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NATIONAL INSTITUTE FOR HEALTH

AND CARE EXCELLENCE

Terms and Conditions of Contract for

**NICE Electronic and Print Content
Framework Agreement**

1. General Summary

|  |  |  |
| --- | --- | --- |
| 1.1 | NAME AND REGISTERED AND PRINCIPAL ADDRESS OF CONTRACTOR (including Company Registration Number if relevant) |  |
|  |   |  |
| 1.2 | DESCRIPTION OF CONTRACTOR  |  |
|  |  |  |
| 1.3 | LOT(s) |  |
|  |  |  |
| 1.4 | DESCRIPTION OF SERVICES |  |
|  |  |  |
| 1.5 | NICE BUDGET HOLDER |  |
|  |  |  |
| 1.6 | NICE COMMISSIONING MANAGER |  |
|  |  |  |
| 1.7 | NOMINATED MANAGER OF CONTRACTOR |  |
|  |  |  |
| 1.8 | CONTRACTOR AUTHORISED SIGNATORY |  |
|  |  |  |
| 1.9 | DATE AGREEMENT SIGNED |  |
|  |  |  |
| 1.10 | DATE AGREEMENT COMES INTO EFFECT (IF DIFFERENT FROM ABOVE) |  |
|  |  |  |
| 1.11 | DATE AGREEMENT ENDS (IF FIXED DATE) |  |
|  |  |  |
| 1.12 | AGREEMENT NUMBER |  |
|  |  |  |
| 1.13 | NICE BUDGET CODE |  |

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1. Framework Agreement

THIS FRAMEWORK AGREEMENT is made the [ ] day of [ ] (‘the Contracting Authority’)

**BETWEEN**:-

1. **National Institute for Health and Care Excellence (NICE)** whose principal office is 10 Spring Gardens, London SW1A 2BU (“**the Contracting Authority**”); and
2. **xxx** whose registered office is at xxxx (Reg No.) (‘the Provider’).

**NOW IT IS HEREBY AGREED as follows:-**

**WHEREAS:-**

An advertisement was placed by the Contracting Authority in the Official Journal of the European Union on 23 April 2016, reference 2016/S 080-142581 in respect of a Framework Agreement for the provision of Electronic and Print Content Resources to the Contracting Authority herein.

The NICE Electronic & Print Content Framework Agreement can be used by eligible Purchasing Authorities and Beneficiaries throughout England, Wales and Northern Ireland to purchase health and social care related Content Resources. The Content Resources that can be purchased through this Framework Agreement are

* + 1. **Print Journals**: periodical publications published as physical hard copies.
		2. **Electronic Journals**: also known as ejournals, e-journals, and electronic serial - periodical publications published in electronic format(s) including HTML and PDF.
		3. **Print Books**: books published as physical hard copies including textbooks and monographs.
		4. **Electronic Books**: also known as eBooks, digital versions of print books which may contain added functionality; available in a number of electronic formats and digital models.
		5. **Databases**: includes Abstracting & Indexing / Bibliographic databases, full text databases, reference works and digital image collections.
		6. **Aggregated Evidence Resource Summaries**: provide information summary products, or web based compendiums, designed to provide health professionals with comprehensive evidence in the format of synthesized information and content.
		7. **Point of Care (PoC) tools**: peer reviewed, evidence based information services for healthcare professionals often used at the point of care. Can provide a combination of Content Resources, practice guidelines, clinical trials, symptoms, tests and diagnosis, treatment options; clinical decision support tools with topic reviews.

The Framework Agreement does not provide for the purchase of content related technical products or eResources such as (but not limited to) Resource Discovery Services, workflow solutions, Horizon Scanning products, reference management software/products, examination software/products and A-Z Finders.

Full details of the Framework’s specification are set out in “ANNEX FOUR: Framework Agreement Structure & Specification” to this document. Content Resources can be purchased from the following Lots:

* + 1. LOT 1 Content Supply: Health & Social Care Content (HSCC) Licence (NICECF/HSCC/01); and / or
		2. LOT 2 Content Supply: Provider License / Agreement (NICECF/PLA/02).
1. Overriding Provisions

The Provider agrees to supply the Print and Electronic Content Services in accordance with these Terms, including the Provider’s Terms as identified in Framework and incorporated into any Order Agreement.

In the event of and only to the extent of any conflict or ambiguity between the clauses of this Agreement, the provisions of the Annexes, any document referred to in the clauses of this Agreement (including the Provider’s Licence / Agreement) and the Order Agreement, the conflict shall be resolved in accordance with the following order of precedence:

* + 1. the “Terms and Conditions of Contract for NICE Electronic and Print Content Framework Agreement” and any annexes;
		2. the Order Terms & Conditions and any Annexes (excluding Provider Terms);
		3. The HSCC Licence and any appendices (Lot 1) or the Provider’s Licence / Agreement and any appendices (Lot 2); and

The Provider acknowledges and accepts that the order of prevailing provisions in this Agreement is as set out in this clause 3.

1. Defined Terms

In this Agreement the words and expressions below will be interpreted to have the meanings adjacent to them:-

