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| **MC_A4 colour logo** | **Invitation to tender for inclusion on the Moray council flexible framework****EDUCATION FOR all (ALTERNATIVE CURRICULUM ACTIVITIES)** **Contract 180848** |

Moray Council aim to promote the provision of alternative curriculum activities for young people in Moray.

If you are interested in offering opportunities to enable young people to meet educational and personal outcomes in a flexible way, you are invited to complete the Tender Application documentation (Section D) for inclusion onto a three (3) year Flexible Framework for Educational Services.

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# **A: INTRODUCTION AND INSTRUCTIONS TO TENDERERS**

1. **Introduction**

The Moray Council (MC) has acknowledged that the current model of support for young people who have support needs is not effectively and consistently meeting their needs. The Council’s Supporting All Learners Strategy (2022 – 2028) reaffirms our commitment to addressing this situation by promoting holistic health and wellbeing, developing a culture of inclusion, equity, and diversity leading to better outcomes for all.

To support these aims we want to commission independent services to assist Education colleagues in the realisation of the learning outcomes agreed in the education plan for an individual child or young person. We want the commissioning process to be as open and as flexible as possible to allow for all interested parties regardless of size or structure to be able to apply for the chance to deliver alternative curriculum activities on behalf of the MC.

The Flexible Framework outlined in this document has been developed to make the process for providers as simple as possible whilst still adhering to public procurement regulation. This includes the necessary terms and conditions and data gathering that you would expect from a MC contract but presented in a way that is accessible to all relevant and where required qualified providers.

This Flexible Framework covers a wide ranging set of Services including (but not limited to):

1. Social inclusion activities
2. Educational day opportunities
3. Learning opportunities

In developing the Flexible Framework Terms and Conditions MC have had to consider all entities that may be capable of delivering such services in Moray (Large and medium organisations, micro businesses and third sector social enterprises) and have endeavoured to write this Flexible Framework **in plain English** using language and a structure which is straightforward and easily understood. Not all terms and conditions may be applicable to each entity, but is important that Providers read the Flexible Framework Terms and Conditions in full and indicate their acceptance of these terms by ticking the acknowledgement box in Section D: Application Form.

The resultant Framework of Providers will inform a Community Asset Map for Alternative Activities.

Becoming a Framework Provider does not constitute a commitment on MC’s behalf to Award an Agreement as this is within the choice of the MC’s Educational Services based on the outcomes required in the educational plan for each young person.

1. **Structure of the Tender**

A: Introduction – the background and key stages of the process

B: How it will work – the detail behind the processes surrounding the Framework

C: Terms of the Framework –the terms that govern the Flexible Framework and the Agreement

D: Application Form – the required response from Provider

E: Application Form

F: Glossary – Identified and Defined Terms

1. **Queries**

Given the complexities of this process we understand that the MC will need to maintain an open communication channel for queries that shares questions and answers with all interested parties. A dedicated web page [www.moray.gov.uk/moray\_standard/page\_148998.html](http://www.moray.gov.uk/moray_standard/page_148998.html)

 has been created and a mailbox for the posting of responses to all queries alternativecurriculum@moray.gov.uk raised throughout the tender timeline to the deadline set in the timescales (see Section A:7 Timescales)

1. **Minimum Standards and Qualification**

In order to ensure that all providers meet the necessary Minimum Standards and Qualifications required for their field of operation a section of the Application Form has been created to collect the relevant information and evidence. Minimum Standards and Qualifications may differ between Providers depending on the size of organisation and Services that they deliver and the Young People they interact with. Should a Provider fall short of the minimum determined by MC they will be informed to enable them to determine how they can meet the necessary requirements.

For example, for a standard, non-specialised Service the minimum would be:

* IR35 self employed declaration (where appropriate)
* Public Liability Insurance (at a relevant level for the service being offered)
* Employers Liability Insurance (where appropriate)
* PVG clearance
* Appropriate registration
* Staff training programme (where appropriate)
* Clear operational policies that define the organisation (Section B:6)
1. **Scope and Duration**

The Scope of the services covered by this Flexible Framework is wide ranging and falls within the definition of a “social and other specific” service under the Public Contracts (Scotland) Regulation 2015 and therefore the Flexible Framework is not subject to the full requirements of the aforementioned regulation.

Achieving the Outcomes determined by a Child’s Plan can be done in many ways and in order to promote the aims of the Act should not be limited to a predetermined list of services.

The Flexible Framework will allow MC to enter into individual Service Agreement(s) (hereafter referred to as Agreement) with Providers, which will set out the Services to be provided to the Young Person.

The flexibility within the Framework will come from the continual “opening” of the Flexible Framework. New Providers can apply to get onto the Flexible Framework and the resultant Community Asset Map at any time.

The duration of the Flexible Framework will be 3 years from the Commencement Date which is anticipated to be 28th October 2024. However, this date may change dependent on the tender process outcomes. An option to extend the Flexible Framework for 2 periods of 12 months has been included.

For continuity of service any Agreement made under the Flexible Framework may extend beyond the end date of the Flexible Framework.

It is anticipated that some of the Providers seeking entry onto the Flexible Framework will already be contracted to MC to provide services of this nature. For these Providers there will be a mutually agreed transition from any existing agreements to a new Agreement or Agreements as the case may be. The timeframe for this will depend on the number of new Agreements that will be needed and will be mutually agreed by both Parties.

1. **Value**

It will be difficult to determine the total value of the Flexible Framework given the potential to be used by a number of different MC services but current estimates suggest that it will be in the region of £2Million per annum. In line with the wide ranging services that will be provided under the Flexible Framework the value of each individual Agreement will vary considerably and cannot be guaranteed.

Moray Council shall not be liable for any costs or expenses incurred by the Bidder in preparation of its tender or otherwise arising directly or indirectly from this procurement exercise or termination thereof, including, without limitation, any changes or adjustments made to this procurement exercise or any related documentation.

The prices shall include profit, delivery, labour, fuel, insurance, and all other expenses of any kind, which under the Conditions of Contract are borne by the Contractor.

The supplier shall be held bound by their tender for a period of 90 days following the last date for return.

1. **Timescales**

The following table provides indicative timescales for the tender process:

|  |  |
| --- | --- |
| Activity | Target completion date |
| Release of Tender Application packs | 13th September 2024 |
| Deadline for Tender Queries | 4th October 2024 |
| **Deadline for Application Form submission\*** | **11th October 2024** |
| Evaluation of Application Forms | 25th October 2024 |
| Acceptance Letter to Providers | 28th October 2024 |
| Contract Commencement Date | As awarded |

\*The Flexible Framework will remain continuously open and so applications can be made at any time, the date highlighted above is for initial applications and is to allow for evaluation and award prior to the commencement date.

1. **Evaluation of Application Forms**

The evaluation of Application Forms will be carried out by MC - Education, Resources and Communities team to ensure a fair and consistent approach.

Providers reaching the Minimum Standards and Qualifications, for the type of service being offered, will be awarded onto the Flexible Framework if their offering is considered affordable.

Any Providers failing to meet these standards will be contacted in order to provide feedback and advice around what is needed to change in order for the Provider to apply again for consideration.

1. **Data Protection**

The information provided during this process to MC (the Data Controller for purposes of the Data Protection Law) will be used (for successful Providers) to adopt the organisation onto our Finance and Procurement systems. The information will be held securely and will be treated as confidential although it may be shared with other public sector organisations when required to prevent or detect crime or to protect public funds.

1. **Award**

For all successful Applicants the terms of this Flexible Framework will apply and participation in the Flexible Framework will commence on the Commencement Date contained in the Letter of Award issued to the Provider.

1. **Call-off Agreements under the Framework**

Individual awards under this Flexible Framework will be made on the basis of best fit for the Young Person and affordability. The MC will work with the proposed Provider to ensure that the outcomes within the Child’s Plan can be fulfilled.

Formal contractual arrangements will be put in place: The Call-Off will comprise of;

1. Service Level Agreement – herein referred to as the “Agreement” which will include Instructions based around the outcomes identified in the Child’s Plan
2. **Required Outcomes**

The required Outcomes for the Young Person will be contained within the Child’s Plan and incorporated into the Agreement. All providers active on the Framework will be contract managed by MC to ensure that outcomes are being met and MC will also check with the Young Person for their input to performance.

# **B: HOW IT WILL WORK**

1. **Specification**

**1.1 Introduction**

The Flexible Framework covers a wide ranging set of Alternative Activities including (but not limited to):

1. Social inclusion activities
2. Day opportunities
3. Learning opportunities

The resultant list of Framework Providers will inform a Community Asset Map for MC Services to access these services.

The services will support a Young Person to achieve the best possible quality of life, in terms of their personal aspirations, choices and abilities. Services will be flexible and adaptable to changes in a Young Person’s assessed need or personal choice. A Young Person and/or their parents or carer should be fully involved in developing and shaping the outcomes expected throughout the duration of their support.

The MC will consider each young person referred to the Framework to assess “best fit” to what the framework can offer based on the required outcomes. Working with the chosen Provider the Agreement will be developed that will outline the final requirements

1. **Key Principles of Care and Support Services**

The Flexible Framework will aim to realise the same aims and objectives as the Additional Support Needs (ASN) Programme Review:

**Aim**

To improve outcomes for children and young people with additional support needs enabling them to become ambitious, confident, skilled and achieving and to promote equity and excellence for all our children and young people

**Objectives**

1. Improve outcomes for Moray’s children and young people with ASN through the implementation of national legislation;
2. Moray’s children and young people with ASN are safe, included, engaged and involved in learning;
3. Moray’s children and young people with severe and complex ASN are educated in Moray
4. Moray’s children and young people with severe and complicated SEBN are educated in Moray
5. ASN resources, including workforce, are realigned towards flexibility, early intervention and prevention delivered through partnership work; and
6. ASN services are efficient, sustainable and appropriately prioritised and targeted.

MC is committed to working with the Young Person and Providers to develop innovative solutions to challenges faced in the delivery of Services and to provide a wide ranging list of services to promote choice.

1. **People requiring Support**

The services required under the Flexible Framework are linked to the provision of Education and will primarily be provided for those young people who require support that cannot be delivered by mainstream Education alone. This includes young people up to the age of 18.

The MC uses staged intervention as a means of identification, assessment, planning, recording and review to meet those needs which require further intervention and support. The Flexible Framework will use the three levels adopted by MC to outline the level of service required



Universal – Level 1. Standard support which would not normally be accompanied by a Child’s Plan. For the purposes of this Framework a Child’s Plan will be developed to detail the outcomes expected from the external service being commissioned and detailed in the Agreement.

Universal with Support – Level 2. Where the Agreement calls for the introduction of specialist services.

Targeted Intervention – Level 3. Where the Agreement calls for more specialised input.

**Minimum Requirements of the Service**

The Flexible Framework will not provide a defined list of minimum requirements but will work with individual providers to ensure that all aspects for the care and protection of the Young Person are taken into consideration and that minimum standards for the Provider’s organisation meet national levels where appropriate. Over time this will allow MC to build a database of these minimum requirements to ensure that they are applied equally and consistently to all applicants.

**4.1 Appropriate Registration & Qualifications (where required)**

Given that this opportunity is aimed at a wide range of learning services a minimum qualification or registration is not possible, however it is expected that any Provider applying to the Framework will have the relevant registrations and qualifications for their particular offering (Qualifying/Standards Section of Application Form)

**4.2 Health and Safety**

As detailed in the Flexible Framework Terms, all Services will be delivered in line with Health and Safety legislation and best practice. Provider will ensure their Staff are appropriately trained in health and safety requirements.

**5. Availability of the Service**

The Service delivered will be tailored to meet the assessed needs and agreed Outcomes for the Young Person. This does not have a timetable that can be determined by this Specification but will be outlined in the Agreement.

It is anticipated that the services required under this Framework will be delivered during the School Day and exclude school holidays. MC reserves the right to negotiate additional services beyond this timeframe as and when required for individual Call Offs.

**6. Policies and Procedures**

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. Although not exhaustive, a list of policies and procedures that Provider might be expected to have are detailed at **APPENDIX B.** Providers will ensure that their policies and procedures are regularly reviewed and amended to ensure they reflect Law and Guidance including any change in best practice.

**7. Approach to Fair Work Practices and Workforce Matters**

The Fair Work Convention produced a Fair Work Framework <https://www.fairworkconvention.scot/the-fair-work-framework/> identifying seven main dimensions that define fair work. Providers will be required to outline where their organisation is in relation to the Fair Work requirements in their application form.

