

PART A - GENERAL

1. Interpretation

- 1.1 In this Flexible Framework Agreement (herein known as “Flexible Framework”), except where the context otherwise requires, the interpretations, identified and defined terms set out in Schedule 6 (Identified and Defined Terms) shall apply.
- 1.2 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.

2. Flexible Framework Status and Duration

- 2.1 For the avoidance of any doubt, the scope of Services to be provided under this Flexible Framework falls within the definition of a “social and other specific” service under the Public Contracts (Scotland) Regulations 2015 and therefore the Flexible Framework is not subject to the full requirements of the aforementioned regulations.
 - 2.2 Formed on behalf of Purchasers, Scotland Excel has established a Flexible Framework for Care and Support Services. Under the terms of the Flexible Framework, Purchasers may enter into Individual Support Agreements (ISAs) for Adults as and when required with Providers participating in the Flexible Framework. ISAs are subject to the Individual Support Terms (IST) contained in Schedule 4, and the ISA, in the form set out in Schedule 5.
 - 2.3 In general, the Flexible Framework Terms set out the rights and obligations between Scotland Excel, acting on behalf of Purchasers, and the Provider in terms of the management of the Flexible Framework. The ISTs set out the rights and obligations between the Purchasers and Providers relative to the ISA.
 - 2.4 Under this Flexible Framework, Purchasers shall be under no obligation to make any ISAs with the Provider.
 - 2.5 Throughout the Duration of the Flexible Framework, Scotland Excel and the Purchasers are at all times entitled to enter into other contracts and arrangements with other organisations for the provision of any or all services which are the same as or similar to the Service.
 - 2.6 The Flexible Framework shall begin on the Commencement Date and shall remain in force until the End Date unless it is otherwise terminated in accordance with its terms. These dates form part of the award of participation on the Flexible Framework issued by Scotland Excel.
 - 2.7 For the avoidance of doubt, the period of any ISA may extend beyond the End Date and the ISTs will still apply regardless of the status of the Flexible Framework in accordance with Clause 14 (Individual Support Agreements (ISAs) Extending Beyond the Duration of the Flexible Framework).
 - 2.8 The ISA shall document arrangements which have been agreed between the Parties for a Service along with the financial arrangements that shall apply in respect of the ISA.
 - 2.9 In the event of any conflict between the documents within the Flexible Framework, the terms of the ISA (incorporating the ISTs) shall apply.
 - 2.10 The following Clauses of the Flexible Framework Terms and the IST shall continue to bind the Parties after the expiry of the Flexible Framework where relevant:

2.11 Framework Terms:

- i) Clause 15 (Data Protection, Security and Recording);
- ii) Clause 16 (Confidentiality);
- iii) Clause 17 (Freedom of Information);
- iv) Clause 35 (Conflicts of Interest);
- v) Clause 28 (Assistance in Legal Proceedings);
- vi) Clause 33 (Corruption and Collusion); and
- vii) Clause 36 (Indemnity and Insurance).

2.12 IST:

- i) Clause 26 (Data Protection, Security and Recording);
- ii) Clause 27 (Confidentiality); and
- iii) Clause 34 (Indemnity and Insurance).

2.13 Providers Operating Multiple Services

- i) The Clauses of the Flexible Framework apply to the Provider in respect of any or all of its participating Services. Where Scotland Excel/the Council is satisfied that the effect of failure or breach of a Clause is confined to one such Service, Scotland Excel/the Council may permit the continued participation of the Provider and its other Services, notwithstanding that the Service concerned has been Suspended or terminated from the Flexible Framework.
- ii) Conditions which terminate the Provider's participation in the Flexible Framework in the event of failure or breach of a Clause by a Service should be read subject to this Clause 2.13.

3. New Entrants

- 3.1 The scope of the Flexible Framework falls within the 'Social and Other Specific Services' category as defined in Schedule 3 and is subject to the procurement regimes set out in section 7, Social and Other Specific Services, both of the Public Contracts (Scotland) Regulations 2015, as set out in Clause 2.1, above. As such, a flexible approach has been designed which will allow New Entrants to apply to be on the Flexible Framework.
- 3.2 Where New Entrants are admitted to this Flexible Framework after it has been established, for the avoidance of any doubt, the rights and obligations of the Flexible Framework will apply to them with any necessary changes reflecting the date of their admission. New Entrants will be detailed in the Scotland Excel contracts register.
- 3.3 The process for admitting New Entrants to this Flexible Framework is outlined in Schedule 2 (New Entrants to the Flexible Framework Guidance Note).

4. Scotland Excel's Obligations

- 4.1 Scotland Excel will manage the Flexible Framework on behalf of the Purchasers as set out herein including in Clause 13 (Framework Management), and will share relevant documents including, without restriction, management reports with Providers and Purchasers.
- 4.2 Scotland Excel will keep under review the operation of the Flexible Framework in consultation with Purchasers, Providers and other stakeholders and make recommendations as part of the Flexible Framework review process which will be subject to agreement with Providers as set out in Clause 22 (Variations) herein.

