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NATIONAL INSTITUTE FOR HEALTH

AND CARE EXCELLENCE

MA Healthcare Ltd. Provider Licence

For the

**NICE Electronic and Print Content
Framework Agreement**

**LOT 2**

**FOR THE PROVISION OF**

*Electronic Journals*

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1. Introduction

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

The Provider Licence is specific to MA Healthcare Ltd.’s supply of electronic journals 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”:

**“Authorised Users”** As defined in the Order Terms & Conditions;

**“Commercial Use”** Use for the purposes of monetary reward (whether by or for the Purchasing Authority or an Authorised User) by means of sale, resale, loan, transfer, hire or other form of exploitation of the Licensed Materials. For the avoidance of doubt, neither recovery of direct costs by the Purchasing Authority from Authorised Users, nor use by the Purchasing Authority or by an Authorised User of the Licensed Materials in the course of research funded by a commercial organisation, is deemed to be Commercial Use.

 **“Fee”** the fee for the Licensed Materials agreed by the parties from time to time, as set out in the Order Terms & Conditions.

 “**Incident**” A service or quality incident that results inthe unavailability of the Licensed Materials as set out in clause 5 of this Agreement.

 “**Level 1 Incident**” Incidents of urgent severity: the Service is totally unavailable, key functionality (search, browse, view and download content) is materially inoperative, or a majority of end users are unable to authenticate or be authorised.

 “**Level 2 Incident”** Incidents ofhigh severity: the Service is available, but key functionality (administration, content management, and web content management) is materially inoperative, or there are intermittent or isolated authentication or authorisation failures.

 “**Licensed Materials**” The electronic materials subject to this Agreement as defined in the Order Terms & Conditions and set out in the Specification.

 “**Order Terms & Conditions**” The Terms and Conditions of Contract to be agreed between the parties and set out in the NICE Electronic and Print Content Framework Agreement Order Terms & Conditions.

 “**Provider**” MA Healthcare Limited, whose registered address is at St. Jude’s Church, Dulwich Road, London, SE24 0PB.

 “**Provider’s Service**” The Provider’s provision of the technical infrastructure and functionality to assess and use the Service and/or the Licensed Materials, pursuant to or in accordance with this Agreement, as detailed in the Specification.

 “**Purchasing Authority**” As defined in the Order Terms & Conditions.

 “**Secure Network**” A network (whether a standalone network or a virtual network within the Internet) which is only accessible to Authorised Users approved by the Purchasing Authority whose identity is authenticated at the time of log-in and periodically thereafter consistent with current best practice, and whose conduct is subject to regulation by the Purchasing Authority.

 “**Server**”The server, either by the Provider’s server or a third party server designated by the Provider, on which the Licensed Materials are mounted and may be accessed.

**“Service”** As such term is defined in the Order Terms & Conditions.

**“Service Availability”** The availability of the Service as calculated by the service availability calculation as set out in Schedule 1.

**“Service Credit” T**he credit provided by the Provider to the Purchasing Authority for non-availability of the Service as calculated by the service credit calculation as set out in Schedule 1.

**“Service Standards”** The expected standards and objectives of the Service.

“**Specification**” The description of the Licenced Materials together with (where applicable) a brief description of Deliverables (as such term is defined in the Order Terms & Conditions) as defined and set out in the Order Terms & Conditions.

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

**“Working Day”** Any day which is not a Saturday, a Sunday or a bank or public holiday inEngland, orany location where a third party provider to the Provider in respect of the Services is located.

**“Working Hours”** Monday – Friday 9:00-17:00 Pacific Time (excluding US national holidays).

1. Contact Details

Name: Jas Atwal

 Job Title: Business Development Manager

Address: MA Healthcare Ltd., St. Jude’s Church, Dulwich Road, London, SE24 0PB. United Kingdom

 Telephone: 020 7501 6738

 Facsimile: n/a

 Email: jas.atwal@markallengroup.com

1. Service Usage

The Purchasing Authority, subject to clause 4.3 below, may:

* + 1. allow Authorised Users to have access to the Licensed Materials from the Server via the Secure Network;
		2. provide Authorised Users with integrated access and an integrated author, article title, abstract and keyword index to the Licensed Materials;
		3. provide single printed or electronic copies of single articles at the request of individual Authorised Users;
		4. display, download or print the Licensed Materials, including screenshots, for the purpose of internal marketing or testing for training Authorised Users or groups of Authorised Users;
		5. alter or modify the format of the Licensed Materials as necessary to provide an equivalent level of service to Authorised Users with appropriate documented print or other disabilities.

