

**NATIONAL INSTITUTE FOR HEALTH  
AND CARE EXCELLENCE**

**NICE Electronic and Print Content  
Framework Agreement**

**Order Terms & Conditions**

THIS AGREEMENT is made the 19<sup>th</sup> day of March 2021 ('**the Purchasing Authority**')

BETWEEN:-

**Party 1** Public Health England whose principal office is Wellington House 133-155 Waterloo Road London, SE1 8UG ('**The Purchasing Authority**'); and

**Party 2** Elsevier whose registered office is at Radarweg 29, 1043 NX Amsterdam, The Netherlands, ('**the Provider**').

**WHEREAS:-**

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

(C) On the basis of its offer, the Contracting Authority selected the Provider (and may have appointed other Providers) to provide Electronic and Print Content to Public Health England in the manner and on the terms described herein.

## **1. Overriding Provisions**

- 1.1. The Provider agrees to supply the print and electronic Content Resources in accordance with these terms, including the Provider's terms as identified in the Framework and incorporated into any Order and Agreement.
- 1.2. In the event of and only to the extent of any conflict or ambiguity between the clauses of this Agreement, the provisions of the Annexes, any document referred to in the clauses of this Agreement (including the Provider's Licence / Agreement) and the Order Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 1.2.1. the "Terms and Conditions of Contract for NICE Electronic and Print Content" and any Annexes";
  - 1.2.2. the "Order Terms & Conditions" and any Annexes (excluding Provider Terms);

- 1.2.3. The “Health & Social Care Content (HSCC) Licence” and any appendices (Lot 1) or the Provider’s Licence / Agreement and any appendices (Lot 2).
- 1.3. The Provider acknowledges and accepts that the order of prevailing provisions in this Agreement is as set out in Clause 1.2 above.

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## 2. Introduction

- 2.1. The “Order Terms & Conditions” must be used for the purchase and supply of print and electronic content resources:
  - 2.1.1. from an appointed Provider(s) to the NICE Electronic and Print Content Framework Agreement (NICE Framework);
  - 2.1.2. for single or multiple sites;
  - 2.1.3. from both Lot 1 and Lot 2 of the NICE Framework;
- 2.2. The “Order Terms & Conditions” must be used in conjunction with the relevant Licence Agreement. These combined documents form the Agreement between the Purchaser and appointed Framework Provider. Guidance Notes are provided throughout.
- 2.3. The NICE Electronic & Print Content Framework Agreement can be used by eligible Purchasing Authorities and Beneficiaries throughout England, Wales and Northern Ireland to purchase health and social care related Content Resources. The Content Resources that can be purchased through this Framework Agreement are:
  - 2.3.1. **Print Journals:** periodical publications published as physical hard copies.
  - 2.3.2. **Electronic Journals:** also known as ejournals, e-journals, and electronic serial - periodical publications published in electronic format(s) including HTML and PDF.
  - 2.3.3. **Print Books:** books published as physical hard copies including textbooks and monographs.
  - 2.3.4. **Electronic Books:** also known as eBooks, digital versions of print books which may contain added functionality; available in a number of electronic formats and digital models.
  - 2.3.5. **Databases** – includes Abstracting & Indexing / Bibliographic databases, full text databases, reference works, digital image collections.
  - 2.3.6. **Aggregated Evidence Resource Summaries:** provide information summary products, or web based compendiums, designed to provide health professionals with comprehensive evidence in the format of synthesized information and content.
  - 2.3.7. **Point of Care (PoC) tools:** peer reviewed, evidence based information services for healthcare professionals often used at the point of care. Can provide a combination of Content Resources, practice guidelines, clinical trials, symptoms, tests and diagnosis, treatment options; clinical decision support tools with topic reviews.

- 2.4. The Framework Agreement does not provide for the purchase of content related technical products or eResources such as (but not limited to) Resource Discovery Services, workflow solutions, Horizon Scanning products, reference management software/products, examination software/products and A-Z Finders.
- 2.5. Full details of the Framework's specification are set out in "ANNEX FOUR: Framework Agreement Structure & Specification" to this document. Content Resources can be purchased from the following Lots:
- 2.5.1. LOT 1 Content Supply: Health & Social Care Content (HSCC) Licence (NICECF/HSCC/01); and / or
- 2.5.2. LOT 2 Content Supply: Provider License / Agreement (NICECF/PLA/02).
- 2.6. Subject to 2.5.1, all terms in the "Health & Social Care Content (HSCC) Licence" and the "Provider's Licence" or "Provider's Agreement" are pre-agreed with the Provider(s) for the purchase of Content Resources. Where additional terms are agreed in Annex SEVEN: "Additional Terms", subject to clause 1, these terms shall not conflict with, or materially change, the terms in these "Order Terms & Conditions" and any Annexes, or the "Health & Social Care Content (HSCC) Licence".

### 3. Defined Terms

- 3.1. In these terms and conditions the words and expressions below will be interpreted to have the meanings adjacent to them:-

<b>"Agent"</b>	Means an organisation or intermediary which does not own the Intellectual Property Rights (IPR) to the Goods or Licensed Materials provided. The Agent acting on the Purchasing Authority's behalf, may undertake any or all of the obligations of the Purchasing Authority under the "Order Terms & Conditions" and the Licence Agreement(s), as agreed between the Purchasing Authority and the Agent;. For the avoidance of doubt, Agent also Includes booksellers.
<b>"Aggregator"</b>	means, an organisation or intermediary which either owns the Intellectual Property Rights (IPR), or a licence to grant access to Intellectual Property for Authorised Users; subject to the Agreement, to act on the Purchasing Authority's behalf;

<b>“Agreement”</b>	means the whole Agreement, which consists of the “Order Terms & Conditions” and any Annexes; the Licence Agreement(s) and any Appendices, specific to this Agreement;
<b>“Agreement Manager”</b>	means a person designated as such by the Provider from time to time as notified in writing to the Purchasing Authority to act as the duly authorised representative of the Provider for all purposes connected with the Agreement, including any authorised representative of such person;
<b>"Term"</b>	means (subject to earlier termination in accordance with its terms or by operation of law) the duration of the Agreement, starting on the Commencement Date, as set out in the Specification or the Licence Agreement(s);
<b>"Agreement Price"</b>	means the monies payable by the Purchasing Authority or any Beneficiaries to the Provider for the provision of the Deliverable(s) as set out in the Order or Licence Agreement(s) to this Agreement. In the absence of agreement by the Parties to the contrary, the Agreement Price shall be inclusive of all taxes, duties, expenses and disbursements save for VAT, at the prevailing rate (if applicable) and shall include the costs of all equipment and materials including all travelling expenses involved and all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Provider of any Intellectual Property or Intellectual Property Rights for the purpose of performance of the Agreement;
<b>“Agreement Standard”</b>	means such standard as complies in each and every respect with all relevant provisions of the Agreement;
<b>“Affected Party”</b>	means in the context of clause 32 the Party whose obligations under the Agreement have been affected by the Force Majeure Event;



<b>“AIMS”</b>	means an Access and Identity Management Service which provides authenticated access for eligible users to electronic Content Resources purchased;
<b>“Annexes”</b>	means the Annexes to this Agreement and/or Orders and/or the Agreement;
<b>"Authorised Officer"</b>	means a person designated as such by the Purchasing Authority from time to time as notified in writing to the Provider to act as the representative of the Purchasing Authority for all purposes connected with the Agreement, including any authorised representative of such person;
<b>“Authorised Users”</b>	means, the eligible persons as set out in the Specification who are permitted access to the Goods and/ or Service(s) and / or Licensed Materials;
<b>"Beneficiary"</b>	<p>means entities below which the Purchasing Authority may have purchased on behalf of or another Beneficiary as defined in Annex FOUR. Only those Beneficiaries listed in Annex FOUR shall be Party to this agreement and be eligible to use the deliverables as detailed in Annex ONE:</p> <ul style="list-style-type: none"> <li>(a) the Secretary of State for Health;</li> <li>(b) the Department of Health and all agencies thereof;</li> <li>(c) the NHS Commissioning Board;</li> <li>(d) Clinical Commissioning Groups;</li> <li>(e) any NHS Trust;</li> <li>(f) any NHS Foundation Trust;</li> <li>(g) any Care Trust;</li> <li>(h) Public Health England;</li> <li>(i) Monitor;</li> <li>(j) the NHS Trust Development Authority;</li> </ul>

	(k)	Care Quality Commission;
	(l)	Healthwatch England;
	(m)	Health and Social Care Information Centre;
	(n)	Health and Well-Being Boards;
	(o)	Local Healthwatch organisations;
	(p)	Health Education England;
	(q)	Local Authorities with a public health role;
	(r)	Local Education and Training Boards;
	(s)	GPs;
	(t)	Royal Colleges in England;
	(u)	Local Health Boards (Wales);
	(v)	the Wales Centre for Health;
	(w)	the Welsh Ministers;
	(x)	the Health and Social Care Board (Northern Ireland);
	(y)	Health and Social Care Trusts (Northern Ireland);
	(z)	the Northern Ireland Central Services Agency;
	(aa)	special health and social services agencies (Northern Ireland);
	(bb)	the Department of Health, Social Services and Public Safety (Northern Ireland);
	(cc)	Department of Health Arm's Length Bodies, including Special Health Authorities (SpHA), Executive Agencies, Executive Non-Departmental Public bodies (NDPB), Statutory Committees and Department of Health-owned companies not provided for above;

	<p>(dd) the Medical Research Council;</p> <p>(ee) Higher Education institutions engaged in providing NHS commissioned healthcare or NHS commissioned education;</p> <p>(ff) independent, private, charitable and voluntary sector organisations which provide NHS-commissioned care or work in partnership with the NHS to provide care to NHS patients, including hospices, cancer support charities and social enterprise organisations;</p> <p>(gg) any body replacing or providing similar or equivalent services to the above;</p> <p>(hh) any statutory successor to any of the above;</p> <p>and <b>"Beneficiaries"</b> shall be construed accordingly;</p>
<b>"Buyers Guide"</b>	means the information and guidance provided by the Contracting Authority to Purchasing Authorities to support the purchase of Content Resources through this Framework;
<b>"Commencement Date"</b>	means the date agreed by the Parties in writing or detailed in the Specification or Licence Agreement(s), on which the provision of the Deliverable(s) is to start;
<b>"Confidential Information"</b>	<p>means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Agreement and:</p> <p>(i) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 1998) or (in the case of the Purchasing Authority or any Beneficiary) which relates to any patient or his or her treatment or medical history; or</p>

	<p>(ii) the release of which is likely to prejudice the commercial interests of the Purchasing Authority or (as the case may be) any Beneficiary or the Provider respectively; or</p> <p>(iii) which is a trade secret;</p>
<b>“Content Resources”</b>	means published health and social care related content such as books, journals, databases, aggregated evidence resource summaries, Point of Care (PoC) products, in a both print and electronic formats;
<b>“Contracting Authority”</b>	means the National Institute for Health and Care Excellence (NICE), that concludes this Framework Agreement for the Deliverables intended for the Purchasing Authorities, or any successor body;
<b>“Copyright”</b>	means, a property right as described in Section 1 of the Copyright Designs and Patents Act 1988;
<b>Controller</b>	means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law
<b>“Costs”</b>	includes costs, charges, outgoings and expenses of every description;
<b>“Default”</b>	means, any breach of the obligations of either Party, (including but not limited to fundamental breach or breach of a fundamental term), or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in

	respect of which such Party is liable to the other hereunder.
<b>“Data Subject Access Request”</b>	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
<b>“Data Protection Impact Assessment”</b>	means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
<b>“Data Protection Legislation”</b>	means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [ subject to Royal Assent ] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;
<b>“Data Subject, Data Protection Officer”</b>	take the meaning given in the GDPR.
<b>“Data Loss Event”</b>	means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
<b>“Deliverable(s)”</b>	means the Goods and/ or Service(s) and / or Licensed Materials detailed in the Specification or Licence Agreement(s); the Service Level Agreement(s) and Key Performance Indicators(s) as set out in the Licence Agreement(s);
<b>"Dispute Resolution Procedure"</b>	means the process of resolving disputes between Parties as set out in clause 31;
<b>“Eligibility Criteria”</b>	means the eligible organisations as listed in Annex TWO who are authorised users of electronic content and any additional users listed by the Purchasing Authority in the Order;

