

**NATIONAL INSTITUTE FOR
HEALTH
AND CARE EXCELLENCE**

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

Call Off Order Form

for knowledge resource(s) supplied by BMJ

Publishing under Lot 1

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

1.1. THIS Agreement is made on the 13th of December 2022 ('**the Purchasing Authority**')

BETWEEN:-

- (1) Health Education England whose principal office is 1st Floor, Blenheim House, Duncombe Street, Leeds LS1 4PL ('**the Purchasing Authority**'); and
- (2) BMJ Publishing Group Ltd whose registered office is at BMA House, Tavistock Square, London, WC1H 9JR. ('**the Provider**').

1.2. 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).

1.3. Agreement details

Reference	NICE Electronic and Print Content Framework Agreement: contract number NICEFAHEE/2125
Agreement Title & Description	Subscription to eJournals: BMJ Sexual & Reproductive Health and BMJ Supportive & Palliative Care
Commencement Date	
Expiry Date	
Agreement Value	(VAT not payable)
Purchase Order Number	[to follow when signed by BMJ]
Contract Number	[to follow when signed by BMJ]

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 at: [Buy books, journals and databases | Library and knowledge services staff | NICE Communities | About | NICE](#)
- 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:

Name: [REDACTED]

[Email:](#) [REDACTED]

- 3.2 For the Provider:

Name: [REDACTED]

Phone: [REDACTED]

4. Term

Term	<p>This Call-Off contract Starts on the Commencement Date and is valid until and including the Expiry Date.</p> <p>(Guidance Note: The Term is subject to clauses 10: Term of the “Call Off Terms & Conditions”)</p>
Termination	<p>The notice period for the Purchasing Authority is a maximum of 30 days from the date of written notice for Termination without cause.</p> <p>(Guidance Note: as per clause 31.6.1 of the “Call Off Terms & Conditions”).</p>
Extension Period	<p>This Call-Off contract can be extended by the Purchasing Authority for 1 or 2 period(s) of 12 months each, by giving the Provider 1 month written notice before its expiry.</p> <p>(Guidance Note: the extension period should not exceed the maximum permitted under the Framework Agreement which is 2 periods of up to 12 months each.)</p>

5. Purchasing Authority Contractual Details

Lots	<p>This Call-Off contract is for the provision of Knowledge Resources under:</p> <ul style="list-style-type: none"> ● Lot 1: Sole supplier - direct award
Service(s) & Deliverables required	<p>The Service(s) & Deliverable(s) to be provided by the Provider under the above Lot are</p> <p>detailed in Annex ONE: Specification to this Call-Off Order Form</p> <p>(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).</p>
Additional Services Required	Detail set out in Annex ONE: Specification to this Call Off Order Form.
Location	NOT USED
Licence Terms	<p>The following licences form an integral part of this Agreement, please state which contractual document shall be used:</p> <p>The HSCC Licence.</p>
Core Standards, Service Level Agreements (SLAs), Key Performance Indicators (KPIs):	<p>The core standards and any associated SLAs and KPIs used are as detailed in the HSCC Licence;</p> <p>(Guidance Note: the core standards are available on the NICE Electronic and Print Framework website at: https://www.nice.org.uk/about/nice-communities/library-and-knowledge-services-staff/buy-books--journals-and-databases/provider-information/core-standards--non-agents)</p>
Limit on Parties' Liability	<p>The annual total liability for all Defaults will not exceed the greater of 125 % of the Agreement Price by the Purchasing Authority to the Provider during the Call-Off contract Term (whichever is the greater).</p> <p>The aggregate liability in circumstances where the Purchasing Authority terminates this Agreement shall</p>

	<p>not exceed the greater of 125 % of the Agreement Price payable by the Purchasing Authority to the Provider.</p> <p>(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".)</p>
Insurance	<p>The insurance(s) required will be:</p> <ul style="list-style-type: none"> ● 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. <p>(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".)</p>
Force Majeure	<p>Either Party may terminate this Order Agreement if the other Party is affected by a Force Majeure Event that lasts for more than 14 consecutive days.</p> <p>(Guidance Note: see clauses 32: Force Majeure of the "Call Off Terms & Conditions".)</p>
Purchasing Authority's Responsibilities	NOT APPLICABLE