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

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;
		7. 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.”
		8. 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.
		9. Nothing in this Licence shall in any way exclude, modify or affect any of the Purchasing Authority’s rights under the Copyright Designs and Patents Act 1988 or the Copy and Rights in Databases Regulations 1997 or any statutory instruments made thereunder or any amending legislation.
	1. Neither the Purchasing Authority nor Authorised Users may:
		1. remove or alter the authors’ names or the Provider’s copyright notices or other means of identification or disclaimers as they appear in the Licensed Materials;
		2. systematically make print or electronic copies of multiple extracts of the Licensed Materials for any purpose or use robots, spiders, crawlers or other automated downloading programs to:
			1. continuously and automatically search or index any of the Licensed Materials, (except in the case of connecting the Licensed Materials to the Purchasing Authority’s federated, metasearch or discovery services), unless authorized by the Provider;
			2. harvest personal information for purposes of sending out unsolicited or unauthorized material; or
			3. cause disruption to the working of the Server.
		3. mount or distribute any part of the Licensed Material on any electronic network, including without limitation the Internet and the World Wide Web, other than the Secure Network
	2. The Provider’s explicit written permission must be obtained in order to:
		1. use all or any part of the Licensed Materials for any Commercial Use;
		2. distribute the whole or any part of the Licensed Materials to anyone other than Authorised Users except as provided in Clause 4.2.7 above;
		3. publish, distribute or make available the Licensed Materials, works based on the Licensed Materials or works which combine them with any other material, other than as permitted in this Licence;
		4. alter, abridge, adapt or modify the Licensed Materials, except to the extent necessary to make them perceptible on a computer screen to Authorised Users. For the avoidance of doubt, no alteration of the words or their order is permitted.
	3. Pursuant to clauses 4.4 – 4.5, 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
	4. The Purchasing Authority shall:
		1. use reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Licensed Materials;
		2. use reasonable endeavours to notify Authorised Users of the terms and conditions of this Licence and take steps to protect the Licensed Materials from unauthorised use or other breach of this Licence;
		3. use reasonable endeavours to monitor compliance with this Licence and immediately upon becoming aware of any unauthorised use or other breach, inform the Provider and take all reasonable and appropriate steps, including disciplinary action, both to ensure that such activity ceases and to prevent any recurrence;
		4. unless access to the Licensed Materials is controlled by IP address authentication, issue passwords or other access information only to Authorised Users and use all reasonable endeavours to ensure that Authorised Users do not divulge their passwords or other access information to any third party;
		5. provide the Provider, within thirty (30) days of the date of this Agreement, with information sufficient to enable the Provider to provide access to the Licensed Material in accordance with its obligation under this Agreement. Should the Purchasing Authority make any significant change to such information, it will notify the Provider not less than ten (10) days before the change takes effect.
		6. keep full and up-to-date records of all Authorised Users and their access details and authenticated IP addresses (where applicable) and provide the Provider with details of such additions, deletions or other alterations to such records as are necessary to enable the Publisher to provide Authorised Users with access to the Licensed Materials as contemplated by this Licence;
		7. use reasonable endeavours to ensure that only Authorised Users are permitted access to the Licensed Materials.
1. Service Availability

The Provider will:

* + 1. provide notification of an Incident. Details are: support@markallengroup.com; (0044) 01722 716997
		2. upload new issues or editions to the Server(s) within 06 working days of receipt of content from the publisher;
		3. provided access to new issues or editions no later than the day of upload to Server;
		4. use all reasonable endeavours to make the Licensed Materials available to the Purchasing Authority and to Authorised Users at all times and on a twenty-four-hour basis, save for technical failures or acts of God, and to restore access to the Licensed Materials as soon as possible in the event of an interruption or suspension of the Service.
		5. notify the Purchasing Authority of any routine maintenance work at least five (5) Working Days in advance of undertaking;
		6. comply with the Service Availability Calculation set out in Schedule 1;
		7. measure and report the availability or the non-availability of the Service on a monthly basis;

In relation to any Incidents, the Provider will:

* + 1. provide the Purchasing Authority with a notification affecting access to Licensed Materials within two (2) Working Hours:
		2. use all reasonable endeavours to ensure that any Incident shall be corrected as follows:
			1. Level 1 Incidents within eight (8) Working Hours of notification on a 24/7/365 basis; and
			2. Level 2 Incidents within two (2) Working Days;
		3. provide the Purchasing Authority with a report of an Incident via a third-party supplier within seven (7) Working Days after resolution of the Incident.
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 MA Healthcare Limited is fully compliant;
		2. be registered as a live entity in the OpenAthens Federation and UK Access Management Federation Metadata;
		3. undertake monthly updates of Authorised User records in cases where the Purchasing Authority provides Provider with full details of such records;
		4. use all reasonable endeavours to adhere to action notifications/action requirements sent out by Eduserv for the OpenAthens Service;
		5. support Eduserv delivery and access via OpenAthens authentication by providing a main point of contact for all service and support needs;
		6. ensure that details of the main point of contact are available via the OpenAthens Federation Metadata;
		7. if used on the Purchasing Authority’s premises, make access available via a non-OpenAthens means of authentication, e.g. IP (internet protocol) authentication;
		8. be fully compliant with KBART standards and has in place an acceptable solution with the nationally commissioned Link Resolver supplier;
		9. make the Licensed Materials compliant with OpenURL Link Resolver standards;
		10. provide title information to Link Resolver and A-Z list vendors to include as a minimum: volume, issue, start page, journal linking key;
		11. provide at least sixty (60) Working Days notification of any data changes for Link Resolver Knowledge Bases;
		12. provide WAYFLess URLs for any page on the Service;
		13. support the national Link Resolver and Knowledge Base delivery through a main point of contact on all service and support needs, and will provide at least eight (8) weeks’ notice (in advance of the changes becoming active) of changes to the Provider’s platform linking schemes;
		14. ensure permanent access to content purchased in perpetuity through continued access to content via Service, and through guaranteed access via an archiving solution.
1. Technical

