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NATIONAL INSTITUTE FOR HEALTH

AND CARE EXCELLENCE

Kortext Ltd Provider Licence

For the

**NICE Electronic and Print Content
Framework Agreement**

**LOT 2**

**FOR THE PROVISION OF**

*Electronic Books*

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1. Introduction

This Provider Licence must be used when placing an Order for the supply of Electronic Book Titles under Lot 2 of the NICE Electronic and Print Content Framework Agreement.

The Provider Licence is specific to Kortext’s supply of Electronic Books under Lot 2. It must be used in conjunction with the “Order Terms & Conditions” and any Annexes to form the whole Agreement.

All terms in this Provider Licence must not be altered and are non-negotiable. Where additional terms are agreed these should be set out in Annex SEVEN: “Additional Terms” of the “Order Terms & Conditions”. These additional terms must not conflict with, or materially change, the terms in:

* + 1. the “Terms and Conditions of Contract for NICE Electronic and Print Content” and any Annexes”; AND
		2. the “Order Terms & Conditions” and any Annexes, AND
		3. this Provider Licence.
1. Defined Terms

In this Agreement the words and expressions below will be interpreted to have the meanings adjacent to them: The following definitions should be read in conjunction with those set out in the “Order Terms & Conditions”:

|  |  |
| --- | --- |
| “Third Party Systems”  | means, online services utilised by Authorised Users to discover and access the Licensed Materials; |

[Guidance Note to Purchasing Authorities and Providers: Enter text “Not Used” if no definitions to be added in this section. The clause numbering should remain the same as the original document.]

1. Contact Details

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1. Service Usage

**Authorised Users** may, in accordance with the terms of this Licence:

* + 1. search, view, retrieve and display the Licensed Materials;
		2. electronically save individual (where relevant for content type) articles, pages or chapters, short passages, figures and/or tables from or items of the Licensed Materials for personal use for as long as required;
		3. electronically export to reference management software individual Bibliographic Data and / or Abstracts of the Licensed Materials for personal use only;
		4. print off an individual copy, or parts of (where relevant for content type) single articles, topics, pages or chapters from the Licensed Materials;
		5. distribute parts of the Licensed Materials in print or electronic form to other Authorised Users. For the avoidance of doubt, this shall include the distribution of a copy for teaching purposes to each individual Authorised User at the Authorised User’s institution;
		6. copy, paste and publish the Bibliographic Data and Abstracts of the Licensed Material(s) for non-authenticated access for Authorised Users. Each item copied and published shall carry appropriate acknowledgement of the source, listing title and copyright owner.

The Purchasing Authority and its Authorised users may incorporate link resolving software at their authorised organisations to access the Licensed Materials via Third Party Systems, if hosted on a Secure Network and using an appropriate method of authentication.

Subject to any restrictions provided by the publisher(s) and specified in the Licensed Materials, the Purchasing Authority or Authorised Users may, subject to any Prohibited Uses set out in this Licence fulfil occasional requests from non-commercial libraries to supply to an Authorised User of another library within the same country as the Purchasing Authority a copy of an individual document being part of the Licensed Materials for inter library loans (“ILL”). Such supply by the requesting non-commercial library must be for the purposes of research or private study and not for Commercial Use. For the avoidance of doubt, requests for ILL is deemed to be where the loan is not carried out in a manner or magnitude that would replace the recipients’ own subscription to the Licensed Materials.