<b>“DPA 2018”</b>	means Data Protection Act 2018.
<b>“Force Majeure Event”</b>	means one or more of the following to the extent that it is not attributable to the Provider or the Provider’s staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the Deliverable(s), but which is not confined to the workforce of the Provider or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Agreement;
<b>“Framework Agreement”</b>	means the terms and conditions of contract for NICE Electronic and Print Content Framework Agreement that has been entered into between the Provider and the Contracting Authority. The agreement which defines, in broad terms, the scope and terms and conditions under which this agreement will be entered into;
<b>"Good Industry Practice"</b>	means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a

	skilled and experienced service provider engaged in the provision of Deliverable(s) similar to the Deliverable(s) under the same or similar circumstances as those applicable to the Agreement and which are in accordance with any codes of practice published by relevant trade associations;
<b>"GDPR"</b>	means the General Data Protection Regulation (Regulation (EU) 2016/679).
<b>"Goods"</b>	means print content resources such as books and journals, as set out in the Specification, or in new Specifications to the "Order Terms & Conditions", that may be agreed by the Parties from time to time;
<b>"Government Procurement Card (GPC)"</b>	means, a branded VISA Purchasing Card provided to the UK public sector through a Framework Agreement between Government Procurement Service, VISA and seven VISA-Issuing Banks and enables all UK public sector organisations, including Central Government, Local Government, NHS, Education, Emergency Services, Charities, NDPB's and others to benefit from a pre-negotiated contract.
<b>"Insolvent"</b>	means: <ul style="list-style-type: none"> <li>a) if the Provider is an individual, that individual or where the Provider is a partnership, any partner(s) in that firm becomes bankrupt or shall have a receiving order, administration order or interim order made against him, or shall make any composition or scheme of arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or any application shall be made for sequestration of his estate, or a trust</li> </ul>

	<p>deed shall be granted by him for the benefit of his creditors;</p> <p>b) if the Provider is a company, the passing by the Provider of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Provider or the dissolution of the Provider, or if an administrator is appointed, or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Provider or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of any of the Provider's assets, or if the Provider makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and</p> <p>c) any event in any jurisdiction other than England and Wales which is analogous to any of the above;</p>
<b>"Intellectual Property"</b>	<p>means any and all patents, trade marks, service marks, domain names, registered designs, utility models, applications for and the right to make applications for any of such rights, inventions, Know-How (as defined below), unregistered trademarks and service marks, trade and business names, including rights in any get-up or trade dress, copyrights, (including rights in computer software and in websites) unregistered design rights and other rights in designs and rights in databases,</p>



	subsisting anywhere in the world; the right for the maker of a database to prevent extraction or reutilisation or both of the whole or a substantial part of the content of that database, as described in Directive 96/9/EC on the legal protection of databases; rights under licences, consents, orders, statutes or otherwise in respect of any rights of the nature specified in this definition "Intellectual Property"; and rights of the same or similar effect or nature as or to those above in each case in any jurisdiction;
<b>"Intellectual Property Right (IPR)"</b>	includes the right to exploit any Intellectual Property or any right which is similar or analogous to any Intellectual Property; any moral right; any licence, right or interest of any kind arising out of or granted or created in respect of any Intellectual Property; any right to bring an action for passing off or any similar or analogous proceeding;
<b>"In writing"</b>	shall be interpreted to include any document which is recorded in manuscript, typescript, any electronic communication as defined in Section 15 of the Electronic Communications Act 2000 but excluding mobile telephone text messages;
<b>"Licence Agreement(s)"</b>	means the terms detailed in the Lot 1: "Health & Social Care Content (HSCC) Licence" or the Lot 2: "Provider's Licence" or "Provider's Agreement" to this Agreement for print and electronic Content Resources;
<b>"LED"</b>	means Law Enforcement Directive (Directive (EU) 2016/680).
<b>"Licensed Materials"</b>	means the electronic material as set out in the Specification, or in new Specifications to the "Order Terms & Conditions" that may be agreed by the Parties from time to time;
<b>"Location"</b>	means the location or premises of the Purchasing Authority and / or Beneficiary;

<b>"Month"</b>	means a calendar month;
<b>"NICE Framework"</b>	means the NICE Electronic and Print Content Framework Agreement;
<b>"Order"</b>	means an Order raised by the Purchasing Authority and/or Beneficiary for the supply of Goods and / or Service(s) and/or Licensed Materials pursuant to this Agreement;
<b>"Party"</b>	means any party to the Agreement individually and "Parties" refers to all of the parties to the Agreement collectively. A Party shall include all permitted assigns of the Party in question. All persons who are not a Party to the Agreement are third parties;
<b>"Person"</b>	includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns;
<b>"Personal Data"</b>	means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
<b>"Provider"</b>	means, an organisation appointed to the NICE Electronic and Print Content Framework Agreement to supply Deliverables which has entered into this Agreement to supply the Deliverables as detailed in the Specification;

<b>“Personal Data Breach”</b>	means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.
<b>“Processing”</b>	means any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
<b>“Processor”</b>	means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
<b>“Protective Measures”</b>	means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
<b>“Publisher”</b>	means, an entity which owns the intellectual property rights (IPR) to the Licensed Materials and / or Goods.
<b>“Purchaser”</b>	means the Purchasing Authority or the Beneficiary placing the Order;
<b>"Purchasing Authority"</b>	means the organisation (of which is listed in the Beneficiary list) and as detailed in (Party 1) of this Agreement, placing the Order for the supply of Deliverable(s);

<b>“Receipt of Order”</b>	means if personally delivered, at the time of delivery; if sent by facsimile, at the time of transmission; if posted, at the expiration of 48 hours or (in the case of airmail seven (07) days) after the envelope containing the same was delivered into the custody of the postal authorities; and if sent by electronic mail, provided that a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent;
<b>“Review”</b>	means the Purchasing Authority’s assessment of the Providers performance to deliver the Deliverable(s) to this Agreement, as detailed in clause 16 to this document “Order Terms & Conditions” and the Licence Agreement(s);
<b>“Service(s)”</b>	means the services provided by the Provider pursuant to, and in accordance with, the Agreement as detailed in the Specification;
<b>“Specification”</b>	means the description of the Goods and / or Service(s) and / or Licensed Materials together with (where applicable) a brief description of Deliverables to be provided pursuant to such Goods and / or Service(s) and / or Licensed Materials as referred to, set out in or attached Annex ONE to this document “Order Terms & Conditions”, or to the Order (or, if no such description is set out in or attached to the Order, as set out in or attached to any documentation inviting the Provider to tender for the appointment to provide the Deliverable(s), including any documentation issued, or made available, to the Provider by any Purchasing Authority or Beneficiary);
<b>“Subscriptions”</b>	means annual subscriptions to print or electronic journals;

<b>“Sub-processor”</b>	means any third Party appointed to process Personal Data on behalf of the Provider related to this Agreement.
<b>“TUPE”</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees rights in the event of transfer of undertakings, businesses or parts of undertakings of businesses;
<b>“Year”</b>	means during the Term, any twelve (12) Month Term commencing on the Commencement Date or an anniversary thereof.

## 4. Interpretation

- 4.1. In these terms and conditions some clauses are attributed to either print or electronic Content Resources or particular types of Provider such as an Agent. Where the clauses referred to in this clause 4.1 are not relevant to the Purchasing Authorities Order, the text of such clauses are required to be removed by the Purchasing Authority and replaced with the terms “Not used”.
- 4.2. In these terms and conditions, all references to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made thereunder and any conditions attaching thereto. Moreover, where relevant, references to English statutes and statutory provisions shall be construed as references also to equivalent statutes, statutory provisions and rules of law in other jurisdictions.
- 4.3. Any headings to clauses, together with the front cover and the contents are for convenience only and shall not affect the meaning of these terms and conditions. Unless the contrary is stated references to clauses shall mean the clauses of these terms and conditions.
- 4.4. Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning.
- 4.5. Where a term of these terms and conditions provides for a list of items following the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such

list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting these terms and conditions. General words are not to be given a restrictive meaning where they are followed by examples intended to be included within the general words.

- 4.6. In these terms and conditions, words importing any particular gender include all other genders.
- 4.7. In these terms and conditions, words importing the singular only shall include the plural and vice versa.
- 4.8. In these terms and conditions "staff" and "employees" shall have the same meaning.
- 4.9. Subject to the contrary being stated expressly or implied from the context in these terms and conditions, all communication between the Parties shall be in writing.
- 4.10. All monetary amounts are expressed in pounds sterling but in the event that pounds sterling is replaced as legal tender in the United Kingdom by a different currency, then all monetary amounts shall be converted into such other currency at the rate prevailing on the date such other currency first became legal tender in the United Kingdom.
- 4.11. Except where an express provision of these terms and conditions states the contrary, each and every obligation of a Party under the terms and conditions is to be performed at that Party's cost.
- 4.12. Any reference to a Party "procuring" another person to act or omit to act in a certain manner shall mean that the Party so procuring shall be liable for any default on the part of the person acting or omitting to act in that manner.
- 4.13. All references to the Agreement include (subject to all relevant approvals) a reference to the Agreement as amended, supplemented, substituted, novated or assigned from time to time.

## **5. Appointment**

- 5.1. The Purchasing Authority appoints the Provider to provide the Deliverable(s):
  - 5.1.1. promptly (and in any event within any time targets as may be set out in the Specification or Licence Agreement(s)) and in a professional and courteous manner so as to reflect and promote the image of the Purchasing Authority and any Beneficiary;

- 5.1.2. strictly in accordance with the Specification or Licence Agreement(s) and all provisions of the Agreement; and
  - 5.1.3. in accordance with all applicable UK laws and regulations and Good Industry Practice; and
  - 5.1.4. in accordance with the policies (including, when on any premises of the Purchasing Authority or any Beneficiary or on any other premises where it works alongside the Purchasing Authority's or any Beneficiary's staff, any racial discrimination and equal opportunities policies), rules, procedures and the quality standards of the Purchasing Authority and any Beneficiary as amended from time to time.
- 5.2. The Provider accepts the terms of appointment as provided in clause 5.1
- 5.3. The Provider warrants to the Purchasing Authority and / or Beneficiary it has satisfied itself this it has the abilities and experience in all respects to perform the Deliverable(s) pursuant to the Agreement.

## **6. Purchasing Authority's Undertakings**

- 6.1. The Purchasing Authority shall:
- 6.1.1. provide the Provider of electronic Content Resources, within thirty (30) days of the Commencement Date, with information sufficient to enable the Provider to enable access to the Service(s) and / or Licensed Materials in accordance with any obligations agreed in the Licence Agreement(s). 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;
  - 6.1.2. keep full and up-to-date records of all Authorised Users and provide the Provider with details of such additions, deletions or other alterations to such records as are necessary to enable the Provider to provide Authorised Users with access to the Service(s) and / or Licensed Materials;
  - 6.1.3. use reasonable endeavours to ensure that all Authorised Users are appropriately notified of the importance of respecting the intellectual property rights in the Goods and / or Licensed Materials.

## **7. Authorised Officers**

- 7.1. Any notice, information or communication given to or made by the Authorised Officer shall be deemed to have been given or made by the Purchasing Authority.

- 7.2. Subject to 7.1, the Provider shall decline from providing any the Deliverable(s) or the service in any notice, information or communication issued by any of the Purchasing Authority's or Beneficiary's staff who are not Authorised Officers.