**8. Sustainability, Community and Social Benefits**

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. MC and Providers will work together to develop appropriate and proportionate approaches to community benefits that may arise from the Flexible Framework.

1. **Flexible Framework Management/Contract Management**

Effective Framework and Service management is essential to ensure that all parties are working together to ensure that the Flexible Framework Terms and aims are being met and the Young Person is receiving the Service determined by the Agreement and Child’s Plan. MC and Provider shall both be responsible for monitoring the delivery of Outcomes for the Young Person and shall use all reasonable endeavours to ensure that the Service meets the Young Persons needs and Outcomes.

MC and provider will meet at intervals to monitor and review the Flexible Framework and Agreements. This will entail meetings to review individual Agreement(s) and a separate meeting to review the overall Flexible Framework delivery.

The information for each meeting will differ:

For the Flexible Framework Providers will be asked to submit management information relevant to the service they provide and the number of Support Persons they support. This may include:

* Change indicators (staff turnover etc)
* Community benefits
* Fair Work First practices
* Financial probity
* Changes to Policy and Procedures
* Insurance evidence
* Number of people supported
* Record of any Major Incidents
* Payment of Living Wage

The ongoing management and monitoring of service delivery requires a partnership approach between the Young Person, MC and the Provider. MC and Provider will seek the views of the Young Person and, where appropriate, those of their relatives, advocates, or other significant people as part of this contract monitoring process.

The Provider will provide the data necessary to support Agreement monitoring annually.

Providers will have a process in place to monitor the Young Person’s Outcomes. As a minimum, this will include:

* Review of the outcomes identified in the Agreement
* Aggregation of achievement of individual Outcomes across Young People using the Service, to support development of the Service, frequency to be determined by MC and Provider.
1. **Service Standards**

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 Young Persons views about the Services they receive
* Use of the comments and complaints procedure to reflect the outcome of any action and change to Service
* A system for collecting and providing information to MC about Staff training, development and induction.
1. **Notification to Care Management- Reporting of Events**

The Provider shall ensure that it has a policy addressing the action to be taken by Staff upon the occurrence of the events including but not limited to the list below and shall ensure Staff are aware of the policy as part of the training provided to them by the Provider.

The Provider shall record and report all serious issues including accidents or health and safety issues concerning any Young Person.

Additionally, the Provider shall immediately inform by telephone the relevant parties outlined in the Agreement or as required by Law and Guidance who should be given notice of any of the following:

* Any significant incident or police activity, including allegations of evidence of abuse or harm relating to the Young Person
* Significant changes in the Young Person’s needs or Outcomes or circumstances
* Formal complaints in respect of any aspect of the Young Person’s Service subject to the consent of the Young Person and/or their Representative
* Unplanned absence of the Young Person
* Failure to provide the Service to the Young Person, missed, late, void or “no response” calls
* The Young Person’s attendance at an accident and emergency facility

The Provider will co-operate fully with any investigation carried out by MC or other Regulatory Body where a serious incident which have occurred (or where there is reason to believe they may have occurred).

If a situation of danger to the Providers Staff and other Young Persons should arise as a result of the actions of another person associated with the Young Person, the Provider shall use best endeavours to manage the situation and shall immediately contact the relevant emergency services, the relevant parties outlined in the Agreement. The Provider shall also submit a written report to MC as soon as reasonably practicable.

Where events occur which have a material effect on the Provider’s ability to deliver the Service, MC must be informed 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 6 (Notices).

1. **Complaints and Suggestions**

The Provider shall operate a complaints and suggestions procedure that is acceptable to MC. A copy of this procedure and any amendments shall be made available to:

All Young Persons

Young Persons parent or carer

MC on request

The Young Person or representative must be informed by the Provider of the means of registering a complaint prior to the delivery of the Service.

The Provider shall be responsible for receiving and dealing with complaints in the first instance in accordance with their complaints and suggestions procedures.

The Provider shall maintain a Complaints Register which shall be available at all reasonable times to MC, a summary of which in a format agreed by the parties will be sent to MC during the annual contract management process.

The provider shall inform Young Persons that they are also entitled to access the complaints procedure operated by the MC.

If any information regarding the identity of a member of Staff is required by MC 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 MC.

On a regular basis and not less than bi-annually, the Provider shall consult with the Young Persons and their parent or carer to ascertain their suggestions in respect of the Service and the way it is delivered. The outcome of such consultation shall be recorded by the Provider and made available to MC within seven (7) Days of receipt of MC request.

1. **Application Form**

Providers seeking to be included on the Flexible Framework are asked to complete the Application Form found in Section D. All sections should be completed as they are required to inform MC of the Providers capability and capacity to deliver the services required, meet procurement regulation and provide the necessary commercial information.

1. **New Admissions after Commencement Date**

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

Tender documentation (including the Application Form) will be available to all interested parties via the Webpage [www.moray.gov.uk/moray\_standard/page\_148998.html](http://www.moray.gov.uk/moray_standard/page_148998.html)

Evaluation will be on the same basis as the original Tender / Application Form

On Award the New Entrants will be added as a Provider to the Community Asset Map

**15. Call off Process**

**15.1 Process for Flexible Framework Providers**

Where a new requirement has been identified for a Young Person by MC, the Education, Resources and Communities team will determine if a suitable service is offered under the Framework. If a suitable service is available under the Framework, MC will work with the Provider to agree individual outcomes from the Child’s Plan and the Agreement will be developed and completed by all Parties.

Service commences.

**15.2 Process for non Flexible Framework Providers**

Should the service required not be available on the Flexible Framework, the Education, Resources and Communities team will work with Educational services to establish if there is availability in the general market. Approaches will be made to potential Providers to see if they can fulfil the requirement.

If the Provider meets the relevant standards and can deliver the required Service, MC will facilitate on boarding the Provider onto the Flexible Framework, following the processes outlined previously.

Service commences.

**15.3 Pre Existing Contracts or Agreements**

Where MC 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.

When considering whether to transfer from an existing arrangement:

1. The MC and Provider must consider the needs and Outcomes and choices of the Young Person as paramount:
2. The MC will review the Young Person’s needs and Outcomes and current arrangements prior to discussion with the Provider: and
3. The MC will share with the Provider relevant information on the findings from the aforesaid review.
	1. **Agreements extending beyond the Duration of the Flexible Framework**

To ensure continuity of Service for Young Persons, the Service may extend beyond the Duration of the Flexible Framework by agreement between the Parties to the Agreement.

Where the Agreement extends beyond the End Date of the Flexible Framework, it may continue the basis of the terms herein, supplemented as necessary.

# **C: TERMS FOR THE FRAMEWORK**

1. **General**

1.1 In general these terms set out the rights and obligations between MC and the Provider and covers the terms of the Flexible Framework and Agreements. A necessary part of the resultant Framework and Agreements but written to cover all potential types of service. Therefore not all these Terms may apply to all applicants as that will depend on the structure of the organisation and the services provided.

1.2 Under this Flexible Framework MC shall be under no obligation to enter into any Agreement(s) with the Provider.

1.3 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.

1.4 The expected duration of any Agreement may extend beyond the End Date and the Terms under this Flexible Framework will still apply.

**2. Providers operating multiple services**

2.1 The clauses of the Flexible Framework apply to the Provider in respect of any or all of is participating services. Should there be a failure or breach of a clause which is confined to one service, MC 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.

**3. New Entrants**

3.1 Where New Entrants are admitted to the Flexible Framework after it has been established, the rights and obligations of the Flexible Framework will apply to them with effect from the date of their admission. The process for admitting New Entrants is outlined in Section B 14 (New Admissions after Commence Date).

**4. MC Obligations**

4.1 MC will manage the Flexible Framework and the Agreements.

4.2 MC will keep under review the operation of the Flexible Framework in consultation with 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 25 (Variations).

4.3 Where MC enters into an Agreement with the Provider it will be governed by these Terms.

4.4 In the event of any conflict between the documents in the Framework, the terms of the Agreement (incorporating the Child’s Plan outcomes) shall take precedence.

MC will ensure the Young Persons, parent or carer and other relevant Provider staff are aware of their obligations under the Flexible Framework and any Agreement entered into.

**5. Providers Obligations**

* + 1. In the provision of the service, the Provider shall perform its obligations;
1. in accordance with this Flexible Framework and the requirements of the Agreement
2. with appropriate experienced, qualified and trained personnel (where relevant)
3. in compliance with all applicable laws and guidance and
4. in accordance any requirements made by appropriate Regulatory Bodies

5.2 The Provider must ensure that its staff understand and at all times comply with the obligations resulting from this Flexible Framework. The Provider will have a duty of care for the Young Person for the duration of the Agreement.

5.3 The Provider must confirm that to the best of their knowledge, they meet the required Minimum Standards and Qualifications set out in the Application Form and that it undertakes to advise MC if at any time during the term of the Flexible Framework they no longer meet those standards. MC shall have the option to terminate the Provider’s participation in the Flexible Framework and the Provider shall indemnify MC in full for any resulting loss.

5.4 The Provider must provide the Service to the Young Person in accordance with the Agreement.

5.5 The Provider shall give Notice to MC as soon as reasonably practicable if it finds it is unable to permanently or temporarily to meet the conditions of an Agreement and a Remedial Plan shall be agreed by both Parties subject to Clause 36 (Breach and Termination).

5.6 The Provider confirms to the best of its knowledge that there is no restrictions of any kind, which in any way affects its capacity to contract. If any such restrictions exist or arise, MC shall have the option to terminate the Agreement. The Provider shall indemnify MC in full for any resulting loss.

5.7 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.

**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 of this Clause 6.1 do not affect or supersede the obligation of the Provider to comply with the Law and Guidance relative to the Protection of Vulnerable Groups as an entirely separate matter distinct from the obligations under this Flexible Framework.

6.2 Such Notice shall be addressed in the following manner:

To MC for general notices:

 Education

Moray Council

Council Office

High Street

Elgin

IV30 1BX

 Email address: education@moray.gov.uk

 Telephone: 01343 563374

To the Provider

 The address as entered into the Tender Application Form by the Provider

The email address as entered into the Tender Application Form by the Provider

The Notice or communication shall be deemed to have been given:

 Two (2) Days after the date of the letter

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 it out with these times; or

At such sooner time where the Provider or MC acknowledges receipt of such letters or items of electronic mail.

The Provider may change its address for Notices by sending written notification to MC.

6.3 Where events occur, which have a material effect on the Providers ability to deliver the Service MC must be notified immediately or as soon as reasonably practicable thereafter. Notification of such events may be made by telephone as long as formal Notice is subsequently given.

6.4 Any Notice which contains personal data or special categories of personal data (as defined by in Data Protection Law) shall be sent securely in a way which complies with Law and Guidance.

**7. Fees & Payment**

7.1 The Provider will determine their Price per Hour within the Application Form for Level one services (see Commercial Section of Application Form).

7.2 The Price per Hour will act as a baseline for subsequent negotiations based on individual requirements as and when they are identified and awarded under the Framework.

7.3 The Price per Hour may be varied by MC and Provider relevant to the requirements of the Young Person and agreed in the Agreement. Any additional requirements such as travel, training or other costs may be included in the agreed Variation - Clause 9 (Fee Variation)

7.4 MC shall pay the Provider the fee in accordance with the terms until the expiry of the relevant Notice periods in accordance with Clause 36 (Breach and Termination) unless otherwise agreed.

**8. Price Uplift**

8.1 Any request for any additional uplift must be submitted in writing to MC for review annually by 31st January preceding the proposed date of effect of 1st April and must comply with any counter inflation legislation and be accompanied by supporting documentation evidence to the satisfaction of MC.

**9. Fee Variations**

9.1 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 Young Person, resulting in a different Price per Hour, the Price will be varied by application to MC. The process will be outlined at contract initiation.

9.2 MC reserves the right to terminate the Agreement where it considers proposed increases to the Fee for the Service to be unreasonable. In accordance with Clause 36 (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 Young Person.

**10. Invoices & Billing**

10.1 MC’s address to which invoices will be sent, and any additional information required for invoicing purposes, will be stated in the Agreement.

10.2 Invoices should be submitted in arrears for the preceding monthly period, no sooner that the first Day of the next calendar month.