|  |  |
| --- | --- |
| “**Agent**” | means the Provider, subject to the Agreement, to act on the Purchasing Authority’s behalf, who may undertake any or all of the obligations of the Purchasing Authority under the Order Terms & Conditions and the Licence Agreement(s), as agreed between the Purchasing Authority and the Provider; an organisation or intermediary which does not own the intellectual property rights (IPR) to the Goods or Licensed Materials provided, Includes booksellers |
| “**Aggregator**” | means, an organisation or intermediary which either owns the intellectual property rights (IPR), or a licence to grant access to Intellectual Property for Authorised Users; subject to the Agreement, to act on the Purchasing Authority’s behalf; |
| “**Agreement**” | means the whole Agreement, which consists of the “Order Terms & Conditions and any Annexes; the Licence Agreement(s) and any Appendices, specific to this Agreement; |
| “**AIMS**” | means an Access and Identity Management Service which provides authenticated access for eligible users to electronic Content Resources purchased; |
| “**AIMS Disaster Recovery Support Plan**” | means a plan to be put in place by the Provider which details alternative routes of access to purchased electronic content in the event of an AIMS failure; |
| **“Assurance and Verification process”** | Means the process detailed in Annex NINE to verify statements made in the Invitation to Tender by the Provider are true. |
| “**Authorised Users”** | means, the eligible persons as set out in the Specification to the Order Terms & Conditions who are permitted access to the Goods and / or Service(s) and / or Licensed Materials; |
| “**Beneficiary**” | means, the Beneficiary or Beneficiaries of the Agreement between the Provider and the Purchasing Authority, as defined in the Order Terms & Conditions;  |
| “**Buyers Guide”** | means the information and guidance provided by the Contracting Authority to Purchasing Authorities to support the purchase of Content Resources through this Framework; |
| “**Citation Link Resolver & Knowledge Base service**” | means, a service which enables users to take citations (typically from searches against abstracting and indexing database) and direct users to 3rd party full text content they are eligible to access. |
| “**Content Resources**” | means published health and social care related content such as books, journals, databases, aggregated evidence resource summaries, Point of Care (PoC) tools, in a both print and electronic formats; |
| "**Contracting Authority**" | means the National Institute for Health and Care Excellence (NICE), that concludes this Framework Agreement for the Deliverables intended for the Purchasing Authorities, or any successor body;  |
| “**Default**”  | means, any breach of the obligations of either Party, (including but not limited to fundamental breach or breach of a fundamental term), or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other hereunder. |
| "**Deliverable(s)"** | means the Services, which include Goods and / or Service(s) and / or Licensed Materials detailed in “Annex ONE: Services delivered under this Framework Agreement”; the Service Level Agreement(s) and Key Performance Indicators(s); |
| “**Dispute Resolution Procedure**” | means the process of resolving disputes between Parties as set out in clause 25; |
| “**Framework Agreement”** | means the terms and conditions of contract for NICE Electronic and Print Content Framework Agreement that has been entered into between the Provider and the Contracting Authority. The agreement which defines, in broad terms, the scope and terms and conditions under which this agreement will be entered into; |
| “**Goods**” | meansprint Content Resources such as books and journals, as set out in the Specification, or in new Specifications to the “Order Terms & Conditions” that may be agreed by the Parties from time to time; |
| “**Government Procurement Card (GPC**)” | means, a branded VISA Purchasing Card provided to the UK public sector through a Framework Agreement between Government Procurement Service, VISA and seven VISA-Issuing Banks and enables all UK public sector organisations, including Central Government, Local Government, NHS, Education, Emergency Services, Charities, NDPB's and others to benefit from a pre-negotiated contract; |
| "**Insolvent**" | means:if the Provider is an individual, that individual or where the Provider is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust deed shall be granted by him for the benefit of his creditors; if the Provider is a company, the passing by the Provider of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Provider or the dissolution of the Provider, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Provider or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Provider's assets, or if the Provider makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and any event in any jurisdiction other than England and Wales which is analogous to any of the above; |
| "Intellectual Property" | means any and all patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trademarks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases, subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction; |
| "**Intellectual Property Right (IPR)"** | includes the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding; |
| "**Invitation to Tender**" | means the Invitation to Tender issued by the Contracting Authority on which the Framework is awarded.  |
| “**Invitation to Quote (ITQ**)” | means the document submitted to the Provider by the Purchasing Authority or any Beneficiary specifying the requirements of that Purchasing Authority or any Beneficiary, to which the Provider will submit an offer and the basis on which the Purchasing Authority or any Beneficiary will place the Order.  |
| "**In writing"** | shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages; |
| “**Key Stakeholders**” | means stakeholders who provide funding, support and direction for this Framework Agreement; senior managers at NICE and Health Education England Library & Knowledge Services (HEE LKS);  |
| “**Licence Agreement(s**)” | means the terms detailed in the Lot 1: “Health & Social Care Content (HSCC) Licence” or the Lot 2: “Provider’s Licence” or Provider’s “Agreement” to this Agreement for print and electronic Content Resources; |
| “**Licensed Materials**” | means, the electronic material as set out in the Specification, or in new Specifications to the “Order Terms & Conditions” that may be agreed by the Parties from time to time; |
| “**Lot(s**)” | Means the Lots as advertised in the Official Journal of the European Union on 17th July 2016, reference 2016/S 137-248681 in respect of a Framework Agreement for the provision of Electronic and Print Content Resources:* LOT 1 Content Supply: Health & Social Care Content (HSCC) Licence (NICECF/HSCC/01)
* LOT 2 Content Supply: Provider License / Agreement (NICECF/PLA/02);
 |
| “**Mini Competition**” | means, a further competition of Providers capable of meeting the particular need. For the avoidance of doubt, the Purchasing Authority or Beneficiary invites Providers that supply the Goods, Service(s) or Licensed Material required, to Quote and Award to the most economically advantageous offer.All Providers capable of meeting the particular need, must be invited to quote; |
| “**Month**” | means a calendar month; |
| **“NICE Framework**” | means the NICE Electronic and Print Content Framework Agreement; |
| "**the Offer**" | means all the terms of the Offer submitted by the Provider in response to an Invitation to Quote. |
| "**Order**" | means an Order raised by the Purchasing Authority and/or Beneficiary for the supply of Goods and/or Service(s) and/or Licensed Materials pursuant to this Agreement; |
| "**Order Terms & Conditions" or “Order Agreement”** | means the “Terms and Conditions of Contract” to be agreed between the Purchasing Authority and / or Beneficiary and the Provider on which the Order is placed and any Annexes; |
| “**Provider**” | means, an organisation appointed to the NICE Electronic and Print Content Framework Agreement to supply Deliverables which has entered into this Agreement to supply the Deliverables as detailed in the Specification; |
| “**Publisher**” | means, an entity which owns the intellectual property rights (IPR) to the Licensed Materials. |
| "**Purchasing** **Authority**" | means the organisation placing the Order as detailed in the “Order Terms & Conditions” of the NICE Electronic and Print Framework Agreement document and shall be any or all of:* the Secretary of State for Health;
* the Department of Health and all agencies thereof;
* the NHS Commissioning Board;
* Clinical Commissioning Groups;
* any NHS Trust;
* any NHS Foundation Trust;
* any Care Trust;
* Public Health England;
* Monitor;
* the NHS Trust Development Authority;
* Care Quality Commission;
* Healthwatch England;
* Health and Social Care Information Centre;
* Health and Well-Being Boards;
* Local Authorities with a public health role
* Local Healthwatch organisations;
* Health Education England;
* Local Education and Training Boards;
* GPs;
* Royal Colleges in England;
* Local Health Boards (Wales);
* the Wales Centre for Health;
* the Welsh Ministers;
* the Health and Social Care Board (Northern Ireland);
* Health and Social Care Trusts (Northern Ireland);
* the Northern Ireland Central Services Agency;
* special health and social services agencies (Northern Ireland);
* the Department of Health, Social Services and Public Safety (Northern Ireland);
* Department of Health Arm's Length Bodies, including Special Health Authorities (SpHA), Executive Agencies, Executive Non-Departmental Public bodies (NDPB), Statutory Committees and Department of Health-owned companies not provided for above;
* the Medical Research Council;
* Higher Education institutions engaged in providing NHS commissioned healthcare or NHS commissioned education;
* independent, private, charitable and voluntary sector organisations which provide NHS-commissioned care or work in partnership with the NHS to provide care to NHS patients, including hospices, cancer support charities and social enterprise organisations;
* any body replacing or providing similar or equivalent services to the above;
* any statutory successor to any of the above;

and "Purchasing Authorities" shall be construed accordingly; |
| “**Service(s)”** | means the services provided by the Provider pursuant to, and in accordance with the Agreement as detailed in the Specification; |
| “**Specification**” | means the description of the Deliverables as set out in Annex ONE: Services delivered under this Framework Agreement to this document; |
| **“Term”** | means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Agreement, starting on the Commencement Date, as set out in 1.10; |
| "**Terms and Conditions of Contract"** | means this Framework Agreement; |
| “**Year**” | means during the Agreement Term, any twelve (12) Month Term commencing on the Commencement Date or an anniversary thereof. |

1. Interpretation

In these terms and conditions some clauses are attributed to either print or electronic Content Resources or particular types of Provider such as an Agent.

In these terms and conditions, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Moreover, where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.

Any headings to clauses, together with the front cover and the contents are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated references to clauses shall mean the clauses of these terms and conditions.

Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning.

Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting these terms and conditions. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

In these terms and conditions, words importing any particular gender include all other genders.

In these terms and conditions, words importing the singular only shall include the plural and vice versa.

In these terms and conditions “staff” and “employees” shall have the same meaning.

Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.

All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency, then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.

Except where an express provision of these terms and conditions states the contrary, each and every obligation of a Party under the terms and conditions is to be performed at that Party's cost.

Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.

All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

1. Duration and Scope

This Framework Agreement shall commence on the date shown in 1.10 and shall continue in force until the date shown in 1.11 unless the Contracting Authority exercises by notice in writing to the Provider, no later than 03 (three) Months prior to the date shown in 1.11, its option to extend this Framework Agreement.

Subject to 6.1, the extension term available for this Framework Agreement shall be 01 (one) x 12 (twelve) Months period.

