative (except where otherwise set out in the ISA) of any accident, emergency or other serious incident relating to the Supported Person where such an incident occurs during the provision of the Service.
- 22.8 In the event of an accident, emergency or other serious incident occurring to a Supported Person with a Mental Disorder as defined in the Mental Health (Care & Treatment) (Scotland) Act 2003 the Provider shall immediately notify the Purchaser. The Purchaser will then inform the Mental Welfare Commission.
- 22.9 If a situation of danger to the Provider's Staff and other Supported People should arise as a result of the actions of another person associated with the Supported Person, the Provider shall use best endeavours to manage the situation and shall immediately contact the relevant emergency services, the Supported Person's social worker or duty social worker, or "standby" service for the Purchaser. The Provider shall also submit a written report to the Purchaser as soon as reasonably practicable.
- 22.10 Where notification relative to a Supported Person is sent by a Provider to a Purchaser's out of hours service, this shall not be deemed to have satisfied the Notice requirements under Clause 5 (Notices) herein until the Provider issues formal Notice to the appropriate contact detailed in the ISA for the Supported Person.
- 22.11 Where events occur which have a material effect on the Provider's ability to deliver the ISA, the Purchaser must be notified immediately or as soon as reasonably practicable thereafter. Notification of such events may be made by telephone as long as written Notice is subsequently given in accordance with Clause 5 (Notices). The following is a non-exhaustive list of events which must be notified in accordance with this Clause:
- i) Notice of any risks to the health and safety of Supported People;
  - ii) Notice of Fraud;
  - iii) Notice that the Provider has become unfit to provide the Service in terms of Regulation 6, or of an insolvency event in terms of Regulation 6A, 6B or 6C, or that someone acting as the Manager of the Service is unfit to so act in accordance with Regulation 7, all of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations, 2011;
  - iv) Notifications from the Care Inspectorate that it is going to impose conditions, serves notice to cancel Registration or to vary categories of Registration, or has cancelled Registration;
  - v) Notice of changes in key personnel, such as to the manager of the Service; and
  - vi) Notice under Clause 38 (Force Majeure and Business Continuity) that the Provider finds it is unable permanently or temporarily to meet the conditions of the IST or any ISA.
- 22.12 Where Notice is given to the Purchaser in accordance with Clause 22.11 herein and there is concern that such events may have a material effect on the Provider's ability to deliver the Service to other Purchasers, Scotland Excel may also be notified in

accordance with Clause 22.11.

- 22.13 Notice given to Scotland Excel under this Clause will detail the event and concern generally but must not identify any individual or provide any information which would contain personal data or sensitive personal data as defined in the Data Protection Law.

## **23. Complaints and Suggestions**

- 23.1 The Provider shall operate a complaints and suggestions procedure that is acceptable to the Purchaser. A copy of this procedure and any amendments shall be made available to:
- 23.1.1 All Supported Persons brought to their attention by whatever means of communication is appropriate to their needs and/or disabilities;
  - 23.1.2 Supported Person's Representatives; and
  - 23.1.3 The Purchaser on request.
- 23.2 Supported Persons must be informed by the Provider of the means of registering a complaint prior to the delivery of the Service.
- 23.3 The Provider shall be responsible for receiving and dealing with complaints in the first instance in accordance with their complaints and suggestions procedures.
- 23.4 The Provider shall maintain a Complaints Register which shall be available at all reasonable times to the Purchaser, a summary of which in a format agreed by the Parties will be sent to the Purchaser no less than annually and more often if required under the Purchaser's contract management procedures.
- 23.5 The Provider shall inform Supported Persons that they are also entitled to access the complaints procedure operated by the Purchaser, the Care Inspectorate, the Ombudsman, and where applicable, the Mental Welfare Commission. The Provider shall co-operate fully with the Purchaser and the other organisations named in this Clause. Where the Provider is a listed authority in terms of the Scottish Public Services Ombudsman Act 2002 it shall comply with its obligations under Section 22 of that Act.
- 23.6 If any information regarding the identity of a member of Staff is required by the Purchaser in relation to any complaint made to them in respect of the Service, the Provider shall provide the relevant information by return on receipt of a written request from the Purchaser.
- 23.7 A complaint shall be regarded as significant if it relates to a situation referred to in Clause 23.8 below. Unless otherwise advised, the Provider shall immediately inform the Purchaser when a significant complaint about the Service and/or the support of any Supported Persons is received. The Provider shall immediately inform the Purchaser of the outcome of all such complaints including any which have been subject to investigation by an external body including the Care Inspectorate, the SSSC, the Police and the Mental Welfare Commission. Such notification shall be in writing (email) or by telephone. Where the Provider gives verbal notification under this Clause it shall confirm the same in writing within three (3) working days.
- 23.8 Complaints referred in Clause 23.7 above, shall be regarded as significant if they relate to any of the following matters:
- i) sudden death of a Supported Person;
  - ii) suicide of a Supported Person;
  - iii) serious injury to a Supported Person;

- iv) assault of a Supported Person;
- v) incidents of actual or intended emotional, physical or sexual abuse of a Supported Person;
- vi) maladministration of a Supported Person's funds or property;
- vii) incidents of financial exploitation of a Supported Person;
- viii) serious loss or damage to property of a Supported Person;
- ix) illegal restraint or restrictions on liberty of a Supported Person; and
- x) a Supported Person missing from their home.

23.9 Without prejudice to the terms of Clause 22 (Reporting of Events) or Clause 23.7 above, the Provider as a care Provider for the purposes of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 Parts 2 and 3 shall fulfil its duties and discharge its obligations in relation to the duty of candour to the Supported Person in addressing and responding to a complaint brought to its attention under this Clause 23.

23.10 On a regular basis and not less than biannually, the Provider shall consult with Supported Persons and their Representatives to ascertain their suggestions in respect of the Service and the way it is delivered. The outcome of such consultations shall be recorded by the Provider and made available to the Purchaser within seven (7) days of receipt of the Purchaser's request.

## **24. Pre-Existing Individual Support Agreements**

24.1 Where the Purchaser and the Provider have entered into arrangements for the provision of related services under any other agreement, they may agree to terminate the provision of services in accordance with its terms and arrange for the provision of the Service in accordance with the Flexible Framework, subject to completion of an ISA. An ISA and these ISTs may only be applied to pre-existing Services following agreement between the Purchaser and the Provider relative to each pre-existing Service being considered.

24.2 When considering whether to enter into an ISA subject to this IST for a pre-existing Service:

- i) The Purchaser and Provider must consider the needs and Outcomes and choices of the Supported Person as paramount;
- ii) The Purchaser will review the Supported Person's needs and Outcomes and current arrangements prior to discussion with the Provider; and
- iii) The Purchaser will share with the Provider relevant information on the findings from the aforesaid review.

24.3 An ISA must be completed for every pre-existing arrangement to which the terms of the Flexible Framework are to be applied detailing clearly the date from which the arrangement will become an ISA in accordance with this IST.

## **25. Individual Support Agreements Extending Beyond the Duration of the Flexible Framework**

25.1 To ensure continuity of Service for Supported People, the Service may extend beyond the Duration of the Flexible Framework by agreement between the Parties to the ISA.



- 25.2 The terms of any future agreement may only be applied to Services entered into under this Flexible Framework following agreement between the Purchaser and Provider once the Parties have considered the needs of the Supported Person in receipt of a Service and are satisfied that the needs and Outcomes of the Supported Person can be met by any future agreement.
- 25.3 Where the ISA extends beyond the End Date of the Flexible Framework, it may continue on the basis of these ISTs, supplemented as necessary, or on such other terms as may be agreed between the Purchaser and Provider.

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## PART D – PROTECTION OF INFORMATION

### **26. Data Protection, Security and Recording**

#### 26.1 Data Protection – General

26.1.1 The expressions “Controller”, “Data”, “Personal Data”, “Processing” and “Special Categories of Personal Data” shall have the meanings assigned to them by Data Protection Law. The expression “Personal Information” means Personal Data, which may include Special Categories of Personal Data, relative to a Supported Person.

26.1.2 The Parties hereby acknowledge that the Purchaser and the Provider are each acting as separate controllers of the Personal Information, and each undertake to comply with their respective duties under Data Protection Law.

26.1.3 In order for the Provider to perform the Service, the Purchaser requires to disclose to the Provider the Personal Information in respect of each Supported Person.

26.1.4 The Parties agree not to use any Personal Information exchanged in terms of this IST other than for the purposes of this IST or as permitted by Data Protection Law.

26.1.5 Where the Provider receives Personal Information from a Purchaser through an enquiry or referral and the Service is not subsequently taken up for the Supported Person, the Personal Information received by the Provider must be securely destroyed and evidence provided to the Purchaser of destruction or returned to the Purchaser in accordance with the Purchaser’s requirements.

26.1.6 The Provider shall not be required to pass information to the Purchaser in relation to a Supported Person, member of Staff, or any other person, if the disclosure would cause the Provider to breach the terms of Data Protection Law. The Provider must supply detailed reasons in terms of Data Protection Law in respect of refusing disclosure of said information within a reasonable timescale specified by the Purchaser. Where the cause of the potential breach of Data Protection Law is due to a lack of necessary consent to disclosure of the information, the Provider will use all reasonable endeavours to obtain the necessary consent to disclose the information

#### 26.2 Data Protection – Warranties

##### 26.2.1 The Provider warrants:

26.2.1.1 That as a minimum, all Staff who will or may have access to Personal Information provided under the Contract have been subject to the relevant vetting procedures including relative to the PVG Act in accordance with Clause 10 (Staffing) of the IST;

26.2.1.2 That any processing of the Personal Information will satisfy the requirements of Data Protection Law;

26.2.1.3 That it will ensure that it provides appropriate guidance to Staff in respect of any Personal Information disclosed to them in respect of each Supported Person placed with them;

26.2.1.4 The Purchaser may elect to enter into a data sharing agreement with the Provider relative to the foregoing obligations.