10.3 Valid invoices submitted by the Provider must contain, unless otherwise set out in the Agreement, in respect of each Young Person for whom MC is liable to make any payment:

 i) the Young Person’s initials

 ii) Date of commencement of the Agreement (for first invoice only)

 iii) dates of any absences from the Service

 iv) Service end date (for last invoice only)

 v) the period of charge

vi) The total Fee for the period of the invoice for each Young Person including a breakdown of the Fee (if different from the Price per Hour)

10.4 Payment by MC will not imply acceptance by MC that the Agreement has been satisfactorily performed.

10.5 MC will make payment of any valid, undisputed invoices not later than thirty (30) Days after receipt.

10.6 Should the Provider submit an invoice to MC which is apparently inaccurate or not in accordance with this Clause 10, MC may dispute the invoice by giving Notice to the Provider stating the reasons for the dispute. MC 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.

10.7 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 is practicable

 ii) Providing a balancing entry on the next invoice; or

iii) Providing a refund and credit note where no further invoices are anticipated

10.8 The Fees are exclusive of Value Added Tax (VAT) and the amount of any VAT must be shown separately on each invoice. MC will pay VAT on that part of the Fee for which MC has a liability.

**11. Service - Regulatory Bodies Registration and Grades**

11.1 Where required it is a condition of this Flexible Framework that the Provider holds maintains the necessary Registration with a Regulatory Body for the delivery of the service.

11.2 At all times the Provider and the Service shall adhere to any Registration requirements. Furthermore the Provider will ensure that any applicable standards, as may be amended from time to time, which are put in place by any Regulatory Body are applied and followed by anyone involved in the delivery of the Service

11.3 If the Registration is subject to conditions and the Provider fails to comply with any such condition, MC will be entitled to terminate the Provider’s participation in this Flexible Framework in whole or in part.

11.4 If there are changes to Registration MC may (but shall not be bound to) terminate the Providers participation in the Flexible Framework.

**12. Staffing**

12.1 The Provider will fulfil its statutory obligations concerning the employment of Staff and at all times ensure it has sufficient number of suitable trained, qualified and competent Staff in accordance with the Health and Safety Standards, the Law and Guidance together with the requirements of the Service being provided.

12.2 The Provider will ensure that all Staff who are required to be Registered, are Registered with the appropriate Regulatory Bodies and staff will hold and maintain the required Registration, including without limitation, for the Duration of the Flexible Framework and for the period of any Agreement.

12.3 Volunteers may be used in the provision of the Service but not as a substitute for Staff.

12.4 Suitably trained and qualified agency workers may be used in the provision of the Service without agreement of MC, but only where the Provider is unexpectedly short-staffed and is consequently unable otherwise to provide the Service. 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.

12.5 Neither the Provider not its Staff shall be deemed to be entitled to act or hold themselves out as agents or employees of MC.

12.6 The Provider will ensure that:

1. Staff deployed in the provision of the Service are instructed in relation to all relevant provisions of the Flexible Framework
2. It has in place and implements all of the policies and procedures required to satisfy relevant regulatory requirements in relation to the employment and management of Staff and the requirements of the Flexible Framework.
3. Staff are familiar with the Providers policies and procedures via ongoing supervision and training.

12.7 In terms of the Rehabilitation or Offenders Act 1974 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, the Provider shall require any person that is 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.

**13. PVG Act**

13.1 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. 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 Agreement.

13.2 The Provider acknowledges that it is an offence in terms of section 35 of the PCG Act to offer Regulated Work 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.

13.3 The Provider shall not permit an individual to carry out the types of Regulated Work required in connection with the delivery of the Service until the Provider has obtained from Disclosure Scotland:

i) The Individual’s Scheme Record for the types of Regulated Work to be undertaken by the Individual in delivery the Service; or

ii) Where the Individual evidences existing membership of the PVG Scheme for the type of Regulated Work to be undertaken in delivering the Service, a Scheme Update; and

iii) Where the Scheme Record Update obtained in accordance with the preceding Clause above evidences that this is new or existing vetting information in relation to the Individual, the Scheme Record of the Individual.

13.4 The Provider shall use the contents of the Scheme Records and/or the Scheme Update, where applicable, as part of the process to make recruitment decisions. 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 Young Persons, which result in the Individual being prohibited from providing the Service.

13.5 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 the PVG Scheme membership for the type of Regulated Work undertaken, the Provider shall immediately remove such an individual from the provision of the Service, informing MC of its actions.

13.6 For the delivery of Services which fall outside the scope of Regulated Work under the PVG Act, the Provider shall obtain the appropriate level of Disclosure directly from Disclosure Scotland :

The appropriate level of Disclosure shall be determined by reference to Part V of the Police Act 1997 (as amended) and by reference to any regulations made under that Act and Guidance issued by Disclosure Scotland

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 safeguarding and protection of the interests of Young Persons – see clause 13.5 above.

13.7 The Provider shall re-check the status of their existing Staff, volunteers or students 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. The Provider will share the findings of the Disclosure with MC on request.

13.8 Before using the services of an agency, sessional or relief staff the Provider shall, as appropriate, either obtain a signed written statement from the agency, which confirms that such staff:

i) Are PVG Scheme members holding a Scheme Record in respect of the type of Regulated Work being undertaken in the provision of the Service and have not subsequently been barred; or

ii) Have been through the appropriate Disclosure checks with Disclosure Scotland should the provision of the Services fall outside the scope of Regulated Work in terms of the PVG Act.

iii) A copy of said statement from the agency shall be supplied to MC on request.

13.9 In the event of the Provider failing to comply with this Clause 13 or where any person has refused to complete a statement concerning their previous convictions or in the reasonable opinion of MC a person is unsuitable to deliver the Service, MC reserves the right without prejudice to its other remedies to require such person to be withdrawn immediately from provision of the Service.

**14. Staff Development and Training**

14.1 Where appropriate the Provider shall ensure that such Staff are registered and confirm to all related requirements laid down by the relevant Regulated Body.

14.2 The Provider will ensure that all Staff are trained to deliver the Service to Young Persons ensuring that this is evidenced within Staff Training Records. MC may request access to such Staff training records.

14.3 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.

**15. Transport**

15.1 Where transport is required, either for Providers Staff delivering the Service, or for a Young Person as part of the Agreement, 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).

15.2 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.

15.3 The Provider will ensure that account is taken of any risk assessments in respect of transporting the Young Person and that all the recommendations in said risk assessment are adhered to at all times. Risk assessments on all Agreements will include risks associated with travel, where applicable.

15.4 The Provider shall ensure that vehicles are always driven safely and with consideration to the Young Person’s needs. This shall include conforming to all road traffic legislation and drivers never driving under the influence of alcohol or drugs, excessively tired, or otherwise in circumstances of unreasonable risk.

15.5 Where a Young Person qualifies for transport, the Provider shall ensure that all drivers and escorts involved in transporting a Young Person must comply with the requirements of the PVG Act as set out in Clause 12 (Staffing)

**16 Individual Agreement Procedures**

16.1 The Agreement is the contract between MC and the Provider relative to a Call-Off under the Flexible Framework and it sets out the specific arrangements for a Young Person as to the Service to be provided in accordance with the outcomes identified in the Child’s Plan. MC will agree and complete the Agreement in consultation with the Provider and Young Person once the Call-Off has been agreed in principle.

16.2 Where MC requires to make an Agreement through this Flexible Framework it shall use the procedures set out in Section B: 15 Call Off Process. In deciding on a Service, MC will, at all times, consider the choice and the needs of the Young Persons as paramount.

16.3 MC and Provider will work together to ascertain the suitability of a potential Service for a Young Person. The Provider shall ensure that information about the Service is kept up to date. MC and the Provider will negotiate as required any variable Price to meet the needs and Outcomes of the Young Person where requirements are not specifically detailed in the original pricing schedule.

16.4 Where an Agreement is entered into, it will be governed by the Section B – Specification and the outcomes incorporated into that Agreement. Any variations to the Specification must be specified clearly in the Agreement.

16.5 MC and Provider will work together to identify any factors that could impact on the Agreement both in terms of Outcomes and cost. MC and Provider will then agree how to address these issues and include this in the Agreement. Once the Agreement has commenced, it will be kept under review and updated following the process set out in Clause 25 (Variations)

16.6 The Agreement shall detail the Provider’s complaint procedure and the Provider will assist the Young Person with following this process, as necessary.

**17. Community Asset Map**

17.1 In order to provide transparency details of Providers on the Flexible Framework will be published on the Council website (including Price per Hour). This map will also act as a source of information for potential Council users for available services.

**18. Protection of Information**

**Data Protection, Security and Recording**

C18.1 All parties comply with their respective duties under Data Protection Law

18.2 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 Young Person.

18.3 The Parties hereby acknowledge that MC 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

18.4 In order for the Provider to perform the Service, MC requires to disclose to the Provider the Personal Information in respect of each Young Person.

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

18.6 Where the Provider received Personal Information from MC through an enquiry or referral and the Service is not subsequently taken up for the Young Person, the Personal Information received by the Provider must be securely destroyed and evidence provided to MC of destruction or returned to MC.

18.7 The Provider shall not be required to pass information to MC in relation to a Young Person, member Staff, or any other person, if the disclosure would cause the Provider to breach the terms of the 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. 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.

**Data Protection – Warranties**

18.8 The Provider warrants:

i) That as a minimum, all Staff who will or may have access to Personal Information provided under the Agreement have been subject to the relevant vetting procedures including relative to the PVG Act.

ii) That any processing of the Personal Information will satisfy the requirements of Data Protection Law

iii) That it will provide appropriate guidance to Staff in respect of any Personal Information disclosed to them.

**Data Protection – Notification**

18.9 The Provider must notify MC immediately after becoming aware of any risks or compromise to MC’s Data or any incidents or concerns which may impact on the confidentiality, integrity or availability of this. The Provider shall thereafter promptly, at their own expense:

i) Provide the MC with such information as it reasonably requires in connection with this risk.

ii) Take such steps as MC reasonably requires 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.

**Data Security and Recording**

18.10 The Provider shall have a clear written policy and guidance for Staff on requirements for recording Data and Data Security and shall ensure that this is adhered to and reported to MC when and as required.

18.11 MC reserves the right to audit, at any time, the suitability of the technical and organisational measure and security measures put in place by the Provider in order to comply with this Clause. MC reserves the right to seek and require changes to said technical and organisational measures and security requirements applied by the Provider MC considers that the providers practice is no longer compliant with the Law. Any changes sought by MC shall be carried out by the Provider promptly in accordance with the timescale required by MC.

18.12 The Provider must immediately notify MC where there has been a loss of Personal Data

18.13 Failure to comply with the requirements of this Clause 18 may be treated by MC as a Material Breach of contract by the Provider under Clause 36 (Breach and Termination) herein.

18.14 Subject Access Request

The Provider shall notify MC within five (5) Working Days if it receives:

i) A request from a Young Person or representative to have access to their Personal Information;

ii) A complaint or request relating to MC’s obligations under the Data Protection Law.

**Sharing Information with Government Regulators**

18.15 Subject to its compliance with the provisions of the Data Protection Law, MC 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 Law including FOISA and Data Protection Law.

18.16 In this Clause 19.16, the term “Act” shall refer to the Public Records (Scotland) Act 2011; “Records Management Plan” means the plan prepared by MC 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 records created by MC in relation to the Service and “Providers Retention Schedule” refers to those parts of the Records Management Provisions relating to how long particular records or classes of records create 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.

The Provider shall, for the Duration of the Agreements entered into, provide MC will all assistance reasonably requested by MC to assist MC in complying with its obligations under the Act.

18.17 Where applicable, the Provider shall comply with MC’s Record Management Provisions in respect of records crated before and during the term of the Agreement.

18.18 Where the Provider’s retention schedule for a particular records or class of records lists the final disposal of a record as “Pass to Council” (or equivalent), the Provider shall offer to transfer the records in question to MC, such transfer to include full ownership of the records (including transfer of the status of data controller, full beneficial ownership and transfer of any intellectual property rights relating to records). The transfer shall be at no cost to MC.

**19. Confidentiality**

19.1 It shall be the Providers responsibility to ensure that its Staff observe and comply with the principles of confidentiality. In recognition of these requirements the Provider will obtain an undertaking from Staff not to disclose any information they may receive in accordance with the provisions of the Flexible Framework, unless required by Law, or with the explicit consent of MC.

19.2 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 Agreement, any information obtained in relation to MC or any Young Persons and they shall not use any such information except as specifically required for the purposes of performing its obligations under this Agreement.