6. Additional Purchasing Authority terms

Performance of the Service(s) and Deliverable(s)	NOT APPLICABLE
Warranties, Representations	NOT APPLICABLE
Additional Terms	NOT USED
Alternative Clauses	NOT USED
Personal Data and Data Subjects	See Annex SEVEN: Personal Data Processing Instructions. (Guidance Note: Annex SEVEN is worded for use with NHS OpenAthens authentication in England ONLY)

7. Sub-contractors

Subcontractors or Partners	NOT APPLICABLE
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8. Payments & Invoicing Schedule

	Invoicing
Payment Method	The payment method for this Call-Off contract is BACS.
Payment Profile	The payment profile for this Call-Off contract is payment in one instalment the invoice should be received by 31 December 2022. (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 in accordance with the payment profile above. The Purchasing Authority will pay the Provider within 30 days of receipt of a valid invoice.

	Invoicing
Invoice Delivery	Invoices will be sent electronically to sbs.apinvoicing@nhs.net and include the following address: [REDACTED]
Invoice Details Required	All invoices must state purchase order number.

	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 the Agreement Value stated in clause 1.3.
Agent supply only	Not Applicable
Breakdown Call-Off Contract Charges	As described in Annex FOUR: Pricing Schedule.

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 (complete tables below)

For and on behalf of The Provider:	
Signature	
Print Name	
Date	
Position	

For and on behalf of The Purchasing Authority	
Signature	
Print Name	
Date	
Position	

ANNEX ONE: Specification

1.1. (Subject to clauses 3.1.1, 3.1.2 and 9.2.1.2 of the “LOT 1: Health & Social Care Content (HSCC) Licence Agreement”), the Licensed Materials will be available to the Purchasing Authority and Authorised Users in the media, format and time schedule set out in “Table 1: Licensed Materials & Service”.

Table 1: Licensed Materials & Service

Materials	Subscription Period	Service	Format	Fee
<p>BMJ</p> <p>Journal</p>	<p>12 months</p>	<p>Full online access available by the day of the print publication.</p> <p>Unlimited and concurrent access for all Authorised Users in England as set out in “ANNEX TWO</p>	<ul style="list-style-type: none"> • Provider's Service • Highwire Platform • www.bmj.com 	<p>See Annex Three</p>

		<p>NHS Eligibility Criteria – Electronic Content”.</p> <p>Access via Open Athens authentication.</p> <p>Licensed Materials discoverable via the NHS Knowledge and Library Hub (including elements provided by EBSCO and Third Iron).</p>		
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1.2. Content Discovery

1.2.1. In addition to “Table 1: Licensed Materials & Service”, the Licensed Materials should be discoverable by (but not limited to):

- Proprietary discovery systems, including those provided by EBSCO, ProQuest ExLibris Primo and Wolters Kluwer, via their link resolver and knowledge bases.
- a) Commonly used search tools which use OpenURL linking, including Google Scholar and PubMed.
- The online catalogues of library management systems.
- b) Other search interfaces which use OpenURL and/or WAYF-less URLs.
- Local intranets
- c) Via IP address and OpenAthens whilst connected to NHS networks, and via NHS OpenAthens when off-site.

1.3. Reporting and Monitoring

1.3.1. The Provider will attend quarterly review meetings and an annual review meeting with the Purchasing Authority.

1.3.2. All quarterly and annual reporting will be provided on “Annex Nine: BMJ Management Report NCC eJournals.xls” to the NICE Contract Manager ten (10) working days prior to the scheduled contract review meeting date.

1.3.3. “Annex Nine: BMJ Management Report NCC eJournals.xls” will provide a summary of performance against any agreed KPIs, to include (but not limited to):

1.3.3.1. Service Availability statistics and details;

1.3.3.2. scheduled maintenance (both advertised and used), showing the start and finish date and time of each period of scheduled maintenance;

1.3.3.3. COUNTER compliant (R5) usage reports;

1.3.3.4. details of any Incidents, their resolution and response times;

1.3.3.5. details of General Enquiries and complaints received and resolution;

1.3.3.6. (subject to clauses 1 (Communications) of the “Annex SEVEN: Additional Terms” to this “Order Terms & Conditions”, details of any global communications circulated that refer to this Agreement;

1.3.3.7. material changes to publication schedules as determined in the reasonable opinion of the Provider.

1.3.3.8. details of material changes to, or removal of, any content within the Licensed Materials (both occurring over the last quarter and any pre-notification of changes or removal over the next quarterly period);

1.3.3.9. (subject to clauses 8.1.5 8.4 and 10.3.3 of the “LOT 1: Health & Social Care Content (HSCC) Licence Agreement”), an annual summary of the number of Gold Open Access articles published in relation to the total number of articles published in the Licensed Materials.