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

* + 1. Service and content is available and accessible on either Port 80 (for world wide web) or Port 443 (https);
		2. Service works with full functionality on IE 9 and above and is fully supported;
		3. Service works with partial functionality on IE 6, 7, 8.

7.2 The Provider will use all reasonable efforts to comply with the following technical standards where possible:

 7.2.1 <https://www.gov.uk/service-manual/user-centred-design/accessibility>

 7.2.2 <https://www.w3.org/standards/webdesign/>

 7.2.3 <http://www.iso.org/iso/catalogue_detail.htm?csnumber=52075>

7.3 The Provider will enable the Service to be delivered to mobile devices via a mobile-optimised interface.

7.4 The Provider will use all reasonable efforts to enable the Licenced Material to be discoverable through the required variety of search options.

1. User Support

The Provider will:

* + 1. provide a point of contact for helpdesk and support services. Details are: support@markallengroup.com; (0044) 01722 716997
		2. respond to complaints sent to the designated MA Healthcare contract manager with confirmation of action within two (2) Working Days of receipt.
		3. respond to general enquires sent to the MAG Online Library Support Desk within two (2) Working Days of receipt.
		4. use all reasonable efforts to resolve ninety-five percent (95%) of general queries sent to the MAG Online Library Support Desk within eighteen (18) Working Days, with the exception of any queries that may require further technical assistance via third party providers.
		5. notify Purchasing Authorities of any duplication of content purchases within the same organisation (under a single Athens ID).
		6. assist the Purchasing Authority with promotional collateral in order to support and further usage of subscriptions to the Licenced Material.
1. Service Notifications
	1. The Provider will:
		1. notify the Purchasing Authority of any anticipated material or substantial native interface changes within thirty (30) Working Days.
		2. notify the Purchasing Authority of any significant change to users' navigation of the native interface within thirty (30) Working Days prior to changes going live.
		3. notify the Purchasing Authority of any significant change which may result in an adverse effect on Authorised Users' access to or use of the Licensed Materials within thirty (30) Working Days prior to changes going live.
		4. notify the Purchasing Authority of any withdrawal of Licensed Material within sixty (60) Working Days. Fourteen (14) Working Days’ notice will be provided for content to which MA Healthcare 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 on a monthly basis via TOC alerts or monthly report.
2. Service Reporting
	1. The Provider will:
		1. attend contract review meetings on a quarterly and annual basis.
		2. provide contract management/service reports, including a summary of performance for key Service standards, SLAs and KPI's, on an annual basis.
		3. provide COUNTER (or equivalent) usage data on the number of titles, of abstracts and articles downloaded, by journal title, on a monthly basis for the Provider’s and the Purchasing Authority’s private internal use only. Such usage data will be complied in a manner consistent with applicable privacy laws, and the anonymity of individual users shall be fully protected.
		4. provide on a monthly basis details of the number of Gold Open Access articles published in relation to the total number of articles published in the Licensed Materials.
3. Measurement & Related Payment
	1. 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).
	2. The Provider will offer the Purchasing Authority a Service Credit in the event of any unscheduled downtime or total loss of service occurring. This will be offered as a percentage reduction against the Fee paid. The credit percentage offered against the annual fee is as follows:

|  |  |
| --- | --- |
| **Service Availability** | **Credit Percentage** |
| 99.3% - 100% | 0% |
| 99% - 99.29% | 3% |
| 98% - 98.99% | 5% |
| 97% - 97.99% | 7% |
| 97.8% and below | 10% |

11.3 The Provider will offer the Purchasing Authority a Service Credit in the event that the full specified functionality of the Service is not available. This will be offered as a percentage reduction against the Fee paid. The credit percentage offered against the annual fee is as follows:

|  |  |
| --- | --- |
| **Service Availability** | **Credit Percentage** |
| 99.3% - 100% | 0% |
| 99% - 99.29% | 3% |
| 98% - 98.99% | 5% |
| 97% - 97.99% | 7% |
| 97.8% and below | 10% |

**SCHEDULE 1**

**Service Availability**

Service Availability Calculation

A third-party monitoring service will monitor four pages on the site: home page, an abstract page, a full-text page and advanced search. The site’s uptime percentage will be the mean of uptime percentages for these pages, each of which will be calculated using the following:

Minutes downtime in the calendar month ÷ minutes uptime in the calendar month (i.e. days x 24 x 60) = uptime %