**Authorised user allowances and requirements**

* + 1. Where a Purchasing Authority uses any method of authentication other than OpenAthens, the Purchasing Authority shall make Authorised Users aware of the following:
			1. By clicking the check box labelled “Yes”, the user agrees that they have read and agreed to the “Kortext Terms and Conditions of Use” and its accompanying Privacy Policy.
		2. Kortext acknowledges and agrees that the usage rights as described in the clause 4 and all its sub-clauses shall take precedence over the Kortext Terms and Conditions of use as described on the Kortext web service.
		3. Use of the Service for eContent as an Authorised User of Kortext, are granted a personal, non-exclusive, non-transferable, limited licence to access and use the Service and access and use eContent and to reproduce and store portions of that eContent for your personal, non-commercial use, all according to the terms and conditions of this Agreement. In addition, Authorised Users may:
			1. view all content of any and all of the eContent that you have access to for the purchase term;
			2. print and/or copy and paste digital pages of the eContent for your personal, non-commercial use and reference in connection with your work; however, the number of pages that you may print, copy and paste is limited.
			3. personalise the Kortext experience by creating bookmarks and adding personal notes;
		4. Offline Option: When you use eContent as part of the Service, you also have the option to access and view your eContent offline using the Kortext Reader apps. You may check out an entire eContent file. If you are viewing any eContent offline, you will not have access to all of the features that are available if you view the eContent online. The access period for individual eContent may vary for our rental program.
		5. The Kortext Reader software contains Adobe® Reader Mobile SDK™ distributed pursuant to an agreement with Adobe Systems Inc. 345 Park Avenue, San Jose, CA 95110, which is a third party beneficiary entitled to enforce Kortext’s rights and your obligations hereunder and to seek appropriate legal and equitable remedies, including but not limited to, damages and injunctive relief, for your breach of such obligations. You agree not to delete or in any manner alter the copyright notices, trademarks, logos or related notices, or other proprietary rights notices of Kortext and its suppliers and Licensors appearing on or within the Software.
		6. Digital Rights Management: The Kortext Reader software contains software code used for performing operations on content protected by Digital Rights Management (“DRM Content”). You agree not to perform any actions in, with or upon Kortext Reader that are performed for the purpose of subverting DRM Content.
		7. Kortext Reader stores and transmits information regarding your usage of Kortext Reader to Adobe Systems Incorporated as part of providing DRM Content and only for eContent that is accessed through the Kortext Reader. This information may include the time period in which you read a given book, the last page number you read, and other information. More information about the use of personal information for DRM Content is available at http://www.adobe.com/privacy.html
		8. **Limits on Your Use of the Service.**
		9. No Ownership Rights: You are only granted a limited right to access the eContent in accordance with this Agreement. All title to, ownership of and all copyright and other proprietary rights in the Service and the eContent shall at all times remain vested in Kortext, its Licensors and the publishers and authors of the eContent, as applicable. Your use of the Service does not give you any ownership rights in any part of the Service or for the avoidance of doubt the eContent. In addition you agree you may not rent, lease, lend, sell, redistribute or sublicense the Kortext Software, Service or eContent. You may not copy, decompile, reverse engineer, disassemble or attempt to derive the source code, modify, or create derivative works of the Kortext Software, any updates, or any part thereof (except as and only to the extent any foregoing restriction is prohibited by applicable law or to the extent as may be permitted by the licensing terms governing use of any open sourced components included with the Kortext Software). Any attempt to do so is a violation of the rights of Kortext and its licensors, in violation of this Agreement and may be subject to prosecution and damages.
		10. To the extent that any part of the Service may be used to reproduce materials, such use is limited to reproduction of non-copyrighted materials, materials in which you own the copyright, or materials you are authorised or legally permitted to reproduce. Title and intellectual property rights in and to any content displayed by or accessed through the Service belongs to the respective content owner. Such content may be protected by copyright or other intellectual property laws and treaties, and may be subject to terms of use of the third party providing such content. This Agreement does not grant you any rights to use, display or publicly perform such content.
		11. Third Party Acknowledgements Portions of the Service and Software may utilise or include third party software and other copyrighted material. Acknowledgements, licensing terms and disclaimers for such material are contained in the electronic documentation for the Kortext Software, and your use of such material is governed by their respective terms.
		12. Personal Use of the Service You also agree that the Service is provided for your own personal use. You also agree that you will not share your password to, or any printed portions of, the Service or any eContent or eResource with any other person. The rights being granted to you are personal in nature to you and may not be shared with, transferred or otherwise assigned to anyone else. In addition, you will not make print or electronic copies of any portions of the eContent for anyone other than yourself to use, nor will you employ or allow the use of your account for the purpose of executing scripts, programs, or other technologies designed or intended to create copies or otherwise reproduce eContent.
