NATIONAL INSTITUTE FOR HEALTH

AND CARE EXCELLENCE

NICE Electronic and Print Content Framework Agreement (NICEFAHEE/2125)

# Call Off Order Form

# This Call Off Order Form forms Part A of the “Call Off Terms & Conditions” of the NICE Electronic and Print Framework Agreement (NICEFAHEE/2125)

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# 1. The Agreement

THIS Agreement is made the [*insert the day that the Purchasing Authority or Beneficiary sign*] day of [*insert the month and year that the health authority or NHS Trust sign*] (‘**the Purchasing Authority**’)

The Provider is a supplier of NICE Electronic and Print Framework Agreement and agreed to provide the Service(s) and Deliverable(s) under the terms of the Framework Agreement (contract number: NICEFAHEE/2125).

| **Reference** | NICE Electronic and Print Content Framework Agreement: contract number NICEFAHEE/2125 |
| --- | --- |
| **Agreement Title** | ***[Enter title***] |
| **Agreement Description** | *[****Enter description]*** |
| **Commencement Date** | ***[Enter start date]*** |
| **Expiry Date** | ***[Enter expiry date]*** |
| **Agreement Value** | ***[Enter value]*** |
| **Purchase Order Number** | ***[Enter purchase order number if applicable]*** |
| **Contract Number** | ***[Enter contract number if applicable]*** |

# 

# 2. Introduction

2.1 This Call Off Order Form and the “Call Off Terms & Conditions” (which together form the “Call Off contract”) is issued under the NICE Electronic and Print Framework Agreement (NICEFAHEE/2125).

2.2 The “Call Off Terms & Conditions” document is available to download from the [NICE Electronic and Print Framework website](https://www.nice.org.uk/about/nice-communities/library-and-knowledge-services-staff/buy-books-journals-and-databases)

2.3 The Purchasing Authority must complete this Call Off Order Form and send to the Provider with the “Call Off Terms & Conditions” (the Call Off Contract).

2.4 The Purchasing Authority should use this Call Off Order Form to specify requirements for the Service(s) and Deliverable(s) when placing an Order.

2.5 There are terms from the “Call Off Terms & Conditions” document that may be referred to in this Call Off Order Form. These are highlighted in this document in (Guidance Notes) (included in round brackets).

2.6 The Call Off Order Form cannot be used to alter existing terms or add any extra terms that materially change the Service(s) & Deliverable(s) offered by the Provider and defined in the quote.

2.7 Words and expressions in this Call Off Order Form will be interpreted to have the meanings as defined in clauses 4: Definitions of the “Call Off Terms & Conditions”.

# 3. Principal Contact Details

3.1 For the Purchasing Authority:

Title: ***[Enter title***]

Name: [***Enter name***]

Email: ***[Enter email]***

Phone: [***Enter phone number***]

3.2 For the Provider:

Title: ***[Enter title***]

Name: [***Enter name***]

Email: [***Enter email***]

Phone: [***Enter phone number***]

# 4. Term

| **Commencement Date** | This Call-Off contract Starts on **[*enter a date*]** and is valid for **[*enter number of*]** **[*days or months*]**.  (Guidance Note: The date and number of days or months is subject to clauses 10: Term of the “Call Off Terms & Conditions”) |
| --- | --- |
| **Termination** | The notice period for the Purchasing Authority is a maximum of **[*30*]** days from the date of written notice for Termination without cause (Guidance Note: as per clause 31.6.1 of the “Call Off Terms & Conditions”). |
| **Extension Period** | This Call-off contract can be extended by the Purchasing Authority for **[*enter number*]** period(s) of [***up to]*** [***enter number***] months each, by giving the Provider **[*enter number of*] [*weeks or months*]** written notice before its expiry.  (Guidance Note: the extension period after 24 months should not exceed the maximum permitted under the Framework Agreement which is 2 periods of up to 12 months each.) |