19.3 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 Young Person to the relatives of that Young Person or other interested person where the appropriate legal rights exists, or, in respect of the Young Person, where such information has already been made available to the Young Persons and the Young Person’s consent to such disclose has been obtained.

19.4 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 the Clauses above and give an undertaking not to disclose any information which they may receive in the course of delivering the Service.

19.5 The Obligations of confidentiality contained in this Clause 19 shall survive the termination of any Agreement under the Flexible Framework.

**20. Freedom of Information**

20.1 No term of this Flexible Framework whether express or implied, shall preclude MC from making public, if required under the Freedom of Information (Scotland) Act 2002 or the Environment Information (Scotland) Regulations 2004 or both, any information held relating to the Framework. In exercising its obligations under these regulations MC shall have due regard to the commercial interests of the Provider but without prejudice to its duty to discharge its obligations. The interpretation of the regulations by MC and any exemptions therein will be final and conclusive subject only to any decision or binding ruling on the matter made by the courts of the Office of Scottish Information Commissioner. The Provider will facilitate compliance by MC with its obligations under the regulations and comply with any request from MC for that purpose.

**21. Publicity and Audit**

21.1 Without prejudice to MC’s obligations under the Freedom of Information (Scotland) Act 2002, the Provider shall not without the prior written consent of MC issue any publicity relating to or otherwise reveal or make public any financial or other confidential information in connection with this Flexible Framework or any Agreements entered hereunder and shall not knowingly authorise, allow, commit or permit or purport to authorise or permit any person, representative or Staff, or agent, to commit any act which might prejudice or damage the reputation of MC.

21.2 The Provider shall keep and maintain until 7 years after the date of expiry of the Flexible Framework or any period of extension, or as long as may be agreed between Parties, full and accurate records of the agreement including Services supplied under it, all expenditure reimbursed by MC and all payments made by MC. The Provider shall on request allow MC such access to those records as may be requested by MC in connection with the Flexible Framework.

**Control of contract**

**22. Waiver**

22.1 No failure or delay by either Party to enforce any right or remedy to which it is entitled, or to require performance by the other Party of any of the terms of the Flexible Framework shall be a waiver of any such right or remedy nor shall it in any way affect its rights subsequently to enforce such provision.

**23. Severability**

23.1 In the event of any of the terms and conditions of this Flexible Framework shall be determined by a competent court of Law or any other competent body with appropriate jurisdiction to be invalid, unlawful or unenforceable to any extent, such term, condition or provision will, to that extent, be severed from the remaining terms and conditions which will continue to be valid to the fullest extent permitted by Law.

**24. Remedies Cumulative**

24.1 Except otherwise provided by this Flexible Framework, all remedies available to any Party for Breach of the Framework are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**25. Variations**

25.1 The Flexible Framework terms may only be varied with the prior written agreement of MC or a provided with the Flexible Framework

25.2 Any condition entered by a Provider or incorporated on any invoice or other communication submitted to MC which is at variance in any respect with the terms and conditions of the Flexible Framework shall not be binding on MC unless such a condition has been accepted in writing by MC.

**Variation of Flexible Framework – Service Requirements**

25.4 Each Party (the proposing Party) shall be entitled to propose any variation to the Flexible Framework for consideration in relation to the Service requirements. Any such Variation could include, but shall not be restricted to, additions, alterations, substitutions or omissions to the Service or changes regarding the delivery or provision of the Service.

25.5 Additions to the Service may include requests from the Provider to admit new services offered by it, after the commencement of the Flexible Framework, so long as those services fulfil the criteria for selection initially established.

25.6 The proposing party shall notify the other Party in writing of its proposal.

25.7 To consider any proposed variation, both Parties shall have available to them:

 i) The reason for the proposed change

 ii) Full details of the proposed change

 iii) The price, if any, of the proposed change

1. Details of the likely impact, if any, of the proposed change on other aspects of the Flexible Framework; and

v) The suggested admission date of any new service, new geographical area of care and capacity.

25.8 The other Party shall respond to the proposed change in writing and, if appropriate, representatives of both parties shall meet to discuss the proposed change

25.9 Any change proposed by either Party shall constitute an amendment to this Flexible Framework only once it has been accepted in writing by both parties. Until such time, the proposed change shall be neither binding nor implemented. Any work undertaken by the Provider, its Staff or agents in connection with any proposed change to this Flexible Framework, shall be undertaken at the expense and liability of the Provider.

**Reviews and Variations to the Agreement**

25.10 Both MC and the Provider will review the Agreement in accordance with this Clause 25. The Provider will be notified of the Young Persons parent or carer and shall be promptly advised of any changes in key MC Staff. The Provider shall advise MC of the Staff responsible for any overview of the Service provided under the Agreement and advise MC promptly of any changes.

25.11 The Provider and MC may agree to vary the Agreement, where both Parties agree the Variation, and this will be detailed a Letter of Variation to the Agreement.

25.12 Where a Call-Off has been made in an emergency and none of the procedures as set out in Clause 14 have been completed, MC shall ensure that engagement with the Provider to review the suitability of the Agreement shall be conducted within ten (10) Working Days of the Service start date.

25.13 Review meetings will be planned in advance, so all Parties have adequate notice and time to prepare including the timely submission of any necessary written reports. The Young Person, the Young Person’s representative, MC, or the Provider may request a review of the Young Person’s needs at any other time given reasonable notice to the other Parties. Where the request is urgent, all Parties will endeavour to meet as soon as possible.

25.14 Review meetings shall be held in suitable premises that accommodates the requirements of all attendees. The review will co-ordinate the different agencies should they be required and MC will be responsible for integrating various different plans for the Young Persons into the Agreement.

25.15 Following Review Meetings, any changes discussed regarding the Agreement shall be implemented within the agreed timescale or otherwise as soon as practical with all documentation updated and agreed by both Parties in writing.

25.16 A written copy of the decisions and/or outcomes of the Review Meetings and any resulting amendments as may be necessary will be confirmed in writing to the Provider by MC as soon as possible.

**Young Person’s Absence**

25.17 Where a Young person is Absent from the Service, the Provider will communicate this absence to MC immediately Clause 6 (Notices). The absence will normally be paid for two weeks, any further payment to cover longer absence will be negotiated with the Provider

**Variation to Fees**

25.18 Requests to vary Fees only will be dealt with in accordance with the provisions of Clause 9 (Fee Variations).

**Variation to Registration (where required)**

25.19 In the event of a change to the Registration of the Provider or the Service MC may, but will not be bound to, agree a Variation to the Flexible Framework to reflect the change subject to the continued adherence to the Flexible Framework Terms by the Provider and the Service, to the satisfaction of MC.

**Variation to change in Law and Guidance**

25.20 Subject to Clause 25.18 (Variation to Fees) herein, for the Duration, the Provider shall bear the cost of ensuring that the Service complies with the Law and Guidance and any amendments thereto. This includes changes to the Care Inspectorate Registration and/or grading requirements.

25.21 Where any change in the Law and Guidance materially impairs the Provider’s ability to supply the Service or materially increases the cost to the Provider of supplying the Service, the Parties shall consider any necessary amendments to the Fees in accordance with the Clause 9 (Fee Variations)

**Failure to agree Variation – Termination by Notice**

25.22 Where a variation cannot be agreed between the Parties in accordance with this Clause 25 (Variations) termination may take place upon the serving of Notice in accordance with Clause 36.17 (Termination by Notice).

**26. Assignation, Disposal, Sub-Contracting, Change of Control**

26.1 The provider will not assign, dispose or otherwise transfer its interest and/or obligations under the Flexible Framework to any other person (hereinafter “assign”) without first obtaining the prior consent in writing of MC notwithstanding Clause 27.2 which shall be unreasonably withheld of delayed subject to:

i) The Providers compliance with the requirements of Clause 27 Assignation /Disposal;

ii) MC’s compliance with its procedural requirements permitting assignation

 iii) Compliance by the Parties with the Law

26.2 Where a Provider which has Agreements in place, requires to make request under this Clause 26, the request will also require to be considered by all Young People.

26.3 Failure to meet the requirements of Clause 26 herein, including the requirements to provide information within stated timescales, will be deemed to be a Material Breach of the Flexible Framework.

26.4 All Notices and/or any remedial action taken under the Flexible Framework prior to assignation will remain in effect in accordance with its original terms notwithstanding the completion of any assignation or other transfer or change of Control.

26.5 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 26, the relevant provisions in this Clause will not apply subject to the Providers compliance with the following requirements:

i) The Provider must notify MC promptly of the position in writing and provide such further information as may be reasonably required by MC;

ii) In disclosing information in accordance with this Clause 26, the Provider must adhere to the requirements of all applicable Law and Guidance including without limitation the Companies Act 2006 and the City Code on Takeovers and Mergers (the Code); and

iii) Copies 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 MC at the time of issue.

**Assignation/Disposal**

26.6 Where the Provider proposes to transfer its interest, or part of its interest, in the Service to another provider with the intention of Service continuation:

i) The provider must give MC no less than thirteen 13 weeks prior written notice; and

ii) MC may consent to the proposed assignation upon being satisfied of the proposed assignee’s suitability and 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.

26.7 In order to enable the due consideration of the assignation request, the Provider shall provide MC with such information as it may reasonably request at the earliest opportunity and not 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 the proposed assignee;

iv) Proposed assignee’s assessment of existing Service;

v) Staffing proposals in particular transfer and re-appointment and/or recruitment and arrangements for transition (including management);

vi) Policies and procedures proposed for use in the management of the Service or confirmation of the application of the existing policies to the Service; and

vii) Appropriate financial information relative to the proposed assignee in order that MC may be satisfied as to the financial viability of the proposed assignee and the continued financial viability of the Service

26.8 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.

26.9 Once notification of a proposed assignation has been received, MC may exercise its right of Suspension in accordance with Clause 37 (Suspension) herein where it has reasonable concerns that the proposed assignee will not 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 26.

26.10 Until the completion of the assignation in accordance with the procedures laid down in this Clause 26, or until the Flexible Framework 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 MC to the proposed assignee;

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

26.11 In the event that consent is not granted to the assignation, or the assignation 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 MC, MC may terminate the Providers participation in the Flexible Framework in accordance with Clause 36 and any Agreements will be dealt with in accordance with Clause 36 (Breach and Termination), or

ii) Where the Provider is able to continue to provide the Service, the terms of the Flexible Framework and Agreement will continue to apply.

26.12 Where MC agrees to assign the Provider’s placing on the Flexible Framework or the assignation of an Agreement, it will confirm this in writing and the Provider will then be responsible for information MC of the assignation date and the details of the assignee.

**Factoring Assignee**

26.13 Notwithstanding the foregoing, 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 Flexible Framework and Agreements subject to:

The provider providing a minimum of one (1) invoicing period’s advance notice to MC;

Deduction of sums in respect of which MC exercise their right to recover overpayments and any other debts.

26.14 The Provider shall notify, or procure that any Factoring Assignee notifies MC of any variations to the arrangements for payment of the Fees or for handling invoices, in each case in good time to enable MC to make arrangements to redirect payments or invoices accordingly. In the absence of such notification, MC shall be under no obligation to vary their arrangements for payment of the Fee or for handling invoices.

**Appointment of Sub-Contractors**

26.15 Notwithstanding the generality of Clause 26.15 herein the Provider will not appoint a Sub-contractor or change an existing Sub-contractor to deliver the part(s) of the Service which are classed as Regulated Work or which require Registration, without the prior consent in writing of MC which shall not be unreasonably withheld subject to compliance with the requirements of this Clause 26.15 herein.

26.16 The Provider will request consent to appoint a Sub-contractor by written application to MC, no less than twenty-eight (28) days (unless alternative timescales are agreed by MC) before the proposed start date of any such subcontract, 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 measure to be put in place by the Provider to ensure that the Sub-contractor complies with the terms of the Flexible Framework as if it was the Provider.

26.17 MC will assess the proposed arrangement and whether it is appropriate to subcontract the part(s) of the Service proposed, taking into account of the information submitted, any internal processes and procedures and relevant professional and regulatory advice.

26.18 MC may request such additional information as required to allow it to make its assessment.

26.19 Subject to the prompt receipt of such additional information as may be reasonably requested in accordance with this Clause 26, MC will advise the Provider of its decision in relation to the appointment of a Subcontractor no more than fourteen (14) days (unless alternative timescales have been agreed) after the date of receipt of the application.

