

DATED 30^h of March 2023

(1) NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE

- and -

(2) The Anna Freud Centre



Specialist Mental Health Guideline Development Support Unit

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THIS AGREEMENT is made the 30^h day of March 2023

BETWEEN:

- (1) **THE NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE** of Level 1A City Tower Piccadilly Plaza Manchester M1 4BT, ("**NICE**"); and
- (2) **The Anna Freud Centre** of 4-8 Rodney Street London N1 9JH ("**the Contractor**")

WHEREAS:

- (A) NICE is a non-departmental public body established under the Health and Social Care Act 2012 to provide guidance and support to providers and commissioners of healthcare to help them improve outcomes for people using the NHS, public health and social care services.
- (B) NICE intends to fund, in accordance with the terms of this Agreement, the Contractor to facilitate the performance of the Services;
- (C) The Contractor The Anna Freud Centre is the lead body responsible for the provision of the Services.
- (D) It is the intention of the parties that the Contractor shall at all times act in a way which is consistent with the governance provisions of this Agreement

NOW IT IS HEREBY AGREED as follows:

1. DEFINITIONS

In this Agreement and the recitals to it the following words shall have the following meanings:

- | | |
|---------------------------|---|
| "Audit Trail" | means the retained documentation and record of actions carried out by the Contractor, its employees, the Guideline Committee in relation to the delivery of Products under the Memorandum of Agreement, as described in clause 8.2; |
| "Chief Executive Officer" | means the individual from time to time appointed by NICE and notified to the Contractor in writing as the Chief |

	Executive Officer for the purposes of dispute resolution, as referred to in clause 23.5.3;
“Compliance Report”	means the report submitted by the Contractor to NICE annually detailing its compliance with the terms of this Agreement in accordance with clause 8 and as set out in Schedule 2;
“Contractor’s Background Intellectual Property”	means Intellectual Property owned or controlled by the Contractor, or which shall at any time thereafter become so owned or controlled otherwise than as a result of the performance of this Agreement;
“Contract Year”	means a year commencing 1 April;
“Default”	means any breach by a party to this Agreement of its obligations under this Agreement or any default, act, omission, negligence or statement of such party or its employees, agents or sub-contractors in connection with this Agreement and in respect of which such party is liable to the other;
“Due Date”	means the date by which a Milestone must be completed.
“Funding”	has the meaning set out in Schedule 1 paragraph 1:
“Guideline Development Methods”	means the currently applicable version of NICE’s publication ‘Developing NICE Guidelines: The Manual (as amended and updated by NICE and notified to the Contractor from time to time);
“Incoming Contractor”	means any person who is the new provider of services the same or broadly equivalent to some or all of the Services, in place of the Contractor (including NICE in the case of such services being provided in-house)
“Insolvency Event”	means where:

- a) either party passes a resolution, or the court makes an order for a party to be wound up (otherwise than for the purpose of a bona fide and solvent reconstruction or amalgamation); or
- b) either party passes a resolution, or the court makes an order for a receiver, manager or administrator on behalf of a creditor to be appointed in respect of all or part of the business of such party; or
- c) either party ceases to trade or is unable to pay its debts within the meaning of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction.

“Intellectual Property”	means patents, trademarks and service marks, applications for any of the foregoing, copyright, design rights, know-how, trade or business names and other similar rights or obligations whether registerable or not that may exist in any part of the world;
“Milestone”	means a milestone in relation to an assigned task linked to its delivery.
“Monitoring Reports”	means reports, in the forms attached at Schedule 2, to be produced quarterly by the Contractor in accordance with clause 3.5.1. The Monitoring Reports consist of a finance report detailing a breakdown of costs incurred, and a progress report showing the progress of the Contractor in respect of the Milestones;
“NICE’s Background Intellectual Property”	means Intellectual Property owned or controlled by NICE, or which shall at any time thereafter become so owned or controlled otherwise than as a result of the performance of this Agreement;

“NICE’s Code of Conduct for Guideline Committee Members and Declaration of Interest”	means NICE’s codes of practice for Guideline Committee chairs and members;
“NICE’s Policies”	<p>means NICE’s policies, guidance, methodologies and procedures including, where applicable to a commission, the Guideline Development Methods, relevant to the Memorandum of Agreement, as supplied by NICE to the Contractor:</p> <ul style="list-style-type: none">• on or before the date of this Agreement; and <p>after the date of this Agreement subject to the Contractor’s written approval of the terms of these, such approval is not to be unreasonably withheld or delayed;</p>
NICE’s Retention and Disposal Schedule”	means the currently applicable version of NICE’s Retention and Disposal Schedule (as updated and amended by NICE and notified to the Contractor from time to time);
“NHS”	means the National Health Service in England
“Payment Date”	means a date on which payment is due from NICE to the Contractor in accordance with the terms of this Agreement and Schedule 1;
“Premises”	means the Contractor’s premises at 4-8 Rodney Street London N1 9JH or such other premises as may be the Contractor’s main premises
“Project Costs”	means the costs specified in paragraph 1 of Schedule 1;
“Responsible Officer”	means the individual from time to time appointed by the Contractor and notified to NICE in writing as the responsible officer for the purposes of dispute resolution, as referred to in clause 23.4.3.2;

“Services”	means the supply of suitable experience, qualified and trained staff to NICE for the research services required to create NICE’s Guidelines to the NHS, Social Care and Public Health arenas;
“Termination Date”	means the date upon which this Agreement terminates, howsoever caused;
“Transfer”	means a “relevant transfer” as defined by Regulation 2 of TUPE;
“Transfer Date”	means the date upon which it is agreed by the parties or found by a court of law that a Transfer of some or all of the transferring individuals has occurred;
“TUPE”	means the Transfer of Undertakings (Protection of Employment) Regulations 2014 as amended;
“Work-in-Progress”	any research, papers, draft guidelines or other materials prepared by a Previous Contractor under a Previous Agreement which NICE supplies to the Contractor and commissions the Contractor to continue and develop as part of the Services;

2. DURATION

- 2.1** This Agreement shall be deemed to have commenced with effect from 1 April 2023 and, subject to earlier termination by either party in accordance with its terms, it shall expire on 31 March 2026, or, pursuant to clause 2.2, on a subsequent anniversary of that date.
- 2.2** Subject to clauses 2.3 and 2.4 and to earlier termination in accordance with its terms, on 1 April 2026, this Agreement shall be extended for a twelve month period, so that this Agreement may remain in force for a series of 1 year periods terminating on 31 March 2028.
- 2.3** Clause 2.2 shall not operate so as to extend this agreement beyond 31 March 2028.