# 5. Purchasing Authority Contractual Details

|  |  |
| --- | --- |
| **Lots** | This Call-Off contract is for the provision of Knowledge Resources under:   * Lot 1: Sole supplier - direct award **[*delete as appropriate*]** * Lot 2: Print Books **[*delete as appropriate*]** * Lot 3: eBooks **[*delete as appropriate*]** * Lot 4: Print and eJournals **[*delete as appropriate*]** * Lot 5: Databases and Evidence Summaries **[*delete as appropriate*]** |
| **Service(s) & Deliverables required** | The Service(s) & Deliverable(s) to be provided by the Provider under the above Lots and outlined below:   * **[*enter text to summarise e.g., name of database, number of journals as detailed in Annex ONE: Specification*]**   Detail set out in Annex ONE: Specification to this Call Off Order Form ***[if required / applicable]***.  (Guidance Note: summarise details above in the case of a multiple order agreement, you should state the anticipated volumes of all Service(s) and Deliverable(s) under this Call-Off contract although there is no guarantee to the Provider of volume). |
| **Additional Services Required** | **[*Enter text*]**  (Guidance Note: print bookshelf ready services, journals consolidation service.)  Detail set out in Annex ONE: Specification to this Call Off Order Form ***[if required / applicable***]. |
| **Location** | The Service(s) and Deliverable(s) will be delivered to **[enter required delivery address(es)]**.  (Guidance Note: if relevant, include details of the main locations being served by the Provider through this Call-Off contract.) |
| **Licence Terms** | The following licences form an integral part of this Agreement, please state which contractual document shall be used:  [***Delete as appropriate***].   * The HSCC Licence. * The Agent Agreement. * The Publishers licence(s) (**to be used for Agent supply only**).   (Guidance Note: in the case of Agent supply, where the Purchasing Authority chooses to use the Publisher’s licence(s), it is the responsibility of the Purchasing Authority and the Agent to ensure any such licence does not conflict any terms of the “Call Off Terms & Conditions” as per clauses 2 and 16 of that document.) |
| **Core Standards, Service Level Agreements (SLAs), Key Performance Indicators (KPIs):** | The core standards and any associated SLAs and KPIs used are:  [***Delete as appropriate***]   1. As detailed in the HSCC Licence; or 2. As detailed in the Agent Agreement.   (Guidance Note: the core standards are available on the [NICE Electronic and Print Framework website](https://www.nice.org.uk/about/nice-communities/library-and-knowledge-services-staff/buy-books-journals-and-databases) |
| **Limit on Parties’ Liability** | The annual total liability for all Defaults will not exceed the greater of *[****£ enter amount***] or *[****% enter percentag*e**] of the Agreement Price by the Purchasing Authority to the Provider during the Call-Off contract Term (whichever is the greater).  The aggregate liability in circumstances where the Purchasing Authority terminates this Agreement shall not exceed the greater of *[****£ enter amount***] or *[****% enter percentage***] of the Agreement Price payable by the Purchasing Authority to the Provider.  (Guidance Note: consider what figure will represent adequate cover for potential loss for contract breaches. 125% is often used or include a figure that adequately covers your potential loss. See clauses 20: Liability and Indemnity and 21: Limitation of Liability of the “Call Off Terms & Conditions”.) |
| **Insurance** | The insurance(s) required will be:  [***Delete as appropriate***]   * a minimum insurance period of ***[6 years***] following the expiration or ending of this Call-Off contract; * professional indemnity insurance cover to be held by the Provider and by any agent, Subcontractor or consultant involved in the supply of the Services. This professional indemnity insurance cover will have a minimum limit of indemnity of ***[£1,000,000***] for each individual claim or any higher limit the Purchasing Authority requires (and as required by Law); * employers' liability insurance with a minimum limit of ***[£5,000,000***] or any higher minimum limit required by Law.   **(**Guidance Note**:** consider if the above are appropriate to your purchases and make any necessary changes, provided they comply with clauses 22: Insurance of the “Call Off Terms & Conditions”.) |
| **Force Majeure** | A Party may terminate this Order Agreement if the other Party is affected by a Force Majeure Event that lasts for more than [***enter number***] consecutive days.  (Guidance Note: see clauses 34: Force Majeure of the “Call Off Terms & Conditions”.) |
| **Purchasing Authority’s Responsibilities** | The Purchasing Authority is responsible for **[*enter text]****.*  (Guidance Note: e.g., example; providing user base numbers to the Provider; technical implementation responsibilities that might impacts access to databases or Provider’s delivery of the Service). |