1. Obligations of the Provider

In consideration of (a) the Contracting Authority agreeing to appoint the Provider to this Framework Agreement and (b) the Contracting Authority agreeing to pay £5 (five pounds) to the Provider on demand (such payment being refundable to the Contracting Authority on the Provider receiving any Order for such Goods and / or Service(s) and / or Licensed Materials from the Contracting Authority, Purchasing Authority or Beneficiary pursuant to this Framework Agreement) the Provider undertakes to supply such Goods and / or Service(s) and / or Licensed Materials, to such extent and at such times and locations as may be ordered pursuant to this Framework Agreement, in accordance with the terms of the Offer and the “Terms and Conditions of Contract”.

The Provider will accept Orders pursuant to this Framework Agreement for Goods and / or Service(s) and / or Licensed Materials from the Contracting Authority, the Purchasing Authority or any Beneficiary.

The Provider shall enter into an Agreement with the Purchasing Authority or Beneficiary with each new Order, the Agreement between these Parties shall consist of the “Order Terms & Conditions” and any Annexes; the Licence Agreement(s) and any Appendices, specific to this Agreement. The Agreement shall not be valid unless signed by all relevant parties pursuant to the Agreement.

The Provider agrees that the “Terms and Conditions of Contract”, the “Order Terms & Conditions” and any Annexes; the Licence Agreement(s) and any Appendices, shall apply to all supplies of Goods and / or Service(s) and / or Licensed Materials made by the Provider to the Contracting Authority pursuant to this Framework Agreement.

The Provider agrees that it will not in its dealings with any Purchasing Authority or any Beneficiary, seek to impose or rely on any other contractual terms which in any way vary or contradict this “Terms and Conditions of Contract for NICE Electronic and Print Content Framework Agreement” or the “Order Terms & Conditions” and any Annexes; and the Licence Agreement(s) and any Appendices, specific to this Agreement.

1. The Position of the Contracting Authority

Other Providers, in addition to the Provider, may have been awarded the right to participate in this Framework Agreement as a result of the procurement process. Accordingly, the Provider acknowledges that the Contracting Authority, the Purchasing Authority or Beneficiary is under no obligation to place any, or any particular level or volume of Orders with the Provider under or pursuant to this Framework Agreement. The Provider accepts that the Contracting Authority shall have no liability to it in respect of, or arising out of, the volume of Orders received by the Provider during the continuance of this Framework Agreement.

1. Beneficiaries to this Agreement

The Contracting Authority and the Provider acknowledge that they have entered into the Framework Agreement for the benefit of each of the Purchasing Authorities as defined.

The Provider agrees that any Purchasing Authorities shall retain the right to place an Order and enter into any Agreement, which shall be personal to the Provider and the Purchasing Authority under this Framework Agreement.

Save as detailed in 9.2, the Contracting Authority and the Provider acknowledge, a person who is not a Party to the Framework Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Framework Agreement.

1. Provider Communications

The Provider shall ensure that all communications with the Contracting Authority concerning the Goods and / or Service(s) and / or Licensed Materials shall only be between the nominated representatives of both Parties, that is, the Commissioning Manager, and the Provider’s Authorised Officer.

The Provider shall ensure that all global communication that refer to the contractual agreement entered into with the Contracting Authority for this Framework Agreement follow the criteria and guidance set out in Annex EIGHT.

1. Assurance and Verification Process

The Provider notes and accepts that a key element in the operation of this Framework Agreement is an Assurance verification process whereby the Authority, verifies any or all claims made by the Provider in their response to the Invitation to Tender, in their Framework Service Entries, and in their Provider Licence / Agreement terms. The assurance and verification process forms an integral part of the qualification process for this Framework Agreement. Thereafter, Assurance verification will continue to verify that any Framework Service Entries, and in their Provider Licence / Agreement terms are an accurate reflection of the actual characteristics of the Deliverables offered and that the Provider continues to meet the essential qualification criteria established at the award of this Framework Agreement. The Provider’s failure thereafter to maintain the appropriate level of Assurance verification will result in the suspension of either the Provider or the particular Deliverable.

The Provider agrees to adhere to the Assurance and Verification Process detailed in Annex NINE.

(Save in the case of fraud) no statements made by or on behalf of the Contracting Authority at any time before, during or after the competition leading to conclusion of this Framework Agreement, shall add to or vary this Framework Agreement, or be of any force or effect, unless any such pre-contractual statements are expressly set out in this Framework Agreement. The Provider waives any right it may have to make any claim whatsoever in connection with any non-fraudulent pre-contractual statements made by or on behalf of the Contracting Authority. This waiver shall be unconditional and irrevocable, but it is expressly agreed that it shall not exclude any liability of the Contracting Authority for pre-contractual statements made fraudulently.

Without prejudice to the generality of clause 11.3 the Provider acknowledges that it has not been induced to enter into this Framework Agreement by any indication as to the volume or content of Orders which might be placed by the Contracting Authority.

1. Deliverables

Wherever the Provider is required to provide a Deliverable:

* + 1. such Deliverable will be delivered in the form prescribed and in accordance with the Specification. If no such form is prescribed in the Specification, the Provider will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Provider by the Authorised Officer;
		2. the Contracting Authority, Purchasing Authority or any Beneficiary may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification or the requirements otherwise made known to the Provider by the Contracting Authority, Authority or any Beneficiary;
		3. the Contracting Authority, Purchasing Authority or any Beneficiary will not reject any Deliverable (wholly or in part) without providing written reasons to the Provider as to why such Deliverable has been rejected;
		4. any dispute as to whether the Contracting Authority, Purchasing Authority or any Beneficiary has exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and
		5. any Deliverables which are rejected shall be replaced by the Provider (at no extra charge to the Contracting Authority, Purchasing Authority or any Beneficiary) by Deliverables which are reasonably satisfactory to the Authorised Officer.
1. Purchasing Models and Discounts

The Provider warrants that it will propose the most cost effective purchasing model in any Offer it makes to a Purchasing Authority or any Beneficiary.

Where a discount purchasing model has been agreed under this Framework Agreement, the Provider cannot decrease the percentage discount offered (as set out in the Framework Agreement) which it applies to the Goods and / or Services and or Licensed Materials. Nothing in this Agreement shall prevent or restrict the Provider from increasing the percentage discount and the Provider shall ensure that any reduction in price is passed on to the Purchasing Authority and / or Beneficiary at the earliest opportunity after agreement with the Contracting Authority.

In accordance with the Framework Agreement, the Provider will ensure any purchasing model used in any Offer shall be fully transparent to the Purchasing Authority and / or Beneficiary. Only the purchasing models and discounts agreed under this Framework may be offered by the Provider to Purchasing Authorities or Beneficiaries. Any additional purchasing models which the Provider may want to offer over the lifetime of this Framework must be agreed with the Contracting Authority prior to providing a quotation to any Purchasing Authority and / or Beneficiary.

Purchasing models and discounts agreed under this Framework will be held on a password protected Server by the Contracting Authority. Access will be granted on request to eligible Purchasing Authorities as set out in “Defined Terms”.

In accordance with the Framework Agreement, the Provider will not impose any minimum Order quantities or values on the Purchasing Authority and / or Beneficiary.

The Purchasing Authority and / or Beneficiary shall pay all valid invoices submitted by the Provider in accordance with the provisions of the “Order Terms & Conditions”.

1. Access to Electronic Content Resources

The Provider of electronic Content Resources in this Framework Agreement agrees to grant access for the duration of the agreed subscription or Agreement term, to any Authorised User of the Purchasing Authority or any Beneficiary that has purchased that content under this Framework Agreement.

Subject to clause 14.1, the route of access shall be agreed between the Purchasing Authority and any Beneficiary, including but not limited to an Access and Identity Management System (AIMS) contracted for national use.

Subject to clause 14.2, if a change is made to the provision of any AIMS contracted for national use, the Provider agrees to work closely with any new AIMS supplier to implement (within three (03) Months of being contacted by the new AIMS supplier) and to meet all costs incurred by the Provider for such implementation at the Provider’s organisation.