- 2.4** By service of written notice on the other party no later than 30 September in any Contract Year commencing on or after 1 April 2026 either party may prevent the extension which would otherwise occur pursuant to clause 2.2 on the next following 1 April.
- 2.5** If this Agreement is extended under clause 2.2, quarterly Funding and Payment Dates shall be agreed via an Annual Business Planning Letter for each extended period between the parties in accordance with clause 3 of Schedule 1 and appended as a variation to contract letter to Schedule 1.

3. OBLIGATIONS OF NICE

- 3.1** Providing that the Contractor has performed its obligations in all material respects under this Agreement, NICE will provide Funding to the Contractor in accordance with the provisions of Schedule 1 and this clause 3.
- 3.2** In the event of a failure by the Contractor to perform its obligations in all material respects for the purposes of clause 3.1 above NICE shall be entitled to withhold the Funding or part of the Funding referable to that failure for the next quarter or quarters or, in circumstances where no further Funding is due to the Contractor, the Contractor shall forthwith repay to NICE the Funding or part of the Funding referable to that failure.
- 3.3** Without prejudice to the rights of NICE under clauses 3.1 and 3.2, where the Contractor has failed to perform its obligations under this Agreement NICE may at its sole option and to the extent that it has legal power to do so make a discretionary payment to the Contractor. Such discretionary payment shall not signify acceptance by NICE of performance of the Services or part of the Services as being complete, satisfactory and by the Due Date. In considering under this clause 3.3 whether to exercise its discretion to make a payment under this clause, NICE shall have due regard to the extent to which NICE is able to use any services delivered to it by the Contractor, the extent and causes of the Contractor's failure to perform and the impact or expected impact of the Contractor's failure to perform on the timetable for successful completion of the Services.
- 3.4** All Funding referred to in this Agreement is exclusive of any VAT properly payable.
- 3.5** NICE will provide the Funding to the Contractor:

- 3.5.1 quarterly in arrears, subject to receipt by NICE of:
 - 3.5.1.1 an invoice;
 - 3.5.1.2 a Monitoring Report in respect of the immediately preceding quarter in the form specified in Schedule 2 which shows costs incurred and satisfactory progress with the Services delivered by staff then current and which shall be used by NICE as evidence (without limitation to any other evidence that NICE may use) of whether the Contractor has performed its obligations in all material respects under this Agreement;
- 3.6 NICE will use its best endeavours to provide the Funding to the Contractor within 30 days of receipt of the evidence required under clauses 3.5.1.1 – 3.5.1.2 inclusive.
- 3.7 If there is dispute over all or any of the charges made by the Contractor, NICE shall pay any sum that is not in dispute.

4. THE SERVICES AND THE OBLIGATIONS OF THE CONTRACTOR

- 4.1 The Contractor shall itself and shall ensure that its employees act at all times in accordance with the terms of this Agreement, and with NICE's Policies, (in particular but without limitation, The Contractor shall perform or procure and take full responsibility for the performance of the Services, in accordance with this Agreement, and shall, at all times, act in good faith towards NICE.
- 4.2 The Contractor will provide as a minimum the below Whole Time Equivalent (WTE) roles (hereafter collectively called the Key individuals) to NICE to support its guidelines programme services, act as a credible source of subject matter expertise in mental health guideline development across NICE and enable the delivery of the SMHGDU programme outputs (as agreed on a quarterly basis) in a business-as-usual way. The following Whole Time Equivalent (WTE) are:
 - 4.2.1.1 Clinical Advisor (0.2 WTE)
 - 4.2.1.2 Senior Systematic Reviewer (1 WTE)
 - 4.2.1.3 Systematic Reviewer (1 WTE)

4.2.1.4 Senior Health Economist (1 WTE)

- 4.2.2** The Contractor will work to NICE's methods and processes for the development of evidence-based guidance. The subject matter of individual guidelines as set in the Quarterly guideline programme requirements along with subject matter expertise will determine the specific tasks undertaken by the SMHGDSU.
- 4.2.3** The Contractor will provide NICE with suitably qualified and skilled staff (as the Key Individuals) to perform the necessary duties at the stated minimum WTE for the duration of this Agreement.
- 4.2.4** The Key Individuals provided by The Contractor to NICE will be identified and confirmed by Professor Steve Pilling the Contractor's Responsible Officer.
- 4.3** The appointment of the Key Individuals to the programme will be in agreement with NICE and where staff are interviewed for a post on this project NICE will participate in the interview. The decision of the successful candidate(s) will be a joint decision of the parties.
- 4.4** NICE accepts that due to circumstances beyond its control, the Contractor may not be able to provide the full quota of the Key Individuals documented in this Agreement at any one time. In such circumstances NICE will work with the Responsible Officer to identify the next available suitable staff member. In such circumstances the Contractor will reduce the charges according to the vacancies at the time.
- 4.5** NICE reserves the right to vary the role allocation specified in clause 4.2, but will do so reasonably through discussion with the authorised representative. In instances where the Contractor cannot provide NICE with a requested varied role allocation, the arrangements set out in clauses 4.3 and 4.4 will apply.
- 4.6** The Contractor shall fulfil all obligations to, and assume responsibility (both as an employer and as a service provider) for, the Key Individuals
- 4.7** At termination of this Agreement, be that as per planned dates or early termination as set out in clause 19, the Contractor will take full responsibility for any employment matters relating to staff performing work under this Agreement, including, where necessary, redundancy costs.