		13. Removal of eContent and eResources You agree that Kortext may, at any time and with or without prior notice, remove eContent or eResources or other content from the Service and/or withdraw or remove features of the Service if Kortext determines that, in its sole discretion, it does not possess the appropriate or necessary rights or for legal or regulatory reasons is no longer able to provide you with access to such eContent, eResource or other Content. In the event Kortext elects to remove any eContent or eResource from the Service, you agree that your sole and exclusive remedy shall be a refund for the removed eContent or eResource. You are advised to maintain back-up copies of any personal notes you may incorporate in order to personalise the Kortext experience in order to avoid these being lost in the event Kortext elects to remove any eContent or eResource from the Service in accordance with this paragraph.
		14. Prohibited Activities. When using the Service, you agree to refrain from doing any of the following:
			1. Redistributing, reselling or sharing eContent or eResources from the Service;
			2. Indexing scraping or using WebCrawler or any other similar software
			3. Making mass, automated or systematic extractions from the Service
			4. Violating applicable laws and regulations
			5. Using the Service to harm minors
			6. Interfering with others’ use of the Service
			7. Using the Service to invade the privacy of others, or to collect and use an individual’s personal and private information or to gain or attempt to gain unauthorised access to other computer systems via the Service
			8. Using the Service to create a false identity or to impersonate another person
			9. Using the Service to advertise or promote other Internet sites or services or any other business or activity
		15. In addition, you will not, either knowingly or with reckless disregard, participate in any actions intended to interrupt or otherwise negatively impact the Service. The foregoing rules set the minimum level of conduct that we expect from users of the Service. We also ask that you use common sense and be considerate towards other users. We reserve the right, at our sole discretion, to suspend or terminate your right to use the Service if you violate the aforementioned rules of conduct or engage in other conduct we deem, acting reasonably, to be inappropriate, objectionable or impairing a third party’s use of the Service or threatening the integrity or security of the Service.
		16. Enforcement of These Terms Except as described in this paragraph, any other use of the Service violates the terms and conditions of this Agreement for the Service and is strictly prohibited. We will pursue our legal and other rights against violators to the full extent permitted under applicable laws and regulations. In addition, you agree that Kortext has the right, without liability to you, to disclose any Registration Data (as defined in paragraph 11 below) and/or account information to law enforcement authorities, government officials, and/or a third party, as Kortext believes is reasonably necessary or appropriate to enforce and/or verify compliance with any part of this Agreement (including but not limited to Kortext’s right to cooperate with any legal process relating to your use of the Service, and/or a third party claim that your use of the Service is unlawful and/or infringes such third party’s rights).
		17. Your Information. You agree to provide accurate, current, and complete information required to register with the Service and at other points as may be required in the course of using the Service (“Registration Data”). You further agree to maintain and update your Registration Data as required to keep it accurate, current, and complete. Kortext may terminate your rights to any or all of the Service if any information you provide is false, inaccurate or incomplete. You agree that Kortext may store and use the Registration Data you provide
		18. No Modification of eContent or eResources. You agree that you will not modify, remove, delete, augment, add to, publish, transmit, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the content of the eContent or eResources, in whole or in part, except as expressly permitted by this Agreement or as permitted by the fair dealing provisions of UK copyright law. Amendment, Withdrawal or Removal of Features of the Service. The Service is intended to be an innovating and dynamic on-line publishing environment and Kortext may amend, withdraw or remove features of the Service at any time, and without prior notice to you.
		19. Pursuant to clause 4.4.8, this excludes the use by the Purchasing Authority and Authorised Users at their authorised organisations, who may incorporate link resolving software to access the Licensed Materials via Third Party Systems, if hosted on a Secure Network and using an appropriate method of authentication.”
		20. The Purchasing Authority shall:
			1. use reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Service and / or Licensed Materials from unauthorised use or other breach of this Licence;
			2. use reasonable endeavours to monitor compliance with this Licence and immediately upon becoming aware of any unauthorised use or other breach, inform the Provider. The Provider shall grant the Purchasing Authority 30 days to rectify such unauthorised use or other breach. The Purchasing Authority shall take all reasonable and appropriate steps to locate and attempt to stop individuals who are abusing the Service and thereafter take action, both to ensure that such activity ceases and to prevent any recurrence. If the breach is not rectified, the Provider shall have rights to terminate the Agreement.
		21. Nothing in this Licence shall make the Purchasing Authority liable for breach of the terms of the Licence by any Authorised User provided that the Purchasing Authority did not cause, knowingly assist or condone the continuation of such breach after becoming aware of an actual breach having occurred.
1. Service Availability