## **8. Beneficiaries party to this Agreement**

- 8.1. The Purchasing Authority and the Provider acknowledge that they have entered into the Agreement for the benefit of each of the Beneficiaries as listed in Annex FOUR. Accordingly, the Purchasing Authority and the Provider agree that (in addition to the Purchasing Authority's right to enforce the Agreement) each of the Beneficiaries may enforce any term of the Agreement.
- 8.2. Save as provided in clause 8.1 a person who is not a Party to the Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.
- 8.3. All or any of the provisions of the Agreement may not be rescinded or varied by any of the Parties in their entirety or in part without the consent and written agreement of the Purchasing Authority.
- 8.4. The Provider agrees that it will not raise as a defence or set off against any claim brought against it by any Beneficiary any matter which would have been available to the Provider by way of defence or set off if proceedings had been brought against the Provider by the Purchasing Authority or by way of counterclaim against such of the Beneficiaries if such Beneficiary had been a Party to the Agreement.
- 8.5. In the event that any Beneficiary listed in Annex FOUR wishes to enforce its rights under this clause 8 the following provisions shall apply:
- 8.5.1. the Beneficiaries shall have the same rights as the Purchasing Authority under the Agreement and shall comply with all the terms of the Agreement which apply to the Beneficiary;
  - 8.5.2. the Beneficiaries agree to exercise their rights under the Agreement only in relation to the provision of Deliverable(s) to the Purchasing Authority or any of the Beneficiaries and not for any other purpose whatsoever. In exercising their rights under the Agreement the Beneficiaries shall at all times treat all information concerning the Agreement with the strictest confidence and in accordance with Clause 26;
  - 8.5.3. the Beneficiaries shall not enter into any obligations in the name of the Purchasing Authority or any Beneficiary and shall not make any representations or give any warranties on behalf of the Purchasing Authority or any Beneficiary;



- 8.5.4. the Purchasing Authority shall not be liable to any Beneficiary for any acts or omissions of the Provider or for any loss, damage or other expenses incurred or suffered by any Beneficiary as a result of such Beneficiary exercising its rights under the Agreement;
- 8.5.5. each Beneficiary undertakes to indemnify and keep indemnified the Purchasing Authority and any other Beneficiary party to this Agreement from and against all costs, claims, demands, liabilities, damages, losses and expenses (including all legal expenses) incurred or suffered by the Purchasing Authority or any Beneficiary party to this Agreement:
  - 8.5.5.1. arising out of or in connection with any act or omission of the Beneficiary or any breach of any term of the Agreement by the Beneficiary;
  - 8.5.5.2. as a result of any claim, loss, injury, damage, expense or delay suffered or incurred by the Provider or any third party arising directly or indirectly from or in any way connected with the acts or omissions of the Beneficiary in enforcing its rights under the Agreement, whether wilful, reckless, fraudulent, negligent, dishonest or otherwise; and
- 8.6. In the event of any dispute:
  - 8.6.1. between the Provider and any Beneficiary relating to any act or omission of such Beneficiary or any breach of any term of the Agreement by such Beneficiary;
  - 8.6.2. between the Purchasing Authority and any Beneficiary relating to the supply of Deliverable(s) by the Beneficiary to the Purchasing Authority or any Beneficiary;
  - 8.6.3. the Purchasing Authority reserves the right to suspend such Beneficiary's rights under the Agreement until such dispute has been resolved;
- 8.7. If the Provider makes a claim against any Beneficiary for any act or omission of such Beneficiary or any breach of the Agreement by such Beneficiary the Provider agrees that it shall not include the Purchasing Authority or any Beneficiary as a party to any proceedings against such Beneficiary;
  - 8.7.1. the Purchasing Authority shall notify any Beneficiary which is removed from the list set out in Annex FOUR and such Beneficiary shall immediately cease to use any Deliverable(s) supplied under the Agreement.

## 9. Term

- 9.1. This Agreement shall take effect on the Commencement Date and shall remain in force for the Term, unless it is otherwise terminated in accordance with the provisions of this Agreement, or otherwise lawfully terminated, or extended.
- 9.2. The Agreement shall commence on 1<sup>st</sup> April 2021 and shall expire on 31<sup>st</sup> March 2022.
- 9.3. The Purchasing Authority may extend the Term by notice in writing to the Provider. Any extension price shall be agreed between both Parties in writing.

## 10.0.—Agreement Price

### Agreement Price

### Agreement Price

- 11.1.10.1.** In consideration of the Provider's due and proper performance of the Agreement, the Provider may charge the Purchasing Authority or Beneficiary the Agreement Price in accordance with clause 10, Annex THREE and the Licence Agreement(s).

- 11.2.10.2.** The Agreement Price provided to the Purchasing Authority or Beneficiary must clearly set out the pricing methodology and purchasing model(s) provided as agreed under the NICE Framework for the Content Resource(s) supplied. Only the purchasing models and discounts agreed under this Framework may be offered by the Provider to Purchasing Authorities or Beneficiaries.

- 11.3.10.3.** The only sums payable by the Purchasing Authority or any Beneficiary to the Provider for the provision of the Deliverable(s) shall be the Agreement Price. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Agreement shall be the responsibility of the Provider.

- 11.4.10.4.** [Subject to clause 10 the Agreement Price is fixed and shall not be subject to any increase whatsoever by the Provider during the Term.]

OR

- 11.5.10.5.** [Subject to clause 10, in the case of Agent supply where the Publisher has not released to the Agent the fixed price for the following year, Annex THREE shall show the estimated price and the date the final fixed price shall be released by the Publisher. The Purchasing Authority and the Agent shall ensure that Annex THREE

is amended under clause 30, Agreement or Specification Change or Variation, no later than 10 days after the Publisher has released the fixed price, to show the final Agreement Price.]

The Agreement Price includes payment in full for all facilities and  
The Agreement Price includes payment in full for all facilities and  
The Agreement Price includes payment in full for all facilities and

- 11.8.10.7. In accordance with the Agreement, where the Provider is required to provide Deliverables, the Purchasing Authority or any Beneficiary shall be entitled to withhold payment of the Agreement Price pending receipt and acceptance of the Deliverables in accordance with the Specification or Licence Agreement(s).
- 11.9.10.8. Subject to clause 9 where the Term allows for the option(s) to renew Subscriptions, the Provider shall:
- 11.9.1.10.8.1. provide the Purchasing Authority with dates for renewals to ensure continuity of supply. A renewal list must be provided to the Purchasing Authority to include:
    - 11.9.1.1.10.8.1.1. current prices;
    - 11.9.1.2.10.8.1.2. titles clearly marked as to whether firm or estimated prices;
    - 11.9.1.3.10.8.1.3. length of grace period to prevent loss of access;
    - 11.9.1.4.10.8.1.4. which subscriptions cover more than a 12 (twelve) Month period;
    - 11.9.1.5.10.8.1.5. the purchasing model(s) provided and pricing methodology as agreed under the NICE Framework;
    - 11.9.1.6.10.8.1.6. subject to 11.5.5 and 11.5.6 details of Open Access materials; AND
  - 11.9.2.10.8.2. provide written notification of the correct renewal price and the percentage change within 05 (five) working days of receiving this information from the Publisher. All firm renewal prices should be agreed with the Purchasing Authority 14 (fourteen) working days prior to the of the commencement date for renewals; OR
  - 11.9.3.10.8.3. where a renewal provision has been agreed subject to clause 10.7.1 and 10.7.2, the Provider shall, subject to clause 9.3, renew the supply on written confirmation; OR
  - 11.9.4.10.8.4. terminate the supply on the expiry date of the Term.

**11.10.10.9.** Except where otherwise stated in the Order, the Agreement Price is exclusive of VAT which shall be payable, if applicable, by the Purchasing Authority or any Beneficiary in addition to such Agreement Price. The invoice provided to the Purchasing Authority or any Beneficiary by the Provider in accordance with clause 21.2 shall show the VAT calculations separately at the prevailing rate.

## **12.11. Ordering**

**12.1.11.1.** The Provider acknowledges that the Purchasing Authority or Beneficiary has placed the Order pursuant to the NICE Electronic and Print Content Framework Agreement established by the Contracting Authority.

**12.2.11.2.** The Purchasing Authority or Beneficiary has placed the Order on the Provider as principal and the Contracting Authority which established the Framework Agreement for the Purchasing Authority or Beneficiary, shall have no liability in respect thereof.

**12.3.11.3.** The Provider must accept the Order placed by the Purchasing Authority in either an electronic form (EDI, email or online), by paper, or fax, or telephone if urgent.

**12.4.11.4.** The Order must quote the NICE Framework contract number: NICEFAHEE/1619

**12.5.11.5.** The Provider must acknowledge that Orders have been placed and confirm by fax, post or e-mail within 05 (five) working days, clearly stating 'Confirmation of Order'. Confirmation of Orders should provide a statement for all Content Resources:

**12.5.1.11.5.1.** that Orders have been placed;

**12.5.2.11.5.2.** with current price(s) - titles clearly marked as to whether firm or estimated prices;

**12.5.3.11.5.3.** for Content Resources ordered that are not yet in print, the Provider must confirm if the final price is higher than the pre-publication price. No firm order should be placed with the publisher until the Purchasing Authority has accepted the new price in writing or by e-mail.

**12.5.4.11.5.4.** with notification of title(s) known to be behind in publication, issues missing, or temporarily ceased publication;

**12.5.5.11.5.5.** the purchasing model(s) provided and pricing methodology as agreed under the NICE Framework;

**12.5.6.11.5.6.** with details of the number of Gold Open Access articles published in relation to the total number of articles

published in the Licensed Materials.

[12.5.7.11.5.7.](#) with details of the number of Open Access journals published in the Licensed Materials.

[12.6.11.6.](#) The Provider must automatically cancel any Orders outstanding due to delayed publication after 01 (one) year and provide confirmation to the Purchasing Authority.

### **[13.12.](#) Packaging and Delivery of Goods (Print Content Resources Only)**

[13.1.12.1.](#) Where Goods are imported into the United Kingdom, the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 shall apply. The Provider shall assume the rolled-up obligations for all the activities performed outside the United Kingdom in relation to the Goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the Goods in addition to any other obligations the Provider may have pursuant to the said Regulations.

[13.2.12.2.](#) All Goods that customarily bear any mark, tab, brand, label or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact.

[13.3.12.3.](#) Without prejudice to the operation of Clause 12.6 Goods shall be inspected on behalf of the Purchasing Authority within a reasonable time after delivery. The Goods may be rejected if found to be defective or inferior in quality to or differing in form or material from the requirements of the Specification, or if they do not comply with any term, whether expressed or implied, of the Agreement.

[13.4.12.4.](#) Without prejudice to the operation of Clause 12.6, the Purchasing Authority shall notify the Provider in writing of:

[13.4.1.12.4.1.](#) the discovery of any defect and shall give the Provider all reasonable opportunities to investigate such defect; and

[13.4.2.12.4.2.](#) any shortage or damage caused in transit and found on delivery.

[13.5.12.5.](#) The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found

not to conform in every material respect to the requirements of the Specification.

**13.6.12.6.** Goods so rejected under clauses 12.3, 12.4, and 12.5 after delivery shall be removed by the Provider, at the Providers cost.

**13.7.12.7.** The Provider shall ensure that:

**13.7.1.12.7.1.** Goods conform in all respects with the Specification and, where applicable, with any sample approved by the Purchasing Authority;

**13.7.2.12.7.2.** Goods correspond with the requirements and/or any particulars specified in the Specification;

**13.7.3.12.7.3.** Goods conform in all respects with all applicable Laws; and

**13.7.4.12.7.4.** Goods shall be free from defects in design, materials and workmanship, new, and shall be supplied strictly in accordance with the Specification and/or any sample previously provided to the Purchasing Authority and are fit and sufficient for all the purposes for which such Goods are ordinarily used and for any particular purpose made known to the Provider.

## **14.13. Deliverables**

**14.1.13.1.** Wherever the Agreement requires the Provider to provide a Deliverable:

**14.1.1.13.1.1.** such Deliverable will be delivered in the form prescribed and in accordance with Annex ONE: Specification or the Licence Agreement(s). If no such form is prescribed in the Specification or Licence Agreement(s) the Provider will:

**14.1.1.1.13.1.1.1.** provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Provider by the Authorised Officer;

**14.1.1.2.13.1.1.2.** deliver Goods on the day of publication or within 14 (fourteen) working days of publication.

**14.1.2.13.1.2.** Where the time of delivery has been agreed by the Parties on the face of the Order or otherwise agreed in writing then time for delivery shall be of the essence and without prejudice to any other right or remedy of the Purchasing Authority.

- 14.1.3.13.1.3.** the Purchasing Authority or any Beneficiary may accept such Deliverable or reject it in its reasonable discretion on the grounds that such Deliverable is (in whole or in part) not of satisfactory quality and/or does not meet the brief set out in the Specification or Licence Agreement(s) or the requirements otherwise made known to the Provider by the Purchasing Authority or any Beneficiary;
- 14.1.4.13.1.4.** the Purchasing Authority or any Beneficiary will not reject any Deliverable (wholly or in part) without providing written reasons to the Provider as to why such Deliverable has been rejected;
- 14.1.5.13.1.5.** any dispute as to whether the Purchasing Authority or any Beneficiary has exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and
- 14.1.6.13.1.6.** any Deliverables which are rejected shall be replaced by the Provider (at no extra charge to the Purchasing Authority or any Beneficiary) by Deliverables which are reasonably satisfactory to the Authorised Officer.
- 14.1.7.13.1.7.** subject to clause 13.1.8, risk in any Deliverables supplied shall, without prejudice to any other rights or remedies of the Purchasing Authority (including the Purchasing Authority's rights and remedies under clause 13.1.3 pass to the Purchasing Authority at the time of delivery.