4.8 Taxation

- 4.8.1 Where the Contractor or Key Individuals supplied by the Contractor are liable to be taxed in the UK in respect of consideration received under this Agreement, the Contractor shall, and ensure that the Key Individuals shall, at all times comply with the Income Tax (Earnings and Pension) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- 4.8.2 Where the Contractor or Key Individuals are liable for National Insurance Contributions (NICs) in respect of consideration received under this Agreement, the Contractor shall, and ensure that the Key Individuals shall, at all times comply with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.
- 4.8.3 NICE may, at any time during the term of this Agreement, request the Contractor to provide information which demonstrates:
- (a) how the Contractor or the Key Individuals comply with clauses 4.2.1 and 4.2.2 above; or why
 - (b) Clauses 4.2.1 and 4.2.2 are not applicable to the Contractor or the Key Individuals.
- 4.8.4 Where applicable, a request under clause 4.2.3 above may specify the information which the Contractor or the Key Individuals must provide and the period within which that information must be provided.
- 4.8.5 NICE may terminate this Agreement if:
- (a) in the case of a request mentioned in clause 4.2.3 above:-
 - (i) The Contractor or the Key Individuals fails to provide information in response to the request within twenty [20] days,
 - or

(ii) The Contractor or the Key Individuals provides information which is inadequate to demonstrate either compliance with clauses 4.2.1 and 4.2.2 above or why these clauses do not apply to either the Contractor or the Key Individuals;

(b) in the case of a request mentioned in clause 4.2.4 above the Contractor fails to provide the specified information within twenty [20] days, or

(c) it receives information which demonstrates that, at any time when clauses 4.2.1 and 4.2.2 apply to the Contractor, the Contractor is not complying with those clauses.

4.8.6 NICE may supply any information which it receives under Clause 4.2.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

4.1 If at any time an overpayment has been made by NICE to the Contractor for any reason whatsoever, the Contractor shall repay the amount of such overpayment within five (5) days of receipt of a written demand therefor from NICE.

5. MANAGEMENT AND GOVERNANCE

5.1 The Contractor shall manage the Services in accordance with the requirements of this Agreement and NICE's Policies including, where applicable to the Services delivered by the Key Individuals, the Guideline Development Methods.

5.2 The Contractor shall adopt and maintain an Internal Control System sufficient to ensure that the Services are delivered in accordance with the requirements of this clause 5, clauses 6, 7, 8, and 9 of this Agreement.

6. MILESTONES AND QUALITY

6.1 The Contractor shall ensure that its staff deliver their assigned workplans and shall in particular, but without limitation to the generality of the foregoing, complete each in accordance with the timetable and deadlines, specifications and acceptance criteria assigned to the Key Individual.

- 6.2** Without prejudice to clause 6.5 and 6.9 (time and quality of the essence), the Contractor shall notify NICE immediately in writing upon becoming aware of any delay or likely delay which might cause the Contractor to fail to perform a Milestone by the Due Date. In these circumstances, without prejudice to its remedies as set out in this Agreement, NICE shall consider, in consultation with the Contractor, whether to take steps to remedy the situation and, if so, which steps should be taken. Such steps may include, where appropriate, postponing one or more Due Dates.
- 6.3** Where the Contractor has given such notice in accordance with clause 6.3 and can demonstrate, to the reasonable satisfaction of NICE, that the delay or likely delay so notified is to a material extent due to a defect in any Work-in-Progress inherited by the Contractor from a Previous Contractor pursuant to a commission, without prejudice to any of the Contractor's other rights under this Agreement, NICE shall postpone one or more Due Dates for such period as will be no more than sufficient to allow correction of any such defect.
- 6.4** NICE may at its sole option but acting reasonably vary the timetable and deadlines. NICE may, in addition, agree to a request by the Contractor, acting reasonably, for a variation of the timetable and deadlines, but for the avoidance of doubt, the Contractor may not vary the terms of delivery without the express agreement of NICE, to be obtained in writing. For the avoidance of doubt changes to the timetable and deadlines may result in a variation to the Due Dates.
- 6.5** The dates by which assigned workplans shall be completed are with each individual and are referred to in this Agreement as the "Due Dates". Each Milestone within a assigned workplan shall be performed by the Due Date and, subject to clause 6.6, performance after this date shall be considered to be late. The parties acknowledge that the completion of each Milestone by its Due Date is vital to the satisfactory performance of the Services and that time is of the essence of this Agreement in relation to the completion of each Milestone by its Due Date, subject only to the exercise of NICE's discretion in light of the particular circumstances of any breach.
- 6.6** The Contractor shall be deemed to have completed a Milestone by the Due Date notwithstanding any delay beyond the Due Date if such delay would not have occurred but for any act or omission of NICE, anything done or omitted to be done on NICE's instructions or any other act or omission of a third party which was beyond the reasonable control of the Contractor (for the avoidance of doubt

such third parties do not include the Contractor's sub-contractors, the Guideline Committee or Consortium Members but shall include any Previous Contractor to the extent that the delay has resulted from the act or omission of such Previous Contractor in relation to Work-in-Progress prepared by it for NICE which has been transferred to the Contractor pursuant to a commission under this Agreement).

6.7 Under the circumstances described in clause 6.6 NICE shall consider after consultation with the Contractor what steps should be taken to remedy the situation and complete the commission.

6.8 The parties acknowledge that it is vital to the satisfactory performance of the Services that the Milestones are completed to specification in accordance with Guideline Development Methods and with all due skill, attention and expertise. References to satisfactory completion of any Milestone shall be read as referring only to performance in accordance with this clause 6.8, and references to time being of the essence refer equally to the quality of the performance as to the time of delivery of performance. Each Milestone shall have been fully and satisfactorily performed if the work, product, service or deliverable constituting that Milestone is completed:

6.8.1 by the Due Date, time to be of the essence of this Agreement;
and

6.8.2 to specification in accordance with assigned workplans, quality to be of the essence of this Agreement; and

6.8.3 in accordance with the Guideline Development Methods, quality to be of the essence of this Agreement; and

6.8.4 with all due skill, care and diligence and to the highest professional standards quality to be of the essence of this Agreement;

provided that in determining under this clause 6.8 whether a Milestone has been fully and satisfactorily performed NICE may also take into account any finding in a report carried out by NICE or any statutory or regulatory auditors or authorised agents of NICE following an audit investigation of the Contractor under clause 7.3.

6.9 Acceptance or otherwise of the Contractor's performance of a Milestone, for the purposes of clauses 6.56 and 6.88 shall be determined in accordance with the provisions of this clause 6.9:

6.9.1 By the Due Date the Contractor shall deliver such Services as it is required by this Agreement to produce by that date or such other evidence of performance of the Milestone as is set out in assigned workplans or as may have been agreed between the parties.

6.9.2 NICE shall apply the relevant quality assessment criteria as specified in clause 6.8 and assigned workplans and notify the Contractor in writing whether it considers that the Contractor's performance of the Milestone complies with this Agreement. Such notification may specify minor defects which, provided they are remedied by the Contractor within such period as specified by NICE shall not be deemed to constitute a breach of clauses 6.6 and/or 6.8.