# 6. Additional Purchasing Authority terms

| **Performance of the Service(s) and Deliverable(s)** | This Call-Off contract will include the following key milestones:   * [***enter text****]* * *[****enter text***]   (Guidance Note: details inserted could include implementation plan, exit and offboarding plans and associated milestones. Consider setting milestones with associated Service(s) and Deliverable(s) and agreeing payments against those Service(s) and Deliverable(s).]  (Guidance Note: delete this section if not relevant to your purchase) |
| --- | --- |
| **Warranties, Representations** | In addition to clauses 39: Warranty in the “Call Off Terms & Conditions”, the Provider warrants and represents to the Purchasing Authority that [***enter any additional warranties and representations***].  (Guidance Note: delete section if not relevant). |
| **Additional Terms** | Within the scope of the Call-Off contract, the Provider will [***enter supplemental requirements***] as detailed in Annex SIX: Additional Terms  (Guidance Note: delete section if not relevant).  (Guidance Note: ensure any amendments or refinements are subject to clauses 2. Overriding Provisions and clauses 16. Licences to this Agreement of the of the “Call Off Terms & Conditions”). |
| **Alternative Clauses** | These alternative clauses, which have been selected from Annex TWO: Schedule for Northern Ireland Law or Annex THREE: Schedule for Scottish Law, will apply:   * *[****enter Alternative clauses****]*   (Guidance Note: This is usually only relevant to Purchasing Authorities from Scotland and Northern Ireland).  (Guidance Note: delete section if not relevant). |
| **Personal Data and Data Subjects** | Confirm whether Annex SEVEN: Personal Data Processing Instructions of this Call Off Order Form is being used. |

# 7. Sub-contractors

| **Subcontractors or Partners** | The following is a list of the Provider’s Subcontractors or Partners:  **[*enter text*]**.  (Guidance Note: include details of any Subcontractors to be used to deliver the Service(s) and Deliverable(s).  See clauses 25: Sub-contractors of the ““Call Off Terms & Conditions”.)  [***Delete this section if not applicable***] |
| --- | --- |

# 8. Payments & Invoicing Schedule

|  | Invoicing |
| --- | --- |
| **Payment Method** | The payment method for this Call-Off contract is **[*enter payment method]****.*  *e.g., BACS, GPC card* |
| **Payment Profile** | The payment profile for this Call-Off contract is *[****[monthly][quarterly*]** in ***[arrears / advance***]].  (Guidance Note: many Providers offer payment options, state here which method of payment and profile has been agreed. The Purchasing Authority does not have to agree to payment in advance.) |
| **Invoice Frequency** | The Provider will issue electronic invoices *[****[monthly][quarterly*]** in ***[arrears / advance***]]. The Purchasing Authority will pay the Provider within **[*30*]** days of receipt of a valid invoice. |
| **Invoice Delivery** | Invoices will be sent to [***enter name and contact information****]*. |
| **Invoice Details Required** | All invoices must include:   * currency * exchange rate used at quotation  [***Delete if not applicable***] * [***enter required information].  (***Guidance Note: for example: purchase order, project reference)] |

|  |  |
| --- | --- |
|  | Agreement Price and Fees |
| **Fixed Agreement Price (non-Agent supply)** | Subject to clauses 11: Agreement Price of the “Call Off Terms & Conditions”, the price is fixed and shall not be subject to any increase whatsoever by the Provider during the Term.  The total value of this Call-Off contract is *[****enter value***].  (Guidance Note: delete if using Agent supply). |
| **Agent supply only** | Subject to clauses 11.5 of the “Call Off Order Terms & Conditions,” in the case of Agent supply where the Publisher has not released to the Agent the fixed price for the following year(s) post year 1, the estimated price and the date the final fixed price shall be released by the Publisher is detailed below.  **[*Add / delete the below as appropriate*]**  **Year 1**  Fixed price – ***[£xxx,xxx.xx]*** excluding VAT.  **Year 2**  Estimated price – ***[£xxx,xxx.xx***] excluding VAT.  Date fixed price release date from Publisher: ***[dd/mm/yyyy]***  The Purchasing Authority and the Agent shall ensure that this Call Off Order Form is amended under clauses 32: Agreement or Specification Change or Variation, no later than 10 days after the Publisher has released the fixed price, to agree the final Agreement Price;  Or terminate the agreement on the expiry date.  **OR** state as described in Annex FOUR: Pricing Schedule**.**  (Guidance Note: delete section if not using Agent supply) |
| **Breakdown Call-Off Contract Charges** | The breakdown of the charges is ***[enter information here***]  **OR** state as described in Annex FOUR: Pricing Schedule. |
| **Renewals** | Do renewals apply? **[*Yes / No*].**  (Guidance Note: where Yes – see clauses 11.8 and 11.9 of the “Call Off Terms & Conditions”). |

# 9. Formation of Contract

9.1 By signing and returning this Call Off Order Form, the Provider agrees to enter a Call-Off contract with the Purchasing Authority.

9.2 The Parties agree that they have read the Call Off Order Form and the “Call Off Terms & Conditions” terms and by signing below agree to be bound by this Call-Off contract.

9.3 This Call-Off contract will be formed when the Purchasing Authority acknowledges receipt of the signed copy of the Call Off Order Form from the Provider.