## **15.14. Access to Electronic Content Resources**

- 15.1.14.1.** The Provider of electronic Content Resources in this Agreement agrees to grant access for the duration of the agreed Subscription or Contract Period, to any Authorised User of the Purchasing Authority or any Beneficiary that has purchased that content under this Framework Agreement.
- 15.2.14.2.** Subject to clause 14.1, the route of access shall be agreed between the Purchasing Authority and any Beneficiary, including but not limited to an Access and Identity Management System (AIMS) contracted for national use.
- 15.3.14.3.** Subject to clause 14.2, where the access route is via the AIMS contracted for national use in England, the Provider agrees to assist the Purchasing Authority in providing alternative access to electronic

resources in the form of an disaster recovery support plan where the AIMS fails or ceases to operate for a significant period of time.

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

**15.5.14.5.** The Purchasing Authority agrees that subject to clauses 14.3 and 14.4, they shall supply the Provider with the relevant user information in order for the Provider to grant access to those eligible users, via an alternative authentication route provided by the Provider, until such time that the AIMS available for national use is operational.

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

## **16.15. Performance of the Deliverable(s)**

**16.1.15.1.** The Provider shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Deliverable(s) to the Agreement Standard.

**16.2.15.2.** To the extent that the Specification or Licence Agreement(s) include the date, format and method of delivery, the applicable performance measures, performance due-by dates, minimum performance levels and methods of performance measurement in respect of the Deliverable(s), the Provider will abide by the same.

**16.3.15.3.** If the Specification or Licence Agreement(s) provides for performance of the Deliverable(s) in stages, the Provider undertakes to perform the Deliverable(s) in strict compliance with the timetable for stages as provided in the Specification or Licence Agreement(s).

**16.4.15.4.** The Purchasing Authority and the Provider will co-operate with each other in good faith and will take all reasonable action as is necessary for the efficient transmission of information and instructions and to enable the Purchasing Authority, or as the case may be, any Beneficiary to derive the full benefit of the Agreement. At all times in the performance of the Deliverable(s), the Provider will co-operate fully with any other Providers appointed by the Purchasing Authority or any Beneficiary in connection with other Deliverable(s) at the Location.

**16.5.15.5.** The Provider shall provide information in a format, medium and at times specified by the Purchasing Authority, related to the performance of the Deliverable(s) as may be reasonably required.



- 16.6.15.6.** In providing the Deliverable(s), the Provider shall use Good Industry Practice to ensure that any computer systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs which might cause harm or disruption to the Purchasing Authority's or, as the case may be, to any Beneficiary's computer systems.
- 16.7.15.7.** If at any time the Provider becomes aware of any act or omission or any proposed act or omission by the Purchasing Authority or any Beneficiary or by any member, official or employee of the Purchasing Authority or any Beneficiary which prevents or hinders or may prevent or hinder the Provider from providing the Deliverable(s) in accordance with the Agreement then the Provider shall immediately inform the Authorised Officer of that fact. For the avoidance of doubt, the Provider's compliance with this clause shall not in any way relieve the Provider of any of its obligations under the Agreement.
- 16.8.15.8.** The Purchasing Authority and any Beneficiary shall provide the Provider with copies of its policies, rules, procedures and quality standards (and shall promptly inform the Provider of any amendments to such documents) to enable the Provider to comply with its obligations under the Agreement.
- 16.9.15.9.** The Purchasing Authority may, where necessary, require the Provider to set up and maintain appropriate policies, rules, procedures and quality standards in relation to the employment of his own staff whilst carrying out their duties in relation to the Agreement at the Location. This shall include, but not be limited to, disciplinary and grievance procedures. The Provider shall provide the Purchasing Authority and any Beneficiary with copies of such policies, rules, procedures and quality standards (and shall promptly inform the Purchasing Authority and any Beneficiary of any amendments to such documents).
- 16.10.15.10.** The Provider will immediately notify the Authorised Officer of any actual or potential problems relating to the Provider's own contractors that affects or might affect his ability to provide the Deliverable(s).
- 16.11.15.11.** The Provider will be responsible for providing and maintaining the Deliverable(s) to the Agreement Standard at all times and will ensure continuity of supply (at no extra cost to the Purchasing Authority and any Beneficiary) in accordance with the Specification or Licence Agreement(s). The Provider must have in place contingency plans and arrangements which are approved by the Purchasing Authority to ensure continuity of supply.
- 16.12.15.12.** The Provider will immediately notify the Authorised Officer of any actual or potential industrial action, including strike action,

whether such action be of his own staff or others, that affects or might affect his ability at any time to provide the Deliverable(s).

- 16.13.15.13. The Provider will be responsible for providing and maintaining the Deliverable(s) to the Agreement Standard during industrial action, at no additional cost to the Purchasing Authority and any Beneficiary. The Provider must have in place contingency plans and arrangements which are to be supplied the Purchasing Authority on request.

## **17.16. Performance Measurement and Review**

- 17.1.16.1. The Provider shall attend formal, minuted review meetings (each such meeting being a "Review"), where agreed and detailed in the Licence Agreement(s) and as required by the Authorised Officer, to discuss the Purchasing Authority's levels of satisfaction in respect of the Deliverable(s) provided under the Agreement and to agree any necessary action to address areas of dissatisfaction. The Provider will not obstruct or withhold its agreement to any such necessary action. Such Reviews shall be attended by duly authorised and sufficiently senior employees of both the Purchasing Authority and the Provider together with any other relevant attendees. The Parties shall agree a standing agenda for such Reviews.

- 17.2.16.2. In addition to any more specific obligations imposed by the terms of the Agreement, it shall be the duty of the Provider to provide the Deliverable(s) to the Agreement Standard which in all respects shall be to the satisfaction of the Authorised Officer.

- 17.3.16.3. If any part of any Deliverable is found to be defective or different in any way from the Specification or Licence Agreement(s) or otherwise has not been provided to the Agreement Standard other than as a result of a default or negligence on the part of the Purchasing Authority or any Beneficiary, the Provider shall at its own expense re-perform the Deliverable(s) in question (without additional remuneration therefor) within such time as the Purchasing Authority or any Beneficiary may reasonably specify.

- 17.4.16.4. If the performance of the Agreement by the Provider is delayed by reason of any act or default on the part of the Purchasing Authority or any Beneficiary or, by any other cause that the Provider could not have reasonably foreseen or prevented and for which it was not responsible, the Provider shall be allowed a reasonable extension of time for completion of the Deliverable(s) so affected.

- 17.5.16.5. On request, the Provider shall submit to the Purchasing Authority and any Beneficiary progress reports detailing its adherence to the timetable (if any) as set out in the Specification or Licence Agreement(s) in a format approved by the Purchasing Authority or any Beneficiary. The submission and acceptance of such reports

shall not prejudice any other rights or remedies of the Purchasing Authority or any Beneficiary under the Agreement.

- 17.6.16.6. If required by the Purchasing Authority or any Beneficiary, the Parties shall co-operate in sharing information and developing performance measurement criteria with the object of improving the Parties' efficiency. Any such agreements shall be fully recorded in writing by the Purchasing Authority or Beneficiary as the case may be.

## **18.17. Intellectual Property**

- 18.1.17.1. All Intellectual Property shall remain the property of the owner.
- 18.2.17.2. Each Party shall use its best endeavours to safeguard the intellectual property, confidential information and proprietary rights of the other Party.
- 18.3.17.3. Goods provided under this Agreement shall be subject to current UK Copyright legislation or any amending legislation and any licence held by the Purchasing Authority which grants additional copying permissions.
- 18.4.17.4. Except as expressly provided in the Agreement, the Provider makes no representations or warranties of any kind, express or implied, including, but not limited to, warranties of design, accuracy of the information contained in the Goods and / or Licensed Materials, merchantability or fitness of use for a particular purpose. The Goods and / or Licensed Materials are supplied as is.
- 18.5.17.5. Nothing in this document "Order Terms & Conditions" and the Licence Agreement(s) shall make the Purchasing Authority liable for breach of the terms of the Licence Agreement(s) 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.
- 18.6.17.6. Except as provided in clause 18.1, under no circumstances shall the Provider be liable to the Purchasing Authority or any of its Authorised Users or any other person, for any special, exemplary, incidental or consequential damages of any character arising out of the inability to use, or the use of, the Goods and / or Service(s) and/ or Licensed Materials.

## **19.18. Liability and Indemnity**

- 19.1.18.1. Neither Party excludes or limits liability to the other Party for:
- 19.1.1.18.1.1. death or personal injury caused by its negligence;  
or

19.1.2.18.1.2. fraud; or

19.1.3.18.1.3. fraudulent misrepresentation; or

19.1.4.18.1.4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

19.2.18.2. Subject to clauses 17.6, 18.3 and 18.4, the Provider shall indemnify the Purchasing Authority and keep the Purchasing Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Deliverable(s) or the performance or non-performance by the Provider of its obligations under the Agreement or the presence of the Provider or any staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, , or any other loss which is caused directly or indirectly by any act or omission of the Provider.

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

19.4.18.4. Subject always to clauses 18.1 and 18.5, in no event shall either Party be liable to the other for any:

19.4.1.18.4.1. loss of profits, business, revenue or goodwill;  
and/or

19.4.2.18.4.2. loss of savings (whether anticipated or otherwise);  
and/or

19.4.3.18.4.3. indirect or consequential loss or damage.

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

## **20.19. Limitation of Liability**

20.1.19.1. Subject to 18.1, the Purchasing Authority shall not be liable to the Provider for any indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with the Purchasing Authority's adherence or non-adherence to the terms and conditions of this Agreement. .

20.2.19.2. The Provider's liability for Defaults or termination shall be subject to the following financial limits:

20.2.1.19.2.1. the aggregate liability for all Defaults arising in any twelve (12) month contract period from the Commencement

Date, in connection with this Agreement shall in no event exceed 125% of the Agreement Price payable by the Purchasing Authority to the Provider;

20.2.2.19.2.2. the aggregate liability in circumstances where the Purchasing Authority terminates this Agreement shall in no event exceed 125% of the Agreement Price payable by the Purchasing Authority to the Provider.

## **21.20. Insurance**

21.1.20.1. The Provider shall maintain an appropriate insurance policy to cover its liabilities to the Purchasing Authority under this Agreement.

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

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

21.2.2.20.2.2. employers' liability insurance with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as required by Law from time to time.

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

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

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

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

## **22.21. Invoicing and Payment**

**22.1.21.1.** The Provider shall invoice the Purchasing Authority or Beneficiary for any Deliverable(s) provided by the Provider as detailed in Annex THREE to this document. Such invoice shall be rendered on the Provider's own invoice form clearly marked with the Purchasing Authority's or the Beneficiary's order number (if any).

**22.2.21.2.** Invoices must show the period to which they relate and the aspects of the Deliverable(s) for which payment is claimed together with the agreed charging rates and any other details the Purchasing Authority or the Beneficiary may require. Failure to provide such information will entitle the Purchasing Authority or the Beneficiary to delay payment of the Agreement Price until such information is provided.

**22.3.21.3.** The Purchasing Authority reserves the right to return incorrect or inaccurate invoices to the Provider for rectification and re-issue.

**22.4.21.4.** Subject to clauses 21.6, 21.7 and 21.5, the Purchasing Authority or any Beneficiary shall pay any invoice submitted by the Provider in accordance with clause 21.1 and 21.2 within 30 (thirty) calendar days of receipt by the Purchasing Authority or the Beneficiary of such invoice. The Purchasing Authority or the Beneficiary shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the Purchasing Authority or the Beneficiary and the Provider.

**22.5.21.5.** The Provider shall use all best endeavours to accept the Government Procurement Card as a means of payment for the ordered Products and/or Services and or Licensed Materials where such card is agreed with the Purchasing Authority and / or Beneficiary to be a suitable means of payment. The Provider shall be solely liable to pay any merchant fee levied for using the Government Procurement Card and shall not be entitled to recover this charge from the Purchasing Authority and / or Beneficiary.