### 26.3 Variations to Clause 26

26.3.1 As a separate matter from variations dealt with by Clause 28 (Variations) of the IST, the Purchaser may, at any time on not less than 30 Working Days' notice, revise Clause 26 of the IST in whole or in part;

26.3.2 By replacing it with any applicable clauses or similar terms including those forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this IST);

26.3.3 To reflect changes to Law or to reflect changes in practice by the Parties pursuant to the provision of the Service.

### 26.4 Data Protection - Notification

26.4.1 The Provider must notify the Purchaser immediately and, in any event, no later than 24 hours after becoming aware of any risks or compromise to the Purchaser's Data or any incidents or concerns which may impact on the confidentiality, integrity or availability of this. The Provider shall thereafter promptly, at its own expense:

- i) provide the Purchaser with such information as it reasonably requires in connection with the risk;
- ii) take such steps as the Purchaser reasonably requires it to take to mitigate the detrimental effects of the risk; and
- iii) otherwise co-operate with the Purchaser in investigating and dealing with the risk and its consequences. Where risks are identified which are considered to have been ignored or an inappropriate response provided, the Purchaser reserves the right to suspend the provision of information to the Provider until appropriate remedial action has been taken.

### 26.5 Data Security and Recording

26.5.1 The Provider shall have a clear written policy and guidance for Staff on requirements for recording Data and Data security in accordance with this Clause 26 (Data Protection, Security and Recording) and 27 (Confidentiality) of the IST and shall ensure that this is adhered to and reported to the Purchaser when and as required. The policy shall include requirements for Staff to ensure that confidential information is held securely and transmitted in accordance with the Purchaser policies as stated in the ISA.

26.5.2 The Purchaser reserves the right to audit, at any time, the suitability of the technical and organisational measures and security measures put in place by the Provider in order to comply with this Clause 26.

26.5.3 The Purchaser reserves the right to seek and require changes to said technical and organisational measures and security requirements applied by the Provider where the Purchaser considers that the Provider's practice is no longer compliant with the Law, Her Majesty's Government or Information Commissioner's Office (ICO) Guidance or where the Purchaser policy has changed.

26.5.4 Any changes sought by the Purchaser in terms of Clause 26 shall be carried out by the Provider promptly in accordance with the timescale required by the

Purchaser. In seeking changes, the Purchaser will give consideration to the nature and impact of the changes required when making this instruction.

26.5.5 The Provider must notify the Purchaser of any actual or perceived risk to Personal Data held by them. They must immediately notify the Purchaser where there has been a loss of Personal Data in accordance with Clause 26.4, above.

26.5.6 Failure to comply with the requirements in Clause 26 may be treated by the Purchaser as a Material Breach of contract by the Provider under Clause 37 (Breach and Termination) herein.

## 26.6 Subject Access request

26.6.1 The Provider shall notify the Purchaser within five (5) Working Days if it receives:

- i) a request from a Supported Person to have access to their Personal Information;
- ii) a complaint or request relating to the Purchaser's obligations under the Data Protection Law.

## 26.7 Sharing Information with Government Regulators

26.7.1 Subject to its compliance with the provisions of the Data Protection Law, the Purchaser may share any information contained in or relating to the contract with the Competition and Markets Authority or any other Regulatory Body or law enforcement agencies, where required to do so and subject to the Law including FOISA and the Data Protection Law.

26.8 In this Clause 26.8, the term "Act" shall refer to the Public Records (Scotland) Act 2011; "Records Management Plan" means the plan prepared by the Purchaser and approved by the Keeper of the Records of Scotland under section 1 of the Act; "Records Management Provisions" refers to the policies, procedures and arrangements for the management and preservation of the records created by the Provider in relation to the Service; and "Provider's Retention Schedule" refers to those parts of the Records Management Provisions relating to how long particular records or classes of records created or managed by the Provider pursuant to the Service(s) are to be retained for after they have come to the end of their normal operational use.

26.8.1 The Provider shall, for the duration of the ISAs entered into, provide the Purchaser with all assistance reasonably requested by the Purchaser to assist the Purchaser in complying with its obligations under the Act, including any recommendations and Guidance issued by the Keeper of the Records of Scotland and with the Purchaser's Records Management Plan where such compliance is in respect of records created or to be created by the Provider on behalf of the Purchaser in terms of the ISA. This assistance will be at no cost to the Purchaser.

26.8.2 Where applicable, the Provider shall, for the duration of the ISA and, in respect of records created during the term of the ISA, for the Duration set out for that class of record in the Provider's Retention Schedule after the termination or expiry of the ISA, comply with the Purchaser's Records Management Provisions as provided by the Purchaser. The Provider shall also comply with these provisions for the period described in relation to any pre-existing records which are transferred to the Provider pursuant to the ISA.

26.8.3 At the end of the relevant period set down in the Provider's Retention Schedule for a particular record or class of records, then if the Provider's Retention Schedule for that record or class of records, lists the final disposal of the record or class of record as "Pass to Purchaser" (or equivalent), the Provider shall offer to transfer the records in question to the Purchaser, such transfer to include full ownership of the records (including transfer of the status of data controller of any personal data as defined in the Law contained in the records, full beneficial ownership and transfer of any intellectual property rights relating to the records.) The transfer shall be at no cost to the Purchaser. The Provider shall ensure that all relevant indices and any other relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Purchaser on the same terms.

## **27. Confidentiality**

- 27.1 The Provider and its Staff shall regard as strictly confidential and shall not disclose to any unauthorised person either at any time during or after the duration of the ISA, any information obtained in relation to the Purchaser or any Supported Persons and they shall not use any such information except as specifically required for the purposes of performing its obligations under this IST.
- 27.2 Subject always to any contrary legislation or rule of Law or any pending civil or criminal investigation or inquiry, the Provider shall be entitled to disclose information relating to a Supported Person to the relatives of that Supported Person or other interested person where the appropriate legal rights exists or, in respect of the Supported Person, where such information has already been made available to the Supported Person and the Supported Person's consent to such disclosure has been obtained.
- 27.3 It shall be the Provider's responsibility to ensure that its Staff and anyone else used to provide the Service observe the principles of confidentiality referred to in Clauses 27.1 and 27.2 above and give an undertaking not to disclose any information which they may receive in the course of delivering the Service.
- 27.4 The Provider shall at all times, ensure that its Staff observe the principle of confidentiality in terms of Clause 27.1 above and shall indemnify the Purchaser against any claims made by a Supported Person or any third party as a result of either the Provider or its Staff and anyone else used to provide the Service failing to maintain confidentiality in terms of this Flexible Framework.
- 27.5 Subject to any requirement to disclose information in terms of its statutory duties or force of Law including but not restricted to the Freedom of Information (Scotland) Act 2002 or order from a court of competent jurisdiction, the Purchaser shall also maintain the obligations of confidentiality in relation to Supported Persons and the Provider in accordance with the terms of this Flexible Framework.
- 27.6 The obligations of confidentiality contained in this Clause 27 shall survive the termination of any ISA agreed under the Flexible Framework.

## PART E – CONTROL OF THE CONTRACT

### **28. Variations**

- 28.1 Where a Purchaser or Provider requires a variation to this IST for all ISAs to be considered, it shall notify Scotland Excel and the request shall be dealt with in accordance with Clause 22 (Variations) of the Flexible Framework Terms.
- 28.2 Where a Purchaser or Provider requires a variation to this IST for a specific ISA to be considered, it shall notify the other Party of the request and the variation shall be considered in accordance with Clause 19.2.

### **29. Assignment, Disposal, Sub-Contracting, Change of Control/Closure or Reconfiguration of the Service**

- 29.1 The Provider will not assign, dispose or otherwise transfer its interests and/or obligations under the IST to any other person (hereinafter “assign”) without first obtaining the prior consent in writing of the Purchaser notwithstanding Clause 29.2, which shall not be unreasonably withheld or delayed subject to:
- i) The Provider’s compliance with the requirements of Clause 29.6.2;
  - ii) The Purchaser’s compliance with its procedural requirements permitting assignment;
  - iii) Compliance by the Parties with the Law.
- 29.2 Where during the Duration of the Flexible Framework the Provider requires to make a request in accordance with this Clause 29 in order to avoid duplication, Scotland Excel will consider any such request on behalf of all Purchasers in accordance with Clause 23 (Assignment, Disposal, Sub Contracting, Change of Control) of the Flexible Framework Terms wherever possible. Where this is not possible Scotland Excel will notify the Provider and the request will require to be considered for any existing ISA by the relevant Purchasers in accordance with Clause 29.
- 29.3 The Purchaser’s prior written consent must be secured where a Purchaser and Provider have agreed to continue an ISA entered into under the Flexible Framework following the End Date in accordance with Clause 25 (Individual Support Agreements Extending Beyond the Duration of the Flexible Framework). This also applies where the Provider will not assign without first obtaining prior consent, during the Duration of the Flexible Framework Terms, where Scotland Excel gives notification to the Provider in accordance with Clause 37 (Termination of Individual Support Agreements (ISAs)) of the Flexible Framework Terms.
- 29.4 Failure to meet the requirements of this Clause 29, including requirements to provide information within stated timescales is a Material Breach of this IST and may result in termination with immediate effect.
- 29.5 All Notices and/or any remedial action taken under this IST and any ISA prior to assignment will remain in effect in accordance with its original terms notwithstanding the completion of any assignment or other transfer or change of Control.
- 29.6 Assignment/Disposal
- 29.6.1 Where the Provider proposes to transfer its interest, or part of its interest, in any ISA to another organisation with the intention of Service continuation:



- i) The Provider must give the Purchaser no less than thirteen (13) weeks' prior written Notice; and
- ii) The Purchaser may consent to the proposed assignation upon being satisfied of the proposed assignee's suitability and subject to the necessary consents and, where applicable, certificate of Registration being granted to the proposed assignee by the Care Inspectorate together with any other necessary Regulatory Body approvals.