5. Provider's Obligations

- 5.1 At all times throughout the Duration, the Provider shall be an independent body and nothing in this Flexible Framework shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties. Accordingly, no Party shall be authorised to act in the name of, or on behalf of, or otherwise bind any other Party save as expressly permitted by the Flexible Framework.
- 5.2 In the provision of the Service, the Provider shall perform its obligations:

- i) In accordance with this Flexible Framework and the requirements of each ISA;
 - ii) With appropriately experienced, qualified and trained personnel;
 - 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.
- 5.3 The Provider must ensure that its Staff understand and at all times comply with the obligations resulting from this Flexible Framework.
- 5.4 In providing the Service set out within this Flexible Framework, the Provider shall ensure it adheres to the requirements set out within Schedule 1 (Service Specification).
- 5.5 The Provider must ensure that its Staff understand and at all times comply with the obligations relative to the provision of the Service as set out within the Law and this Flexible Framework.
- 5.6 Without prejudice to the immediately preceding paragraph, the Provider confirms that to the best of its knowledge, none of the offences detailed in Regulation 58(1), none of the grounds detailed in Regulation 58(3) or 58(8) 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 Scotland Excel if, at any time subsequently during the term of the Flexible Framework, 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, Scotland Excel shall have the option to terminate the Provider's participation in the Flexible Framework and the Provider shall indemnify Scotland Excel in full for any resulting loss.
- 5.7 Duty of Candour
- i) In compliance with The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, health care and social work services have a Duty of Candour on health for Supported People.
 - ii) In implementation of and compliance with the Duty of Candour, it is expected that the Provider will:
 - Understand and comply with Duty of Candour;
 - Ensure there is a robust policy and procedure in place for:
 - a) The identification of incidents which activate the Duty of Candour;
 - b) The actions that must take place once a Duty of Candour has been identified;
 - c) The annual reporting of Duty of Candour incidences.
 - Ensure that staff are undertaking appropriate training on the impact of Duty of Candour and their role in the processes;
 - Ensure that there is access to policies and procedures and training records upon request during Contract Monitoring;
 - Inform Purchasers and/or Scotland Excel of any incidences of Duty of Candour within one working day of the incidences being identified.

6. Notices

- 6.1 Any Notice which is to be given by any Party to another shall be given by electronic

mail or letter (sent by hand, post or by the recorded or special delivery service) unless otherwise agreed between the relevant Parties. The provisions in this Clause 6 do not affect or supersede the obligations of the Provider to comply with the Law and Guidance relative to Protection of Vulnerable Groups as an entirely separate matter distinct from the obligations under this Flexible Framework.

6.2 Such Notices shall be addressed to the Provider or Scotland Excel in the following manner:

6.2.1 For the Provider:

- i) For Notices relating to the operation of the Flexible Framework to the address for correspondence in the tender documents;
- ii) For Notices relating to ISAs, as detailed in the ISA.

6.2.2 For Scotland Excel:

- i) The Director, Scotland Excel, Renfrewshire House, Cotton Street, Paisley, PA11AR

6.3 The Notice or communication 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 sent 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 Provider or Scotland Excel acknowledges receipt of such letters or items of electronic mail.

6.4 The Provider or Scotland Excel may change its address for Notices by sending written notification to the other Party. Scotland Excel 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 Scotland Excel of a change under this Clause.

6.5 Where events occur, which have a material effect on the Provider's ability to deliver the Service, Scotland Excel must be notified immediately or as soon as reasonably practicable thereafter (subject to Clause 6.6, below). Notification of such events may be made by telephone as long as formal Notice is subsequently given. The following is a non-exhaustive list of events which must be notified in accordance with this Clause 6:

- i) Notice of any risks to, or significant occurrence in relation to, the health and safety of Supported People following Notice given to the relevant Purchaser/s under Clause 22 (Reporting of Events) of the IST, where there is concern that this may impact or has affected multiple Supported People;
- ii) Notice of any investigation of or proceedings brought against the Provider and/or Service by any Regulatory Body or notifications that any Regulatory Body is going to impose conditions, serve notice to cancel Registration or to vary categories of Registration;
- iii) Notice of Fraud;
- iv) Notice that the Provider and/or Service has become unfit to deliver in terms of Regulation 6 or that someone acting as the manager of the Service is unfit to so act in accordance with Regulation 7, both of the Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations, 2011;
- v) Notice under Clause 24 (Closure/Substantial Reconfiguration of the Service) herein that the Provider and/or Service finds it is unable permanently or temporarily to meet the conditions of the Flexible Framework, or under Clause 20.10 and add title of the IST where there is a concern that this may impact or has affected multiple Supported People.

6.6 Notice given to Scotland Excel under Clause 6.5 will detail the event and concern

generally but will not identify any individual or provide information which contains personal data and/or special categories of personal data in terms of Data Protection Law.

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