- 22.6.21.6.** Pursuant to clause 11.6, where an Order or part Order is automatically cancelled due to delayed publication, the Provider shall return any monies paid by the Purchasing Authority for that Order or part Order within 30 days of the cancellation.
- 22.7.21.7.** Where an Order or part Order remains missing or unavailable after 01 (one) Year for any reason, the Provider must refund any monies paid by the Purchasing Authority for that missing Order or Order items.
- 22.8.21.8.** The Purchasing Authority and / or Beneficiary shall be entitled to deduct from any monies due or to become due to the Provider any monies owing to the Purchasing Authority or the Beneficiary from the Provider pursuant to this Agreement, unless otherwise agreed by the Purchasing Authority and / or Beneficiary, where the Provider may issue a credit note to the Purchasing Authority and / or Beneficiary for the total sum of the monies owed.
- 22.9.21.9.** Where the performance of the Provider does not meet the required standard then a deduction as set out in the Specification and / or Licence Agreement(s), or as agreed by the Parties, may be made.
- 22.10.21.10.** Where the Provider is an Agent, the Provider shall ensure prompt payment of all invoices due to the publisher(s). Where there is a delay to the payment of the Agreement Fee to the publisher(s) by the Provider, the Provider shall use its best endeavours to ensure that the Goods and / or Service(s) and / or the Licensed Materials are not suspended by the publisher(s). In the event that the Goods and / or Service(s) and / or Licensed Materials are suspended, the Purchasing Authority will exercise its rights under clause 21.11.
- 22.11.21.11.** Subject to clause 21.10, in the event that the Goods and / or Service(s) and / or the Licensed Materials are suspended by the publisher(s) due to delayed payment by the Provider, the Provider will offer the Purchasing Authority a reduction against the Agreement Fee.
- 22.12.21.12.** In the event of the Purchasing Authority or any Beneficiary breaching clause 21.4, the Provider shall be entitled to charge interest on the outstanding amount owed by the Purchasing Authority or such Beneficiary in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

## **23.22. Audit, Accounts and Sales Information**

- 23.1.22.1.** The Provider grants to the Purchasing Authority and / or Beneficiary, and to any statutory or regulatory auditors of the Purchasing Authority and / or Beneficiary and to authorised agents the right of reasonable access to (and if necessary to copy) the financial records relating to the Deliverables during normal business

hours on reasonable prior notice, no more than once per calendar year.

**23.2.22.2.** The Provider shall provide all reasonable assistance at all times during the Term and during the period of 06 (six) years thereafter for the purposes of allowing the Purchasing Authority and / or Beneficiary to obtain such information as is necessary to fulfil the Purchasing Authority's obligations to supply information for parliamentary, governmental judicial or other administrative purposes and/or to carry out an audit of the Provider's compliance with this Agreement including all activities, performance security and integrity in connection therewith.

**23.3.22.3.** The Provider shall keep at its normal place of business detailed, accurate and up to date records of the quantity and value of the Deliverable(s) provided by it to any Purchasing Authority or Beneficiary, on or after the date of the Agreement and pursuant to the Agreement together with accurate details of the identity of the Purchasing Authority or Beneficiary to which such Deliverable(s) were provided. Subject to any other auditing process being agreed between the Purchasing Authority or Beneficiary and the Provider under this agreement or made in writing by the Parties, the Purchasing Authority or Beneficiary shall be entitled by prior appointment to enter the Provider's normal place of business during normal office hours and to inspect such records in order to verify whether any statement supplied by the Provider to the Purchasing Authority or Beneficiary pursuant to clause 10.8 is accurate and complete.

**23.4.22.4.** Both the Provider and the Purchasing Authority or Beneficiary party to this Agreement acknowledge and agree that purchasing data in relation to any purchase under this Agreement will be shared with the Contracting Authority as an annual sales statement.

**23.5.22.5.** The Comptroller and Auditor General and the Purchasing Authority or Beneficiary or its auditors may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Provider and may require the Provider to produce such oral or written explanation as he considers necessary. The Provider acknowledges that it will fully cooperate with any counter fraud policy or investigation, whether carried out by the Counter Fraud and Security Management Service, or any equivalent body, successor or function, at any time. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Provider is not a function exercisable under this Agreement.

## **24.23. Sub-contractors**



**24.1.23.1.** The Provider shall not sub-contract the supply of any Deliverable without the previous consent in writing of the Authorised Officer (such consent not to be unreasonably withheld).

**24.2.23.2.** Subject to clause 23.1 if consent to sub-contract is requested from the Authorised Officer:

**24.2.1.23.2.1.** the Purchasing Authority may insist upon the production to it (inter alia) of all reasonable information and documentation relevant to:

**24.2.1.1.23.2.1.1.** the financial liability;

**24.2.1.2.23.2.1.2.** competence; and

**24.2.1.3.23.2.1.3.** relevant experience of the proposed sub-contractor.

**24.3.23.3.** As reasonable and valid conditions of their consent under clause 23.1:

**24.3.1.23.3.1.** the Provider must warrant that appropriate and adequate insurance is in place for the life of the sub-contract and that the Provider and sub-contractor will fully comply with clause 16;

**24.3.2.23.3.2.** the Provider must engage the most appropriate and qualified sub-contractor to undertake the supply of the Deliverable(s).

## **25.24. Staff and Resources**

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

**25.2.24.2.** The Provider shall ensure that it complies with all current employment legislation and in particular, does not unlawfully discriminate within the meaning of the Equality Act 2010, the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000, the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, or any other relevant legislation relating to discrimination in the employment of employees for the purpose of providing the Deliverable(s). The Provider shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Deliverable(s) do not unlawfully discriminate within the meaning of this clause 24.2 and shall impose on any Sub-contractor obligations substantially similar to those imposed on the Provider by this clause 24.2; and

**25.3.24.3.** The Provider shall notify the Purchasing Authority and / or any Beneficiary immediately of any investigation of or proceedings against the Provider under the Equality Act 2010 and shall cooperate fully and

promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data required, attending any meetings and providing any information requested.

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

**25.5.24.5.** The Provider shall impose on any sub-contractor obligations substantially similar to those imposed on the Provider by this clause 24.

**25.6.24.6.** Where the Purchasing Authority has notified the Provider that it intends to tender or retender any Deliverable(s), the Provider shall on written request and within 20 (twenty) working days of such a request provide the Purchasing Authority with anonymised details of staff engaged in the provision of such Deliverable(s) to be tendered or retendered that may be subject to TUPE.

## **26.25. Providers' Key Personnel**

**26.1.25.1.** Any notice, information, instruction or other communication given or made to the Agreement Manager shall be deemed to have been given or made to the Provider.

**26.2.25.2.** The Agreement Manager shall be suitably qualified in accordance with the Specification or Licence Agreement(s).

**26.3.25.3.** The Provider shall forthwith give notice in writing to the Authorised Officer of the identity of the person appointed as Agreement Manager and of any subsequent appointment. Until notice of a subsequent appointment shall have been given the Purchasing Authority and any Beneficiary shall be entitled to treat as Agreement Manager the person last notified to the Authorised Officer as being the Agreement Manager.

**26.4.25.4.** The Provider shall ensure that the Agreement Manager, or a competent deputy who is duly authorised to act on his behalf, is available to the Purchasing Authority and any Beneficiary at all times.

**26.5.25.5.** The Provider shall inform the Authorised Officer of the identity of any person authorised to act for any period as deputy for the Agreement Manager before the start of that period.

**26.6.25.6.** The Agreement Manager or his deputy shall consult with the Authorised Officer and such other of the Purchasing Authority's or any Beneficiary's own supervisory staff as may from time to time be specified by the Authorised Officer as often as may reasonably be necessary for the efficient provision of the Deliverable(s) in accordance with the Agreement.

**26.7.25.7.** All persons appointed to managerial and supervisory positions in accordance with the Agreement, Specification or Licence Agreement(s) must be to the acceptance of the Authorised Officer. The Provider shall notify the Authorised Officer of the Purchasing Authority of any change to such staff. The Authorised Officer shall retain the right to consult with the Provider regarding the candidates' skills and experience.

**26.8.25.8.** The Provider's staff engaged in and about the provision of the Deliverable(s) shall primarily be under the control and direction of the Provider's own supervisory staff but nevertheless while on the Purchasing Authority's and any Beneficiary's premises will obey all reasonable instructions given to them by the Purchasing Authority's or any Beneficiary's supervisory staff in any matter occasioned by the operational needs of the relevant Service or the health, safety or welfare of anyone.

**26.9.25.9.** The Provider shall ensure that his staff carry out their duties and behave while on the Purchasing Authority's or any Beneficiary's premises in an orderly manner and in as quiet a manner as may reasonably be practicable having regard to the nature of the duties being performed by them. The Provider's staff shall not cause any unreasonable or unnecessary disruption to the routines, practices, and procedures of the Purchasing Authority's or any Beneficiary's staff, patients or visitors, or any of the staff of any other Providers.

## **27.26. Confidentiality**

**27.1.26.1.** In respect of any Confidential Information it may receive from the other Party ("the Discloser") and subject always to the remainder of this clause 26, each Party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:

**27.1.1.26.1.1.** the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Agreement;

**27.1.2.26.1.2.** the provisions of this clause 26 shall not apply to any Confidential Information which:

27.1.2.1.26.1.2.1. \_\_\_\_\_ is in or enters the public domain other than by breach of the Agreement or other act or omissions of the Recipient;

27.1.2.2.26.1.2.2. \_\_\_\_\_ is obtained by a third party who is lawfully authorised to disclose such information; or

27.1.2.3.26.1.2.3. \_\_\_\_\_ is authorised for release by the prior written consent of the Discloser; or

27.1.2.4.26.1.2.4. \_\_\_\_\_ the disclosure of which is required to ensure the compliance of the Purchasing Authority or (as the case may be) any Beneficiary with the Freedom of Information Act 2000 (the FOIA).

27.2.26.2. \_\_\_\_\_ Nothing in this clause 8 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Provider is the Recipient, to the Provider's immediate or ultimate holding company provided that the Provider procures that such holding company complies with this clause 8 as if any reference to the Provider in this clause 26 were a reference to such holding company.

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

27.4.26.4. \_\_\_\_\_ The Provider acknowledges that the Purchasing Authority and Beneficiaries are or may be subject to the FOIA. The Provider notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. The Provider will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable

codes of practice or guidance notified to the Provider from time to time) to the extent that they apply to the Provider's performance under the Agreement.

27.5.26.5. The Provider agrees that:

27.5.1.26.5.1. without prejudice to the generality of clause 26.2, the provisions of this clause 26 are subject to the respective obligations and commitments of the Purchasing Authority and any Beneficiary (as the case may be) under the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004;

27.5.2.26.5.2. subject to clause 26.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Purchasing Authority or a Beneficiary (as the case may be);

27.5.3.26.5.3. where the Purchasing Authority or a Beneficiary is managing a request as referred to in clause 26.5.2, the Provider shall co-operate with the Purchasing Authority or Beneficiary making the request and shall respond within 05 (five) working days of any request by it for assistance in determining how to respond to a request for disclosure.

27.6.26.6. The Provider shall agree that its sub-contractors shall:

27.6.1.26.6.1. transfer any request for information, as defined under section 8 of the FOIA, to the Purchasing Authority or a Beneficiary as soon as practicable after receipt and in any event within 05 (five) working days of receiving a request for information;

27.6.2.26.6.2. provide the Purchasing Authority or a Beneficiary with a copy of all information in its possession or power in the form that the Purchasing Authority or a Beneficiary requires within 05 (five ) working days (or such other period as the Purchasing Authority or a Beneficiary may specify) of the Purchasing Authority or a Beneficiary requesting that Information; and

27.6.3.26.6.3. provide all necessary assistance as reasonably requested by the Purchasing Authority or a Beneficiary to enable the Purchasing Authority or a Beneficiary to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

27.7.26.7. The Purchasing Authority or Beneficiary (as the case may be) may consult the Provider in relation to any request for disclosure of

the Provider's Confidential Information in accordance with all applicable guidance.

**27.8.26.8.** This clause 26 shall remain in force without limit in time in respect of Confidential Information which comprises Personal Data or which relates to a patient, his or her treatment and/or medical records. Save as aforesaid and unless otherwise expressly set out in the Agreement, this clause 26 shall remain in force for a period of three (03) years after the termination or expiry of this Agreement.

**27.9.26.9.** In the event that the Provider fails to comply with this clause 26, the Purchasing Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

## **28.27. Data Protection**

**28.1.27.1.** The Provider shall comply with the Data Protection Legislation. In particular the Provider agrees to comply with the obligations placed on the Purchasing Authority as set out in Data Protection Legislation, namely:

**28.1.1.27.1.1.** to maintain technical and organisational security measures sufficient to comply with the obligations imposed on the Purchasing Authority and the Provider by the Data Protection Legislation;

**28.1.2.27.1.2.** only to process Personal Data for and on behalf of the Purchasing Authority, in accordance with the instructions of the Purchasing Authority as described in Annex Eight of this "Order Terms and Conditions" and for the purpose of performing the Services in accordance with the Agreement and to ensure compliance with the Data Protection Legislation;

**28.2.27.2.** The Parties acknowledge that for the purposes of the Data Protection Legislation, that the Purchasing Authority is the Controller and the Provider is the Processor.