29.6.2 In order to enable due consideration of the assignation request, the Provider shall provide the Purchaser with such information as it may reasonably request no later than thirteen (13) weeks prior to the proposed transfer date including:

- i) The name and address of the proposed assignee together with its relevant company/organisation details (such as its registered company office and company registration number) and details of regulatory approvals;
- ii) Evidence that the proposed assignee can meet the required Service quality levels and financial and economic requirements satisfied by the Provider;
- iii) Proposed date of transfer and details of the nature of the legal relationship between the Provider and proposed assignee;
- iv) Proposed assignee's assessment of existing ISAs;
- v) Staffing proposals, in particular transfer and re-appointment and/or recruitment and arrangements for transition (including the manager of the Service);
- vi) Policies and procedures proposed for use in the management of the ISA or confirmation of the application of the existing policies to the ISAs; and
- vii) Appropriate financial information relative to the proposed assignee in order that the Purchaser may be satisfied as to the financial viability of the proposed assignee and the continued financial viability of the provision of ISAs.

29.6.3 Agreement must be reached about how any sums due will be repaid before an assignation request is consented to. Should agreement not be reached, or where insufficient notice is given, the relevant Party may reclaim any monies owed via any means at its disposal.

29.6.4 Once notification of a proposed assignation has been received the Purchaser may exercise its right of Suspension in accordance with Clause 36 (Suspension) where it has serious doubts the proposed assignee will be able to meet the required Service quality levels and financial and economic requirements and the Provider has not indicated it will continue the Service if the assignation does not go ahead. Suspension in this case will normally come to an end once the Provider and proposed assignee have completed an assignation agreement in accordance with the procedures laid down in this Clause.

29.6.5 Until the completion of the assignation in accordance with the procedures laid down in this Clause 29, or until the ISA with the Provider is terminated:

- i) The proposed assignee must not provide the Service or any part of it

and no payments will be made by the Purchaser to the proposed assignee;

- ii) The Provider shall continue to be responsible for the performance of and shall be liable to the Purchaser for the acts and omissions of any party to which it may assign, transfer or otherwise dispose of any obligations under the Flexible Framework as if they were the acts or omissions of the Provider.

29.6.6 In the event that consent is not granted to the assignment, or the assignment is not completed by the Provider and proposed assignee:

- i) And the Provider is unable to continue to provide the Service to the reasonable satisfaction of the Purchaser, the Purchaser may terminate the ISA in accordance with Clause 37 (Breach and Termination); or
- ii) And the Provider is able to continue to provide the Service, this IST and the ISA will continue to apply.

29.6.7 Where the Purchaser agrees to assign the ISA, it will confirm this in writing and the Provider will then be responsible for informing the Purchaser of the assignment date and the details of the assignee.

## 29.7 Factoring Assignee

29.7.1 The Provider may assign to another person (the "Factoring Assignee") the right to receive payment of the Fee or any part thereof due to the Provider under this IST subject to:

- i) The Provider providing a minimum of one (1) invoicing period's advance notice to the Purchaser;
- ii) Deduction of sums in respect of which the Purchaser exercise its right to recover overpayments and any other debts.

29.7.2 The Provider shall notify or procure that any Factoring Assignee notifies the Purchaser of any variations to the arrangements for payment of the Fees or for handling invoices, in each case giving no less than one (1) invoicing period's advance notice, to enable the Purchaser to make arrangements to redirect payments or invoices accordingly. In the absence of such notification, the Purchaser shall be under no obligation to vary their arrangements for payment of the Fee or for handling invoices.

## 29.8 Appointment of Sub-contractors

29.8.1 The Provider will not appoint a Sub-contractor to deliver the part(s) of the Service which require Registration with the SSSC or Registration with another Regulatory Body, without the prior consent in writing of the Purchaser which shall not be unreasonably withheld subject to compliance with the requirements of this Clause 29.8 (Appointment of Subcontractors).

29.8.2 The Provider will request consent to appoint a Sub-contractor, by written application to the Purchaser, no less than twenty-eight (28) days before the proposed start date of any such sub-contract, including:

- i) The name of the proposed Sub-contractor;
- ii) The part(s) of the Service to be sub-contracted;
- iii) The terms of the proposed sub-contract;
- iv) Information pertaining to the suitability of the proposed Sub-contractor; and



- v) Where appropriate, the monitoring measures to be put in place by the Provider to ensure that the Sub-contractor complies with this IST and the ISA as if it was the Provider.
- 29.8.3 The Purchaser will assess the proposed arrangement and whether it is appropriate to sub-contract the part(s) of the Service proposed, taking into account the information submitted, any internal processes and procedures, Good Social Care Practice and relevant professional or regulatory advice.
- 29.8.4 The Purchaser may request such additional information as required to allow it to make its assessment.
- 29.8.5 The Purchaser will advise the Provider of its decision in relation to the appointment of a Sub-contractor no more than fourteen (14) Days after the date of receipt of the application and such additional information as may be requested in accordance with Clause 29.8.4.
- 29.8.6 Where the Purchaser consents to the appointment of a new Sub-contractor, the Provider will:
- i) Be responsible for the performance of and shall be liable to the Purchaser for the acts and omissions of its Sub-contractors;
  - ii) Ensure that any Sub-contractor appointed complies with the requirements of this IST and any ISA entered into; and
  - iii) Ensure that a provision is included in any sub-contract;
    - a) That requires the Subcontractor to apply for the consent of the Purchaser to sub-contract anything in the sub-contract in terms no less onerous than those set out in Clauses 29.8.6 (a) – (d);
    - b) Which requires payment to be made to the Sub-contractor within a specified period not exceeding thirty (30) days from receipt of a valid invoice as defined by the subcontract requirements and provides that, for the purpose of payment alone, where the Purchaser has made payment to the Provider and the Sub-contractor's invoice includes Services in relation to which the payment has been made by the Purchaser then, to the extent that it relates to such Services, the invoice shall be treated as valid and payment shall be made to the Sub-contractor without deduction;
    - c) Which notifies the Sub-contractor that the contract forms part of a larger contract for the benefit of the Purchaser and that, should the Sub-contractor have any difficulty in securing the timely payment of an invoice, the matter may be referred by the Sub-contractor to the Purchaser; and
    - d) In the same terms as that set out in this Clause 29.8 (including for the avoidance of doubt this Clause 29.8.6(iii)(a)-(d) subject only to modification to refer to the correct designation of the equivalent party as the Provider and Sub-contractor as the case may be.
- 29.9 Change of Control
- 29.9.1 The Provider shall give thirteen (13) weeks' prior written notice to the Purchaser of a change of Control. In circumstances where it is not possible to give thirteen (13) weeks' prior notice, the Provider may give a shorter

period of Notice. In such circumstances Notice must be given to the Purchaser no later than two (2) weeks after the Provider becomes aware of the change of Control.

- 29.9.2 Where the Provider proposes a change in its Control with the intention of Service continuation, the Purchaser may require it to provide such further information as it requires, which could be similar to that required for assignation in Clause 29.6 (Assignment/Disposal) herein, to determine whether or not the ISA with the Provider should continue.
- 29.9.3 Upon receipt of notice of a change in Control which the Purchaser reasonably considers will materially and adversely affect the provision of the Service by the Provider, it may terminate the ISA.
- 29.9.4 Where the Provider is subject to part 28 of the Companies Act 2006 and this restricts the ability of the Provider to comply with the requirements of this Clause 29, the relevant provisions in this Clause will not apply subject to the Provider's compliance with the following requirements:
- i) The Provider must notify the Purchaser promptly of the position in writing and provide such further information as may be reasonably required by the Purchaser;
  - ii) In disclosing information in accordance with this Clause 29, the Provider must adhere to the requirements of all applicable legislation including without limitation the Companies Act 2006 and the City Code on Takeovers and Mergers ("the Code"); and
  - iii) Copies of any disclosures made in accordance with the requirements of the aforementioned part 28 of the Companies Act 2006, the Code and all applicable Law and Guidance must be provided to the Purchaser at the time of issue.