26.20 Where MC consents to the appointment of a Sub-contractor, the Provider will:

i) Be responsible for the performance of and shall be liable to MC for the acts and admissions of its Sub-contractors;

ii) Ensure that any Sub-contractor appointed complies with the requirements of the Flexible Framework and any Agreement entered into thereunder; and

iii) Ensure that a provision is included in any sub-contract that requires the Subcontractor to apply for the consent of MC to sub-contract anything in the sub-contract in terms no less onerous than those set out in Clause 26.20 (i – iv)

iv) Which require payment to be made to the Sub-contractor within a specific period not exceeding thirty (30) days from receipt of a valid invoice.

**Change of Control**

26.21 The Provider will give thirteen (13) weeks prior written Notice to MC of a change of Control. In circumstances, where it is not possible to give thirteen (13) weeks prior written Notice, the Provider may give a shorter period of Notice – no later than two (2) weeks after the Provider becomes aware of the change of Control.

26.22 Where the Provider proposes a change of Control with the intention of Service continuation, MC may require it to provide such further information as it requires, such as that required for assignation in Clause 26 herein, to determine whether or not the Providers participation in the Flexible Framework and Agreements should continue.

26.23 Following receipt of notice of a change of Control where MC reasonably considers the change of Control will materially and adversely affect the Providers provision of the Service in compliance with the Flexible Framework, the Provider’s participation and Agreements entered into may be terminated.

26.24 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 26, the relevant provisions in this Clause will not apply subject to the Providers compliance with the following requirements:

i) The Provider must notify MC promptly of the position in writing and provide such further information as may be reasonably required by MC;

ii) In disclosing information in accordance with this Clause 26 the Provider must adhere to the requirements of all applicable Law and Guidance including without limitation the Companies Act 2006 and the City Code on Takeovers and Mergers (the Code); and

iii) Copies 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 MC at the time of issue.

**27. Closure/Substantial Reconfiguration of the Service**

27.1 The provider shall give MC thirteen (13) weeks written Notice of its intention to close or substantially reconfigure the Service.

27.2 In the event that Notice is served in accordance with Clause 27.1 (above):

MC may but shall not be bound to terminate the Provider’s participation in the Flexible Framework 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

27.3 MC and the Provider shall co-operate to implement the Providers business continuity plan further to Clause 39 (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.

**28. Law**

**Statutory Obligations**

28.1 It is a material condition of the Flexible Framework that throughout its Duration and that any of any Agreements thereunder, the Provider ensures that it and the Service adheres to the requirements of the Law and Guidance.

**The Contract (Third Party Rights) (Scotland) Act 2017**

28.2 Unless otherwise agreed in writing by the Parties neither the Flexible Framework nor any Agreement entered into under it shall create rights in favour of any third party under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce or otherwise involve any provision of the Flexible Framework or Agreement.

**Law of Scotland**

28.4 The construction, validity, performance and all other matters arising out of and in connection with this Flexible Framework shall be governed by the Law of Scotland. The Parties also submit to the exclusive jurisdiction of the Scottish Courts

**Best Value**

28.5 The Provider shall agree and hereby acknowledge that the Local Government in Scotland Act 2003 applies to Councils, and the Provider shall use all reasonable endeavours throughout the Duration to ensure its continual improvement in the planning and delivery of the Service with regard to effectiveness, efficiency and economy in meeting the needs of the Young Person.

**Assistance in Legal Proceedings**

28.6 If requested to do so by MC, the Provider shall use best endeavours to co-operate with MC, including, but not limited to, the provision of documentation and statements from Staff in connection with any third party legal proceedings, requests received in accordance with the Freedom of information (Scotland) Act 2002, Ombudsman or other inquiries, arbitrations or court proceedings in which MC may become involved or any relevant disciplinary hearing internal to MC arising out of the provision of the Service. The Provider shall permit Staff to co-operate and if necessary, give evidence in such inquiries, arbitrations, proceedings or hearings.

**Human Rights**

28.7 The Provider shall at all times comply, in a manner which is proportionate and relevant to the nature of the Framework, with the obligations which are incumbent upon MC as a public authority in terms of the Humans Rights Act 1998 and of all secondary legislation made under that Act.

28.8 The Provider shall ensure the observance of this Clause 28 by all Staff and anyone involved in the provision of the Service

28.9 The Provider shall indemnify MC against losses, costs, expenses and damages and shall keep MC indemnified against all liabilities, demand, claims, actions or proceedings reasonably incurred as a result of an alleged break of this Clause 28 by the Provider.

28.10 The Provider shall promote and comply with the human rights based approach embedded in the Health and Social Care Standards overarching principles and any subsequent standards developed.

**Equalities**

28.11 The Provider confirms that to the best of its knowledge and belief it has complied with the Equalities Act 2010 (the Act) and hereby agrees to continue to comply with the Act in a manner which is proportionate and relevant to the nature of the Flexible Framework and Agreements.

28.12 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 the relevant Codes of Practice issued by the Equality and Human Rights Commission.

28.13 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 under this Flexible Framework and any Agreement entered into thereunder.

28.14 The Provider recognises MC has a responsibility to monitor the extent to which the provision of the Service extends to social excluded groups. In recognition of this, the Provider agrees, where appropriate and practicable, to work towards providing information to MC in relation to employment and provision of the Service in respect of the protected characteristics as detailed in the Act Part 2 Chapter 1.

28.15 The Provider shall not discriminate, directly or indirectly or by way of victimisation or harassment against any person on the 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.

28.16 The Provider shall notify MC forthwith in writing as soon as it becomes aware of any investigation, or proceedings brought against, the Provider under the Act. The Provider will inform MC of any investigation decision or outcome of any proceedings as soon as practicable. Any Young Persons anonymity should be maintained at all times.

28.17 Where any such 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 Providers performance of the Service being in contravention of the Act, the Provider shall free of charge:

 Provide any information required in the timescales allotted

 Attend any meetings as required and permit the Providers Staff to attend

Promptly allow access to and investigation of any document or data deemed to be relevant

Allow itself and any Staff to appear as witness in any ensuing proceedings; and

Co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation

28.18 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, Subcontractors or Staff, and where there is a finding against the Provider in such investigation or proceedings, the Provider shall indemnify MC with respect to all costs, charges and expenses arising out of or in connection with any such investigation or which MC may have been ordered or required to pay to a third party.

28.19 The provider will extend the obligations under this Clause 28 to any arrangements with Sub-contractors.

**29. Health and Safety**

29.1 The Provider must operate health and safety policies and must perform its obligations under the Flexible Framework in accordance with all Law and Guidance.

29.2 Where requested by MC the Provider shall provide MC with a copy of its health and safety policy statement.

29.3 The Provider shall ensure it adheres to any health and safety reporting requirements in accordance with Law and Guidance, including all serious accidents or health and safety issues concerning any individual Agreement.

**30. TUPE**

30.1 Without prejudice to the Provider’s obligations under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), at any time within twenty (20) working days of being requested to do so by MC, the Provider shall fully and accurately disclose to MC all “employee liability information” as defined by TUPE.

30.2 The Provider, in providing information under this Clause 30 (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 and orderly transfer of responsibility for provision of the Service.

30.3 The Provider will indemnify MC 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 this Flexible Framework or any Agreement in respect of his/her employment with the Provider, or any breach 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 MC.

**31. Corruption and Collusion**

31.1 MC shall be entitled to terminate a Providers participation in the flexible Framework and Agreement with immediate effect, in whole or in part, and to recover from the Provider the amount of any loss resulting from such termination if:

i) The provider, it representative, associate, affiliated companies, subsidiary, related companies or organisations (whether with or without the knowledge of the Provider) have practised collusion in tendering or refraining from tendering for the Flexible Framework or any Agreement or have employed any corrupt or illegal practices either in the obtaining or the carrying out of the Flexible Framework or Agreement.

ii) The provider or any person employed by or action on behalf of the Provider (whether or not at the Providers knowledge) has offered or given or agreed to give, to any person any gift or consideration of any kind as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or carrying out of the Flexible Framework or providing the Service or for showing or refraining from showing favour or disfavour to any person in relation to the Flexible Framework.

**32. Prevention of Fraud**

32.1 The Provider shall take reasonable steps, in accordance with Good Social Care Practice, to prevent any Fraud by Staff or anyone else involved in the provision of the Service and the Provider (including its shareholders. members and directors) in connection with the receipt of monies from MC.

32.2 The Provider shall notify MC immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

32.3 If the Provider or its Staff commits Fraud in relation to the Flexible Framework:

i) MC may terminate the Providers participation in the Flexible Framework in whole or in part and recover from the Provider the mount of any loss suffered resulting from the termination, including (where relevant) the costs reasonably incurred by arranging for the supply of Services and any additional expenditure incurred as a result of the Provider’s Fraud

ii) MC may terminate the Agreement and recover from the Provider the amount of any loss suffered by the Council resulting from the termination, including the costs reasonably incurred in arranging an alternative Agreement; and/or

iii) MC will recover in full from the Provider any loss sustained in consequence of such Fraud.

**33. Conflicts of Interest**

33.1 The Provider shall take appropriate steps to ensure that neither the Provider nor any member of Staff, agent or supplier is placed in a position where in the reasonable opinion of MC there is or may be actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider or such persons and the duties owed to MC under the provisions of the Flexible Framework. The Provider will disclose to MC full particulars of any such conflict of interest which may arise within fourteen (14) days of the matter coming to the attention of the Provider.

33.2 MC reserves the right to terminate the Provider’s participation in the Flexible Framework in whole or in part immediately by notice in writing and/or take such other steps it deems necessary where, in the reasonable opinion of MC there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the duties owed to MCs under the provisions of the Flexible Framework.

33.3 Where there is a conflict of interest in accordance with the provisions of this Clause 33 Agreements may be terminated by MC in accordance with Clause 36 (Breach and Termination)

**34. Liabilities**

**Indemnity and Insurance**

34.1 The Provider shall indemnify and keep indemnified MC and its officers against any claim, expenses, or loss in respect of personal injury or death or loss of our damage to property which arises out of the performance of obligations of the Flexible Framework or Agreement 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 Providers duties under this Flexible Framework or Agreement.

34.2 For certain Services the Provider is obliged to insure, and maintain insurance, for the Duration of the Flexible Framework and Agreements, this may be varied by MC upon application and as required:

Public Liability – to a minimum limit relevant to the type of service being delivery. Liability must not exclude abuse and/or molestation cover.

Employers Liability – to a minimum limit relevant to the size of the organisation.

Statutory Third Part 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 insurance and maintained for business purposes

Specialist Cover – where the Service requires specialist insurance cover details must be provided

34.3 The Provider shall, at least fifteen (15) days before the renewal anniversary or, otherwise, on request, for each of its insurance policies held for the purposes of this Flexible Framework, provide to MC such evidence as may be necessary to demonstrate that the insurance requirements detailed in the Flexible Framework have been maintained for each subsequent renewal and the premium payments have been made and are up to date.

34.4 MC may request an increase to the minimum level of insurance cover required or request additional insurance cover when awarded an Agreement should the circumstance require it.

**35. Disputes**

**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 then arising out of or in connection with the Flexible Framework and notwithstanding the referral of any such matter or dispute under the 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 appropriate remedy.

35.3 For the purposes of resolving disputes in terms of this Clause 35, MC 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 have been exhausted and the dispute remains unresolved, the Provider’s participation in whole or in part in the Flexible Framework may be terminated either with immediate effect or within such alternative timescales as the Parties may determine by agreement. In such a case, the requirements of Clause 36 (Breach and Termination) will apply.

**36. Breach and Termination**

36.1 The Provider shall give Notice to MC as soon as reasonably practicable if it finds it is unable to permanently or temporarily meet the conditions of the Flexible Framework and Agreement in whole or in part, and an action plan with timescales shall be agreed by both Parties.

**Breach of the Flexible Framework and Remedial Action Plan**

36.2 Where MC or Provider considers the other to be in Breach of the Flexible Framework, 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.

36.3 Where the Party service the foregoing Notice disputes the fact of the Breach, the procedures set out in Clause 35.1 (Resolution of Disputes) shall be followed.

36.4 If the Party in Breach is unable to rectify the Breach to the reasonable satisfaction of the other Party within the said fourteen (14) days the matter shall be referred to the relevant nominated officers of each Party, who shall use best endeavours to reach a resolution of the matter within fourteen (14) Days.