Subject to clause 14.2, where the access route is via the Contracting Authority’s AIMS contracted for national use in England, the Provider agrees to assist the Contracting Authority in providing alternative access to electronic resources in the form of an AIMS Disaster Recovery Support Plan where the AIMS fails or ceases to operate for a significant period of time.

In the case of Wales or Northern Ireland, where any AIMS provision is provided nationally by a relevant contracting authority of that country, the Provider shall seek to work with that contracting authority to achieve similar or the same aims of this clause 14 for that country.

The Contracting Authority agrees that subject to clauses 14.3 and 14.4, NICE or any such successor body shall supply the Provider with the relevant user information in order for the Provider to grant access to those eligible users, via an alternative authentication route provided by the Provider, until such time that the Access and Identity Management System contracted by NICE or any such successor body is operational.

Subject to clauses 14.4 and 14.5, the Provider shall meet all costs incurred by the Provider for the set up and management of any alternative authentication route.

The Provider of electronic Content Resources under Lot 1 in this Framework Agreement agrees to make the Licensed Materials compliant with the Citation Link Resolver and Knowledge Base service contracted for national use by the Contracting Authority, for the duration of the agreed Subscription or Contract Period, to any Authorised User of the Purchasing Authority or any Beneficiary that has purchased that content under this Framework Agreement.

Subject to clause 14.8, if a change is made to the provision of the Citation Link Resolver and Knowledge Base service contracted for national use by the Contracting Authority, the Provider agrees to work closely with any new supplier to implement and to meet all costs incurred for such implementation at the Provider’s organisation.

Subject to 14.8, in the case of Wales or Northern Ireland, where any Citation Link Resolver and Knowledge Base service provision is provided nationally by a relevant contracting authority of that country, the Provider shall seek to work with that contracting authority to achieve similar or the same aims of clause 14.9 for that country.

1. Audit, Accounts and Sales Information

The Provider shall provide the Contracting Authority with statements giving accurate and complete details of the quantity and value of the Goods / Services / Licensed Materials supplied by the Provider to the Contracting Authority pursuant to this Framework Agreement. The frequency, format and level of detail to be included in such statements shall be as specified by the Contracting Authority in Annex THREE, or as otherwise agreed between the Contracting Authority and the Provider.

The Provider shall keep at its normal place of business detailed, accurate and up to date records of the quantity and value of the Goods and / or Services and / or Licensed Materials sold by it to any Purchasing Authority pursuant to this Framework Agreement. Subject to any other auditing process being agreed between the Contracting Authority and the Provider in writing, the Contracting Authority shall be entitled by prior appointment, on prior written request (and no more often than once per year) to enter the Provider’s normal place of business during normal office hours and to solely inspect such records in order to verify whether any statement supplied by the Provider to the Contracting Authority pursuant to clause 15.1 is accurate and complete.

1. Monitoring and reporting

Framework Purchasing Performance Data

* + 1. All Providers must supply the Contracting Authority with sales and purchasing data on a Monthly basis, as set out in Annex THREE: Purchasing Performance Data, to this Agreement.
		2. Subject to 16.1.1 all information provided to the Contracting Authority shall remain confidential and shall only be shared with Key Stakeholders in an aggregated and anonymous format.

Annual Service Review

* + 1. All Providers shall attend an Annual Service Review meeting with the Contracting Authority and provide an annual service report no later than two (02) weeks before the scheduled meeting.
		2. Subject to 16.2.1, an annual management reporting template as set out in Annex THREE (A) will be supplied to Providers in order to summarise details of their performance and adherence to the Terms and Conditions of the Agreement to include (but not limited to):
			1. aggregated annual purchasing and sales data;
			2. a demonstration of the Provider’s quality of service, to include (but not limited to) details of levels of helpdesk services and customer support;
			3. adherence to SLAs and KPIs;
			4. a summary of purchasing models and discounts provided under this Agreement and lessons learned.
		3. Subject to clauses 16.2.2, data provided will be incorporated into an “Annual Quality Review”. The final review document may include feedback from the Framework purchasers on the quality and performance of Providers and will be published on the NICE website.
1. Warranty

The Provider warrants to the Contracting Authority that it has all necessary corporate standing and authorisation to enter into and be bound by the terms of this Framework Agreement. At all times in connection with this Framework Agreement, the Provider shall be an independent Provider and nothing in this Framework Agreement shall create a relationship of agency or partnership or a joint venture as between the Provider and the Contracting Authority and accordingly the Provider shall not be authorised to bind the Contracting Authority.

1. Liability

Neither Party excludes or limits liability to the other Party for:

* + 1. death or personal injury caused by its negligence; or
		2. fraud; or
		3. fraudulent misrepresentation; or
		4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

Subject to clauses 18.3 and 18.4, the Provider shall indemnify the Contracting Authority and keep the Contracting Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Provider of its obligations under the Agreement or the presence of the Provider or any staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss, or any other loss which is caused directly or indirectly by any act or omission of the Provider.

The Provider shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Contracting Authority or by breach by the Contracting Authority of its obligations under the Agreement.

Subject always to clauses 18.1 and 18.5, in no event shall the Provider be liable for any of following incurred by the Contracting Authority:

* + 1. loss of profits, business, revenue or goodwill; and/or
		2. loss of savings (whether anticipated or otherwise); and/or
		3. indirect or consequential loss or damage;

The Provider shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure incurred by the Contracting Authority resulting from the direct Default of the Provider.

1. Limitation of Liability

The Contracting Authority shall not be liable to the Provider for any claims, proceedings, actions, damages, costs, expenses and any other liabilities, indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with the Contracting Authority's adherence or non-adherence to the terms and conditions of this Agreement except in the case of death or personal injury caused by negligence, and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law.

1. Insurance

Minimum Insurance Period shall be 06 (six) Years following the expiration or earlier termination of this Agreement and any Order Agreement.

To comply with its obligations under this Agreement and as a minimum, where requested by the Contracting Authority in writing the Provider shall ensure that:

* + 1. professional indemnity insurance is held by the Provider and by any agent, sub-contractor or consultant involved in the supply of the Services and that such professional indemnity insurance has a minimum limit of indemnity of one million pounds sterling (£1,000,000) for each individual claim or such higher limit as the Contracting Authority may reasonably require (and as required by Law) from time to time;
		2. employers' liability insurance with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as required by Law from time to time.

The Provider shall maintain an appropriate insurance policy to cover its liabilities to the Contracting Authority under this Agreement and any Agreement entered into under this Framework Agreement.

The Provider shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Provider, arising out of the Provider’s performance of its obligations under the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Provider. Such insurance shall be maintained for the duration of the Agreement Period and for a minimum of six (06) years following the expiration or earlier termination of the Agreement.

The Provider shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

If, for whatever reason, the Provider fails to give effect to and maintain the insurances required by the provisions of the Agreement the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.

The provisions of any insurance or the amount of cover shall not relieve the Provider of any liabilities under the Agreement. It shall be the responsibility of the Provider to determine the amount of insurance cover that will be adequate to enable the Provider to satisfy any liability under this Agreement.

1. Staff And Resources

The Provider shall be fully responsible in every way for its entire staff and all consultants (whether part-time or full-time).

The Provider shall ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Equality Act 2010 (as amended) the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Services. The Provider shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this Clause 21.2 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Provider by this Clause 21.2; and

in the management of its affairs and the development of its equality and diversity policies, the Provider shall co-operate with NICE in respect of NICE’s obligations to comply with statutory equality duties. The Provider shall take such steps as the Contracting Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in the provision of the Service(s).

The Provider shall notify Contracting Authority immediately of any investigation of or proceedings against the Provider under the Equality Act 2010 and shall cooperate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

The Provider shall indemnify Contracting Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by Contracting Authority arising out of or in connection with any investigation conducted or any proceedings brought under the 2010 Act due directly or indirectly to any act or omission by the Provider, its agents, employees or sub-contractors.