6.10 Without prejudice to clauses 6.5 and 6.9 (time and quality of the essence), clause 3 (obligations of NICE) or clause 19 (termination), the Contractor shall complete any part of a Milestone that has not been completed by the Due Date and improve the quality of or replace any work done in connection with a Milestone that does not meet with the reasonable satisfaction of NICE (without additional remuneration therefore) by such date as NICE may reasonably specify, failing which NICE shall be entitled to procure performance of the defective part of the Project from a third party or to execute the tasks in question itself and recharge the cost of this work to the Contractor.

7. MONITORING AND REPORTING

7.1 The Contractor shall:

7.1.1 in respect of the Services, deliver quarterly to NICE a Monitoring Report in the form set out in Schedule 2 (including details as to specific progress achieved with respect to Milestones) together with such additional documents as specified from time to time;

7.1.2 attend quarterly review meetings

- 7.1.3 deliver annually, in the final quarter of each Contract Year, to NICE a Compliance Report in the form set out in Schedule 2 specifying details of;
 - 7.1.3.1 the records management programme implemented by the Contractor in accordance with clause 8.1.2; and
 - 7.1.3.2 in respect of Commissions provided by the Contractor in the year immediately preceding the date of the Compliance Report, or ongoing at such date, the level of compliance with Milestones in accordance with clause 6.
- 7.2 The Contractor shall at the reasonable request of NICE, make available to NICE (and, if necessary to copy at NICE's cost) copies of any or all materials and documents and any data under the Contractor's control which is or has been produced or used in connection with the Services, including a full copy of any Audit Trail or financial records requested.
- 7.3 NICE and any statutory or regulatory auditors or authorised agents of NICE shall be entitled to carry out a financial, quality and/or value for money audit of the Contractor, and the Contractor shall provide its full co-operation including but not limited to providing access to any premises used in connection with the Services upon reasonable notice and during normal office hours to NICE or its authorised representatives.
- 7.4 The Contractor shall allow or procure NICE access to the Premises during normal office hours on reasonable prior written notice as reasonably necessary to permit NICE to satisfy itself of the compliance by the Contractor with its obligations under this Agreement.

8. RECORD MANAGEMENT

- 8.1 The Contractor shall keep proper books of account which give a fair and accurate account of receipts and payments received or incurred in connection with the Services and keep such books available for inspection upon reasonable notice by NICE in accordance with clause 7.2, for a period consistent with NICE's Retention and Disposal Policy. In respect of each commission the Contractor shall:

- 8.1.1 keep, for a period consistent with NICE's Retention and Disposal Policy, detailed records and documents comprising the Audit Trail; and
- 8.1.2 develop and implement a records management programme sufficient to generate and maintain the Audit Trail.

8.2 In relation to each commission the Audit Trail shall:

- 8.2.1 During the term of this Agreement, refrain from destroying or deleting any data or documents, including documents comprising the Audit Trail, (other than duplicates of documents) relating to the provision of Services under this Agreement, unless and until the prior written permission of NICE has been given, provided that on the expiry or termination of this Agreement, and subject to clause 9.1.1, the Contractor shall afford NICE a reasonable opportunity to take possession of such data or documents prior to their destruction or deletion;
- 8.2.2 comprise all such information as generated by the Contractor, its employees, in relation to the development and delivery of the Services required by the commission, including, where applicable and without limitation:
 - 8.2.2.1 search strategies, parameters and rationales, including modes of searching and reasons for changes and amendments to searches;
 - 8.2.2.2 electronic records of references retrieved, stored in bibliographic database format;
 - 8.2.2.3 records of all abstracts, papers, studies and documents obtained in the document-delivery process;
 - 8.2.2.4 records of study selection, assessment, results synthesis and grading of available evidence, including study inclusion criteria;
 - 8.2.2.5 Final versions of documents produced;

8.2.3 be indexed and stored in such a way, whether in electronic or hard form, as to enable:

8.2.3.1 the process of the identification and consideration of evidence leading to the delivery and to be repeatable and transparent; and

8.2.4 be maintained and managed in accordance with the records management programme described in clause 8.1.2 by a person appointed to such a role by the Contractor.

9. DATA PROTECTION AND FREEDOM OF INFORMATION

9.1 NICE shall comply with its obligations under the (a) the UK GDPR; (b) the Data Protection Act 2018; (c) as applicable, General Data Protection (GDPR) Regulation, Regulation (EU) 2016/679 ("GDPR"); (d) any laws which implement any such laws; and (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing, where "UK GDPR" means GDPR as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018, with adjustments as provided in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and any successor legislation.

9.2 The Contractor shall:

9.2.1 comply with the (a) the UK GDPR; (b) the Data Protection Act 2018; (c) as applicable, General Data Protection (GDPR) Regulation, Regulation (EU) 2016/679 ("GDPR"); (d) any laws which implement any such laws; and (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing, where "UK GDPR" means GDPR as it forms part of UK domestic law by virtue of the European Union (Withdrawal) Act 2018, with adjustments as provided in the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and any successor legislation, in particular and without limitation by effecting all measures necessary to comply with the eight Data Protection principles set out in the UK GDPR;

- 9.2.2 obtain all consents required from any individual under the UK GDPR or any other law in relation to any transfer to NICE of personal data (as defined in the UK GDPR) such as are adequate and appropriate to enable NICE to process such data as it considers reasonably appropriate;
 - 9.2.3 co-operate with NICE as reasonably required to enable NICE to comply with its obligations under that legislation which arise from this Agreement or in relation to any data collected, held or processed pursuant to this Agreement;
 - 9.2.4 take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data held for the purposes of this Agreement; and
 - 9.2.5 provide all reasonable assistance at all times during the term of this Agreement and during the period of six years thereafter to allow NICE to obtain such information as is necessary to fulfil NICE's obligations to supply information for parliamentary, governmental, judicial or other administrative purposes and/or to carry out an audit of the provision of the Services in compliance with this Agreement.
- 9.3** The Contractor shall co-operate and assist NICE, and shall procure that its staff shall co-operate and aid NICE, to enable NICE to meet its obligations under the Freedom of Information Act 2000 or any successor legislation ("FOIA") by;
 - 9.3.1 the provision to NICE of information which the Contractor is holding on behalf of NICE within timescales that NICE may reasonably set to enable NICE to comply with its obligations under the FOIA in respect of any request by a third party for information from NICE; and
 - 10.3.2 engaging fully in any consultation that NICE may hold with the Contractor, in relation to information requested from NICE by a third party that relates to the Contractor, or this Agreement.
- 9.4** During the term of this Agreement, refrain from destroying or deleting any data or documents, including documents comprising the Audit Trail, (other than

duplicates of documents) relating to the provision of Services under this Agreement, unless and until the prior written permission of NICE has been given, provided that on the expiry or termination of this Agreement, and subject to clause 8.1.1, the Contractor shall afford NICE a reasonable opportunity to take possession of such data or documents prior to their destruction or deletion.