36.5 If the nominated officers fail to resolve the matter within the said fourteen (14) Days, a meeting of Parties shall be convened within seven (7) Days involving senior offices with line management responsibility for the nominated officers in order to reach a solution or formulate a Remedial Action Plan with appropriate timescales for rectification of the Breach.

36.6 Where a Remedial Action Plan cannot be agreed between the Parties or if the agreed Remedial Action Plan is not given effect timeously to the reasonable satisfaction of the Party not in Breach then the procedures set out in Clause 35.1 (Resolution of Disputes) shall be invoked.

**Material Breach – Capable of Remedy**

36.7 Where a Party has committed a Material Breach of the Flexible Framework 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 I 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 – Registration**

36.8 Without Prejudice to other rights and remedies MC may have available to them under the Agreement for Material Breach or at Law if the Regulatory Body give notice to the Provider of a proposal to cancel the Registration of it the Regulatory Body has made Summary Application to the Sheriff for an Order cancelling the Registration or if the Registration is cancelled, then MC may, but shall not be bound, to terminate this Agreement, 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,

**Material Breach – Irremediable**

36.9 Without prejudice to the rights and remedies for Breach or Material Breach of the Flexible Framework or Agreement otherwise available to them under the Flexible Framework or at common Law or under statute MC and Provider shall each have the right, such right being exercised at their absolute discretion to serve written Notice on the nominated officer or the other Party to terminate the Provides participation in the Flexible Framework in whole or in part if the other Party has committed a Material Breach of this Flexible Framework and Agreement which is not capable of remedy, or if capable of remedy, has not been remedied to the reasonable satisfaction of the Party service the Notice within the period specific in the Notice.

36.10 Where Material Breach occurs as defined in Clause 36 herein, termination in whole or in part may take effect immediately, or within such an alternative period as the Parties mutually agree.

36.11 Not used

36.12 Where the Provider is in Breach, whether in whole or in part, MC may assist the Provider in continuing to provide or improve the Service to the Young Person in order to meet the best interests of the Young Person. Such assistance by MC shall not be regarded as a waiver of any Breach of the Provider obligations under this Flexible Framework. The Fees for the Service during this period shall be subject to negotiation and may be reduced to reflect the reduction in Service for the relevant period.

36.13 Termination of the Flexible Framework shall not prejudice the rights of either Party that have arisen on or before the date of termination.

36.14 The following are Material Breaches of the Flexible Framework and Agreement by MC:

i) Committing a Breach of any of its obligations under this Flexible Framework which materially and adversely affects the performance of the Flexible Framework or provision of the Service; or

ii) Committing a series of Breaches of any of its obligations under the Flexible Framework, the cumulative effect of which is to seriously and adversely affect the performance of the Flexible Framework or provision of the Service.

36.15 The following, in addition to the serious or repeated Breach of Law or Guidance, are Material Breaches of Flexible Framework and Agreement by the Provider and/or Service.

i) Operation of the Service without effecting the necessary Insurance cover in accordance with Clause 34 (indemnity and Insurance) herein;

ii) Abuse or neglect of any Young Person, where the Provider fails to notify MC if they are made aware that anyone working for the Provider is convicted of a Schedule 1 offence under the Criminal Procedure (Scotland) Act 1995 or is place on the Sex Offenders Register (unless the Services offered specialist support of Schedule 1 offenders); and where the Provider fails to notify the Purchaser if they are made aware that anyone working for the Provider has any allegations made against them of a serious nature.

iii) Serious non-compliance with the requirements of the Equality Act 2010;

iv) An Insolvency Occurrence;

v) Offering any improper inducements or exerting unreasonable pressure upon any person to encourage them or persons who they represent to be placed in the Service;

vi) Being convicted of an offence under the provisions of Part 5 of the Public Services Reform (Scotland) Act 2010;

vii) Committing any offence under the Bribery Act 2010;

viii) Giving any undisclosed or illicit fee or reward to any elected member or officer of MC in order to secure an unfair gain or advantage;

Failing to comply with the assignation process as set out in Clause 26 (Assignation, Disposal, Sub Contracting, Change of Control) herein;

Corruption or Collusion as set out in Clause 31 (Corruption & Collusion) herein;

Fraud as set out in Clause 32 (Prevention of Fraud) herein;

Conflict of interest as set out in Clause 33 (Conflicts of Interest) herein;

Breach of obligations set out in Clause 5 (Providers obligations) herein;

Breach of obligations set out in Clause 28.1 (Statutory Obligations) herein;

In the event of any action being necessary in accordance with Clause 38 (Force Majeure and Business Continuity) herein;

Where the Provider and/or Service fails to meet the reasonable requirements of any relevant Regulatory Bodies, and unreasonably fails to put in place an agreed action plan between the Provider and/or Service and any relevant Regulatory Bodies to put this right, or the Provider and/or Service unreasonably fails to meet the requirements of said agreed action plan within a reasonable period of time; or

The provider committing a Breach of any of its obligations under this Flexible Framework which materially and adversely affects the performance of the Flexible Framework or provision of the Service or the Provider committing a series of Breaches of any of its obligations under this Flexible Framework the cumulative effect of which is to materially and adversely affect the performance of the Flexible Framework or provision of the Service;

Imposing changes on the Young Person that are not permitted by the Flexible Framework;

Committing any offence under the Modern Slavery Act or the Human Trafficking and Exploitation (Scotland) Act 2015.

**Material Breach – Immediate Termination**

36.16 Each of the following is a Material Breach entitling the Party not in breach to terminate the Agreement immediately:

i) a breach by the Provider in terms of Clause 5 (Providers Obligations), Clause 18 (Data Protection, Security and Recording) or Clause 19 (Confidentiality)

ii) a breach by either party in terms of Clause 31 (Corruption and Collusion), Clause 32 (Prevention of Fraud).

iii) the Provider, at any time during the period of the Agreement is in one of the situations referred to in the Public Contracts (Scotland) Regulations 2015, Regulation 58(1) (Exclusion ground).

**Termination by Notice**

36.17 Either Party may give Notice to the other of the termination of its participation in the Flexible Framework and any Agreements entered into. Such Notice must be provided in writing, in advance, and will take effect on the date specified in the Notice which shall be no less than ninety (90) Day from the date on which the Notice was given.

**Termination under Regulation 73**

36.18 In addition to any of its other rights to terminate the Flexible Framework MC shall have the right to terminate the Flexible Framework and any Agreements entered into where:

i) the Flexible Framework and Agreement/s has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) (modification of contracts during their term) of the Public Contracts (Scotland) Regulations 2015 (the Regulations)

ii) the Provider has, at the time of award of the Flexible Framework been in one of the situations referred to in Regulation 58(1)(exclusion grounds) of the Regulations, including as a result of the application of Regulation 58(2) of the Regulations, and should therefore have been excluded from the procurement procedure; or

iii) the Flexible Framework should not have been awarded to the Provider in view of a serious infringement of the obligations of Law or Guidance including the Regulations.

36.19 MC shall give Notice of termination to the Provide in writing (whether in whole or in part) and termination shall take effect as follows:

i) Where in the opinion of MC, the issue giving rise to the exercise of the right to terminate under this Clause is sufficiently serious, with immediate effect; and

ii) 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.

**Council’s Right to Terminate – No Fault**

36.20 Without prejudice to any other Clause of the Agreement, MC shall have the right in its absolute discretion to terminate the Agreement, such termination to take effect no earlier than ninety (90) Days after the giving of written Notice in accordance with Clause 6 (Notices), unless otherwise agreed between MC and the Provider.

**General provisions applying on Termination**

36.21 During any period of Notice referred to in this Clause 36, the Provider and MC shall co-operate with each other to ensure that the Young Persons’ Care requirements continue to be met; and they shall fully co-operate and consult with the Young Person and their Representative in making suitable alternative care arrangements for the Young Person.

36.22 Neither Party shall be entitled to withhold performance of their obligations under the Agreement during any period of Notice.

36.23 Where MC has terminated the Flexible Framework under this Clause, whether in whole or in part, it may enter into another contract with some other company, firm or person. All losses, expenses, costs and charges incurred in this connection shall be a debt due by the original Provider to MC and may be deducted from any monies in the hands of MC or may be recoverable by legal action.

36.24 Termination in whole or in part shall not prejudice the rights of either Party that have arisen on or before the date of termination.

36.25 Where the Provider receives a Notice of termination of its participation in the Flexible Framework, whether in whole or in part, it must take the following action as soon as possible and no later than the expiry date of said Notice;

i) All relevant information provided to the Provider by MC must be returned in whatever format the parties shall agree;

ii) The Provider shall provide such further information to MC as may be required to ensure an orderly transition to a new Provider or Service.

36.26 The Provider agrees that upon termination for any reason or expiry of the Flexible Framework it shall not be entitled to make a claim against MC in relation to costs howsoever incurred by the provider in securing the award or providing the Service under the Flexible Framework nor in relation to the loss of expected profits from the provision of Services under the Flexible Framework.

36.27 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 Flexible Framework. No granting of time or period of time 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 the Flexible Framework.

**37. Suspension**

37.1 MC may suspend the Providers participation in the Flexible Framework and Agreement Service delivery in whole in part where:

i) a Breach or Material Breach by the Provider and/or Service creates an immediate or serious risk of harm to a Young Person or diminution of quality of the Service or any part of it below the requirements set out in the tender documents and Individual Agreement.

ii) the Provider and/or Service has failed to timeously implement any Remedial Action Plan agreed with MC.

iii) Notice of assignation, disposal, sub-contracting or change of control has been given and MC 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) the Provider and/or Service is in Material Breach in accordance with Clause 36 (Breach and Termination) herein.

37.2 Once a decision has been taken to exercise Suspension MC will:

i) Notify the Provider in writing of the reasons for the Suspension and the date the suspension takes effect; and

37.3 During any period of Suspension

i) The provider and/or Service must continue to co-operate with and comply promptly with any reasonable requirements of MC;

ii) Existing Agreements may continue subject to MC being satisfied each Service continues to be the most appropriate way to meet the needs of the Young Person concerned; and

iii) No further Young Person shall be referred to the Provider and/or Service and the Provider and/or Service shall cease to accept referrals from MC.

37.4 MC will work with the Provider and/or Service to ensure there is no interruption to the Service being delivered to Young Persons with existing Agreements and address any issues that led to the Suspension, and the Provider and/or Service will co-operate fully with MC.

37.5 During the period of Suspension, MC 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 during of the Suspension.

37.6 Withdrawal of the Notice issues in accordance with this Clause will be confirmed by MC at such time as it become reasonably satisfied that the Provider and/or Service is able to and will perform the Service to the required standard.

37.7 The exercise of any provisions under the Clause shall not prevent MC from taking into account the occurrence and the resolution of the circumstances falling within this Clause in MCs assessment of the Provider and/or Service’s overall performance, nor from exercising any of its rights or remedies under the contract.

**38. Force Majeure**

38.1 If either Party to this Flexible Framework cannot perform any of its obligations when they are due to be performed because of Force Majeure (as defined in Clause 38.6 (below) and if such Party give written notice to the other Party specifying the circumstances constituting Force Majeure together with such evidence as it reasonably can give an specifying the period for which it is estimated that these circumstances shall continue, then the Party in question shall be excused the performance or the practical performance as the case may be of the contractual obligations which are effected by Force Majeure from the date on which it became unable to perform and for so long as Force Majeure continues subject to the provisions of Clause 38 herein.

38.2 If the period of Force Majeure exceeds fifty-six (56) Days either Party may immediate terminate the Providers participation in this Flexible Framework in whole or in part.

38.3 If the period of Force Majeure is expected to or exceeds two (2) months from the date of the Notice given either party may service on the other one (1) months’ notice of termination of the Agreement.

38.4 MC and Provider agree to use their best efforts to ensure that during any period when Force Majeure exists that the needs of the Young Person are accommodated to the fullest extent practicable.

38.5 The Fees for the Service during the period of Force Majeure shall be subject to negotiation with MC.

38.6 For the purposes of this Flexible Framework and Agreement 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.

38.7 Neither Party shall be liable to the other for any delay in performance, or failure to perform, its obligations under the Agreement to the extent that such failure is a result of Force Majeure, each party shall use all reasonable endeavours to continue to perform its obligations under the Agreement for the duration of such Force Majeure.

**39. Business and Service Continuity**

39.1 The Provider shall maintain a business continuity plan, which takes account of the support reasonably expected to be available from statutory authorities including but not limited to, the civil and emergency planning provisions within MC area. The Provider shall provide a copy to MC on request.