29.10 Closure/Substantial Reconfiguration of a Service

- 29.10.1 The Provider shall give the Purchaser thirteen (13) weeks' written Notice of its intention to close or substantially reconfigure the Service.
- 29.10.2 In the event that Notice is served in accordance with Clause 29.10.1, above:
- 29.10.2.1. The Purchaser may but shall not be bound to terminate the ISA at the end of the thirteen (13) week period of Notice or at the end of the actual period of Notice given, whichever is the shorter (or on a period otherwise agreed between the Parties); and
  - 29.10.2.2. Scotland Excel and the Purchaser and Provider shall co-operate to implement the Provider's business continuity plan further to Clause 38.2 (Business Continuity) herein and shall adhere to the requirements of Law and Guidance including implementing the contingency plan further to the Care Inspectorate's "Financial Viability Guidance" as updated from time to time in terms of section 53(6) of the Public Services Reform (Scotland) Act 2010.

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## PART F – LAW

### **30. Statutory Obligations**

- 30.1 The Provider shall comply with the requirement of Clause 25 (Statutory Obligations) of the Flexible Framework Terms.

### **31. Equalities**

- 31.1 The Provider confirms that to the best of its knowledge and belief it has complied with the Law and Guidance relating to equalities including the Equality Act 2010 (the “Act”) and agrees to continue to comply with the Act in a manner which is proportionate and relevant to the nature of this IST and any ISA .
- 31.2 The Provider agrees to provide the Service in a non-discriminatory manner and shall promote equality and work towards the Service reflecting best practice as identified in Guidance including the relevant statutory Codes of Practice issued by the Equality and Human Rights Commission.
- 31.3 The Provider may be subject to the requirements of the equality duty under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 in respect of the Service being provided by the Purchaser under this IST and any ISA. Where the requirement to comply with this equality duty exists, compliance with the requirements of Clauses 31.1 to 31.4 and Clause 31.8 will be evidence to the Purchaser of the Provider meeting this requirement.
- 31.4 The Provider recognises that the Purchaser has a responsibility to monitor the extent to which the provision of the Service extends to socially excluded groups. In recognition of this, the Provider agrees, where appropriate and practicable, to provide monitoring information to the Purchaser in relation to employment and provision of the Service in respect of the protected characteristics as detailed in the Act, Part 2 chapter 1.
- 31.5 The Provider shall not discriminate, directly or indirectly or by way of victimisation or harassment against any person on grounds of gender reassignment, age, marriage, and civil partnership, sexual orientation, disability, religion or belief, sex, pregnancy or maternity and race contrary to the Act.
- 31.6 The Provider shall notify the Purchaser in writing as soon as it becomes aware of any investigation of, or proceedings brought against, the Provider and any decision or outcome being made from any proceedings under the Act in respect of an ISA made by the Purchaser; for the avoidance of doubt this is in addition to the reporting requirements under Clause 30 (Equalities) of the Flexible Framework Terms.
- 31.7 Where any investigation is undertaken by a person or body empowered to conduct such investigation, and/or proceedings are instituted in connection with any matter relating to the Provider’s performance of the Service being in contravention of the Act, the Provider shall free of charge:
- i) Provide any information requested in the timescales allotted;
  - ii) Attend any meetings as required and permit the Provider’s Staff to attend;
  - iii) Promptly allow access to and investigation of any document or data deemed to be relevant;
  - iv) Allow itself and any Staff to appear as witness in any ensuing proceedings; and

- v) Co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 31.8 Where any such investigation is conducted or proceedings are brought under the Act which arise directly or indirectly out of any act or omission of the Provider, its agents or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify the Purchaser with respect to all costs, charges and expenses arising out of or in connection with any such investigation or which the Purchaser may have been ordered or required to pay to a third party.
- 31.9 In recognition of the Purchaser's legal obligation to tackle discrimination and promote equalities and diversity in all its functions and policies, under the Act the Provider may be subject to the requirement to complete a questionnaire and/or provide information to the Purchaser on the extent and quality of the Provider's equalities and diversity policies. Good practice in this regard will be recognised by the Purchaser, however, poor practice may result in the Purchaser issuing a mind to comply letter describing the nature of improvement required and the associated timescales. If the Provider fails to improve practice in this regard the Purchaser may take further action, up to and including the termination of any existing ISA in accordance with Clause 37 (Breach and Termination).
- 31.10 The Provider will extend the obligations under this Clause 31 to any arrangements with Sub-contractors.

## **32. TUPE**

- 32.1 Where reasonably requested to do so at any time the Provider will provide all relevant and up to date information in connection with TUPE as the Purchaser may require.
- 32.2 The Provider, in providing information under this Clause 32 (TUPE) will not unreasonably withhold or delay the provision of information requested and will not knowingly do or omit to do anything that may adversely affect an orderly transfer of responsibility for provision of the Service.
- 32.3 The Provider will indemnify the Purchaser and/or any successor provider against all reasonable costs, expenses and liabilities incurred as a result of any claim made by any employee of the Provider prior to being transferred under TUPE in relation to the expiry or termination of any ISA in respect of his/her employment with the Provider, or any breach of TUPE by the Provider, arising out of or in consequence of the supply of false, inaccurate or incomplete employee liability information in response to a request by Purchaser under Clause 32.1 provided that the Provider will in any such case be given the opportunity at its own cost to defend or settle any such claim.

## **33. Common Clauses**

- 33.1 There are some 'common clauses' which apply to both the IST and the Flexible Framework Terms. These are listed under Clause 1.4 of this IST and can be read in full in the Flexible Framework Terms.

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## PART G – LIABILITIES

### 34. Indemnity and Insurance

34.1 The Provider shall indemnify and keep indemnified the Purchaser and its officers against any claim, expenses, or loss in respect of personal injury or death or loss of or damage to property which arises out of the performance of obligations of any ISA by the Provider including but not limited to any negligent act error or omission by the Provider or Staff in the course of delivery of the Provider's duties under this IST and any ISA.

34.2 Without prejudice to its obligation to indemnify the Purchaser, the Provider is obliged to insure, and maintain insurance, for the Duration of the Flexible Framework and for the period of any ISA entered into under it, including the following minimum requirements:

#### i) Public Liability

To a minimum indemnity limit of ten million pounds Sterling (£10,000,000) each and every claim. Liability must not exclude abuse and/or molestation cover.

#### ii) Employers' Liability

To a minimum indemnity limit of ten million pounds Sterling (£10,000,000) each and every claim.

#### iii) Statutory Third-Party Motor Vehicle Liability

Where a vehicle is used in delivery of the Service, statutory third-party motor vehicle cover should be evidenced by way of a valid MV certificate in the company name, OR where there is no company fleet and employees use their own vehicles instead, a letter signed by a person of appropriate authority confirming that the provider has ongoing arrangements in place to ensure that employees' vehicles are appropriately insured and maintained for business purposes.

34.3 As detailed in Clause 36.4 (Indemnity and Insurance) of the Flexible Framework Terms, the Purchaser may request an increase to the minimum level of insurance cover required or request additional insurance cover when purchasing an ISA. This requirement will be agreed and specified in accordance with the procedures set out in Clause 15 (Individual Support Agreement Procedures) herein. Without prejudice to the foregoing generality, where a Provider will deliver care and treatment as part of the Service (such as administration of medicines, for example), Purchasers may additionally require evidence, at Call Off, of either:

- a care and treatment extension to the existing public liability policy; or
- medical malpractice cover.

34.4 Unless the Provider has complied with Clause 36.3 (Indemnity and Insurance) of the Flexible Framework Terms, the Provider shall, at least fifteen (15) Days before the renewal anniversary and, at any other time, on request, for each of its insurance policies held for the purposes of the ISA, provide to the Purchaser such evidence as may be necessary to demonstrate that the insurance requirements for the ISA have been maintained for each subsequent renewal and the premium payments have been made and are up to date.

**[The rest of this page is left intentionally blank.]**

## PART H – DISPUTES, REMEDIES & TERMINATION

### **35. Resolution of Disputes**

- 35.1 The Parties to the Flexible Framework shall attempt in good faith and in a spirit of mutual trust and co-operation to negotiate a settlement to any dispute between them arising out of or in connection with the Flexible Framework within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the finance director (or equivalent) of each Party.
- 35.2 Nothing in this Clause shall:
- i) prevent the Parties to the Flexible Framework from complying with, observing and performing all their obligations in respect of the Flexible Framework regardless of the nature of any dispute between them arising out of or in connection with the Flexible Framework and notwithstanding the referral of any such matter or dispute for resolution under this Clause;
  - ii) diminish the Parties to the Flexible Framework’s responsibilities in respect of its obligations relative to management and monitoring; nor
  - iii) prevent any Party to the Flexible Framework applying to a relevant court of competent jurisdiction to seek an appropriate remedy.
- 35.3 For the purpose of resolving disputes in terms of this Clause 35, the Purchaser and the Provider shall formulate operational guidelines as to the levels of officer hierarchy within the respective organisations to which disputes should be referred.
- 35.4 Where the procedures in this Clause 35 (Resolution of Disputes) have been exhausted and the dispute remains unresolved, the ISA to which the dispute relates, or all ISAs between the Purchaser and Provider, may be terminated with immediate effect or within such alternative timescale as the Parties may determine by agreement. In such a case, the requirements of Clause 37 (Breach and Termination) will apply.