9.5 NICE will consult the Contractor in advance of disclosure in relation to any request for disclosure of the Contractor's Confidential Information in accordance with all applicable guidance.

9.6 the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for NICE

10. EQUAL OPPORTUNITIES

10.1 The Contractor shall itself and shall take all reasonable steps to ensure that the, its employees, or agents and all sub-contractors employed in the execution of this Agreement comply with all current employment legislation and in particular, do not unlawfully discriminate within the meaning of the Equality Act 2010 or any other relevant legislation relating to discrimination for the purpose of providing the Services.

10.2 The Contractor shall:

10.2.1 have a written Equal Opportunities Policy, which shall be produced to NICE upon request;

10.2.2 take all reasonable steps to eliminate all discrimination in relation to sex, race, disability, age, gender reassignment, being married or in a civil partnership, being pregnant or on maternity leave, religion and sexual orientation in its employment and management practices and in the provision of Services under this Agreement in accordance with its Equal Opportunities Policy;

10.2.3 work with NICE as reasonably required throughout the term of the Agreement to promote equality in accordance with this clause 10 and to ensure that the delivery of the Services is achieved without discrimination on the grounds of sex, race, disability, age, gender reassignment, being married or in a civil

partnership, being pregnant or on maternity leave, sexual orientation or religion or similar philosophical belief;

- 10.2.4 inform NICE in writing as soon as reasonably practicable should it become aware of any proceedings brought against it in connection with this Agreement by any person including but not limited to claims for breach of the Equality Act 2010.

11. WARRANTIES AND REPRESENTATIONS

11.1 Each party warrants and represents that:

- 11.1.1 it has full capacity and authority and all relevant licences, permits and consents to enter into and perform its obligations under this Agreement;
- 11.1.2 this Agreement is executed by a duly authorised representative; and
- 11.1.3 there are no actions, suits or proceedings pending or, so far as it is aware, threatened against or affecting it that might reasonably be expected to materially adversely affect its ability to meet and carry out its obligations under this Agreement.

11.2 The Contractor further warrants and represents that:

- 11.2.1 it will discharge its obligations hereunder with all due skill, care and diligence including, but not limited to good practice and (without limiting generality of the foregoing) in accordance with its own established internal procedures;
- 11.2.2 the Services will be performed by a multi-disciplinary group of appropriately experienced, qualified and trained personnel (with reference to relevant stakeholders, particularly patients and their carers) with all due skill, care and diligence;
- 11.2.3 so far as the Contractor is aware, having made reasonable enquiries, the performance of the Services and NICE's use of any material produced by the Contractor in the performance of the Services shall not infringe any Intellectual Property rights of any third party;

12. EQUIPMENT

12.1 The Contractor shall, subject to receipt from NICE of adequate Funding, provide and pay for all reasonable equipment and personnel required in its performance of the Services.

12.2 On the termination, howsoever caused, of this Agreement, the Contractor shall deliver up to NICE, as soon as is reasonably practicable, if so required by NICE, all equipment and assets purchased by or on behalf of the Contractor from funds provided by NICE under this Agreement.

13. SET-OFF

If any sum of money shall be due from one party to the other, the same may be deducted from any sum then due or which at any time thereafter may become due to the first party from that other party under this Agreement.

14. CONFIDENTIALITY

14.1 In respect of any Confidential Information (such information to be clearly marked as confidential) it may receive from the other party ("the Discloser") and subject always to the remainder of this clause 15, 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:

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

14.3 the provisions of this clause 15 shall not apply to any Confidential Information which:

14.3.1 is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;

14.3.2 is obtained by a third party who is lawfully authorised to disclose such information; or

14.3.3 is authorised for release by the prior written consent of the Discloser; or

14.3.4 the disclosure of which is required to ensure the compliance with the Freedom of Information Act 2000 (the FOIA).

14.4 Nothing in this clause 14 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 Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this clause 14 as if any reference to the Contractor in this clause 14 were a reference to such holding company.

15. PUBLIC REPUTATION OF THE PARTIES

15.1 Both parties recognise the other party's public reputation and legal responsibilities. Each party shall use all reasonable endeavours not to harm or compromise these.

15.2 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. NICE shall be responsible for determining in its absolute discretion whether any of the content of this Agreement is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA.

15.3 Notwithstanding any other term of this Agreement, the Contractor hereby gives consent for NICE to publish this Agreement in its entirety, including from time to time agreed changes to this 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.

16. INTELLECTUAL PROPERTY RIGHTS

16.1 Intellectual Property rights, other than NICE's Background Intellectual Property rights and the Contractor's Background Intellectual Property rights which shall remain vested in NICE and the Contractor respectively, to all materials produced in the performance of the Services by the Contractor or a Guideline Committee member shall in consideration of the sums payable under this contract vest in NICE.

- 16.2** The Contractor hereby grants (to the extent such Intellectual Property vests in the Contractor) to NICE:
- 16.2.1 a perpetual world-wide, royalty free, non-exclusive and irrevocable licence to use, publish, edit, update, amend, republish, translate, extract from and otherwise utilise in full or in part, strictly for its own purposes: the Contractor's Background Intellectual Property from Guideline development and updating which is included in any materials produced in the performance of the Services under this Agreement; and
 - 16.2.2 a licence to grant sub-licences of its rights described in clause 16.2.1 at NICE's sole cost, acting reasonably, to any person, strictly for such person's own purposes provided that NICE shall give the Contractor prior written notice of the granting of any such sub-licence, to include the identity of the relevant sub-licensee. For the avoidance of doubt, "person" shall include an organisation or association.
- 16.3** The Contractor shall not itself and shall use all reasonable endeavours to procure that no member of its staff shall assign any Intellectual Property rights to the materials referred to in clause 16.2.1 without the prior written consent of NICE, such consent not to be unreasonably withheld or (if given) delayed.
- 16.4** The Contractor warrants to NICE that in relation to any work created by itself, its servants, agents, consultants or independent contractors, as a result of the Project Services, that:-
- 16.4.1 such work is not knowingly a violation of any existing copyright anywhere;
 - 16.4.2 such work does not contain anything objectionable, obscene or libellous;
 - 16.4.3 all statements contained in any such work which purport to be facts are true.
- 16.5** If the Contractor incorporates any copyrightable work in any work it produces or has produced on its behalf then it shall ensure that appropriate permissions to use that work are obtained in writing. NICE shall have the right to see such permissions.