39.2 The Provider will be mindful of the importance of maintaining continuity of Service for the Young Person. The Provider will monitor the Agreement throughout its duration and shall give regular feedback to MC. The Provider and MC shall notify the other immediately of any matter affecting the maintenance and stability of the Service including any serious risk to health and safety of the Young Person.

39.3 If the Young Person’s need or Outcomes change to the extent that the Provider can no longer meet the Young Person’s assessed needs or if the Provider reasonably anticipates that further supports are required, the Provider shall notify MC and request a Risk Assessment meeting or review be undertaken within four (4) Days, except in an emergency situation when this shall be undertaken as a matter of urgency.

39.4 Where MC agrees that the Young Person’s support needs or Outcomes have changed to the extent referred to in the Clause above, MC shall confirm this, in writing with plans for addressing the issues. If MC does not agree, then the Parties shall resort to the dispute resolution procedure described in Clause 35 (Resolution of Disputes). Otherwise the Parties my wish to agree to a no fault termination referred to in Clause 36.20 (Right to Terminate – No Fault).

39.5 If despite any further supports agreed, there continue to be issues about the Provider’s ability to meet the needs of the Young Person due to their specific nature, a further review should be held, and the Provider shall work with MC to ensure that actions agreed are acted upon immediately.

39.6 No Young Person will have their Service withdrawn without a review except in exceptional circumstances.

39.7 In the event that it is agreed at a review, and with the agreement of the Young Person and/or Young Person’s Representative, in the best interests of the Young Person that an alternative Provider/Service be found, both Parties will work together to provide a smooth and planned transition between Services.

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| **D: APPLICATION FORM** |
|  Contact Information |
| Tenderer/Company Name |  |
| Company Address |  |
| Main Contact |
| Name |  |
| Designation |  |
| Telephone Number |  |
| Email Address |  |
| Other Contacts (please indicate responsibilities) |
| Name |  |
| Designation |  |
| Telephone Number |  |
| Email Address |  |
| Qualification/Standards |
| Relevant Registration and/or Regulatory Bodies |
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|  |
| **PVG** |
| Please outline your process for ensuring all staff have the appropriate level of PVG assessment |
|  |
| **Procurement Exclusions** |
| The Applicant uses this section as a self-declaration that they have not breached any of the mandatory exclusion grounds (or if they have, they can demonstrate to the MC’s satisfaction that they have taken self-cleansing measures). Self-cleansing measures are actions that the Applicant has taken to ensure that there are no further breaches of any mandatory or discretionary exclusion grounds – this may include appropriate steps to rectify any breaches or new processes/systems to stop any future breaches happen. Self-cleansing measures prove that an Applicant has changed their behaviour following criminal offences/misconduct.The mandatory and discretionary exclusion grounds are set out in **APPENDIX A** that Applicants are required to read before completing this declaration and by signing this Application Form you confirm that you have read these. Please note that MC may request additional information from the Applicant regarding this section.  |

|  |
| --- |
| **Mandatory Exclusions** |
| Criminal Convictions - The Applicant **confirms** that they have read the grounds relating to criminal convictions as per [Regulation 58 (1) of The Public Contracts (Scotland) Regulations](http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf) (also in Appendix A below).  | Yes/No |
| Criminal Convictions - Has the Applicant been the subject of a conviction within the last five years for one of the reasons listed in Regulation 58 of The Public Contracts (Scotland) Regulations 2015?  | Yes/No |
| **Discretionary Exclusions** |
| The Applicant **confirms** that they have read the grounds relating to discretionary exclusion grounds convictions as per [Regulation 58 (3) or 58 (8) of The Public Contracts (Scotland) Regulations](http://www.legislation.gov.uk/ssi/2015/446/pdfs/ssi_20150446_en.pdf) (also in Appendix A below).  | Yes/No |
| Has the Applicant been the subject of a conviction within the last three years for one of the reasons listed in Regulation 58 of The Public Contracts (Scotland) Regulations 2015? | Yes/No |
| **Taxes or social security contributions**.Has the Applicant breached any of its obligations relating to the payment of taxes or social security contributions? | Yes/No |
| **Blacklisting**Has the Applicant committed an act prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010? | Yes/No |
| **Environmental, Social and Labour Law**Has the Applicant breached its obligations in the fields of environmental law, social law or labour law? | Yes/No |
| **Insolvency, Conflicts of Interests or Professional Misconduct**Is the Applicant in any of the following situations – bankrupt, insolvent, in an arrangement with creditor, its assets being administered by a liquidator, its business activities are suspended? | Yes/No |
| Is the Applicant guilty of grave professional misconduct? | Yes/No |
| Has the Applicant entered into agreements with other economic operators aimed at distorting competition | Yes/No |
| Is the Applicant aware of any conflict of interest due to its participation in this procedure? | Yes/No |
| Has the Applicant been guilty of serious misrepresentation in supplying this information or has it withheld such information? | Yes/No |
| ***If an Applicant has answered ‘Yes’ to any of the questions in the Discretionary Exclusions Section, this may result in its exclusion from the process.****However,* the Applicant can provide evidence to show that it has taken sufficient and appropriate remedial action to demonstrate its reliability – this is called ‘self-cleansing’. If you have answered Yes to any of the above questions, please provide details below of any self-cleansing measures you have undertaken in the box below. The MC will take this information into account and a decision will be made regarding the Applicant’s suitability to provide the service, based on the actions taken to self-cleanse. |

|  |
| --- |
| Insurance  |
| Please outline the level of cover you have in place and if this level is determined by Regulatory Body |
| Cover | Company | £ - renewal date |
| Public Liability  |  |  |
| Employers Liability |  |  |
| Motor Vehicle Liability |  |  |
| Specialist Liability |  |  |
| For Specialist Cover please explain why it is needed |
| Service to be providedPlease provide a detailed explanation of the service offered, attachments are allowed  |
|  |
| Services provided where additional funding is sought from other bodies, give examples |
|  |
| Capacity of Service – number of users per session – please provide explanation of capacity |  |
| Availability of Service – days/sessional structure/calendar  |  |
| Geography of Service – where is it to be provided, address, etc |  |
| Staffing |
| Number of staff employed for this service | Full time:Part time:Relief: |
| Minimum Qualification standardsPlease outline roles and minimum qualifications |  |
| Staff Training/Development |
| Please outline your approach to staff training and development – attachments are allowed |
| Any other Staffing information relevant to the service |
|   |
| Fair Work Practices |
| Does your company commit to adopting the principles of Fair Work First <https://www.fairworkconvention.scot/the-fair-work-framework/>Appropriate channels for effective voice, such as trade union representation Investment in workforce developmentNo inappropriate use of zero hours contracts (see relief question below)Action to tackle the gender pay gap and create a more diverse and inclusive workplaceProviding fair pay for workers (see Living Wage question below)Offer flexible and family friendly working practices for all workers from day one of employmentOppose the use of fire and rehire practices |  |
| Are your relief staff working relief by choice? |  |
| Please indicate your current position regarding the Real Living WageDelete as appropriate  | AccreditedProgression towards AccreditationNot Accredited but pay the Real Living WageCommitted to gaining Accreditation over the next 2 yearsNot paying the Real Living Wage but committed to doing so in the next 2 yearsNeither Accredited not paying the Real Living Wage |

|  |
| --- |
| Sustainability, Community and Social Benefits |
| Please outline any activity undertaken by your organisation that provides benefits to the community that are not part of your normal organisational service deliveryYour answer to this will not be taken into account when your application is evaluated – it is for information only |
|  |
| Any other information you consider relevant to your application  |

|  |
| --- |
| Commercial |
| Please enter your pricing details below, indicating what days your service is available. If this template does not work for your organisation, then please feel free to submit your pricing offer in an easy to read format. All prices must be in Sterling and EXCLUDE Value Added Tax. |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **INDIVIDUAL** | Monday | Tuesday | Wednesday | Thursday | Friday | TOTAL |
| AM(start & finish time) |  |  |  |  |  |  |
| PM(start & finish time) |  |  |  |  |  |  |
| **Hourly rate** staff role e.g. include 1:1, 2:1 as per appropriate for your service offer |  |  |  |  |  |  |

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **GROUPS****(Min & Max size)** | Monday | Tuesday | Wednesday | Thursday | Friday | TOTAL |
| AM(start & finish time) |  |  |  |  |  |  |
| PM(start & finish time) |  |  |  |  |  |  |
| **Hourly rate** staff role e.g. include 1:1, 2:1 as per appropriate for your service offer |  |  |  |  |  |  |

|  |
| --- |
| **TERMS & CONDITIONS**This section seeks the Tenderers acceptance of the Flexible Framework and Agreement Terms and conditions. Where you do not agree with any Clause, we will consider proposals to vary but reserve the right to reject these in full or in part |
| Yes, I confirm acceptance of the Flexible Framework Terms and Conditions relevant to the services I am offering.Please enter an x to confirm:  |
| **COLLUSION**This section seeks confirmation from the tenderer that this is a bona fide submission, intended to be competitive and it has not used or adjusted the document by, under or in accordance with any agreement or arrangement with any other tenderer. The tenderer also certifies that it has not done and it undertakes that it will not do at any time before submission any of the following acts:Communicate to any other organisation the content of the document to be submitted;Enter into any agreement with another organisaton that stops them from submitting an application in their own right;Offering or paying or giving or agreeing to pay or givce any sum of money or consideration directly or indirectly to any Bidder for doing or having done or causing or having done or causing or having caused to be done in relation to any other application or proposed application for the said work any act or thing of the sort described above. |
| I certify that there has been no collusion in the preparation of this application Please enter an x to confirm: |
| **TENDER DECLARATION**Enter name of organisation:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ offer to perform the obligations specified in the Flexible Framework and confirm that we have the necessary authority to bind the organisation in the making of this offer and that all the information contained in the application is true, complete, accurate and not misleading.  |
| Signed on behalf of the organisation Signature \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Position \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

|  |
| --- |
| **CHECKLIST** |
| **Mandatory** | **Item** | **Enter Y if supplied** |
|  | IR35 self-employed declaration (where appropriate) |  |
| Y | Public Liability Insurance (at a relevant level for the service being offered) |  |
|  | Employers Liability Insurance (where appropriate) |  |
|  | Motor Insurance (where appropriate) |  |
| Y | PVG clearance |  |
|  | Appropriate registration  |  |
|  | Staff training programme (where appropriate) – staff induction programme |  |
| Y | Accidents/Incident |  |
| Y | Business Continuity |  |
| Y | Child Protection |  |
| Y | Complaints |  |
| Y | Data Retention |  |
| Y | Equalities |  |
| Y | First Aid |  |
|  | Fair Work (where appropriate) |  |
| Y | Health & Safety |  |
| Y | Risk Assessments |  |
|  | Staffing & Training (where appropriate) |  |
| Y | Completed and signed Section D – Application Form including check boxes |  |

APPENDIX A – MANDATORY EXCLUSIONS

**Appendix A: Mandatory and Discretionary Exclusion Grounds**

The table below lists the mandatory and discretionary exclusion grounds, which apply to regulated procurements.

**Mandatory**

Criminal Convictions - Conviction by final judgement of a criminal offence as per Regulation 58 (1) of The Public Contracts (Scotland) Regulations 2015:

• Participation in a criminal organisation

• Bribery, corruption or conspiracy

• Fraud

• Terrorist offences or offences linked to terrorist activities

• Money laundering or terrorist financing

• Drug trafficking

• Child labour and other forms of trafficking in human beings

**Discretionary**

Breach of The Employment Relations Act 1999 (Blacklists) Regulations 2010

Breach of tax and social security obligations • Established by judicial or administrative decision

Breach of tax and social security obligations • Established by any appropriate means

Breach of environmental, social and labour laws stablished by any appropriate means

Economic operator is subject to bankruptcy, insolvency or winding up proceedings

Grave professional misconduct, which renders the economic operator’s integrity questionable

Where the contracting authority has sufficiently plausible indications that the economic operator has entered into agreements with other economic operators to distort competition

Conflict of interest which cannot be effectively remedied by other less intrusive measures

Distortion of competition from the prior involvement of the economic operator in the preparation of the procurement exercise, that cannot be remedied by other less intrusive measures

Economic operator has shown significant or persistent deficiencies in the performance of a substantive requirement under a previous contract, which led to early termination of that contract, damages or other comparable sanctions

Economic operator is guilty of serious misrepresentation in supplying the information required for the verification of absence of grounds for exclusion or fulfilment of the selection criteria

Economic operator has undertaken to unduly influence the decision-making process of the organisation, to obtain confidential information to gain undue advantages or to negatively provide misleading information that may have a material influence on decision concerning exclusion, selection and award

APPENDIX B – LIST OF POLICY EXAMPLES

Accidents/Incident

Business Continuity

Child Protection

Complaints

Data Retention

Equalities

First Aid

Fair Work

Health & Safety

Risk Assessments

Staffing & Training

|  |  |
| --- | --- |
| **TO BE INSERTED ON SCHOOL HEADED PAPER** | Our Ref: Your Ref:   |

Date:

# **E: AGREEMENT TEMPLATE**

Dear

**Individual Placement Agreement (IPA) Under 180848 Education for All Flexible Framework**

**Child or Young Person:**

**Date of Birth:**

**Child Unique Reference Number:** <Insert>

**Provision:**

.