The Provider shall impose on any sub-contractor obligations substantially similar to those imposed on the Provider by this Clause 21.

In fulfilling its obligations under this Framework Agreement the Provider shall ensure that it complies with all current Employment Legislation and in particular, does not unlawfully discriminate in breach of any Employment Legislation.

The Provider shall take all reasonable steps (at its own expense) to ensure that any employees employed to fulfil the Provider’s obligations under this Framework Agreement do not unlawfully discriminate in breach of any Employment Legislation.

In the management of its affairs and the development of its equality and diversity policies, the Provider shall co-operate with the Contracting Authority in light of the Contracting Authority’s obligations to comply with statutory equality duties. The Provider shall take such steps as the Contracting Authority reasonably considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in the fulfilment of its obligations under this Framework Agreement.

1. Confidentiality

In respect of any Confidential Information it may receive from the other party (“the Discloser”) and subject always to the remainder of this clause 22, each party (“the Recipient”) undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser’s prior written consent provided that:

* + 1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Agreement;
		2. the provisions of this clause 22 shall not apply to any Confidential Information which:
			1. is in or enters the public domain other than by breach of the Agreement or other act or omissions of the Recipient;
			2. is obtained by a third party who is lawfully authorised to disclose such information; or
			3. is authorised for release by the prior written consent of the Discloser; or
		3. the disclosure of which is required to ensure the compliance of the Contracting Authority with the Freedom of Information Act 2000 (the FOIA).

Nothing in this clause 22 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Provider is the Recipient, to the Provider's immediate or ultimate holding company provided that the Provider procures that such holding company complies with this clause 22 as if any reference to the Provider in this clause 22 were a reference to such holding company.

The Provider authorises the Contracting Authority to disclose the Confidential Information to such person(s) as may be notified to the Provider in writing by the Contracting Authority from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the goods supplied in accordance with the Agreement, such exercise being commonly referred to as "benchmarking". The Contracting Authority shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The Contracting Authority shall not without good reason claim that the lowest price available in the market is the realistic market price.

The Provider acknowledges that the Contracting Authority is or may be subject to the Freedom of Information Act (FOIA). The Provider notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The Provider will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance notified to the Provider from time to time) to the extent that they apply to the Provider's performance under the Agreement.

The Provider agrees that:

* + 1. Without prejudice to the generality of clause 22.2, the provisions of this clause 22 are subject to the respective obligations and commitments of the Contracting Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004;
		2. subject to clause 22.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Contracting Authority;
		3. where the Contracting Authority is managing a request as referred to in clause 22.5.2, the Provider shall co-operate with the Contracting Authority and shall respond within five (5) working days of any request by it for assistance in determining how to respond to a request for disclosure.

The Provider shall and shall procure that its sub-contractors shall:

* + 1. transfer the any request for information, as defined under section 8 of the FOIA, to the Contracting Authority as soon as practicable after receipt and in any event within five (05) working days of receiving a request for information;
		2. provide the Contracting Authority with a copy of all information in its possession or power in the form that the Contracting Authority requires within five (05) working days (or such other period as the Contracting Authority or a Beneficiary may specify) of the Contracting Authority or a Beneficiary requesting that Information; and
		3. provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

The Contracting Authority may consult the Provider in relation to any request for disclosure of the Provider's Confidential Information in accordance with all applicable guidance.

This clause 22 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Agreement, this clause 22 shall remain in force for a period of 06 (six) years after the termination or expiry of this Agreement.

In the event that the Provider fails to comply with this clause 22, the Contracting Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

1. Data Protection

The Provider shall comply with the Data Protection Act 1998 ("the 1998 Act") and any other applicable data protection legislation. In particular the Provider agrees to comply with the obligations placed on the Contracting Authority and any Beneficiary by the seventh and eighth data protection principles ("the Seventh Principle") and (“the Eighth Principle”) set out in the 1998 Act, namely:

* + 1. to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Contracting Authority and any Beneficiary by the Seventh Principle;
		2. to ensure that data is not transferred to any other country without adequate data protection in place and to comply with the obligations imposed on the Contracting Authority and any Beneficiary by the Eighth Principle.
		3. only to process Personal Data for and on behalf of the Contracting Authority and any Beneficiary, in accordance with the instructions of the Contracting Authority or such Beneficiary and for the purpose of performing the Services in accordance with the Agreement and to ensure compliance with the 1998 Act;
		4. to allow the Contracting Authority to audit the Provider's compliance with the requirements of this Clause 23 on reasonable notice and/or to provide the Contracting Authority with evidence of its compliance with the obligations set out in this Clause 23.

The Provider agrees to indemnify and keep indemnified the Contracting Authority and any Beneficiary against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Contracting Authority and any Beneficiary as a result of any claim made or brought by any individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Provider's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Provider, its employees or agents in the Provider's performance of the Agreement or as otherwise agreed between the Parties.

Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Provider providing the Contracting Authority and any Beneficiary with reasonable assistance in complying with subject access requests served on the Contracting Authority and any Beneficiary under Section 7 of the 1998 Act and the Provider consulting with the Contracting Authority and any Beneficiary prior to the disclosure by the Provider of any Personal Data in relation to such requests.

1. Termination

The Contracting Authority may terminate this Framework Agreement by serving written notice on the Provider in any of the following circumstances:

* + 1. a material failure by the Provider to perform any obligation of the Provider under this Framework Agreement provided that (if capable of remedy) such failure has not been remedied to the Contracting Authority’s reasonable satisfaction within a period of 30 (thirty) days following written notice demanding remedy of the failure in question being served by the Contracting Authority on the Provider; or
		2. the Provider fails to perform any material obligation of the Provider under this Framework Agreement on more than three occasions; or
		3. the Provider becomes Insolvent or otherwise ceases to be capable of supplying the Goods and/ or Service(s) and / or Licensed Materials the subject of this Framework Agreement; or
		4. the Provider is in default of any duty of care or any fiduciary or statutory duty owed to the Contracting Authority and/or any employee or agent of the Contracting Authority; or
		5. there is a change of ownership or control of the Provider which, in the reasonable opinion of the Contracting Authority, will have a material impact on the supply of the Goods and/ or Service(s) and / or Licensed Materials the subject of this Framework Agreement or the image of the Contracting Authority; or
		6. the Provider purports to dispose of this Framework Agreement in breach of clause 29 “Assignment”; or
		7. the Provider shall have 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 forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Framework Agreement or any contract with the Contracting Authority pursuant to this Framework Agreement, or for showing or forbearing to show favour or disfavour to any person in relation to this Framework Agreement or any contract with the Contracting Authority pursuant to this Framework Agreement; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Provider); or
		8. if in relation to this Framework Agreement or any contract with the Contracting Authority pursuant to this Framework Agreement, the Provider or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward to any officer of the Contracting Authority which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer’s proper remuneration.

The Provider agrees and acknowledges that the Contracting Authority is entitled to recover any costs the Contracting Authority may reasonably incur in consequence of the Contracting Authority terminating this Framework Agreement pursuant to this clause 24.

The Provider agrees that upon termination for any reason or expiry of this Framework Agreement it shall not be entitled to make a claim against the Contracting Authority in relation to costs incurred by the Provider in providing the Goods and/ or Service(s) and / or Licensed Materials costs incurred in acquiring equipment and/or materials used in the provision of the Goods and/ or Service(s) and / or Licensed Materials or in engaging third parties in connection with the Goods and/ or Service(s) and / or Licensed Materials the subject of this Framework Agreement.

In addition to its rights under any other provision of the Agreement the Contracting Authority may terminate the contract at any time by giving the Provider three Months’ written notice.

In addition to its rights under any other provision of the Agreement the Contracting Authority may terminate the Agreement at any time by giving the Provider three (03) Months’ written notice.