9.4 In cases of any ambiguity or conflict, the terms and conditions of this Call Off Order Form will supersede those of the Provider terms and conditions as per the order of precedence set out in clauses 2: Overriding Provisions to the “Call Off Terms & Conditions”.

# 10. Signatures

AS WITNESS the hands of the parties the day and year below first written.

## Authorised Signatories

|  |
| --- |
| For and on behalf of The Provider: |
| Signature |
| Print Name |
| Date |
| Position  (Budget Holder) |

|  |
| --- |
| **For and on behalf of The Purchasing Authority** |
| Signature |
| Print Name |
| Date |
| Position  (Budget Holder) |

# ANNEX ONE: Specification

(Guidance Note: to be defined by the Purchasing Authority and / or Beneficiary as detailed in the Call Off Order Form.

Example details might include:

* Licensed Materials: (*name of database / journal titles*).
* Subscription Period.
* Service: (*search interface; unlimited and concurrent access for all Authorised Users as set out in “NHS Eligibility Criteria;” access via NHS Open Athens authentication; discoverable by xxx*)
* Format: (*platform name).*
* Fee (*as set out in Annex FOUR: Pricing Schedule*).
* Content discovery requirements (*link resolvers; RDS; via IP address*).
* Content upload frequency.
* Reporting and monitoring requirement (*frequency, report details etc.).*
* Helpdesk and support contact details.

# ANNEX TWO: Schedule for Northern Ireland Law

1. This Annex TWO: “Schedule for Northern Ireland Law” may be included as an annex to the “Call Off Order Form” to adapt the terms set out in the “Call Off Terms & Conditions” document, so that the Agreement is under Northern Ireland Law as follows:
2. Clause 25: **Staff Resources**:
   1. Clause 25.2: substitute “the Equality Act” with “Section 75 of the Northern Ireland Act 1998.”
   2. Clause 25.3: substitute “the Equality Act” with “Section 75 of the Northern Ireland Act 1998.”
3. Changes to Clause 32: **Dispute Resolution Procedure**:
   1. Clause 32.4: substitute the full clause 32.4 with the following wording: “If the Dispute is not resolved at that meeting, the Parties can attempt to settle it by mediation using the Dispute Resolution Service of Northern Ireland (DRS) Code of Practice current time at the time of the Dispute. If the Parties cannot agree on a mediator, the mediator will be nominated by DRS.”
   2. Clause 41: **Law**:
      1. Clause 41.1 the term “English courts” shall be replaced with “N. Ireland courts.”
      2. Clause 41.1 the term “English Law” shall be replaced with “the Law of Northern Ireland.”

# ANNEX THREE: Schedule for Scottish Law

1. This Annex TWO: “Schedule for Scottish Law” may be included as an annex to the “Call Off Order Form” to adapt the terms set out in the “Call Off Terms & Conditions” document, so that the Agreement is under Scottish Law as follows:
2. Clause 8: **Beneficiaries party to this Agreement**:
   1. Clause 8.2 the words “Contract (Rights of Third Parties) Act 1999” shall be replaced by “Contract (Third Party Rights) (Scotland) Act 2017 (CTPRSA)”.
3. Changes to Clause 32: **Dispute Resolution Procedure**:
   1. Clause 32.4: add the following wording: “The governing law and jurisdiction provisions of CEDR’s Model Mediation Agreement shall be deemed to be amended to refer to the laws of Scotland and the Court of Session.”
   2. Clause 41: **Law**:
      1. Clause 41.1 the term “English courts” shall be replaced with “Scottish courts.”
      2. Clause 41.1 the term “English Law” shall be replaced with ““the Law of Scotland.”

# Annex FOUR: Pricing Schedule

The Provider will invoice the Purchasing Authority or Beneficiary ***[monthly/quarterly/annually]*** in ***[advance / arrears]*** according to the schedule below for the Service(s) and Deliverable(s) provided and subject to invoicing terms in section 23: Invoicing and Payment to the “Call Off Terms & Conditions” document.

# Annex FIVE: Beneficiaries Party to this Agreement

The Beneficiaries listed below shall be party to this Agreement and are the Beneficiaries to which the Purchasing Authority has purchased the Service(s) and Deliverable(s) as set out in the Specification (Annex ONE to the “Call Off Order Form”) in partnership, collaboration or consortia:

|  |  |  |
| --- | --- | --- |
| Organisation  (from Beneficiaries List) | Address | Contact Name of Beneficiary |
|  |  |  |
|  |  |  |
|  |  |  |

# Annex SIX: Additional Terms

(Guidance Note: The Purchasing Authority to use this Annex SIX to set out the terms for any additional service requirements which are not contained in the Health & Social Care Content (HSCC) Licence, the Agent Agreement or the Publisher’s licence.