**Council:** Moray Council

**Provider:**

**Period: Start:**

**End (if known):**

**IPA Review Date:**

This is the IPA entered into by the Council with the Provider for the Child or Younger Person for the Period on the basis of the contract (Ref: 180848). The IPA is subject to the terms and conditions of the contract including (without limitation). Words and phrases used in this IPA with initial capital letters are further defined in the contract.

The Child or Young Person has been assessed as requiring the Day Education detailed in the Child or Young Person’s Child Plan and the Service provided must meet the Child or Young Person’s assessed needs and personal Outcomes as detailed in the Child or Young Person’s child planning documents (as detailed in Enclosure 3, below).

**DELIVERING THE SUPPORT SERVICES**

The Support Provision

The Support Provision will consist of the Provider supporting the Young Person:

* in preparing a plan setting out the type of support needed by the Young Person, how, when and by whom the support is to be provided along with an explanation of how this support will meet their Child’s plan outcomes
* by informing the Young Person or their representative the means of registering a complaint prior to the delivery of the Service and that they are also entitled to access the complaints procedure operated by the MC;
* regularly consulting with the Young Person to ensure they are satisfied with the provision of the support and to ensure the Child’s Plan outcomes continues to meet the Person’s needs and satisfy the Individual Outcomes; and
* delivering the support provision in accordance with best practice in its sector and taking into account the individual needs of the Young Person.

**GAPS IN PROVISION OF SUPPORT**

The Provider, after discussion with the Young Person and education colleagues (where appropriate), will let MC know if there are any changes to provision of support which means the Person’s Individual Outcomes are not met.

MC will inform the Provider and the Young Person if there are any planned changes to the Person’s Individual Budget or a review of the Person’s Plan.

**PROVIDER’S FEES 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 contract:

|  |  |
| --- | --- |
| **Service** | *Enter details of Day Education:* |
| **Fee** |  |
| **Agreed additional fees** (*Include description, start and end* *date of services)* | (may include travel, training, additional staffing etc.).  |
| **Agreed Fee** | £ <insert total> per week/day/half day[*\*delete as appropriate]* |

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

**If for any reason you are not able to accept this IPA, you must contact the Council immediately using the Child or Young Person’s nominated officer details, set out in Enclosure 1, below (Nominated Officer contact details).**

**AUTHORISED SIGNATORIES TO AGREEMENT/ APPROVAL FOR FUNDING**

The Provider and the Purchaser agree to the placement of the named Child or Young Person in accordance with the details set out above.

For the purposes of this Individual Placement Agreement, the date the placement commences may not be affected or altered in any way by the date of signature of this Agreement.

|  |  |
| --- | --- |
| **PURCHASER: AUTHORISED SIGNATORY**  | **PROVIDER: AUTHORISED SIGNATORY**  |
| Name: |  | Name: |  |
| Position: |  | Position: |  |
| **Signature:** |  | **Signature:** |  |
| **Date:** |  | **Date:** |  |

Yours sincerely

**Name**

**Title**

**ENCLOSURES:-**

1. Nominated Officer Contact details

2. Information required for invoicing

3. Child or Young Person’s Plan / Assessment at the point of placement

4. Outcomes to be achieved for the Child or Young Person

5. Additional Information

**1. Nominated officers**

Operational contact details for day-to-day issues. Incidents to be reported as per Clause 11 Notification to Care Management - Reporting of Events

|  |
| --- |
| **Child or Young Person’s Nominated Officer** |
| Name: |  |
| Designation: |  |
| Telephone: |  |
| Email: |  |
| **Organisation’s Nominated Officer** |
| Name: |  |
| Designation: |  |
| Telephone: |  |
| Email: |  |

**2. Information required for invoicing**

Invoices should be submitted in arrears on a monthly basis to invoices@moray.gov.uk and include:

1. Purchase Order number and Contract Reference 180848
2. Young Person’s unique reference number

 ii) Date of commencement of the Agreement (for first invoice only)

 iii) Dates of any absences from the Service

 iv) Service end date (for last invoice only)

 v) Period of charge

vi) The total Fee for the period of the invoice for each Young Person including a breakdown of the Fee (if different from the Price per Hour)

**3. Child or Young Person’s Support Plans e.g. Child Plan, LPS, CSP, Risk Assessment etc.**

The background and assessment reports provided at the point of referral will support ongoing planning. Weekly communications between the provider and the nominated officer with any updates within the IPA period.

**4. Outcomes to be achieved for the Child or Young Person**

Specific detail will be included and updated through development and delivery of the Child’s Plan within the education setting, in collaboration with parent(s)/carer(s) and partners.

|  |
| --- |
| **Safe** –  |
| **Healthy** – |
| **Active** –  |
| **Nurtured** –  |
| **Achieving** –  |
| **Responsible** –  |
| **Respected** –  |
| **Included** –  |

**5. Additional information not included in the Child or Young Person’s Support Plan**

(This could include safeguarding practices, policies on restraint and safe holds, missing persons protocol, etc.)

Any requirement for safe holding should be in line with Moray Council’s Education policy and training and be agreed in consultation with the parent / carer and other professionals involved.

**[End of Schedule – Individual Placement Agreement]**

# **F: GLOSSARY AND DEFINED TERMS**

1. **Interpretation**
	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;

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;

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 include 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 within 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;

viii) References to any statutory body shall be taken as a reference to its successor or replacement body established during the Duration of the Flexible Framework or Agreement;

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. **Identified and Defined Terms**
	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 Young Person is not presented to receive the Service (whether due to planned or unplanned absence)  |
| **Agreement** | The contract between MC, and a Provider for an Agreement under the Flexible Framework in the form set out in Section E: Agreement Template |
| **Alternative Activities** | Wide ranging set of activities that could be provided as an alternative to mainstream schooling |
| **Applicant or Tenderer** | A Provider who applies for participation in the Flexible Framework  |
| **Application Form** | Form set out in Section D: Application Form  |
| **Best Value** | Means the obligations of the Council under the Local Government in Scotland Act 2003 |
| **Breach** | Means an act or omission constituting a Party failing to fulfil any obligation under the Flexible Framework or any Agreement  |
| **Call-Off** | The process used by MC to arrange an Agreement under the Flexible Framework  |
| **Commencement Date** | The date of Commencement of the Flexible Framework as notified to the Provider by MC  |
| **Complaints Register** | Register containing any formal complaint made by a Young Person or representative about the Service, the outcome of such complaint and the action taken.  |
| **Community Asset Map** | The resultant map of Moray which will highlight where the Providers can deliver their services |
| **Contract Notice** | 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  |
| **Council** | Local authority constituted in accordance with Section 2 of the Local Government etc (Scotland) Act 1994  |
| **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: * The Data Protection Act 2018
* The General Data Protection Regulation (Regulation EU 016/679) (“GDPR”)
* The Law Enforcement Directive (Directive (EU) 2016/680)
* The Regulation for Investigatory Powers (Scotland) Act 2000
* The Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI2000/2699)
* The Electronic Communications Data Protection Directive 2002/58/EC
* The Privacy and Electronic Communications (EC Directive) Regulations 2003

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.  |
| **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 the Scottish Government |
| **Duration** | The period from the Commencement Date to the End Date of the Flexible Framework. With option to extend for 2 periods of 12 months. |
| **End Date** | The expiry date of the Flexible Framework which will be up to three (3) 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 doubt the End Date also applies to New Entrants |
| **Equality and Human Rights Commission** | 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  |
| **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.  |
| **Flexible Framework** | Means the Flexible Framework and any Appendices appended hereto |
| **Flexible Framework Terms** | The overarching agreement between the Provider and MC relative to the Service forming part of the Flexible Framework  |
| **Fraud** | Any offence under Law in respect of fraudulent or corrupt acts  |
| **Geographical Areas** | An area within Moray where the Provider can deliver their Services |
| **Guidance** | Any applicable guidance, direction or determination which MC and the Provider has a duty to have regard to including as may be issued from time to time by the Scottish Government and Regulatory BodiesAny applicable guidance relative to the Law which MC and the Provider has a duty to have regard to  |
| **Individual Outcomes**  | The aims contained within the Child’s Plan for the individual which will be incorporated into the Agreement |
| **Insolvency Occurrence** | (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; (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(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(4) any event similar to those listed in (1), (2) or (3) above occurs under the Law of this or any other jurisdiction.  |
| **Invitation to Tender** | Means the full set of procurement documents leading to the award of the Flexible Framework, or admission to it as a New Entrant  |
| **Management Information** | The contract monitoring information provided by the Provider to MC in accordance with Section B: 9 Flexible Framework Management / Contract Management |
| **Material Breach** | As defined in Clause 37 (Breach and Termination) |
| **New Entrant** | A Provider admitted as a participant of the Flexible Framework after its Commencement Date in accordance with Section B: 14 (New Admissions after Commencement Date) |
| **Notice** | Any formal notification which requires to be provided under the terms of the Flexible Framework in accordance with Clause 6 (Notices)  |
| **Outcomes** | Means Outcomes agreed with or for the Young Person as determined by the Child’s Plan and incorporated into the Agreement |
| **Party** | The Provider and MC when used in the Flexible Framework terms and the Provider and the Purchaser when used in the Agreement |
| **Personal Information** | As defined in Clause 19 (Data Protection, Security and Recording) of the Flexible Framework terms  |
| **Provider** | The organisation registered to provide the Service and Party to the Flexible Framework and Agreement(s)  |
| **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** | As defined in Section 91 of the PVG Act  |
| **Regulatory Body** | Means in this Flexible Framework any relevant statutory organisations responsible for the inspection and / or regulation of the Provider’s Service |
| **Remedial Action Plan** | The plan which the Provider is required to produce in accordance with Clause 38 (Suspension) and Clause 37 (Breach and Remedial Action Plan) |
| **Review Meeting** | Any meeting between the Parties to review an Agreement  |
| **Risk Assessment and Risk Management Plan** | The process of identifying individual behaviours, environmental hazards and risks concerned with the safety and welfare of the Young 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 & Update** | Scheme Record means the document defined in section 48 of the PVG Act. Scheme Record Update defined in section 53 of the PVG Act  |
| **School day** | Monday to Friday (timings defined by individual schools) excluding designated school holidays |
| **Scottish Government** | As described in Section 12 of the Scotland Act 2012 |
| **Scottish Information Commissioner** | The Officer appointed under Part 3 of the Freedom of Information (Scotland) Act 2002 |
| **Service or Services** | The service delivered by the Provider to a young Person in accordance with the Agreement |
| **Service Specification** | The specification relating to the relevant Service as detailed in Section B: Specification |
| **Staff** | Any person engaged directly by the Provider in terms of a contract of employment or contract for Services |
| **Sub-Contractor** | Any individual or person engaged directly by the Provider to perform an aspect of the Service delivered to Young People |
| **Child’s Plan** | Means the written plan prepared by the MC that outlines the outcomes sought for the individual.  |
| **Tender** | Means the Tenderer or Applicant’s response incorporating the Application Form |
| **Tenderer or Applicant** | Organisation which offer to provide the Service by way of a Tender / Application Form  |
| **TUPE** | Means the Transfer of Undertakings (Protection of Employment) Regulations 2006  |
| **Working Day** | Any reference to a Day excluding Saturday, Sunday and bank holidays specified in accordance with the Banking and Financial Dealings Act 1971  |
| **Young Person** | Means any Supported Person under the age of eighteen (18) in receipt of the Service |
| **Young Person Parent or Carer** | Means an appropriate adult nominated to represent the interests of the Young Person as detailed in the Child’s Plan |