1. Dispute Resolution Procedure

During any dispute, including a dispute as to the validity of the Agreement, it is mutually agreed that the Provider shall continue its performance of the provisions of the Agreement (unless the Contracting Authority or any Beneficiary requests in writing that the Provider does not do so).

If a dispute arises between the Contracting Authority or any Beneficiary and the Provider in relation to any matter which cannot be resolved by the Authorised Officer and the Provider Manager either of them may refer such dispute to the Dispute Resolution Procedure.

In the first instance each of the Contracting Authority or such Beneficiary and the Provider shall arrange for a more senior representative than those referred to in Clause 25.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Contracting Authority or such Beneficiary (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

If the meeting(s) referred to in Clause 25.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within twenty-eight (28) days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until thirty (30) days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

1. Variation to Agreement

This Framework Agreement may not be varied in any way without prior written consent and agreement by both Parties.

Subject to 26.1, any agreement by both Parties must be agreed in Annex SIX of this Agreement.

1. Corrupt Gifts or Payments

The Provider shall not do (and shall use its best endeavours to ensure that in entering the Framework Agreement they have not done) any of the following: (referred to in this clause as “Prohibited Acts”)

* + 1. offer, give or agree to give any person in the employment of the Contracting Authority, any gift or consideration as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or performance of this or any other Agreement with the Contracting Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any other Agreement with the Contracting Authority; nor
		2. enter into this or any other Agreement with the Contracting Authority if any commission has been paid or agreed to be paid to any person in the employment of the Contracting Authority or any beneficiary, by or on behalf of the Provider or to their knowledge, unless particulars of such commission and the terms of any Agreement for the payment of it have been disclosed to the Contracting Authority in writing before the Agreement is made.
		3. If the Provider or any of its employees, agents or sub-contractors, or any person acting on their behalf, does any of the Prohibited Acts or commits any offence under the Bribery Act 2010, with or without the knowledge of the Provider in relation to this or any other Agreement with the Crown, the Contracting Authority shall be entitled:
		4. to terminate the Framework Agreement and recover from the Provider the amount of any loss resulting from the termination;
		5. to recover from the Provider the amount or value of any such gift, consideration or commission; and
		6. to recover from the Provider any other loss sustained in consequence of any breach of this clause 27.1 whether or not the Framework Agreement has been terminated.
		7. In exercising its rights of remedies under clause 27.1, the Contracting Authority shall:
		8. act proportionately in the light of the gravity and circumstances of the particular breach; and
		9. give all due consideration, where appropriate, to action other than termination of the Framework Agreement.
1. Procurement Transparency

The Provider acknowledges that this Framework Agreement and any tender documentation that forms part of this Framework Agreement will be published in its entirety in order to comply with the UK governments Transparency Agenda. Limited redactions may be made before publication in order to comply with existing law and for the protection of national security.

Subject to 28.1, 28.3 and 28.4 the Provider must notify the Contracting Authority of any sections of the tender documentation and/or this Framework Agreement that they regard as Commercial in Confidence or subject to the non-disclosure clauses of the FOIA or DPA. Any such request must provide a clear justification for the proposed redaction.

The total value (bottom line) of the Framework Agreement is required to be published under current EU regulations and the UK governments Transparency Agenda.

The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA, the content of this Framework Agreement is not Confidential Information.  the Contracting Authority shall be responsible for determining in its absolute discretion whether any of the content of the Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA.

Notwithstanding any other term of this Framework Agreement, the Provider hereby gives his consent for the Contracting Authority to publish the Licence Agreement in its entirety, including from time to time agreed changes to the Framework Agreement, to the general public.  And agrees to the public re-use of the documents provided that such reuse cites the source and do not misuse or deliberately mislead.

Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, Providers, professional advisors and consultants comply with this clause 28.

1. Assignment

This Framework Agreement is personal to the Provider. The Provider shall not assign, novate, sub-contract or otherwise dispose of this Framework Agreement or any part of it, or the benefit or advantage of this Framework Agreement or any part of it, without the previous written consent of the Contracting Authority.

1. Notices

All notices to be given hereunder shall be in writing and may be served either personally, or by electronic means such as email, or by registered post to the address of the relevant Party or as it may from time-to-time notify in writing to the other Party and shall be deemed to be effective on the business day on which received or if the date of actual receipt is not a business day then on the next business day following receipt.

1. Law

The Provider submits to the jurisdiction of the English courts and agrees that the Agreement is to be governed and construed according to English law.

1. General

The parties accept the non-exclusive jurisdiction of the English courts and agree that this Framework Agreement is to be governed and construed in accordance with English law.

No amendment of this Agreement shall be valid unless agreed in writing by a duly authorised representative of each of the Parties.

The failure by the Contracting Authority or the Provider to insist upon the strict performance of any provision, term or condition of this Framework Agreement or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

1. Agreement Signatures

|  |  |  |  |
| --- | --- | --- | --- |
| Signed for and on behalf of **the Contracting Authority** |  |  |  |
|  | Signature | Name and title | Date |
| Procurement Manager  |  |  |  |
|  |  |  |  |
| Contract Manager |  |  |  |
|  |  |  |  |
| Budget Holder |  |  |  |
|  |  |  |  |
| Signed for and on behalf  |  |  |  |
| of **the Provider** |  |  |  |
|  | Signature | Name and title | Date |
|  Contract Manager |  |  |  |
|  |  |  |  |
| Authorised Signatory: |  |  |  |

**This contract is not valid until all Signatures have been completed**

ANNEX ONE: Specification

Services delivered under this Framework Agreement:

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |
|  |  |  |

The provider shall supply the above to the any eligible Purchasing Authority as detailed in - Definitions “Purchasing Authority”.

The Provider shall respond to any Invitation to Quote (ITQ) requested by any Purchasing Authority as instructed in the Purchasing Authorities ITQ, within the timeframe detailed in the Purchasing Authorities ITQ.

The Provider shall under no circumstances attempt to apply any Terms and Conditions of Contract to any purchase made through this Framework other than those listed in clause 3 - Overriding Provisions, specifically, those listed in sub-clauses 3.2.1, 3.2.2 and 3.2.3. For the avoidance of doubt, any such attempt will be considered a material breach of this Agreement.

The Provider shall apply the pricing models as detailed in Annex 2 to any purchase made under this Framework. The Provider shall not use any other method of pricing other than detailed in Annex 2.

ANNEX TWO

Details of Purchasing Models, Discount Structures and Pricing Policies

The following purchasing models and discount structures are agreed:

**See Annex 2A: Purchasing Models**

Quotation price guarantee policy is as follows:

**See Annex 2A: Purchasing Models**

Purchasing Authorities will access the Framework Agreement purchasing models, pricing policies and discounts offered from the NICE Share service.

ANNEX THREE

Service Level Agreements (SLAs)

1. The Framework Service Level Agreements (SLAs) are set out in the Excel spreadsheet: “Annex THREE (A) SLA”.
2. An annual management reporting template will be provided to in order to summarise details of performance and adherence to the SLAs.
3. Providers must attend an Annual Service Review meeting as a minimum with NICE and provide an annual service report no later than two (02) weeks before the scheduled meeting.

Purchasing Performance Data

1. The Provider should supply sales and purchasing data on a Monthly basis, no later than the 21st of the following Month.
2. The data should be provided for each Lot in an Excel format using the template provided as: Annex THREE (B) “Monthly Spend”.
3. Sales and purchasing data must be supplied for each relevant content category for which the Provider has made Content Resources sales through the Framework: Print Journals; Electronic Journals; Print Books; Electronic Books; Databases; Evidence Resource Summaries; Point of Care (PoC) products.
4. Sales and purchasing data provided on template Annex THREE (B) “Monthly Spend” must include as a minimum:
	* + the Purchasing Authority’s organisation details and Local Education & Training Board (LETB) or national region;
		+ discount supplied (where relevant);
		+ Content Resource details (for Databases, Evidence Resource Summaries and Point of Care (PoC) products ONLY).
5. Monthly data reports must be sent to CommissionedContentReports@evidence.nhs.uk

ANNEX FOUR

Framework Agreement Structure & Specification

Structure Overview

The Framework consists of a core set of contractual Terms and Conditions (T&Cs) documents for all appointed Providers; ***AND*** two Lots.