The Provider will:

provide notification of an Incident. Details are: Help Desk Tel: 01202 551203; email: support@kortext.com; Web [www.kortext.com](http://www.kortext.com) (can use electronic support forms both in the web pages and the web app). Kortext also provides FAQ’s, support PDF’s and bite sized how to videos <http://www.kortext.com/support/>

upload new issues or editions to the Server(s) within 06 working days of receipt of content from the publisher;

provided access to new issues or editions no later than the day of upload to Server.

The Provider will use all reasonable endeavours to:

Make the Provider's Service available via the Provider’s or third Party’s Service interface (the “native interface”, 24 hours per day 7 days per week 365 days per year). 99.8% compliance excluding problems beyond Publisher’s / Providers control and with the exception of scheduled or routine maintenance.

Measure availability / non-availability of the Service at an agreed frequency. Measured on a monthly basis.

Measure availability / non-availability of the Service of their Service Availability calculation. 100% compliance to the Service Availability Calculation as set out the Providers Licence.

Provide notification for scheduled maintenance to agreed timescales. At least 05 working days notice and / or at time of licensing.

Provide notification of an Incident within 02 hours of Incident occurring.

To fix and restore Service as a result of an Incident to an agreed timeframe within 02 working days of Incident occurring.

Provide a report of any Incident occurrence to an agreed timeframe. Report to be supplied no more than 07 working days after Incident resolution.

1. Service Access

The Provider will

* + 1. enable access for Authorised Users to the Service and Licensed Materials via the national Access and Identity Management System (AIMS). Currently the national AIMS system is EduServ OpenAthens with which Kortext is fully compliant;
		2. make the Licensed Materials compliant with OpenURL Link Resolver standards;
		3. provide title information to Link Resolver and A-Z list vendors to include as a minimum: Volume, issue, start page, journal linking key.

The Provider will use all reasonable endeavours to:

* + 1. Support Security Assertion Mark-up Language (SAML)
		2. Have in place a regular procedure for the refresh of Authorised Users records for the Eduserv OpenAthens service. Monthly refresh.
		3. Have in place policies and procedures to work closely with Eduserv to implement OpenAthens changes, adhering to action notifications / action requirements sent out by Eduserv for the OpenAthens service. The Provider also adheres to action notifications / action requirements sent out by Eduserv for the OpenAthens service. The Provider supports Eduserv delivery and access via OpenAthens authentication through a main point of contact on all service and support needs. The provider will register the main point of contact (named person, dedicated email and telephone number) in either the OpenAthens Federation Manager or OpenAthens SP interface
		4. Support dispersed users working on an NHS network and outside of it. If used on NHS premises access available via a portal that doesn’t require entry of an OpenAthens password e.g. IP (internet protocol) authentication.
		5. Be compliant with KBART standard. Kortext can demonstrate acceptable solution in place with nationally commissioned Link Resolver supplier.
		6. Provides data changes to agreed frequency for Link Resolver KnowledgeBase(s). Changes to data provided as frequently as the data changes.
		7. Provide WAYFLESS access at article-level with WAYfless URL for journals and books to title of URL.
		8. Have policies and procedures are in place to notify the nationally commissioned Link Resolver service of changes
		9. Support the national Link Resolver and Knowledge Base delivery through a main point of contact on all service and support needs.
		10. Provide at least 08 (eight) weeks’ notice (in advance of the changes becoming active) of changes to Provider’s platform linking schemes, such as changes to title or article level links.
		11. Ensure permanent access for content purchased in perpetuity.
1. Technical

The Provider will ensure full compliance with the following technical standards:

 Service and content is available and accessible on either Port 80 (for world wide web) or Port 443 (https);

 Service works with full functionality on IE 9 and above and is fully supported

Service works with partial functionality on IE 6, 7, 8.