**28.3.27.3.** The Provider shall only process Personal Data as authorised by the Purchasing Authority and described in Annex Eight and shall not process or use the Personal Data for any other purpose. The details in Annex Eight may not be determined by the Provider.

**28.4.27.4.** The Provider shall notify the Purchasing Authority immediately if it considers that any of the Purchasing Authority's instructions infringe the Data Protection Legislation.

**28.5.27.5.** The Provider shall provide all reasonable assistance to the Purchasing Authority in the preparation of any Data Protection Impact

Assessment prior to commencing any processing. Such assistance may, at the discretion of the Purchasing Authority, include:

- 28.5.1.27.5.1. a systematic description of the envisaged processing operations and the purpose of the processing;
- 28.5.2.27.5.2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- 28.5.3.27.5.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
- 28.5.4.27.5.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

28.6.27.6. The Provider shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- 28.6.1.27.6.1. process that Personal Data only in accordance with Annex Eight, unless the Provider is required to do otherwise by Law. If it is so required the Provider shall promptly notify the Purchasing Authority before processing the Personal Data unless prohibited by Law;
- 28.6.2.27.6.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Purchasing Authority as appropriate to protect against a Data Loss Event having taken account of the:
  - 28.6.2.1.27.6.2.1. nature of the data to be protected;
  - 28.6.2.2.27.6.2.2. harm that might result from a Data Loss Event;
  - 28.6.2.3.27.6.2.3. state of technological development; and
  - 28.6.2.4.27.6.2.4. cost of implementing any measures;
- 28.6.3.27.6.3. ensure that:
- 28.6.4.27.6.4. the Provider's Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex Ten);
- 28.6.5.27.6.5. it takes all reasonable steps to ensure the reliability and integrity of any Provider's Personnel who have access to the Personal Data and
  - ensure that they:
- 28.6.6.27.6.6. are aware of and comply with the Provider's duties under this clause;
- 28.6.7.27.6.7. are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor;

28.6.8.27.6.8. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Purchasing Authority or as otherwise permitted by this Agreement; and

28.6.9.27.6.9. have undergone adequate training in the use, care, protection and handling of Personal Data; and

28.6.10.27.6.10. not transfer Personal Data outside of the EU unless the prior written consent of the Purchasing Authority has been obtained and the following conditions are fulfilled:

28.6.11.27.6.11. that the Purchasing Authority or the Provider has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Purchasing Authority;

28.6.12.27.6.12. the Data Subject has enforceable rights and effective legal remedies;

28.6.13.27.6.13. the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Purchasing Authority in meeting its obligations); and

28.6.14.27.6.14. the Provider complies with any reasonable instructions notified to it in advance by the Purchasing Authority with respect to the processing of the Personal Data;

28.6.15.27.6.15. at the written direction of the Purchasing Authority, delete or return Personal Data (and any copies of it) to the Purchasing Authority on termination of the Agreement unless the Provider is required by Law to retain the Personal Data.

28.7.27.7. Subject to clause 27.8, the Provider shall notify the Purchasing Authority immediately if it:

28.7.1.27.7.1. receives a Data Subject Access Request (or purported Data Subject Access Request);

28.7.2.27.7.2. receives a request to rectify, block or erase any Personal Data;



28.7.3.27.7.3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

28.7.4.27.7.4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

28.7.5.27.7.5. receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;

or

28.7.6.27.7.6. becomes aware of a Data Loss Event.

28.8.27.8. The Provider's obligation to notify under clause 27.7 shall include the provision of further information to the Purchasing Authority in phases, as details become available.

28.9.27.9. Taking into account the nature of the processing, the Provider shall provide the Purchasing Authority with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 27.7 (and insofar as possible within the timescales reasonably required by the Purchasing Authority) including by promptly providing:

28.9.1.27.9.1. the Purchasing Authority with full details and copies of the complaint, communication or request;

28.9.2.27.9.2. such assistance as is reasonably requested by the Purchasing Authority to enable the Purchasing Authority to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;

28.9.3.27.9.3. the Purchasing Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

28.9.4.27.9.4. assistance as requested by the Purchasing Authority following any Data Loss Event;

28.9.5.27.9.5. assistance as requested by the Purchasing Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Purchasing Authority with the Information Commissioner's Office.

28.10.27.10. The Provider shall maintain complete and accurate records and information to allow the Purchasing Authority to audit the Provider's compliance with the requirements of this Clause 27 on reasonable notice and/or to provide the Purchasing Authority with evidence of its

compliance with the obligations set out in this Clause 27 and to demonstrate its compliance with this clause.

**28.11.27.11.** The Provider shall allow for audits of its Data Processing activity by the Purchasing Authority or the Purchasing Authority's designated auditor.

**28.12.27.12.** The Provider shall designate a data protection officer if required by the Data Protection Legislation.

**28.13.27.13.** Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Provider must:

**28.13.1.27.13.1.** notify the Purchasing Authority in writing of the intended Sub-processor and processing;

**28.13.2.27.13.2.** obtain the written consent of the Purchasing Authority;

**28.13.3.27.13.3.** enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 27 such that they apply to the Sub-processor; and

**28.13.4.27.13.4.** provide the Purchasing Authority with such information regarding the Sub-processor as the Purchasing Authority may reasonably require.

**28.14.27.14.** The Provider shall remain fully liable for all acts or omissions of any Sub-processor.

**28.15.27.15.** The Purchasing Authority may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

**28.16.27.16.** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Purchasing Authority may on not less than 30 Working Days' notice to the Provider amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

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

performance of the Agreement or as otherwise agreed between the Parties.

## **29.28. Health and Safety**

**29.1.28.1.** The Provider shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Agreement.

**29.2.28.2.** The Provider shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Institute on request

## **30.29. Termination**

**30.1.29.1.** The Purchasing Authority may terminate the Agreement (in whole or in part) with immediate effect in any of the following circumstances:

**30.1.1.29.1.1.** a material failure (in whole or in part) by the Provider to perform any material obligation of the Provider under this Agreement provided that (if capable of remedy) such failure has not been remedied to the Purchasing Authority's reasonable satisfaction within a period of 30 (thirty) working days following written notice demanding remedy of the failure in question being served by the Purchasing Authority on the Provider; or

**30.1.2.29.1.2.** if the Provider repeats any breach of this Agreement after receiving a written notice from the Purchasing Authority warning that repetition of the breach shall or may lead to termination (whether or not the repeated breach is remedied within 30 days); ; or

**30.1.3.29.1.3.** the Provider becomes Insolvent or otherwise ceases to be capable of providing the Deliverable(s); or

**30.1.4.29.1.4.** the Provider is in default of any duty of care or any fiduciary or statutory duty owed to the Purchasing Authority and/or any Beneficiary and/or any patient, employee or agent of the Purchasing Authority or Beneficiary; or

**30.1.5.29.1.5.** there is a change of ownership or control of the Provider which, in the reasonable opinion of the Purchasing Authority will have a material impact on the provision of the Deliverable(s) or the image of the Purchasing Authority; or

**30.1.6.29.1.6.** the Provider purports to assign the Agreement in breach of clause 38; or

30.1.7.29.1.7. the Provider shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the Agreement or any other Agreement with the Purchasing Authority or Beneficiary, or for showing or forbearing to show favour or disfavour to any person in relation to the Agreement or any other Agreement with the Purchasing Authority or Beneficiary; or similar acts have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the Provider); or

30.1.8.29.1.8. if in relation to the Agreement or any other Agreement with the Purchasing Authority or Beneficiary the Provider or any person employed by it or acting on its behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward to any officer of the Purchasing Authority or, as the case may be, Beneficiary which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration.

30.2.29.2. The Purchasing Authority and any Beneficiary shall be entitled to recover from the Provider the amount of any Loss resulting from termination under clause 29.1. For the purpose of this clause, Loss shall include reasonable cost to the Purchasing Authority and any Beneficiary of the time spent by its officers in terminating the Agreement and in making alternative arrangements for the provision of the Deliverable(s).

30.3.29.3. The Provider agrees that upon termination for any reason (under Clause 29.1 or otherwise) or expiry of the Agreement it shall not be entitled to make a claim against the Purchasing Authority or any Beneficiary in relation to costs incurred by the Provider in providing the Deliverable(s) or costs incurred in acquiring equipment and/or materials used in the provision of the Deliverable(s) or in engaging third parties in connection with the Deliverable(s) whether or not such costs were amortised in the calculation of the Agreement Price payable by the Purchasing Authority or any Beneficiary under the Agreement. For the avoidance of doubt, the Provider will not be restricted from making any claim in respect of the Agreement Price to the extent the Agreement Price is outstanding and due and payable.

30.4.29.4. The Purchasing Authority and the Provider agree that termination (in whole or in part) or expiry of the Agreement shall not affect either Party's obligations which the Agreement provides shall survive the termination or expiry of the Agreement or the continuance of the part or parts not terminated where the Agreement is terminated in part only.

**30.5.29.5.** Any termination (in whole or in part) of the Agreement will not prejudice the rights, obligations and duties of each Party arising prior to such termination taking effect.

**30.6.29.6.** In addition to its rights under any other provision of the Agreement the Purchasing Authority or Beneficiary may terminate the Agreement at any time by giving the Provider 03 (three) Months' written notice.

**30.7.29.7.** In addition to its rights under any other provision of the Agreement the Purchasing Authority or Beneficiary may terminate the Agreement at any time by giving the Provider 01 (one) Month written notice if the Provider is terminated from the Framework Agreement by the Contracting Authority.

### **31.30. Agreement or Specification Change or Variation**

**31.1.30.1.** The Purchasing Authority may at any time propose to the Provider any reasonable variation or addition to the Agreement or Specification or Licence Agreement(s) and the Provider shall not unreasonably withhold or delay its consent to such variation.

**31.2.30.2.** No such variation or addition shall affect the continuation of the Agreement.

**31.3.30.3.** Where the either Party see a need to make a change to the Agreement or Specification or Licence Agreement(s), the Purchasing Authority may at any time request such change and the Provider may at any time recommend such change, provided that each Party gives the other at least 01 (one) Month's written notice of any change or addition and provided that either (a) such change or addition can be achieved without need for additional funding; or (b) that the Purchasing Authority agrees to provide any additional funding reasonably required by the Provider in respect of such change or addition; or (c) should the change require an adjustment to the Agreement Price, that such adjustment is agreed by both parties. The notice shall give details of the variation or addition and the date on which it is to take effect.

**31.4.30.4.** Any request for an Agreement or Specification or Licence Agreement(s) change shall be provided in writing in the form at Annex SIX.

**31.5.30.5.** Neither Party shall unreasonably withhold its agreement to any Agreement or Specification or Licence Agreement(s) change. For the avoidance of doubt any withholding of agreement by the Purchasing Authority shall not be considered to be unreasonable where any Agreement or Specification or Licence Agreement(s) change

recommended by the Provider would or might (in the opinion of the Purchasing Authority) result in the Provider's provision of the Deliverable(s) failing to conform to the terms of this Agreement or to the Agreement Price being exceeded.

- 31.6.30.6.** Until such time as an Agreement change is made the Provider shall, unless otherwise agreed in writing, continue to provide the Deliverable(s) pursuant to the Agreement as if the request or recommendation had not been made.
- 31.7.30.7.** Any discussions which may take place between the Parties in connection with a request or recommendation before the authorisation of a resultant Agreement or Specification or Licence Agreement(s) change shall be without prejudice to the rights of either Party.
- 31.8.30.8.** Discussion between the Parties concerning an Agreement change shall result in one of the following:
- 31.8.1.30.8.1.** no action being taken; or
  - 31.8.2.30.8.2.** the request to make an Agreement change by the Purchasing Authority being implemented; or
  - 31.8.3.30.8.3.** the recommendation to make an Agreement change by the Provider being implemented.
- 31.9.30.9.** Subject to clause 30.7 this Agreement cannot be varied except in writing and signed by the lawful representatives of both Parties.
- 31.10.30.10.** In the event that the Agreement is varied in such a way as to affect the Agreement Price and if agreement between the Parties cannot be reached on the adjustment to the Agreement Price within 03 (three) Months both Parties shall jointly act to resolve the dispute in accordance with clause 31.
- 31.11.30.11.** If the adjusted Agreement Price is not so agreed or certified until after such variation has taken effect, the Purchasing Authority or any Beneficiary shall continue to pay the Provider at the rate current prior to the variation but shall pay to the Provider, or be entitled to recover from the Provider as the case may be, such sum if any as is equal to the difference between the amount which should have been paid in accordance with the adjusted Agreement Price and the amount which was actually paid.