16.6 The Contractor shall procure that any independent author or part-author of any copyrightable material created as a result of the Services, assigns the copyright with full title guarantee to NICE and waives any moral rights under the Copyright, Designs and Patents Acts 1988. The Contractor shall do this as soon as reasonably possible after the creation of any such work.

16.7 NICE hereby grants to the Contractor a world-wide, irrevocable, royalty-free, non-exclusive licence to:

16.7.1 to use or publish in full or in part, strictly for its own purposes the written outputs of the services or any other material containing or relying upon any part of written outputs of the services; and

16.7.2 use any part of the written outputs of the services or any other material containing or relying upon any part of the the written outputs of the services for teaching purposes,

16.8 In all cases provided that:

16.8.1 prior to such publication or use the Contractor submits the relevant material to NICE for review following which NICE shall respond to the Contractor, such response not to be unreasonably withheld or delayed, stating either its consent to such publication or use (including whether or not consent is subject to amendments to such material) or its lack of consent to such publication or use;

16.8.2 where NICE consents to such publication or use, the Contractor shall make due acknowledgement to NICE as owner of the relevant the written outputs of the services in a form to be specified by NICE, save that where such consent is subject to amendments to the relevant material and such amendments are not made by the Contractor, NICE shall be deemed to have not consented to such publication or use;

16.8.3 where NICE does not or, in accordance with Clause 16.8.1, is deemed not to consent to such publication or use, the Contractor shall make no reference which links such material, its publication or use in any way to NICE;

16.9 The Contractor publishes and uses at its own cost; and

16.10 The Contractor complies with any relevant obligations of confidentiality

17. INTELLECTUAL PROPERTY INDEMNITY

17.1 Each party shall promptly notify the other if any claim or demand is made or action brought against it for infringement or alleged infringement of Intellectual Property which might affect the Services.

17.2 The Contractor shall indemnify NICE and keep it indemnified for alleged infringement of any third party Intellectual Property rights caused by any act or omission of the Guideline Committee or the Contractor. For the avoidance of doubt, any costs to the Contractor of such an indemnity shall not constitute sums recoverable by it as Funding from NICE.

18. LIABILITY

18.1 The liability (whether for breach of obligation, covenant, undertaking, warranty or in relation to any indemnity) of either party to the other party (to include any liability (if any) of the Contractor to any Incoming Contractor) under this Agreement or in tort or otherwise shall not exceed the value of the total Funding.

18.2 Neither party shall be liable to the other for indirect or consequential loss or damage arising from its use of the results generated under this Agreement.

18.3 Nothing in this clause shall exclude or limit the liability of either party for death or personal injury or otherwise to the extent that such exclusion or limitation is prohibited by law.

19. TERMINATION

19.1 Either party ("Initiating Party") may terminate this Agreement at any time by giving notice to the other party on the happening of any of the following events by or in relation to the other party:

19.1.1 the other is subject to an Insolvency Event;

19.1.2 the other is in material Default under this Agreement and:

19.1.2.1 if the Default is capable of remedy, the defaulting party has failed to remedy the Default within thirty

days of written notice being sent to it specifying the Default and requiring its remedy; or

19.1.2.2 the Default is not capable of remedy;

19.1.3 Force Majeure, as defined in clause 22.1, prevents the other party performing its obligations under this Agreement for more than four months.

19.2 Termination of this Agreement pursuant to clause 19.1 shall (at the option of the Initiating Party, as the case may be):

19.2.1 terminate this Agreement with effect from the date of service of the notice; or

19.2.2 terminate this Agreement with effect from the expiry of such period of between three and six months as may be specified in such notice.

19.3 Either party may at any time terminate this Agreement by giving the other not less than six months' notice (referred to in the following provisions of this clause 19 as the "Break Notice").

19.4 For the avoidance of doubt a Break Notice does not include the service of written notice by either party in accordance with clause 2.4.

19.5 Subject to clauses 19.6 to 19.11, NICE shall compensate the Contractor for all reasonable losses, liabilities and expenses incurred directly by the Contractor as a result of NICE giving the Break Notice.

19.6 Any payment under clause 19.5 above shall take into account the Unexpired Term (defined below) of this Agreement and the accelerated receipt by the Contractor of such payment.

19.7 Under clause 19.5, NICE will not pay any sum which, when taken together with any sums paid or due, or becoming due to the Contractor under this Agreement will exceed such total sums that would have been payable under this Agreement in respect of the period which is defined below as the Unexpired Term of the Agreement had the Break Notice not been served.

19.8 Following receipt of the Break Notice the Contractor shall take all reasonable steps consistent with its obligations under this Agreement to:

19.8.1 immediately (or at the earliest possible opportunity) cancel all capital and recurring costs and commitments;

19.8.2 where requested by NICE assign, and to the extent that it is legally possible, any contracts with sub-contractors to NICE or to a third party specified by NICE on the best terms reasonably obtainable;

19.8.3 subject to any request under clause 19.8.2 terminate any contracts with sub-contractors on the best terms reasonably obtainable; and

19.8.4 mitigate the cost to NICE.

19.9 No payment shall be made under clause 19.5 in respect of any losses, liabilities and expenses incurred directly by the Contractor which have not first been approved in writing by NICE such consent not to be unreasonably withheld or delayed.

19.10 In the event that the Contractor does not comply with clause 19.8:

19.10.1 NICE shall not pay any sum pursuant to clause 19.5 which it considers, acting reasonably, would exceed that which would have been payable; and

19.10.2 the Contractor shall pay to NICE such sum as NICE reasonably considers would have been payable pursuant to clause 19.8 had such action been taken.