Examples of such additional service requirements might include a technical specification for the provisions of a database API, ability to integrate content into national or local Resource Discovery Systems (RDS), local usage requirements, communications criteria.)

# Annex SEVEN: Personal Data Processing Instructions

(Guidance Note – this annex should be completed by the Purchasing Authority in conjunction with clauses 29. Data Protection of the “Order Terms & Conditions” for the agreed authentication method required to access the Service(s) and Deliverable(s). The guidance provided for each section in the table below is for completion when using NHS Open Athens authentication and may need to be amended as appropriate to authentication method to be used.

**Please delete the guidance notes before sending to Provider**.)

|  |  |
| --- | --- |
| **Subject matter of the processing** | (Guidance Note: this should be a high level, short description of what the processing is about e.g.  “Granting and allowing access to the Licensed Materials using attributes passed to the Provider from the OpenAthens authentication service”  or  “Granting and allowing access to the Licensed Materials using the Providers access and authentication service”). |
| **Duration of the processing** | (Guidance Note: clearly set out the duration of the processing including date. This will normally be the same as the contract duration). |
| **Purposes of the processing** | (Guidance Note: Cover all intended purposes e.g.  “Where the Provider requires any personal identifiable attributes from the OpenAthens authentication service, the Provider may only use such attributes for the purposes of allowing access to Licensed Materials for that individual and no other.”  or  “The Provider may only use personal identifiable data for the purposes of allowing access to Licensed Materials for that individual and no other”). |
| **Nature of the processing** | (Guidance Note: This has a wide meaning and includes collection, storage, use dissemination etc. e.g.  “The Provider may use any personal identifiable attributes for the purpose of granting access to Licensed Materials.”  or  “The Provider may only use personal identifiable data for the purposes of allowing access to Licensed Materials for that individual and no other.”  “The Provider may not use or share any personal identifiable attributes in any circumstances or for any purpose what-so-ever.”  or  “The Provider may not use or share any personal identifiable data in any circumstances or for any purpose what-so-ever.”) |
| **Type of Personal Data** | (Guidance Note: Examples include name, address, date of birth, NI number, telephone number, images, biometric data etc.  In the case of Open Athens authentication, this would include the following attributes: Persistent user identifier; Organisation ID; Entitlement; Role.  or  If using the Providers’ identification / authentication process, list what the Provider asks for when setting up a user account.) |
| **Categories of Data Subject** | (Guidance Note: List who the users are e.g., patients, staff, members of the public etc.  If Authorised Users fall under the NHS Open Athens Eligibility Criteria in England, insert “Eligible persons as defined at: https://www.nice.org.uk/about/what-we-do/evidence-services/journals-and-databases/openathens/openathens-eligibility) |
| **Plan for return and destruction of the data once the processing is complete** | (Guidance Note:  “Unless there is a statutory obligation to preserve the data the Provider shall not store personal identifiable attributes. The attributes will be deleted on the closing of each user session.”  Or  “Unless there is a statutory obligation to preserve the data the Provider shall delete personal identifiable data within [***x***] [***days/ hours***] or [***on the closing of each user session***). |

# ANNEX EIGHT: Variation to Agreement

Schedule 1 to the Agreement between the Purchasing Authority and the provider of                  on the Day of 20 (“the Agreement”).

For the purposes of this Memorandum of Agreement:

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

This Memorandum of Agreement, pertain to the development of [add details] (the “Services and Deliverables”) to be undertaken by the Provider and is agreed by the Provider and the Purchasing Authority as a current addition to Annex ONE to the Call Off Order Form.

The Development Services and Supply will:

be developed by the Provider in compliance with the Specification or annex(es) contained in this Memorandum, and

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

This Development Services and Supply consists of:

**[To be completed]**

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

The Milestones for deliverables which are required by the Purchasing Authority are detailed in this Memorandum. The Purchasing Authority requires, and the Provider will deliver [annually, quarterly, monthly] a Monitoring Report in the form and by the times set out within the Schedule for Reporting & Monitoring.

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 Purchasing Authority, anything done or omitted to be done on the Purchasing Authority 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 Memorandum of Agreement, unless otherwise stated, or the context otherwise requires.

| Signature on behalf of the Provider  Name  Title  Date | Signature on behalf of the Purchasing Authority  Name  Title  Date |
| --- | --- |