The Provider will use reasonable endeavours to comply with:

* + 1. <https://www.gov.uk/service-manual/user-centred-design/accessibility> (partial compliance)
		2. <https://www.w3.org/standards/webdesign/> (partial compliance)
		3. <http://www.iso.org/iso/catalogue_detail.htm?csnumber=52075> (partial compliance)

Delivers content through mobile and digital devices by providing the ability to download to mobile and digital devices and providing service apps for such mobile devices; OR offering a separate web interface optimised for all mobile devices OR offering a fully responsive interface that will make it unnecessary to use alternative websites or apps

Kortext enables content to be discoverable through a variety of search options that can include search options such as native interface, NICE Evidence Search Healthcare Databases Advanced Search (HDAS), local portals, intranets, library management systems and Resource Discovery Systems.

Provides downloadable MARC records with the functionality to download MaRC records with embedded Order data, including frequency of publication and estimated date of publication.

1. User Support

The Provider will:

* + 1. provide a point of contact for helpdesk and support services. Help Desk Tel: 01202 551203; email: support@kortext.com; Web www.kortext.com (can also use electronic support forms both in the web pages and the web app). Kortext also provides FAQ’s, support PDF’s and bite sized how to videos http://www.kortext.com/support/

The Provider will use reasonable endeavours to

* + 1. Respond to complaints within the agreed timeframes of 01 working day of receipt and provide confirmation of action to be taken within 02 working days.
		2. Respond to General Enquiries within the agreed timeframe of 01 working day of receipt and provide confirmation of action to be taken within 02 working days.
		3. Resolve and close General Enquiries received within the agreed timeframe of “95% of all General Enquiries resolved within 18 working days”. Most Kortext enquiries can be resolved locally through the Kortext FAQ's and website support PDF's and short "How To" video's. The user can also contact Kortext directly from the book.
		4. Have standard procedure in place to notify purchasers of any duplication of content purchases within the same organisation.
		5. Offers training and education programmes to support usage.
1. Service Notifications

The Provider will:

* + 1. Provide notification of any anticipated material or substantial native interface changes (e.g. major redesign) within the 30 working day timelines.
		2. Provide notification of any significant change to users’ navigation of the native interface within the 30 working day timelines.
		3. Provide notification of any significant change which may result in an adverse effect on Authorised Users access to or use of the Licensed Materials within the 30 working day timelines.
		4. Provide notification of the withdrawal of Goods / Licensed Materials at least 60 working days’ notice prior to the withdrawal date of title(s). Notice to be provided within 14 days after removal for content for which the Provider no longer retains the right to provide or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful or otherwise objectionable.
		5. Provide notification of new content additions to the monthly timescales. "Monthly. In either printed or tagged electronic form, sorted by subject.
1. Service Reporting

The Provider will:

* + 1. Attend contract and service review meetings at least annually.
		2. Provide a regular contract management / service report at least annually, including a summary of performance for key Service standards, SLAs and KPI's in regular contract management / service report."
		3. Provide or facilitate the collection of monthly usage and statistical data. Statistics are COUNTER 4 compliant and will be available by 21st of the month."
1. Measurement & Related Payment

The Provider reserves the right at any time to withdraw the whole, a part or parts of the Licensed Materials for which it no longer retains the right to publish or provide, or which it has reasonable grounds to believe infringes Copyright or is defamatory, obscene, unlawful or otherwise objectionable. In the event of the withdrawal of the whole of the Licensed Materials under this clause 11.1, the Provider will refund that part of Fee paid for the remaining un-expired portion of the Term (proportional to the amount of the Licensed Materials / Goods unavailable).

Kortext will provide a service credit in the event of any unscheduled downtime or total loss of Service occurring for online only content.



Kortext will provide a service credit in the event that the full specified functionality of the Service is not available.