## **32.31. Dispute Resolution Procedure**

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

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

**32.3.31.3.** In the first instance each of the Purchasing Authority or such Beneficiary and the Provider shall arrange for a more senior representative than those referred to in clause 31.2 **Error! Reference source not found.** to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Purchasing Authority or such Beneficiary (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question at the discretion of the chairman.

**32.4.31.4.** If the meeting(s) referred to in clause 31.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 (twenty eight) working days of the Mediation Notice being served. Neither Party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 (fourteen) of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the Parties). Neither Party to the mediation will commence legal proceedings against the other until 30 (thirty) working days after such mediation of the dispute in question has failed to resolve the dispute. The Parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

## **33.32. Force Majeure**

**33.1.32.1.** No Party shall be entitled to bring a claim for a breach of obligations under the Agreement by the other Party or incur any liability to the other Party for any Loss or damages incurred by that party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of force majeure.

**33.2.32.2.** In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

**33.3.32.3.** As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement.

### **34.33. Environmental and Sustainability**

**34.1.33.1.** The Provider shall perform its obligations under the Agreement in accordance with the Purchasing Authority or Beneficiaries environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

**34.2.33.2.** The Provider shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Deliverable(s). Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Provider shall comply with such agreements or codes of practices as if they were incorporated into English law subject to those voluntary agreements being cited in tender documentation.

**34.3.33.3.** Without prejudice to the generality of the foregoing, the Provider shall where applicable:

**34.3.1.33.3.1.** comply with all reasonable stipulations of the Purchasing Authority or any Beneficiary aimed at minimising packaging in which any products supplied by the Provider to the Purchasing Authority or any Beneficiary, as part of the performance, of the Deliverable(s) are supplied; and

**34.3.2.33.3.2.** promptly provide such data as may reasonably be requested by the Purchasing Authority or any Beneficiary from time to time regarding the weight and type of packaging according to material type used in relation to all products supplied to the Purchasing Authority or any Beneficiary under or pursuant to the Agreement, and no more than once per calendar year; and



34.3.3.33.3.3. comply with all obligations imposed on it in relation to any products supplied to the Purchasing Authority or any Beneficiary as part of the performance of the Deliverable(s) by Producer Responsibility Obligations (Packaging Waste) Regulations 2007, Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2014 (or any other equivalent legislation giving effect in any part of the European Economic Area to the Packaging and Packaging Waste Directive 94/62/EC); and

34.3.4.33.3.4. label all products supplied to the Purchasing Authority or any Beneficiary by the Provider under the Agreement and the packaging of those products, to highlight environmental and safety information as required by applicable UK and EU legislation; and

34.3.5.33.3.5. unless otherwise agreed with the Purchasing Authority or any Beneficiary, insofar as any Deliverable(s) supplied under the Agreement comprise or include electrical or electronic equipment, manage the said equipment and associated consumables at end of life to facilitate recovery, treatment, recycling and provide any information which the Purchasing Authority or any Beneficiary may reasonably require from time to time;

34.3.6.33.3.6. promptly provide all such information regarding the environmental impact of any Deliverable(s) supplied or used under the Agreement as may reasonably be required by the Purchasing Authority or any Beneficiary to permit informed choices by end users;

34.3.7.33.3.7. where Goods are imported in to the UK then for the purposes of the Producer Responsibility Obligations (Packaging Waste) Regulations 1997 (as amended) and the Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2014, the Provider shall assume the rolled-up obligations for all activities performed outside the United Kingdom in relation to the Goods and the packaging which is used for the containment, protection, handling, delivery and presentation of the Goods in addition to any other obligations he may have pursuant to the said regulations.

34.4.33.4. The Provider shall meet all reasonable requests by the Purchasing Authority or any Beneficiary for information evidencing the Provider's compliance with the provisions of this clause.

## **35.34. Sustainability/Carbon Emission Management**

35.1.1.34.1.1. The Provider will ensure that a Board approved Sustainable Development Strategy and Carbon

Management Plan is produced, and reviewed at least annually.

- 35.1.2.34.1.2.** The Provider will ensure key personnel, particularly managers, are familiar and up to date with the Sustainable Development Strategy and Carbon Management Plan, and their role within it.
- 35.1.3.34.1.3.** The Provider shall use its best endeavours to comply with the requirements of the Climate Change Act (2008), the NHS Carbon Reduction Strategy (2009) and any future updates or any such equivalent law of the geological location where the work takes place. The Provider will ensure key personnel, in particular managers, are familiar with the strategy and updates or any other relevant environmental requirements.
- 35.1.4.34.1.4.** Where appropriate the Provider is encouraged to sign up to the Good Corporate Citizenship Assessment Model.
- 35.1.5.34.1.5.** The Provider will ensure a process and system is in place to measure, monitor and reduce carbon across the organisation.
- 35.1.6.34.1.6.** The Provider will use its best endeavours to ensure that policies and procedures are in place to monitor, review and report on carbon across the organisation in relation to:
- 35.1.6.1.34.1.6.1.** Procurement – Goods, Service(s) and Licensed Materials purchased
  - 35.1.6.2.34.1.6.2.** Building energy – heating, hot water, electricity consumption and cooling
  - 35.1.6.3.34.1.6.3.** Travel – ‘Green’ Travel Plan, movement of people (i.e. patients, visitors and staff)
  - 35.1.6.4.34.1.6.4.** Water – better use of water
  - 35.1.6.5.34.1.6.5.** Waste – reduce, reuse and recycle
- 35.1.7.34.1.7.** The Provider will ensure a process is in place to actively raise awareness of sustainability and carbon reduction at every level of the organisation.
- 35.1.8.34.1.8.** The Provider will demonstrate the consideration of carbon reduction within innovation to improve the quality and sustainability of Deliverable(s) to the Purchasing Authority on reasonable request.
- 35.1.9.34.1.9.** The provider will use its best endeavours to ensure that resilience and business continuity plans are in plan for climate change adaptation.

## **36.35. Inducements to Purchase**

**36.1.35.1.** The Provider shall not offer or give to any member of staff of the Purchasing Authority and / or Beneficiaries or a member of their family any gift or consideration of any kind (including the payment of commission) as an inducement or reward for doing something or not doing something or for having done something or having not done something in relation to the obtaining of or execution of this Agreement or any Agreement with the Purchasing Authority and / or Beneficiaries. This prohibition specifically includes the payment of any fee or other consideration for any work in respect of or in connection with the Project Services carried out by a member of staff of the Purchasing Authority and / or Beneficiaries to that member of staff or to a member of their family.

**36.2.35.2.** Any breach of this condition by the Provider or anyone employed by the Provider (with or without the knowledge of the Contractor) or the commission of any offence under the Bribery Act (2010) shall entitle the Purchasing Authority and / or Beneficiaries to terminate this Agreement immediately and/or to recover from the Provider any payment made to the Provider.

## **37.36. Procurement Transparency**

**37.1.36.1.** The Provider acknowledges that this Agreement and any Licence Agreement(s) that form part of this Agreement will be published in its entirety in order to comply with the UK governments Transparency Agenda. Limited redactions may be made before publication in order to comply with existing law and for the protection of national security.

**37.2.36.2.** Subject to 36.1, 36.3 and 36.4 the Provider must notify the Purchasing Authority and / or any Beneficiary of any sections of this Agreement that they regard as Commercial in Confidence or subject to the non-disclosure clauses of the FOIA or DPA. Any such request must provide a clear justification for the proposed redaction.

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

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

from disclosure in accordance with the provisions of the FOIA and/or the DPA.

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

**37.6.36.6.** Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, publishers, professional advisors and consultants comply with this clause 36.

### **38.37. Warranty**

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

**38.2.37.2.** The Provider shall not incur any liabilities on behalf of the Purchasing Authority or Beneficiary; or, make any representations or give any warranty on behalf of the Purchasing Authority or Beneficiary; or, enter into any contract or obligation on behalf of the Purchasing Authority or Beneficiary.

### **39.38. Assignment**

**39.1.38.1.** The Provider shall not assign the whole or any part of the Agreement without the prior written consent of the Purchasing Authority.

**39.2.38.2.** Subject to 38.1 if consent to assign is requested from the Authorised Officer:

**39.2.1.38.2.1.** the Purchasing Authority may insist upon the production to it (inter alia) of all reasonable information and documentation relevant to:

**39.2.1.1.38.2.1.1.** the financial liability;

**39.2.1.2.38.2.1.2.** competence; and

**39.2.1.3.38.2.1.3.** relevant experience of the proposed assignee

39.2.1.4.38.2.1.4. as reasonable and valid conditions of their consent under clause 38.1;

39.2.2.38.2.2. the Provider must warrant that the Provider and assignee will fully comply with clause 22;

39.2.3.38.2.3. the Provider must engage the most appropriate and qualified assignee to undertake the supply of the Deliverable(s).

## **40.39. Notices**

40.1.39.1. Any notice to be given under the Agreement shall either be delivered personally, sent by facsimile or sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service of each Party shall be its registered office or such other address as either Party may previously have notified to the other Party in writing. A notice shall be deemed to have been served:

40.1.1.39.1.1. if personally delivered, at the time of delivery;

40.1.2.39.1.2. if sent by facsimile at the time of transmission;

40.1.3.39.1.3. if posted, at the expiration of 48 (forty-eight) hours or (in the case of airmail 07 (seven) working days) after the envelope containing the same was delivered into the custody of the postal authorities; and

40.1.4.39.1.4. if sent by electronic mail, a telephone call is made to the recipient warning the recipient that an electronic mail message has been sent to him (as evidenced by a contemporaneous note of the Party sending the notice) and a hard copy of such notice is also sent by first class recorded delivery post (airmail if overseas) on the same day as that on which the electronic mail is sent.

40.2.39.2. In proving such service it shall be sufficient to prove that personal delivery was made, or that the envelope containing such notice was properly addressed and delivered into the custody of the postal authority as prepaid first class, recorded delivery or airmail letter (as appropriate) or that the facsimile was transmitted on a tested line or that the correct transmission report was received from the facsimile machine sending the notice as the case may be.

## **41.40. Law**

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

## **42.41. General**

42.1.41.1. Save as required by law and the Licence Agreement(s), no publicity shall be made by any of the Parties relating to any matter in connection with the Agreement without the prior written consent of the other Party.

42.2.41.2. The Provider shall from time to time upon the request of the Purchasing Authority, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of the Agreement.

42.3.41.3. Any provision of the Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

42.4.41.4. The Provider acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of the Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the Purchasing Authority for any misrepresentation (whether made carelessly or not) or for breach of any warranty unless the representation relied upon is set out in the Agreement or unless such representation was made fraudulently.

42.5.41.5. The failure by the Purchasing Authority, the Provider or, as the case may be, any Beneficiary to insist upon the strict performance of any provision, term or condition of the Agreement or to exercise any right or remedy consequent upon the breach thereof shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

42.6.41.6. Each Party shall bear its own expenses in relation to the preparation, execution and implementation of the Agreement including all costs legal fees and other expenses so incurred.

42.7.41.7. The Provider warrants represents and undertakes to the Purchasing Authority that there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Provider and that there are no material contracts existing to which the Provider is a party which prevent it from entering into the Agreement; and that the Provider has satisfied itself as to the nature and extent of the risks assumed by it under the Agreement and gathered all information necessary to perform its obligations under the Agreement and all other obligations assumed by it.

42.8.41.8. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by

the general law, or by any other contract or document. In this provision "general law" includes the law of a country other than England, and "right" includes any power, privilege, remedy, or proprietary or security interest.

## **ANNEX ONE:**

### **Specification**

[to be defined by the Purchasing Authority and / or Beneficiary as detailed in the Order]



## ANNEX TWO

### NHS Eligibility Criteria – Electronic Content

The NHS eligibility criteria list defines the eligible persons who are entitled to have OpenAthens accounts in England. The current list was originally defined to set out all **eligible persons** across the NHS who could access electronic content resources purchased at a national level.

For all other purchasing levels made through the Framework e.g. regional, local, consortia, eligibility will consist of the eligible persons as listed in the NHS Eligibility Criteria within **geographically** or **organisationally**-defined areas.

Additionally, those Beneficiaries who choose to purchase through the Framework, will have their own specific eligibility requirements.