1.3.4. (Subject to clauses 6.7, 9.2.3, 9.2.3.3, and 10.3.3 of the “LOT 1: Health & Social Care Content (HSCC) Licence Agreement”, the Provider will provide COUNTER compliant usage data to the Purchasing Authority at: CommissionedContentReports@evidence.nhs.uk and carol.cartwright@nice.org.uk from the 20th of following month.

1.3.5. The following COUNTER (Release Five) usage reports must be made available (but not limited to):

Report	Description	Status
Journal Report 1	Number of Successful Full-Text Article Requests by Month and Journal	Standard
Journal Report 1 GOA	Number of Successful Gold Open Access Full-Text Article Requests by Month and Journal	Standard
Journal Report 2	Access Denied to Full-Text Articles by Month, Journal and Category	Standard
Journal Report 5	Number of Successful Full-Text Article Requests by Year-of-Publication (YOP) and Journal	Standard
Title Report 1 (formerly Journal/Book Report 1)	Number of Successful Requests for Journal Full-Text Articles and Book Sections by Month and Title	Desirable

Source: <https://www.projectcounter.org/code-of-practice-sections/usage-reports/>

1.4. The Purchasing Authority reserves the right to request the Provider to enter into discussions during the course of the Agreement where the requirement arises for the provision of future Service Deliverables. Such discussions will be subject to appropriate negotiations and agreement and managed through the agreed contract management review meetings and management reporting template ("Annex Nine: BMJ Management Report NCC eJournals.xls").

1.5. Main Points of Contact

NICE Contract Manager & Authorised Officer

ANNEX TWO: Schedule for Northern Ireland Law

2. 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:

3. Clause 25: **Staff Resources** :

- 1.1. Clause 25.2: substitute “the Equality Act” with “Section 75 of the Northern Ireland Act 1998.”

- 1.2. Clause 25.3: substitute “the Equality Act” with “Section 75 of the Northern Ireland Act 1998.”

4. Changes to Clause 32: **Dispute Resolution Procedure** :

- 1.3. 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.”

- 1.4. Clause 41: **Law** :

- 1.4.1. Clause 41.1 the term “English courts” shall be replaced with “N. Ireland courts.”

- 1.4.2. Clause 41.1 the term “English Law” shall be replaced with “the Law of Northern Ireland.”

ANNEX THREE: Schedule for Scottish Law

2. 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:
3. Clause 8: **Beneficiaries party to this Agreement** :
 - 3.1. Clause 8.2 the words “Contract (Rights of Third Parties) Act 1999” shall be replaced by “Contract (Third Party Rights) (Scotland) Act 2017 (CTPRSA)”.
5. Changes to Clause 32: **Dispute Resolution Procedure** :
 - 3.2. 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.”
 - 3.3. Clause 41: **Law** :
 - 3.3.1. Clause 41.1 the term “English courts” shall be replaced with “Scottish courts.”
 - 3.3.2. Clause 41.1 the term “English Law” shall be replaced with “the Law of Scotland.”
- 6.

ANNEX FOUR: Pricing Schedule

The Provider will invoice the Purchasing Authority or Beneficiary according to the schedule below for the Service(s) and Deliverable(s) provided and subject to invoicing terms in section 21: Invoicing and Payment to the “Call Off Terms & Conditions” document. Insert payment table below:

Subscription period	Payment (excl VAT)	Invoice due date
<div></div>	<div></div>	<div></div>

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

NOT USED.

ANNEX SEVEN: Personal Data Processing

Instructions

(Guidance Note – this annex should be completed by the Purchasing Authority in conjunction with clauses 27. 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.)

Subject matter of the processing	Granting and allowing access to the Licensed Materials using attributes passed to the Provider from the OpenAthens authentication service”
Duration of the processing	From the Commencement date to one month after the Expiry date (Guidance Note: This allows for an orderly closedown of service and resolution of issues. Can be amended as required).
Purposes of the processing	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.
Nature of the processing	The Provider may only use personal identifiable data for the purposes of allowing access to Licensed Materials for that individual and no other.
Type of Personal Data	The following attributes from the Open Athens authentication service: Persistent user identifier; Organisation ID; Entitlement; Role.
Categories of Data Subject	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	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.

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;
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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	Signature on behalf of the Purchasing Authority
Name	Name
Title	Title
Date	Date