### **36. Suspension**

- 36.1 Distinct from the powers of Suspension by Scotland Excel under the Flexible Framework Terms, the Purchaser may suspend the making of new ISAs with a Provider in whole or in part where it determines that:
- i) A Breach or Material Breach by the Provider and/or Service creates an immediate or serious risk of harm to a Supported Person or a diminution of quality of the Service or any part of it below the standards required at the establishment of this Flexible Framework;
  - ii) The Provider and/or Service has failed to timeously implement any Remedial Action Plan agreed with the Purchaser;
  - iii) Notice of assignation, disposal, sub-contracting or change of Control (“an event”) has been given and the Purchaser has serious concerns about the viability of the arrangement, or where a Provider has failed to provide Notice of an event;
  - iv) Where the Provider or Purchaser has given Notice of termination;
  - v) Where the Provider and/or Service is in Material Breach in accordance with Clause 37 (Breach and Termination) of this IST; or
  - vi) Where the Service fails to maintain the required Care Inspectorate grades in



accordance with Clause 9.1.

- 36.2 Once a decision has been taken to exercise Suspension the Purchaser will:
- i) Notify the Provider in writing of the reason for the Suspension and the date the Suspension takes effect; and
  - ii) Notify the Care Inspectorate, Scotland Excel and other relevant Regulatory Bodies of the Suspension.
- 36.3 During any period of Suspension:
- 36.3.1 The Provider and/or Service must continue to co-operate with and comply promptly with any reasonable requirements of the Purchaser;
  - 36.3.2 Existing ISAs may continue subject to the Purchaser being satisfied each ISA continues to be the most appropriate way to meet the needs of the Supported Person concerned; and
  - 36.3.3 The Purchaser shall use reasonable efforts to ensure that no further Supported People are referred to the Provider and/or Service and the Provider and/or Service shall cease to accept referrals of Supported People from the Purchaser unless there are exceptional circumstances where the needs of a particular Supported Person require a new ISA with the Provider and/or Service to be made and this is agreed by both the Purchaser and Provider.
- 36.4 The Purchaser and, where required, Scotland Excel will work together with the Provider and/or Service to ensure there is no interruption in the Service being delivered to Supported People with existing ISAs. In addition will seek to address the issues that led to the Suspension and the Provider and/or Service shall co-operate fully with the Purchaser and Scotland Excel.
- 36.5 The Purchaser may organise additional reviews for existing ISAs within short timescales and will endeavour to agree with the Provider a mechanism or timetable for doing this to ensure that they are able to participate fully.
- 36.6 During the period of Suspension, the Purchaser will keep the Provider and/or Service informed of its assessment of what progress the Provider and/or Service has made in addressing the issues that led to Suspension and the likely duration of the Suspension.
- 36.7 Withdrawal of the Notice issued in accordance with Clause 36.2 herein will be confirmed by the Purchaser at such time as it becomes reasonably satisfied that the Provider and/or Service is able to and will perform the Service to the required standard.
- 36.8 The exercise of any provisions under this Clause 36 shall not prevent the Purchaser from taking into account the occurrence and the resolution of the circumstances falling within this Clause 36 in the Purchaser's assessment of the Provider and/or Service's overall performance nor from exercising any of its other rights or remedies under the IST.

## **37. Breach and Termination**

### **Breach Provisions**

- 37.1 The Provider shall give notice to the Purchaser as soon as reasonably practicable if it finds it is unable permanently or temporarily to provide the ISAs as required and/or in accordance with the IST.

#### **Material Breach – Definition**

- 37.2 Each of the following is a Material Breach of the IST by either Party:

- 37.2.1 a breach of any of its obligations under this IST which materially and adversely affects the performance of the ISA or the purchase of Service under the IST; or
- 37.2.2 a series of breaches of any of its obligations under the IST, the cumulative effect of which is to seriously and adversely affect the performance of the ISA or the purchase of Service under the IST;
- 37.2.3 any of the circumstances described as Material Breach in the Flexible Framework Terms, Clause 39.12 (Breach and Termination).

**Material Breach – Capable of Remedy**

- 37.3 Where a Party has committed a Material Breach of the IST that is capable of remedy the Party who is not in Material Breach may serve a written notice on the Party in Material Breach giving that Party a fixed period in which to remedy the Material Breach. The period given shall be determined at the sole discretion of the Party serving the notice but must be reasonable given the particular circumstances and is always subject to a minimum period of two (2) weeks and a maximum of thirteen (13) weeks.

**Material Breach – Irremediable**

- 37.4 Without prejudice to the rights and remedies for breach or Material Breach of the IST otherwise available to them under the IST or at common law or under statute and without prejudice to the Purchaser's obligations under the IST, the Purchaser and the Provider shall each have the right, such right being exercised reasonably, to serve written notice on the other Party to terminate the other Party's participation in the IST if the other Party has committed a Material Breach of this IST which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the Party serving the notice within the period specified in the Notice.
- 37.5 Where Material Breach occurs as defined in this Clause 37, termination may take effect immediately, or within such alternative period as the Parties shall mutually agree.

**Material Breach – Immediate Termination**

- 37.6 Each of the following is a Material Breach entitling the Party not in breach to terminate the IST immediately:
  - 37.6.1 a breach by the Provider in terms of Clause 4 (Provider's Obligations), Clause 26 (Data Protection, Security and Recording) or Clause 27 (Confidentiality);
  - 37.6.2 a breach by either Party in terms of the Flexible Framework Terms, Clauses 33 (Corruption and Collusion), 34 (Prevention of Fraud); or any of the circumstances described as Material Breach in Clause 39.12 (Breach and Termination) therein; or
  - 37.6.3 the Provider, at any time during the period of the IST, is in one of the situations referred to in the Public Contracts (Scotland) Regulations 2015, Regulation 58(1) (Exclusion grounds), including as a result of Regulation 58(2) there.

**Material Breach – Registration**

- 37.7 Without prejudice to other rights and remedies the Purchaser may have available to them under the IST for Material Breach or at Law if the Regulatory Body gives notice to the Provider of a proposal to cancel the Registration or if the Regulatory Body has



made Summary Application to the Sheriff for an Order cancelling the Registration or if the Registration is cancelled, then the Purchaser may, but shall not be bound, to terminate this IST or any ISA without notice, irrespective as to whether or not the Provider has made representations to the Regulatory Body about the cancellation or the period for making such representations has elapsed or the Summary Application to the Sheriff is being opposed.

All other breaches

- 37.8 Where either the Purchaser or the Provider considers the other to be in non-Material Breach of the IST, the Party not in breach will be required to notify the details of the breach to the other Party who shall use all reasonable endeavours to rectify the breach within fourteen (14) days of notification of the breach.
- 37.9 Further to and without prejudice to Clause 37.1, where the Provider is unable to meet the Clauses only temporarily, the Parties may agree a Remedial Action Plan setting out the failings in performance and their remedies together with the firm timescales for putting in place and maintaining those remedies. Where there is a failure by the Parties to agree a Remedial Action Plan or a failure on the part of the Provider to meet deliver the Service or meet the requirements in accordance with the agreed Remedial Action Plan, the Purchaser may treat either form of failure as a Material Breach which is not capable of remedy, entitling the Purchaser to terminate the IST under Clauses 37.4 and 37.5 above.
- 37.10 The Purchaser shall advise the Regulatory Body of any material or persistent breach of the IST by the Provider.
- 37.11 Nothing in this Clause shall limit the nature and extent of acts considered by a court of law or otherwise to be Material Breaches of this IST. No granting of time or period of Notice under this Clause shall be deemed to be a waiver of any right the Party granting time or giving Notice may have against the other Party in respect of the other Party's Material Breach of this IST.

**Non-Breach Provisions**

37.12 Termination of the IST under Regulation 73

In addition to any of its other rights to terminate the IST, the Purchaser shall have the right to terminate the IST where:

- 37.12.1 the IST has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public ISTs (Scotland) Regulations 2015 (modification of ISTs during their term);
  - 37.12.2 the Provider has, at the time of IST award, been in one of the situations referred to in the aforementioned 2015 Regulations, Regulation 58(1) (exclusion grounds), including as a result of the application of Regulation 58(2), and should therefore have been excluded from the procurement procedure; or
  - 37.12.3 the IST should not have been awarded to the Provider in view of a serious infringement of the obligations under the Treaties and the Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.
- 37.13 The Purchaser shall give notice of termination to the Provider in writing and termination shall take effect as follows:

- 37.13.1 where in the opinion of the Purchaser, the issue giving rise to the exercise of the right to terminate under this Clause 37.13.1 is sufficiently serious, with immediate effect;
- 37.13.2 in any other case, on the date specified in the notice which shall be no less than thirty (30) days from the date on which the notice was given.
- 37.14 Where the Purchaser has terminated the IST under Clauses 37.12 and 37.13 the Provider shall have no right of compensation except where it is established that the Purchaser has acted or omitted to act negligently, and this shall be the Provider's only remedy.

### **Purchaser's Right to Terminate – No fault**

- 37.15 Without prejudice to any other Clause of the IST the Purchaser shall have the right in its absolute discretion to terminate the IST, such termination to take effect no earlier than ninety (90) days after the giving of written notice in accordance with Clause 5 (Notices) above, unless otherwise agreed between the Purchaser and the Provider.