**Chart A: Framework Structure Model**



**Contractual Terms & Conditions (T&Cs)**

1. The T&Cs comprise of two separate contractual documents consisting of the :
* terms between NICE (as the Contracting Authority) and each appointed Provider (the “**Terms and Conditions of Contract for NICE Electronic and Print Content Framework Agreement**” document;

***AND***

* purchasing terms for use at the point of purchase i.e. between the Provider(s) and individual purchaser(s) (the ““**Order Terms & Conditions**” document).
1. The “Terms and Conditions of Contract” for NICE Electronic and Print Content
Framework Agreement”document for use between NICE and each appointed Provider sets out standard contractual terms including (but not limited to) the Providers’ obligations, insurance, warranty and liability limitations, monitoring and reporting requirements.
2. The “Order Terms & Conditions” document for between the Purchasing Authority and the appointed Provider sets out the purchasing and supply terms where appropriate to print and electronic Content Resources to include (but not limited to): ordering procedures, Term and renewal, ownership and risk, limitation of liability, undertakings by both parties, quality and copyright.
3. The Framework Agreement has two Lots. Purchasers must choose which Lot to purchase from based on whether they require print or electronic Content Resources, as well as the access, delivery and service management needs that is best suited to the content they require, in addition to any further specific requirements.

***Lot 1: Content Supply - “Health & Social Care Content (HSCC) Licence”***

1. Providers awarded to this Lot may supply **electronic** Content Resources ONLY under the terms of the “Health & Social Care Content (HSCC) Licence”.
2. The Licence includes pre-agreed and non-negotiable terms including (but not limited to): licensing & usage; service availability levels; service credits ; monitoring & reporting requirements; technical standards; Service Level Agreements (SLAs) & Key Performance & Quality Indicators (KPIs), permitted and prohibited usage rights.
3. Purchasing Authorities can add in terms for additional service requirements to the HSCC Licence in Annex SEVEN to the “Order Terms & Conditions”, dependent on local purchasing requirement e.g. technical requirements such as API specification, ability to integrate content into local Resource Discovery Systems. Any additional terms set out in Annex SEVEN may not conflict with the terms set out in:
* the “Terms and Conditions of Contract for NICE Electronic and Print Content” and any Annexes”;
* the “Order Terms & Conditions” and any Annexes;
* this “Health & Social Care Content (HSCC) Licence” and any appendices.
1. Purchases made in Lot 1 include (but are not limited to):
2. where there is a requirement for strong measurement and reporting of contract performance - for example all national purchases, where there is a need for the Provider to adhere to specific service levels and KPIs, regular reporting requirements;
3. consortium purchases, where there is a requirement to measure contract performance;
4. high value purchases and / or those deemed high risk;
5. all Point of Care (PoC) and PoC related Content Resources.

***Lot 2: Content Supply - “Provider Licence / Agreement”***

1. Providers awarded to this Lot may supply electronic and / or print Content Resources under the terms of their own Licence or Agreement. The Licence / Agreement will set out an individual Provider’s pre-agreed usage and licensing terms as well as SLAs / KPIs. Providers’ terms may not conflict with the terms set out in:
* the “Terms and Conditions of Contract for NICE Electronic and Print Content” and any Annexes”;
* the “Order Terms & Conditions” and any Annexes (excluding Provider Terms);
1. Lot 2 might be used for purchases not deemed high risk, for Agreements that do not require strong contract management or where the contract value is expected to be low.
2. Where the Provider in Lot 2 is an intermediary such as a bookseller or Agent the contractual document will take the form of a “Provider Agreement”. For example, when purchasing print and electronic journals from a subscription Agent. The individual publisher’s Licence for each title purchased would then take the form of an appendix to the Provider Agreement. This is required as many of the licensing and usage terms may be publisher dependent and the Agent is not in a position to agree on the publishers behalf.
3. Providers awarded to this Lot must supply electronic and or print Content.
4. The purchasing process shall be detailed in a “Buyers Guide” to be provided by the Contracting Authority and made available to Purchasing Authorities and Providers on the Commencement Date of this Agreement.
5. Content purchases made from the Framework Agreement will either take the form of:
* **new purchases**, with Contract Award based on there being only one Provider, or cost, or a Most Economically Advantageous Tender (MEAT) evaluation;
* **renewals** of new purchases made from the Framework Agreement - where the terms of contract allow and there is no change in the Deliverables required e.g. journal and databases subscription renewals.
1. When purchasing from the Framework, Purchasing Authorities are wholly responsible for the selection of:
* the appropriate Lot(s) for their purchasing requirement(s);
* the procurement route to be followed for their individual purchasing requirement(s) from the Framework, namely: a “Direct Call Off”; or Mini Competition.

Subject to 17 above, the purchasing process detailed in the Buyers Guide shall be updated by the Contracting Authority from time to time. Any update to the Buyers Guide shall be automatically accepted as part of this Agreement on instruction by the Contracting Authority and shall not require a Variation to Agreement detailed in clause 26.

ANNEX FIVE

Variation to Agreement

Variation to Agreement between National Institute for Health and Care Excellence (the Contracting Authority) and [name] (the Provider) for the NICE Electronic and Print Content Framework Agreement on the Day of 200 (“the Agreement”).

For the purposes of this Variation to Agreement:

|  |  |
| --- | --- |
| Contracting Authority’s Commissioning Manager | means the individual from time to time appointed by the Contracting Authority and notified to the Provider in writing responsible for the co-ordination of the development specified below; |

This Variation to Agreement, pertains to the development or additions of the NICE Electronic and Print Content Framework Agreement and any Annexes to be undertaken by the Provider and is agreed by the Provider and the Contracting Authority as a current addition to Annex ONE to the Agreement.

The Development Services and Supply will:

be developed by the Provider in compliance with the specifications contained in this Variation to Agreement, and

be developed and delivered in accordance with the terms and conditions of the Agreement.

This Development Services and Supply consists of the following revisions to the Agreement contractual documentation:

[To be completed]

The Scope and this Variation to Agreement may only be varied with the prior written agreement of the Contracting Authority, such agreement (if given) not to be unreasonably delayed.

The Milestones for deliverables which are required by the Contracting Authority are detailed below.

**Milestones**

|  |  |
| --- | --- |
| Due Date | Milestone |
|  |  |
|  |  |
|  |  |

The Provider shall be deemed to have completed a Milestone by the Due Date notwithstanding any delay beyond the Due Date if such delay would not have occurred but for any act or omission of the Contracting Authority, anything done or omitted to be done on the Contracting Authority’s instructions or any other act or omission of a third party which was beyond the reasonable control of the Provider (for the avoidance of doubt such third parties do not include the Provider’s sub-contractors,).

Terms defined in the Agreement shall bear the same meanings in this Variation to Agreement, unless otherwise stated, or the context otherwise requires.

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature on behalf of the ProviderName TitleDate | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature on behalf of the Contracting AuthorityName TitleDate |

ANNEX SIX

Arrangements for Agreements / Contracts / Orders placed under this Framework Agreement on expiry or Termination of this Agreement

Any Agreement / Order placed under this Framework Agreement shall remain valid and in force until the agreed expiry date or termination date of that Agreement / Order.

The contract term of any Agreement / Order placed under this Framework Agreement shall remain in force until the expiry or termination of the Agreement / Order shall not exceed four (04) years from the first commencement date of the original Agreement / Order.