This list may from time to time be updated at:

<https://www.nice.org.uk/about/what-we-do/evidence-services/journals-and-databases/openathens/openathens-eligibility>

### Authorised users

- **A. Employees, workers and contractors of NHS organisations which provide NHS-commissioned care in England**  
Examples: NHS Trusts; GP practices; NHS Treatment Centres; Defence Medical Services; Prison Healthcare Services.
- **B. Individuals of non NHS organisations which provide NHS-commissioned care in England working directly with NHS patients**  
Examples: independent, private, charitable and voluntary sector organisations; local authority organisations which provide NHS-commissioned care or work in partnership with the NHS to provide care to NHS patients, including dental practices pharmacies, hospices, cancer support charities and social enterprise organisations; government-funded bodies which provide public health services and organisations that work in partnership with NHS organisations.
- **C. Employees, workers and contractors of organisations which commission care for NHS patients in England**  
Examples: Clinical Commissioning Groups, Commissioning Support

Units; NHS England Area Teams; NHS Commissioning Boards; NHS Commissioning Support agencies; Local Authorities including those in a Public Health role.

- **D. Employees, workers and contractors of organisations which receive government funding to provide executive, regulatory, advisory and delivery services to the NHS in England**

Examples: The Department of Health (DH); Local Education and Training Boards; Health Education England; Monitor; the Care Quality Commission; DH 'Arm's Length Bodies' including Special Health Authorities, Executive Agencies and Non Departmental Public Bodies, and DH-owned companies.

- **E. Individual employees, workers and contractors of organisations which receive government funding to provide social care services or information to support social care service delivery**

Examples: local authorities, Children and Family Court Advisory and Support Service, Social Care Institute for Excellence, Skills for Care, Centre for Excellence and Outcomes in Children and Young People's Services.

- **F. Registered health care professionals who provide NHS-commissioned care in England**

Examples: registered medical practitioners, dentists, dispensing and ophthalmic opticians, pharmacists, pharmacy technicians and dispensing staff; registered professionals recognised by the Nursing and Midwifery Council and by the Health Professions Council, including independent sector nurses providing cancer care.

- **G. Individuals engaged to provide education, training or research for the NHS in England**

Examples: educators contracted to provide training to the NHS, librarians delivering services to NHS, researchers contracted to do DH- or NHS-funded research.

- **H. Healthcare students, from the date of commencement of an education programme which involves practice and placement within NHS provider services, for the duration of their programme. Note: Healthcare students at universities which have an OpenAthens**

administrator can have an NHS OpenAthens account for the duration of their course. Students at these universities will have NHS accounts set up for them by their administrator and should not attempt to register online. Healthcare students can also register for an NHS OpenAthens account when on their NHS placement.

- **I. Patients, carers and members of the public (walk-in access only)**

**Note:** Only those patients, carers and members of the public that have access to local NHS library & knowledge service premises in England can access NHS purchased content.

- **J. Any other person authorised by a national, regional or local Open Athens administrator to use or otherwise have the benefit of NHS Deliverables or Services.**

Examples: NHS volunteers; employees of PFI partners which provide maintenance, catering and portering services in hospitals; individual representatives of NHS-related collaboratives e.g. HealthWatch, Comprehensive Local Research Networks, Collaborations for Leadership in Applied Health Research and Care, Health Innovation & Education Clusters; individual public-sector employees working in partnership with the NHS e.g. coroner, health service ombudsman, police officer; registered members of NHS library services; at the discretion of NHS librarians, retired NHS staff who have retained their professional registration.

## **Ensuring compliance with the eligibility criteria**

Access will be via OpenAthens only. As at present, individuals with an NHS e-mail address or access to a NHS network PC will be able to self-register for an OpenAthens account. Applications from other individuals will be directed to a librarian (the OpenAthens Administrator) who has responsibility for checking compliance against the eligibility criteria before granting access to those deemed eligible for an account. As at present, the OpenAthens Administrators will work collaboratively to ensure that the criteria are applied rigorously and consistently across the country.

Where administrators are unsure of a person's eligibility, in all areas the following email will be sent to the applicant:

“An NHS Open Athens account provides access to electronic information resources that are funded by the NHS for those working in the NHS or in non-NHS organisations whilst engaged in NHS-related business.

We have to assure our suppliers that we are not providing access to anyone not engaged in NHS related business, and in particular, that we are not providing access in such a way that may deprive them of income.

In order for us to consider your application, please reply to this e-mail with statements to clarify:

1. The type services that your organisation provides to NHS patients, free at the point of delivery.
2. Your role in supporting the provision of these services.
3. The period for which you will be engaged in this NHS-related business.
4. Proof of eligibility will be required.”

## Annex THREE

### Pricing Schedule

The Provider will invoice the Purchasing Authority or Beneficiary annually in advance according to the schedule below for the Deliverables provided and subject to invoicing terms in section 21: Invoicing and Payment to this "Order Terms & Conditions".

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#### Subscribed Products/Access/Fees

##### PUBLIC HEALTH ENGLAND

No. 1-19808606704 Subscribed

Access

01/04/2021 - 31/03/2022

Products – publisher

GBP

~~ClinicalKey® – Elsevier Inc.~~

~~clinicalkey.com~~

~~ClinicalKey Base Package~~

~~£4,820.70~~

~~-ClinicalKey Specialty Package~~

~~Allergy & Immunology Package~~

~~£11,443.58~~

~~Infectious Disease Package~~

~~£13,735.72~~

~~TOTAL FEES~~

~~£30,000.00~~

#### ScienceDirect® Subscription Commitment

A discount to account for title redundancy on the ScienceDirect online service concurrently provided by Elsevier to the Subscriber has been applied to the Fees for the Subscriber's ClinicalKey Subscribed Products. In the event that the Subscriber terminates or does not renew its subscription to any of the concurrent titles on the ScienceDirect online service, the Subscriber will pay to Elsevier the value of the terminated titles in the then current annual subscription list price within thirty (30) days of such termination or expiration, and each year of the term thereafter.

## ANNEX FOUR

### 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 Deliverables as set out in the Specification (Annex ONE to this document) in partnership, collaboration or consortia:

Organisation (from Beneficiaries List)	Address: <a href="#">Wellington House 133-155 Waterloo Road London, SE1 8UG</a>	Contact Name of Beneficiary

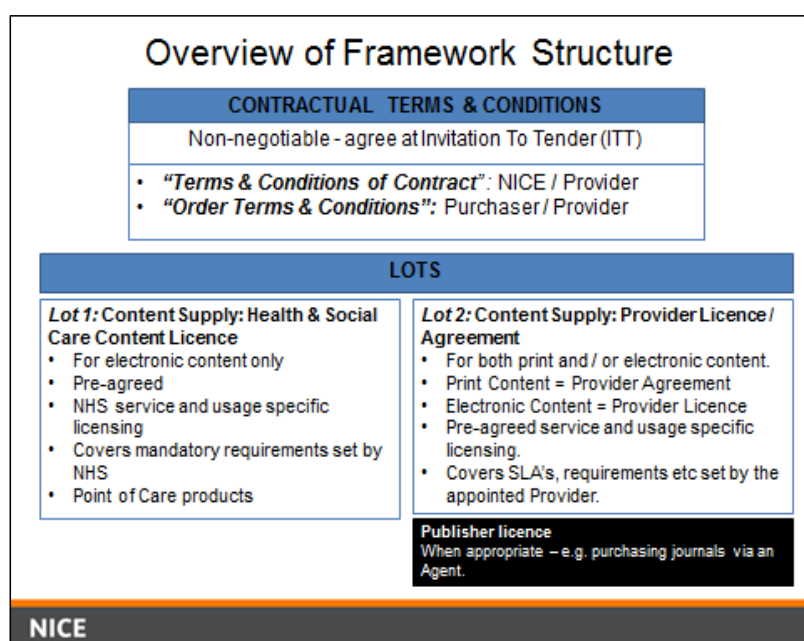
## ANNEX FIVE

### Framework Agreement Structure & Specification

#### Structure Overview

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

#### Chart A: Framework Structure Model



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

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

**AND**

- purchasing terms for use at the point of purchase i.e. between the Provider(s) and individual purchaser(s) (the “**Order Terms & Conditions**” document).
- 2. The “Terms and Conditions of Contract for NICE Electronic and Print Content Framework Agreement” document for use between NICE and each appointed Provider sets out standard contractual terms including (but not limited to) the Providers’ obligations, insurance, warranty and liability limitations, monitoring and reporting requirements.
- 3. The “Order Terms & Conditions” document for between the Purchasing Authority and the appointed Provider sets out the purchasing and supply terms where appropriate to print and electronic Content Resources to include (but not limited to): ordering procedures, Term and renewal, ownership and risk, limitation of liability, undertakings by both parties, quality and copyright, permitted and prohibited usage.

#### **Lots**

4. The Framework Agreement has two Lots. Purchasers must choose which Lot to purchase from based on whether they require print or electronic Content Resources, as well as the access, delivery and service management needs that is best suited to the content they require, in addition to any further specific requirements.

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

5. Providers awarded to this Lot may supply electronic Content Resources ONLY under the terms of the “Health & Social Care Content (HSCC) Licence”.
6. The Licence includes pre-agreed and non-negotiable terms including (but not limited to): licensing & usage; service availability levels; service credits; monitoring & reporting requirements; technical standards; Service Level Agreements (SLAs) & Key Performance & Quality Indicators (KPIs), permitted and prohibited usage rights.
7. Purchasing Authorities can add in terms for additional service requirements to the HSCC Licence in Annex SEVEN to the “Order Terms & Conditions”, dependent on local purchasing requirement e.g. technical requirements such as API specification, ability to integrate content into local Resource Discovery Systems. Any additional terms set out in Annex SEVEN may not conflict with the terms set out in:



- the “Terms and Conditions of Contract for NICE Electronic and Print Content” and any Annexes”;
  - the “Order Terms & Conditions” and any Annexes;
  - this “Health & Social Care Content (HSCC) Licence” and any appendices.
8. Purchases made in Lot 1 include (but are not limited to):
- where there is a requirement for strong measurement and reporting of contract performance - for example all national purchases, where there is a need for the Provider to adhere to specific service levels and KPIs, regular reporting requirements;
  - consortium purchases, where there is a requirement to measure contract performance;
  - high value purchases and / or those deemed high risk;
  - all Point of Care (PoC) and PoC related Content Resources.

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

9. Providers awarded to this Lot may supply electronic and / or print Content Resources under the terms of their own Licence or Agreement. The Licence / Agreement will set out an individual Provider’s pre-agreed usage and licensing terms as well as SLAs / KPIs. Providers’ terms may not conflict with the terms set out in:
10. the “Terms and Conditions of Contract for NICE Electronic and Print Content” and any Annexes”;
11. the “Order Terms & Conditions” and any Annexes (excluding Provider Terms);
12. Lot 2 might be used for purchases not deemed high risk, for Agreements that do not require strong contract management or where the contract value is expected to be low.
13. Where the Provider in Lot 2 is an intermediary such as a bookseller or Agent the contractual document will take the form of a “Provider Agreement”. For example, when purchasing print and electronic journals from a subscription Agent. The individual publisher’s Licence for each title purchased would then take the form of an appendix to the Provider Agreement. This is required as many of the licensing and usage terms

may be publisher dependent and the Agent is not in a position to agree on the publishers behalf.

### **Purchasing Process**

14. Content purchases made from the Framework Agreement will either take the form of:

- **new purchases**, with Contract Award based on there being only one Provider, or cost, or a Most Economically Advantageous Tender (MEAT) evaluation;
- **renewals** of new purchases made from the Framework Agreement - where the terms of contract allow and there is no change in the Deliverables required e.g. journal and databases subscription renewals.

15. When purchasing from the Framework, Purchasing Authorities are wholly responsible for the selection of:

- the appropriate Lot(s) for their purchasing requirement(s);
- the procurement route to be followed for their individual purchasing requirement(s) from the Framework, namely: a "Direct Call Off"; or Mini Competition.

16. The purchasing process shall be detailed in a "Buyers Guide" to be provided by the Contracting Authority and made available to Purchasing Authorities and Providers as part of the guidance published on the Framework website.

17. Subject to 13 above, the purchasing process detailed in the Buyers Guide shall be updated by the Contracting Authority from time to time. Any update to the Buyers Guide shall be automatically accepted as part of this Agreement on instruction by the Contracting Authority and shall not require a variation to contract detailed in clause 30.

## **Annex SEVEN**


### **Additional Terms**

## SIGNATURES: ORDER TERMS & CONDITIONS

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

### Authorised Signatories

<b>For and on behalf of The Provider:</b>
<b>Signature</b>
<b>Print Name</b>
<b>Date:</b> <u>23.3.21</u>
<b>Position</b> <b>(Budget Holder)</b>

<b>For and on behalf of The Purchasing Authority</b>
<b>Signature</b> 
<b>Print Name:</b> <del>Moira Pickford</del>
<b>Date:</b> 19.3.21
<b>Position</b> Category Manager <b>(Budget Holder)</b>