### **General Provisions**

- 37.16 During any period of notice referred to in this Clause 37.16, the Provider and the Purchaser shall co-operate with each other to ensure that the Supported Person's care requirements continue to be met; and they shall fully co-operate and consult with the Supported Person and their Representative in making suitable alternative care arrangements for the Supported Person.
- 37.17 Neither Party shall be entitled to withhold performance of their obligations under the IST during any period of notice, as required under Clauses 37.12 to 37.15 inclusive above.
- 37.18 The termination of this IST howsoever arising is without prejudice to the rights, duties and liabilities of either Party accrued prior to termination (subject as otherwise expressly provided in this IST). Those rights shall include the right of the Purchaser or the Provider as the case may be to claim damages against the other Party arising out of the Material Breach by that party of the IST. The Clauses of this IST which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 37.19 The Purchaser may choose to advise Scotland Excel in the event of a Breach or Material Breach which has been notified to the relevant Regulatory Body in order that Scotland Excel can consider the Provider's participation in accordance with the Flexible Framework Terms.
- 37.20 The Clauses of this IST which expressly impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 37.21 The Provider agrees that upon termination for any reason or expiry of the IST it shall not be entitled to make a claim against the Purchaser in relation to costs howsoever incurred by the Provider in securing the award of the IST or providing the Service under the IST nor in relation to the loss of expected profits from the provision of the Service under the IST.

## **38. Force Majeure and Business Continuity**

### **38.1 Force Majeure**

- 38.1.1 Subject to Clause 34 (Indemnity and Insurance) neither Party shall be liable to the other for any delay in performing, or failure to perform, its obligations

under the IST to the extent that such failure is a result of Force Majeure (as defined, below). Each Party shall use all reasonable endeavours to continue to perform its obligations under the IST for the duration of such Force Majeure.

- 38.1.2 If the period of Force Majeure is expected to or exceeds two (2) months from the date of the Notice given in accordance with the Clause 5 (Notices) either Party may serve on the other one (1) months' Notice of termination of the ISA.
  - 38.1.3 The Purchaser and Provider agree to use their best efforts to ensure that during any period when Force Majeure exists that the needs of the Supported Person are accommodated to the fullest extent practicable.
  - 38.1.4 The Fees for the Service during the period of Force Majeure shall be subject to negotiation with the Purchaser.
  - 38.1.5 For the purposes of this Flexible Framework and any ISAs entered into by Purchasers and Providers "Force Majeure" shall be deemed to be any circumstances affecting the performance of this Flexible Framework arising from or attributable to acts, events, omissions or accidents beyond the reasonable control of the Party to perform.
- 38.2 Business Continuity
- 38.2.1 The Provider will develop, implement, maintain and hold responsibility for processes and procedures in relation to business continuity. The Provider shall maintain a business continuity plan, which takes account of the supports reasonably expected to be available from statutory authorities including but not limited to, the civil and emergency planning provisions within the Council area. The Provider shall provide a copy to the Purchaser on request. The Provider shall notify the Purchaser as soon as reasonably practicable of the activation of said plan.

**[End of Schedule 4 – Individual Support Terms.]**

<b>TENDER:</b>	Care and Support Services
<b>FRAMEWORK REFERENCE:</b>	1318
<b>PERIOD:</b>	01 April 2020 – 31 March 2024 (Commencement Date for New Entrants to be confirmed at time of award)
<b>SCHEDULE:</b>	Schedule 5
<b>Individual Support Agreement (ISA)</b>	

<Insert Council's name>

<Insert Address>

Our Ref:

Your Ref:

Date:

To: <Insert Provider contact and address>

Dear <Insert Provider contact>

**INDIVIDUAL SUPPORT AGREEMENT (ISA)**

**Supported Person:** <Insert Supported Person Name> <Date of Birth>

**Flexible Framework:** NATIONAL FLEXIBLE FRAMEWORK FOR CARE AND SUPPORT SERVICES (1318)

**Council:** <Insert Council name>

**Provider:** <Insert Provider name>

**Period:** **Start:** <Insert>

**End (if known):** <Insert> OR To be determined by Supported Person needs \*

*[\*delete as appropriate]*

This is the ISA entered into by the Council with the Provider for the Supported Person for the Period on the basis of the Flexible Framework (all as identified above). The ISA is subject to the terms and conditions of the Flexible Framework including (without limitation) the Individual Support Terms ("IST"). Words and phrases used in this ISA with initial capital letters are further defined in the Flexible Framework.

The Supported Person has been assessed as requiring the Care and Support detailed in the Support Plan and the Service provided must meet the Supported Person's assessed needs and personal Outcomes as detailed in the Care Assessment and Support Plan provided by the Supported Person's Care Manager (as detailed in Enclosure 3, below).

**PROVIDER’S PRICE AND PAYMENT OF FEES**

The Council shall make the following payments in return for the provision of the Service by the Provider in accordance with the Flexible Framework:

<b>Base Price per hour</b>	£ <insert> base price per hour or; £ <total individual budget> individual budget ( <i>Delete as appropriate</i> )
<b>Local Variable Price</b> <i>(Include description of services)</i>	£ <insert> (may include travel, training etc.)
<b>Agreed Core Price per hour</b>	£ <insert total>

Please note that the information required for invoicing purposes by the Council is detailed in Enclosure 2, below.

Any variations applicable to this ISA in accordance with the Flexible Framework are detailed in Enclosure 4, below.

**If for any reason you are not able to accept this ISA, you must contact the Council immediately using the Supported Person’s Care Manager details, set out in Enclosure 1, below (Nominated Officer contact details).**

Yours faithfully,

[NAME]

[Position]

**ENCLOSURES:**

1. Nominated Officer contact details
2. Information required for invoicing
3. Supported Person’s Support Plan
4. Variations to the Flexible Framework for this ISA

**1. Nominated Officers**

<b>Supported Person's Care Manager</b>		<b>Finance/Administration</b>	
Name:		Name:	
Designation:		Designation:	
Address:		Address:	

**2. Information required for invoicing**

The information is set out below/attached *(DELETE AS APPROPRIATE)*

**3. Supported Person's Support Plan**

The information is set out below/attached *(DELETE AS APPROPRIATE)*

**4. Variations to the Flexible Framework for this ISA**

This information is set out below/attached *(DELETE AS APPROPRIATE)*

**[End of Schedule 5 – Individual Support Agreement.]**

<b>TENDER:</b>	Care and Support Services
<b>FRAMEWORK REFERENCE:</b>	1318
<b>PERIOD:</b>	01 April 2020 – 31 March 2024 (Commencement Date for New Entrants to be confirmed at time of award)
<b>SCHEDULE:</b>	Schedule 6

**Identified and Defined Terms**

**1. Interpretation**

This Schedule 6 sets out the Identified and Defined Terms of the Flexible Framework.

1.1 In this Flexible Framework, except where the context otherwise requires:

- i) Words importing the singular shall be deemed to include the plural and vice versa and words importing the masculine gender shall be deemed to include the feminine gender and vice versa unless the context otherwise requires;
- ii) Any reference to a Clause shall be construed as a reference to a Clause of the document in which the reference appears unless otherwise stated and any reference to a Schedule shall be construed as a reference to a Schedule of this Flexible Framework;
- iii) References to any Law shall be construed as a reference to the Law as amended by any subsequent Law (including any enactment, modification, order, regulation or instrument as subsequently amended or re-enacted) and any Guidance issued thereunder;
- iv) References to the Flexible Framework or any other documents includes reference to the Flexible Framework or such other documents as varied, amended, supplemented, extended, restated and/or replaced from time to time;
- v) Should any procedures or other matters relating to quality assurance contained within this Flexible Framework become subject to a national performance or Outcomes reporting Framework then such changes shall take precedence over those contained in the Flexible Framework;
- vi) Should any of the defined terms, procedures or any other matter regulated by this Flexible Framework become subject to Law, or to any change in the Law which results in any change to the defined terms or to the manner in which such procedures or other matters require to be dealt with then such changes shall take precedence over that contained in the Flexible Framework;
- vii) References to “persons” shall include natural persons and all entities with legal personality including statutory bodies, partnerships and companies save where the context otherwise requires;
- viii) References to any statutory body shall be taken as a reference to its successor or replacement body established during the Duration of this Flexible Framework or the Duration of any ISA entered into thereunder;
- ix) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- x) Headings and numbering are included for ease of reference only and shall not



affect the interpretation or construction of the Flexible Framework.

- 1.2 Where changes impact on the Flexible Framework as a result of circumstances coming within the terms of Clauses 1.1(iii), (v), (vi) or (viii), above, Scotland Excel may issue a revised copy of the Flexible Framework to Providers with the necessary changes incorporated into the documents.

## 2. Identified and Defined Terms

- 2.1 In this Flexible Framework, defined terms have capital letters with the exception of headings, named documents and at the beginning of sentences.

