

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)

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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