19.11 For the purposes of clauses 19.6 and 19.7 above, the “Unexpired Term of the Agreement” shall be:

19.11.1 where the Break Notice is served on or before 30 September 2023, the period remaining until 31 March 2024;

19.11.2 after 30 September 2023:

19.11.2.1 where the Break Notice is served up to and including 30 September in the course of a Contract Year, the period remaining until the end of that Contract Year; or

19.11.2.2 where the Break Notice is served after 30 September in the course of a Contract Year, the period remaining until the end of the subsequent Contract Year.

19.12 In the event that the Contractor serves the Break Notice, the Contractor shall:

19.12.1 repay to NICE the Funding received from NICE which is then or becomes available for repayment, the Contractor having complied with its obligations under clause 19.8;

19.12.2 as soon as is reasonably practicable, but in any case within one month after the Agreement terminates, deliver up to NICE all stocks of work in progress and finished work relating to the Services; and

19.12.3 as soon as is reasonably practicable, but in any case within one month after the Agreement terminates, deliver up to NICE all equipment and assets purchased by or on behalf of the Contractor from funds provided by NICE under this Agreement.

20. CONSEQUENCES OF TERMINATION

20.1 Termination of the Agreement, however caused, shall not prejudice or affect any rights, action or remedy which shall have accrued before termination or shall accrue thereafter to either party.

20.2 In advance of any Termination Date, the Contractor undertakes to provide NICE and any Incoming Contractor (if different from NICE) with all such information in relation to the Key Individuals as NICE may reasonably request, within 14 days of such request. Without limitation to the generality of the foregoing, such information shall include a list of all Key Individuals, and what percentage of each Key Individual's time is spent on the Services, full details of salary, benefits (both in cash and in kind), and all other material terms and conditions of employment,

whether express or implied, applicable to the Key Individuals. The Contractor shall further provide details of any internal procedures invoked for or on behalf of Key Individuals and/or against Key Individuals together with details of any threatened or actual claims or proceedings. The Contractor warrants that the information provided to NICE in accordance with this clause 20.2 shall be full, complete and accurate in all material respects and the Contractor shall indemnify NICE and any Incoming Contractor (if different from NICE) on demand in respect of any costs, losses, damages and expenses (including reasonable legal fees) suffered or incurred by such party as a result of any breach of this warranty.

- 20.3** In the event that NICE serves a Break Notice pursuant to clause 20, and TUPE does not operate on the Termination Date to transfer all or any of the Key Individuals either to an Incoming Contractor or to NICE, the Contractor will use all reasonable endeavours to avoid the need to make such Key Individuals redundant by re-employing them into its workforce.
- 20.4** The Contractor shall indemnify and keep indemnified NICE and any Incoming Contractor (if different from NICE) against all costs, claims, demands, damages and expenses (including reasonable legal fees) arising out of or in connection with the employment or engagement or the termination of the employment or engagement of any Key Individual(s) where such claim arises out of or in connection with any act or omission on the part of the Contractor in the period up to the Transfer Date.
- 20.5** NICE shall indemnify and keep indemnified the Contractor against all costs, claims, demands, damages and expenses (including reasonable legal fees) arising out of or in connection with the employment or the termination of the employment of any Key Individual(s) where such claim arises out of or in connection with any act or omission on the part of NICE in the period following the Transfer Date.
- 20.6** The Contractor agrees that it will be responsible for all salaries, wages, commission, bonuses and other benefits (whether in cash or in kind) accrued and/or National Insurance contributions and other statutory contributions and income tax deductions under PAYE for which the Contractor is accountable, including any pension, employment costs and holiday pay in respect of such Key Individuals as may become employees of NICE or any Incoming Contractor following a Transfer, for the period up to and including the Transfer Date of such Key Individuals (whether or not due for payment at that date). Accordingly the

Contractor will indemnify and keep indemnified NICE and any Incoming Contractor (if different from NICE) against any costs, claims, demands, damages and expenses (including reasonable legal fees) arising from any claim for such sums.

- 20.7** The Contractor will indemnify and keep indemnified NICE and any Incoming Contractor (if different from NICE) against any costs, claims, demands, damages and expenses (including reasonable legal fees) reasonably incurred arising out of the employment or engagement of or the termination of the contract of any employee, consultant, contractor or any other person employed or engaged by the Contractor, in the period up to the Transfer Date, where the employment or engagement of such employee, consultant, contractor or other person is alleged or deemed to have transferred to NICE or any Incoming Contractor (if different from NICE) pursuant to TUPE.
- 20.8** Without limitation to clause 20.3, the Contractor shall indemnify and keep indemnified NICE and any Incoming Contractor (if different from NICE) in respect of any claim for a protective award under TUPE save to the extent any breach of Regulation 13 of TUPE is caused by NICE's or any Incoming Contractor's act or omission, including a failure to provide information to the Contractor pursuant to Regulations 13(2) and 13(4) of TUPE.
- 20.9** Where it is found that there is a Transfer of some or all of the Key Individuals to NICE, NICE shall indemnify the Contractor on demand against all costs, claims, demands, damages and expenses (including reasonable legal fees) arising out of or in connection with the employment or termination of employment of such Key Individuals where such liability arises after the Transfer Date and does not arise out of or in connection with any act or omission on the part of the Contractor.
- 20.10** Upon commencement the Contractor, shall indemnify via a separate agreement the previous contractor on demand against all costs, claims, demands, damages and expenses (including reasonable legal fees) arising out of or in connection with the employment or termination of employment of such Key Individuals where such liability arises after the Transfer Date and does not arise out of or in connection with any act or omission on the part of the Contractor.
- 20.11** At expiry NICE shall use its reasonable endeavours to secure from such Incoming Contractor an indemnity in favour of the Contractor in terms similar to those of the indemnity at clause 20.90. Where it is agreed between the parties

or found that there is a Transfer of Relevant Individuals to the Incoming Contractor, within 10 business days of such determination, the Contractor shall deliver to the Incoming Contractor PAYE certificates relating to each such Key Individual completed up to the date of the Transfer, together with an original contract of employment for such Key Individual(s), together with such details of all relevant claims and relevant litigation as the Incoming Contractor may request.