General defined terms:

“Absent/Absence”	Means where the Supported Person is not presented to receive the Service (whether due to planned or unplanned absence).
“Adult”	Means any Supported Person over the age of sixteen (16).
“Adults at Risk”	Means persons aged 16 or over coming within the definition of Section 3(1) of the Adult Support and Protection (Scotland) Act 2007.
“Base Price”	Means the amount payable per hour in respect of the Service which may form part of the Core Price in accordance with Clause 6 of the IST and identified in Schedule 7 - Financial Information. Where no Local Variable Costs apply, this will be the Core Price.
“Best Value”	Means the obligations of the Council under the Local Government in Scotland Act 2003.
“Block Contract”	Means a contract between the Council and Provider for the provision of a prescribed level of Service to be delivered over an agreed timescale to a number of Supported People.
“Breach”	Means an act or omission constituting a Party failing to fulfill any obligation under, as applicable, the Flexible Framework, or any ISA.
“Call Off”	Means the process used by the Council to arrange an ISA under the Flexible Framework.
“Care and Support”	Means the provision of personal care, housing support, practical, social and emotional support services to a Supported Person as part of the Service as set out in the Specification.
“Care at Home”	Means care provided in a Supported Person’s own home by paid care workers to help with daily life. Home care workers are usually employed by an independent agency, and the Service may be arranged by a Council or by the Supported Person (or someone acting on their behalf).
“Care Groups”	Means Supported People with different care needs as further defined in the Procurement Documents.
“Care Inspectorate”	Means the name, for the time being, given to the Social Care and Social Work Improvement Scotland body established under section 44 of the Public Services Reform (Scotland)

	Act 2010.
“Care Manager”	Means such person(s) as may be appointed by the Council from time to time to assess, oversee and review the Care provided to the Supported Person by the Provider.
“Care Plan”	Means the document that sets out the level of Care and Support and the target Outcomes identified by the Council as required by and requested for the Supported Person based on the care assessment and subsequent reviews.
“Child Protection”	Means (1) taking measures to reduce the risk of physical, emotional or sexual abuse, neglect or significant harm of a child or young Person, (2) enabling children or young people or staff to report concerns about actual or potential abuse or significant harm and (3) responding to allegations, occurrences and suspicions of abuse or significant harm of a child or young person.
“Commencement Date”	Means the date of commencement of the Flexible Framework as notified to the Provider by Scotland Excel.
“Complaints Register”	Means a register containing any formal complaint made by a Supported Person or a Supported Person's representative about the Service, the outcome of such complaint and the action taken.
“Contract Notice”	Means the notice advertising the opportunity issued in accordance with the Law.
“Control”	Means the ability to direct the affairs of another, whether by virtue of the ownership of shares, contract or otherwise.
“Core Price”	Means the sum of the Base Price and the Local Variable Price (where applicable) payable for the Service as set out in Clause 6 of the IST.
“Council”	Means a local authority constituted in accordance with section 2 of the Local Government etc. (Scotland) Act 1994.
“Council Direct Service Matching Process”	Means the process Councils will use to direct award to a Provider for the provision of the Service as outlined in Schedule 3 – Calling Off from the Flexible Framework Guidance Note.
“Council Enhanced Service Matching Process”	Means where a Council invites a number of Providers to submit offers to provide a Support Arrangement in order to identify the Provider best able to meet the Outcomes for the Supported Person, as outlined in Schedule 3 – Calling Off from the Flexible Framework Guidance Note.
“Data Protection Law”	Means the Law relative to the following, together with any primary or secondary legislation implementing or supplementing it and as the same may be amended, updated or replaced over time: <ul style="list-style-type: none"> <li>• the Data Protection Act 2018,</li> <li>• the General Data Protection Regulation (Regulation EU 016/679) (“GDPR”),</li> </ul>

	<ul style="list-style-type: none"> <li>• the Law Enforcement Directive (Directive (EU) 2016/680),</li> <li>• the Regulation for Investigatory Powers Act 2000,</li> <li>• the Regulation for Investigatory Powers (Scotland) Act 2000,</li> <li>• the Telecommunications (Lawful Business Practice)(Interception of Communications) Regulations 2000 (SI2000/2699),</li> <li>• the Electronic Communications Data Protection Directive 2002/58/EC,</li> <li>• the Privacy and Electronic Communications (EC Directive) Regulations 2003</li> </ul> <p>and any Law that, in respect of the United Kingdom, replaces or enacts into domestic law GDPR or any other Law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union including where applicable the Guidance and codes of practice issued by the statutory regulator in the United Kingdom: the Information Commissioner.</p>
“Day”	Means any calendar day comprising twenty-four (24) hours.
“Disclosure”	Means a criminal record certificate or enhanced criminal record certificate (also referred to as an “Enhanced Disclosure”) issued by Disclosure Scotland under Part V of the Police Act 1997.
“Disclosure Information”	Means Disclosure records disclosed under section 52, 53 or 54 of the PVG Act and any information in such a disclosure record which is obtained only by virtue of section 51, 52, 53 or 54 of the PVG Act.
“Disclosure Scotland”	Means an agency of the Scottish Government that discharges the functions of Scottish Ministers under the Police Act 1997 and in particular provides disclosure of conviction information and manages the PVG Scheme on behalf of the Scottish Government, based for the time being at the Scottish Criminal Record Office, Pacific Quay, Glasgow, G51 1EA.
“Duration”	Means the period from the Commencement Date to the End Date of the Flexible Framework.
“End Date”	Means the expiry date of the Flexible Framework which will be up to four (4) years from the Commencement Date, or such earlier date where the Flexible Framework is terminated early in accordance with its terms. For the avoidance of any doubt, the End Date also applies to New Entrants.
“Equality and Human Rights Commission”	Means the Commission for Equality and Human Rights established in accordance with the Equality Act 2006 which has its principal Scottish office at The Optima Building, 58 Robertson Street, Glasgow, G2 8DU.

“ESPD (Scotland)”	Means the electronic self-declaration document to be submitted by Providers interested in tendering for contracts for the supply of goods, works or services to public bodies located anywhere within the European Union.
“Fair Work Practice”	Means work that offers effective voice, opportunity, security, fulfilment and respect; that balances the rights and responsibilities of employers and workers and that can generate benefits for individuals, organisations and society.
“Financial Year”	Means the period of twelve (12) months commencing 1 April in one year and concluding on 31 March in the next succeeding year, both dates inclusive.
“Flexible Framework Agreement” or “Flexible Framework”	Means the Flexible Framework Terms and all Schedules appended thereto.
“Flexible Framework Terms” or “Framework Terms”	Means the overarching agreement between the Provider and Scotland Excel relative to the Service forming part of the Flexible Framework.
“Fraud”	Means any offence under Law in respect of fraudulent or corrupt acts.
“Geographical Areas”	Means an area where a Provider delivers Services.
“Good Social Care Practice”	Means the codes of practice, standards, practices, methods and procedures conforming to the Law and the requirements of Regulatory Bodies reflecting the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.
“Guidance”	<p>Means:</p> <ol style="list-style-type: none"> <li>1) Any applicable guidance, direction or determination which Scotland Excel, the Purchaser and/or the Provider has a duty to have regard to including as may be issued from time to time by the Scottish Government and Regulatory Bodies;</li> <li>2) Any applicable guidance relative to the Law which Scotland Excel, the Purchaser and/or the Provider has a duty to have regard to;</li> <li>3) Health and Social Care Standards.</li> </ol>
“Health and Social Care Standards”	Means the health and social care standards published in accordance with Law and Guidance.
“Health and Social Care Partnerships”	Means an integration authority or other body established pursuant to the Public Bodies (Joint Working) (Scotland) Act 2014.
“Home”	Means, the Supported Person’s main place of residence where the Service is (ordinarily) provided.

<p>“Individual Support Agreement” or “ISA”</p>	<p>Means the contract between a Purchaser and a Provider for a Support Arrangement under this Flexible Framework substantively in the form set out at Schedule 5 – Individual Support Agreement or in such alternative form as may be agreed between the Parties, to be governed by the Individual Support Terms and any other terms individually agreed and set out in the ISA.</p>
<p>“Individual Support Terms” or “IST”</p>	<p>Means the terms that shall apply to an ISA as set out in Schedule 4 of this Flexible Framework.</p>
<p>“Initial Period”</p>	<p>Means from the Commencement Date of the Flexible Framework to 31<sup>st</sup> March of the <b>following</b> year, during which the Core Price or any elements of it cannot be uplifted unless otherwise agreed.</p>
<p>“Insolvency Occurrence”</p>	<p>Means where:</p> <ol style="list-style-type: none"> <li>1) the Provider is a company and passes a resolution for winding-up or dissolution (other than for, and followed by, an amalgamation or reconstruction), or an administrator, administrative receiver, receiver or manager, liquidator or provisional liquidator is appointed in terms of statute by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge, or the company makes a composition or arrangement with its creditors, or the court makes an administration order or a winding-up order, or the company is made subject of a Debt Arrangement Scheme or the company is struck off in accordance with the Law;</li> <li>2) the Provider is an individual and is apparently insolvent or a petition is appointed for the Provider’s bankruptcy or for the sequestration of his estate or the Provider makes a composition, conveyance or assignment or any arrangement with or for the benefit of creditors, or a trustee or administrator is appointed to manage his affairs;</li> <li>3) the Provider is a firm or a number of persons acting together in any capacity and a petition is presented for the Provider to be wound up as an unregistered company, or if any of the events in Conditions (1) and (2) of this Condition occur in respect of the firm or any partner or any of those persons; or</li> <li>4) any event similar to those listed in (1), (2) or (3) above occurs under the Law of this or any other jurisdiction.</li> </ol>
<p>“Invitation to Tender” or “ITT”</p>	<p>Means the full suite of procurement documents leading to the award of the Flexible Framework, or admission to it as a new Entrant.</p>
<p>“Key Worker”</p>	<p>Means the named member of Staff employed by the Provider responsible for an overview of the care of the Supported Person.</p>