No Agreement / Order placed on or after the expiry or termination date of this Framework Agreement shall be valid once expiry or termination of this Framework Agreement has occurred.

Extensions or renewals of any Agreement / Order shall be valid once expiry or termination of this Framework Agreement has occurred.

ANNEX SEVEN

Order Terms & Conditions and the Licence Agreement(s)

Any Agreement / Order placed under this Framework Agreement shall be subject to the “Order Terms & Conditions” and any Annexes; the Licence Agreement(s) and any Appendices applicable to the Agreement / Order.

**LOT 1** Content Supply: Health & Social Care Content (HSCC) Licence (NICECF/HSCC/01)

**LOT 2** Content Supply: Provider Licence / Agreement (NICECF/PLA/02)

ANNEX EIGHT

Communications Guidelines for Appointed Providers

This Annex EIGHT sets out the NICE communications criteria and guidance for appointed Framework Providers. For use when publicising and communicating the Framework to NHS and health and social care related organisations through print and electronic publications and communications.

1. Subject to (4), the criteria and guidance apply to all communications that refer to the contractual agreement between the Provider and NICE. Any reference to NICE must be factual and all communications consistent.
2. The Provider shall not publish or cite any global communication in relation to the Framework without written approval by NICE before distribution.
3. The Provider shall ensure all communications are written in English.
4. The criteria and guidelines in the table below are distinguished as either mandatory or optional. The Provider shall use reasonable endeavours to ensure all the criteria are incorporated into their related communications in order to ensure clarity and consistency.

|  |  |  |
| --- | --- | --- |
| **Communications Criteria** | **Guidelines** | **Usage** |
| Use of NICE logo | It is **NOT** permitted to use the NICE logo on any communications. | Mandatory |
| Framework naming | Use contractual name of “NICE Electronic and Print ContentFramework Agreement”  | Mandatory |
| Quote Framework Contract Number | NICEFAHEE/1619 | Optional – however this will speed up the purchasing process for NHS procurement departments. |
| Strap line | “NICE framework content provider”This is the approved strap line for framework related communications ONLY until the end of the agreement.  | Optional - it could be used in email signatures or on the Providers website or other marketing materials |
| Standard Paragraph | “Eligible purchasers can access all details about how to buy electronic and print content from the NICE “Buy books, journals and databases” webpage at: http://www.nice.org.uk/about/nice-communities/library-and-knowledge-services-staff/buy-books-journals-and-databases | Mandatory |
| Standard Paragraph | “NICE Evidence Services provide online access to high quality authoritative evidence and best practice. The services cover health, social care and public health evidence. [www.evidence.nhs.uk](http://www.evidence.nhs.uk).” | Optional - may be included as a footnote or appendix |

If the above guidelines are followed these documents do not need to be sent for approval:

* content on an appointed provider’s website
* letters to stakeholders
* e-shots to appointed providers' mailing lists
* internal newsletters
* Content Resources catalogues

This list is not exhaustive and there will be other communications that do not require NICE approval.

## Process for the approval of Provider communications

Communications such as press releases and articles that mention contractual arrangements e.g. organisations appointed to the NICE Framework must be sent to CommissionedContentReports@evidence.nhs.uk for approval before dissemination.We aim to return communications submitted to us within 05 (five) -07 (seven) working days.

Documents should be sent in Word format.

NICE will send any documents that include quotes from NICE staff to the individual mentioned, for approval. This will increase the timescale for the return of the document.

## Process for the addition of information to individual Provider’s web pages on the NICE website

All requests for information to be added should be sent to: CommissionedContentReports@evidence.nhs.uk

The NICE Framework web pages are not a marketing tool for Providers, their primary aim is to make purchasers aware of what is available on the Framework and how they can purchase from it. We provide a link to a Provider’s Content Resources catalogue in order to support purchasing decisions from the Framework and basic contact and purchasing information.

ANNEX NINE

Assurance and Verification Process

The Provider is required to provide all information requested by the Contracting Authority to verify any statements made in the Invitation to Tender (ITT) response documents.

Commencing on w/c 22nd August 2016 and continuing post contract award and throughout the contract Term, the Contracting Authority will request in writing all information it requires to assure itself that the Providers Invitation to Tender statements are true.

Providers will be required to provide:

1. Company Financial Status

Three years of financial accounts or balance sheets

1. Service Availability

All information requested to support the bidders responses to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack to:

* + 1. Rows 6-18(QUESTIONS 2 – 14)on the **Lot 1 HSCC Licence** tab of the 02\_Bidders Response Document.
		2. Rows 8-20 (QUESTIONS 3 – 15) on the **Lot 2 Providers Lic – Agree** tab of the 02\_Bidders Response Document.
		3. Rows 6 – 7 (QUESTIONS 2 – 3) on the **Lot 2 Agents ONLY** tab of the 02\_Bidders Response Document
1. Service Access

All information requested to support the bidders responses to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack to:

* + 1. Rows 20-36 (QUESTIONS 15 – 31)on the **Lot 1 HSCC Licence** tab of the 02\_Bidders Response Document.
		2. Rows 22-35 (QUESTIONS 16 – 29) on the **Lot 2 Providers Lic – Agree** tab of the 02\_Bidders Response Document.
1. Technical Standards

All information requested to support the bidders responses to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack to:

* + 1. Rows 38-46 (QUESTIONS 32 – 40)on the **Lot 1 HSCC Licence** tabof the 02\_Bidders Response Document.
		2. Rows 37-45 (QUESTIONS 30 – 38) on the **Lot 2 Providers Lic – Agree** tabof the 02\_Bidders Response Document.
1. User Support

All information requested to support the bidders responses to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack to:

* + 1. Rows 48-53(QUESTIONS 41 – 46)on the **Lot 1 HSCC Licence** tabof the 02\_Bidders Response Document.
		2. Rows 47-52 (QUESTIONS 39 – 44) on the **Lot 2 Providers Lic – Agree** tab of the 02\_Bidders Response Document.
		3. Rows 8 – 13 (QUESTIONS 4 – 9 on the **Lot 2 Agents ONLY** tab of the 02\_Bidders Response Document.
1. Service Notifications

All information requested to support the bidders responses to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack to:

* + 1. Rows 54-59(QUESTIONS 47 – 52)on the **Lot 1 HSCC Licence** tab of the 02\_Bidders Response Document.
		2. Rows 53-58 (QUESTIONS 45 – 50)on the **Lot 2 Providers Lic – Agree** tab of the 02\_Bidders Response Document.
1. Service Reporting

All information requested to support the bidders responses to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack to:

* + 1. Rows 60-64 (QUESTIONS 53 – 57)on the **Lot 1 HSCC Licence** tab of the 02\_Bidders Response Document.
		2. Rows 59-63 (QUESTIONS 51 – 55) on the **Lot 2 Providers Lic – Agree** tab of the 02\_Bidders Response Document.
		3. Rows 15 – 18 (QUESTIONS 10 – 13) on the **Lot 2 Agents ONLY** tab of the 02\_Bidders Response Document.
1. Measurement & Related Payment

All information requested to support the bidders responses to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack to:

* + 1. Rows 66-70 (QUESTIONS 58 – 62)on the **Lot 1 HSCC Licence** tab of the 02\_Bidders Response Document.
		2. Rows 65-68 (QUESTIONS 56 – 59) on the **Lot 2 Providers Lic – Agree** tab of the 02\_Bidders Response Document.
		3. Rows 20-21 (QUESTIONS 14 – 15) on the **Lot 2 Agents ONLY** tab of the 02\_Bidders Response Document.
1. Other

Any other information required to support any other statements made in the Bidder’s response documents to the “NICE Electronic and Print Content Framework Agreement: Invitation to Tender” pack.