<p>“Law”</p>	<p>Means:</p> <ol style="list-style-type: none"> <li>1) Any applicable common law, statute or proclamation or any delegated or subordinate legislation or regulation;</li> <li>2) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom unless and until any such right, power, liability, obligation, restriction, remedy or procedure is repealed or otherwise re-enacted or replaced by the exercise of powers by or on behalf of the relevant Parliament within the United Kingdom;</li> <li>3) Any applicable judgement of a relevant court of law which is a binding precedent in Scotland;</li> <li>4) All bylaws and regulations of local and other public authorities insofar as these are applicable to the provision of the Service;</li> <li>5) Guidance; and</li> <li>6) Any other directives or requirements of any Regulatory Body of which the Provider is bound to comply.</li> </ol> <p>In each case in force in Scotland.</p>
<p>“Local Variable Price”</p>	<p>Means the amount payable where any additional local variable costs are agreed between the Parties forming part of the Core Price, in accordance with Clause 6.7 of the IST and identified in Schedule 7 – Financial Information.</p>
<p>“Management Information”</p>	<p>Means the contract monitoring information provided by the Provider to Scotland Excel in accordance with Clause 13 (Flexible Framework Management) of the Flexible Framework Terms and the corresponding Clause 20 (Local Contract Monitoring) of the IST.</p>
<p>“Material Breach”</p>	<p>Means as defined in Clause 39 (Breach and Termination) of the Flexible Framework Terms or, in respect of an ISA, Clause 37 (Breach and Termination) of the Individual Support Terms.</p>
<p>“Mental Welfare Commission”</p>	<p>Means the Mental Welfare Commission for Scotland, as defined by the Mental Health (Care and Treatment) (Scotland) Act 2003 and having a place of business for the time being at Thistle House, 91 Haymarket Terrace, Edinburgh, EH12 5HE.</p>
<p>“National Performance Framework”</p>	<p>Means the Scottish Government framework for all of Scotland, setting out ‘national outcomes’ to describe the kind of Scotland it aims to create.</p>
<p>“New Entrant”</p>	<p>Means a Provider admitted as a participant of the Flexible Framework after its Commencement Date in accordance with the procedures set out in Schedule 2 – New Entrants to</p>



	the Flexible Framework Guidance Note.
“Notice”	Means any formal notification which requires to be provided under the terms of the Flexible Framework in accordance with Clause 6 (Notices) of the Flexible Framework Terms and Clause 5 (Notices) of the Individual Support Terms.
“Ombudsman”	Means the individual appointed by Her Majesty on the nomination of the Scottish Parliament in terms of the Scottish Public Service Ombudsman Act 2002.
“Outcomes”	Means Outcomes agreed with or for the Supported Person as set out in the Care Plan/Support Plan and Individual Support Agreement in partnership with the Supported Person’s Social Worker.
“Party”	Means the Provider and Scotland Excel, when used in the Flexible Framework Terms and the Provider and the Purchaser when used in the Individual Support Terms.
“Personal Information”	Means as defined in Clause 15 (Data Protection, Security and Recording) of the Flexible Framework Terms and as defined in Clause 26 (Data Protection, Security and Recording) of the IST.
“Positive Risk Taking”	Means the weighing up of potential benefits and harms of exercising one’s choice of action over another.
“Procurement Documents”	Means any document produced or referred to by Scotland Excel or Councils to describe or determine elements of the procurement to establish the Flexible Framework or enter into a Call Off under the Flexible Framework as more particularly described within the Public Contracts (Scotland) Regulations 2015.
“Provider”	Means the organisation registered to provide the Service and which is Party to this Flexible Framework and any person authorised to act on its behalf.
“Purchaser”	Means any Council or other party which is entitled to purchase ISAs in accordance with the terms of the Flexible Framework and any person authorised to act on its behalf.
“PVG Act”	Means the Protection of Vulnerable Groups (Scotland) Act 2007.
“PVG Scheme”	Means the scheme established under Section 44 of the Protection of Vulnerable Groups (Scotland) Act 2007 managed by Disclosure Scotland.
“Real Living Wage”	Means the ‘Real Living Wage’ UK rate as currently published each year by the Living Wage Foundation.
“Registration”	Means Registration with all necessary Regulatory Bodies and “Registered” will be construed accordingly.
“Regulated Work”	Means as defined in section 91 of the PVG Act.
“Regulated Work with Children”	Means Regulated Work described in Schedule 2 of the PVG Act.

“Regulated Work with Adults”	Means Regulated Work described in Schedule 3 of the PVG Act.
“Regulatory Body”	Means, in this Flexible Framework, the Care Inspectorate, the Scottish Social Services Council and any other relevant statutory organisations responsible for the inspection and/or regulation of Care and Support Services in Scotland.
“Remedial Action Plan”	Means the plan which the Provider is required to produce in accordance with Clause 40 (Suspension) and Clause 39.2 (Breach and Remedial Action Plan) of the Flexible Framework Terms and Clause 36 (Suspension) and Clause 37 (Breach and Termination) of the Individual Support Terms to address a Breach.
“Review Meeting”	Means any meeting between the Parties to review an Individual Support Agreement.
“Risk Assessment and Risk Management Plan”	Means the process of identifying individual behaviours, environmental hazards, and risks concerned with the safety and welfare of the Supported Person. This includes measuring the seriousness and likelihood of the impact of any risk and subsequently developing management plans and recording methods to minimise this.
“Scheme Record”	Means the document defined in section 48 of the PVG Act.
“Scheme Record Update”	Means a short Scheme Record as defined in section 53 of the PVG Act.
“Scotland Excel”	Means the joint committee, formed under Section 57 of the Local Government (Scotland) Act 1973 to carry out purchasing functions for member Councils as a central purchasing body in accordance with the Public Contracts (Scotland) Regulations 2015, which authorises Renfrewshire Council as its lead Council to act as a contracting authority on its behalf.
“Scottish Government”	Means as described in Section 12 of the Scotland Act 2012.
“Scottish Information Commissioner”	Means the officer appointed under Part 3 of the Freedom of Information (Scotland) Act 2002.
“Scottish Social Services Council or SSSC”	Means the body established by the Regulation of Care (Scotland) Act 2001) and having its head office at Compass House, 11 Riverside Drive, Dundee, DD1 4NY.
“Service” or “Services”	Means the Care and Support delivered by the Provider to a Supported Person, ordinarily in their Home, in accordance with the ISA, as registered with the relevant Regulatory Body.
“Service Directory”	Means the directory populated by Scotland Excel containing the Provider Service information to assist Councils to make Call Offs from the Flexible Framework.
“Service Specification” or “Specification”	Means the specification relating to the relevant Service as detailed in Schedule 1 – Service Specification.

“Social Worker”	Means the person appointed by the Purchaser (normally a social worker but this could be another professional) who has the responsibility for the Supported Person, the Care Plan and Individual Support Agreement of the Supported Person.
“Staff”	Means any person engaged directly by the Provider in terms of a contract of employment or contract for Services.
“Strategic Plan”	Means a plan created to guide Council’s decision making in the future.
“Sub-contractor”	Means any individual or company contracted by the Provider to perform an aspect of the Service delivered to Supported People.
“Support Arrangement”	Means the provision of the Service by the Provider for a Supported Person.
“Support Plan”	Means the written plan prepared by the Provider, as required by the Health and Social Care Standards, which sets out how the Supported Person’s health and social care needs shall be met and which forms part of the Care Plan.
“Supported Living Services”	Means a broad range of options for vulnerable adults assessed as requiring care and support. The purpose of the service is to enable people to establish or remain in their own homes, living as independently as possible; and to achieve and maintain or increase their potential in relation to physical, intellectual, emotional and social capacity.
“Supported Person” or “Supported People”	Means the Adult in receipt of the Service as a result of the Purchaser care assessment process.
“Supported Person Selected Service”	Means the process Councils will use to direct award to a Provider (following selection of that Provider at the direction of the Supported Person) for the provision of the Service as outlined in Schedule 3 – Calling Off from the Flexible Framework Guidance Note.
“Supported Person’s Representative” or “Representative”	Means an appropriate adult nominated to represent the interests of the Supported Person as detailed in the Support Plan or ISA.
“Suspension”	Means any action taken in accordance with Clause 40 (Suspension) of the Flexible Framework Terms and Clause 36 (Suspension) of the IST.
“Tender”	Means a Tenderer’s Technical and Commercial Response incorporating the Tenderer Response Template to an ITT taken together.
“Tenderer” or “Tenderer(s)”	Means organisations which offer to provide the Service by way of a Tender.
“Tenderer Response Template”	Means the response forming part of the Procurement Documents to be completed and submitted by Tenderers in accordance with the instructions given where Tenderers seek to participate in the Flexible Framework.

"Treaties"	<p>Means:</p> <p>(1) those treaties of the European Communities (now the European Union) and its predecessor bodies to which the United Kingdom agreed on its accession to the European Communities on 1 January 1973; and</p> <p>(2) those treaties to which the United Kingdom as a member of the European Union assented (on those particular terms as applied to it) between the date of its accession and the date of its departure from the European Union.</p>
"TUPE"	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006.
"Vetting Information"	Means as defined in section 49 of the PVG Act.
"Working Day"	Means any reference to a Day excluding Saturday, Sunday and bank holidays specified in accordance with the Banking and Financial Dealings Act 1971.

**[End of Schedule 6 – Identified and Defined Terms.]**

<b>TENDER:</b>	Care and Support Services
<b>FRAMEWORK REFERENCE:</b>	1318
<b>PERIOD:</b>	01 April 2020 – 31 March 2024 (Commencement Date for New Entrants to be confirmed at time of award)
<b>SCHEDULE:</b>	Schedule 7
<b>Financial Information</b>	

**REFER TO THE SEPARATE EXCEL SPREADSHEET NAMED 'PART 2B – SCHEDULE 7 – FINANCIAL INFORMATION'**

[End of Part 2B – Schedules (1-6) to the Flexible Framework.]