21. CESSATION OF SERVICES - RESTRICTION ON CHANGES

21.1 The Contractor undertakes that:

- 21.1.1 upon being served with notice to terminate this Agreement by NICE pursuant to clauses 2, 4, 19 or 23 of this Agreement; or
- 21.1.2 from such date as it becomes aware that it will serve notice to terminate pursuant to clauses 2, or 19 of this Agreement and upon and after the date that it serves such notice; and
- 21.1.3 for the duration of this Agreement after such notice has been served;
- 21.1.4 it shall not, without the prior written consent of NICE, do any of the matters set out in clause 21.2.

21.2 The matters which the Contractor shall not do without NICE's written consent are:

- 21.2.1 vary the rates of remuneration or hours to be worked by or the terms and conditions of employment of any Relevant Individual(s) (save where such amendments arise in the ordinary course of business as a result of annual pay settlements and are made in good faith); or
- 21.2.2 increase or decrease the number of persons that perform the Services under this Agreement; or
- 21.2.3 deploy (other than those individuals already employed as Relevant Individuals) re-deploy or replace (unless the Relevant Individuals have resigned or been fairly dismissed for conduct of such a kind to warrant dismissal and the replacement is employed on materially

the same terms and conditions as the Relevant Individuals being replaced) any Relevant Individual or terminate the employment of any Relevant Individual;

- 21.2.4 and the Contractor shall not unnecessarily take any steps to oblige NICE or any Incoming Contractor to do so after the Contractor ceases to employ any of the Relevant Individual(s).

22. FORCE MAJEURE

- 22.1** For the purposes of this Agreement the expression “Force Majeure” shall mean any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings beyond the reasonable control of that party including (but without limitation) government regulations, war, terrorism, insurrection, riot, explosion, fire, flood, interruption to electricity supply or any natural disaster. Such cause shall only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the party claiming Force Majeure or its servants, agents or employees.
- 22.2** Neither party shall in any circumstances be liable to the other for any loss whether directly or indirectly incurred by the other party by reason of any failure or delay in the performance of its obligations hereunder due to Force Majeure.
- 22.3** If either of the parties becomes aware of the occurrence of Force Majeure it shall immediately notify the other by the most expeditious method available and shall inform the other and keep the other informed of the period which it is estimated that any failure or delay shall continue.

23. GENERAL TERMS

23.1 Assignability and Sub-Contracting

- 23.1.1 Neither NICE (subject to clause 23.1.2) nor the Contractor shall be entitled to novate or assign the whole or any part of this Agreement without the prior written consent of the other, such consent (if given) not to be unreasonably delayed.
- 23.1.2 NICE shall be entitled, if so required by any statute, regulation or order binding on it, after giving prior notice, to assign, novate or otherwise dispose of its obligations under this Agreement or any part thereof provided that any such assignment, novation or

other disposal shall not increase the scope or nature of the Contractor's obligations pursuant to this Agreement.

23.1.3 Save as provided in this Agreement, the Contractor may not sub-contract any of the burdens of this Agreement without the prior written consent of NICE. In the event that the Contractor sub-contracts any of its obligations under this Agreement the Contractor shall remain responsible for all its obligations hereunder and for the acts and omissions of any such sub-contractor.

23.1.4 Any consent granted by NICE under clause 23.1.3 shall be subject to the following conditions and such other conditions as NICE sees fit:

23.1.4.1 The Contractor and the sub-contractor shall enter into a signed written agreement covering all work in relation to the Services and such agreement shall entitle the Contractor to terminate the agreement with the sub-contractor on three (3) months' notice.

23.1.4.2 Where the subcontractor is a Small to Medium Enterprise, or a Voluntary, Community and Social Enterprises or a mutual then the contractor shall ensure that all their invoices are paid within 30 days of invoice receipt.

23.2 Severability

23.2.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid provisions eliminated.

23.2.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purposes of this Agreement, the parties shall immediately commence good faith negotiations to remedy such invalidity.

23.3 Waiver

- 23.3.1 The failure of any party to insist upon strict performance of any provision of this Agreement, or the failure of any party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 23.3.2 A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 23.3.3 No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of this Agreement.

23.4 Corrupt Gifts or Payments

- 23.4.1 The Contractor shall use all reasonable endeavours to procure that it shall not do (and warrants that in entering the Agreement it has not done) any of the following (referred to in this clause as “Prohibited Acts”):
 - 23.4.1.1 offer, give or agree to give any person in the employment of NICE any gift or consideration as an inducement or reward for doing or refraining from doing any act in relation to the obtaining or performance of this or any other contract with NICE or for showing or refraining from showing favour or disfavour to any person in relation to this or any other Agreement with NICE; or
 - 23.4.1.2 enter into this or any other contract with NICE if any commission has been paid or agreed to be paid to any person in the employment of NICE by or on behalf of the Contractor or to their knowledge, unless particulars of such commission and the terms of any agreement for the payment of it have been disclosed to NICE in writing before the Agreement is made.
- 23.4.2 If the Contractor or any of its employees, agents or sub-contractors, or any person acting on their behalf, does any of the

Prohibited Acts or commits any offence under the Bribery Act 2010 with or without the knowledge of the Contractor, NICE shall be entitled:

23.4.2.1 to terminate the Agreement in accordance with clause 19.1.2 and recover from the Contractor the amount of any loss (including any consequential loss) resulting directly from the breach and/or termination; and

23.4.2.2 to recover from the Contractor the amount or value of any such gift, consideration or commission.

23.4.3 In exercising its rights and remedies under clause 23.4, NICE shall:

23.4.3.1 act reasonably and proportionately in the light of the gravity and circumstances of the particular breach; and

23.4.3.2 give all due consideration, where appropriate, to action other than termination of the Agreement.

23.5 Dispute Resolution

23.5.1 The parties shall at all times use all reasonable endeavours to procure that any dispute arising out of or in relation to the interpretation or performance of this Agreement is resolved in good faith and in such a manner as shall cause minimum disruption to the continuing performance of the Services, before having recourse to arbitration or litigation.

23.5.2 A party claiming that a dispute has arisen must give written notice to the other party of the existence of the dispute, specifying the nature of this dispute and any such dispute arising between the parties out of or relating to the interpretation or performance of this Agreement shall be referred in the first instance to the Responsible Officer of the Contractor and the Director of the Centre for Guidelines for resolution.

23.5.3 If any dispute between the parties cannot be resolved in accordance with clause 23.5.2 within one month of such referral the dispute shall be referred to the Responsible Officer of the

Contractor and the Chief Executive Officer of NICE for resolution.

23.5.4 If any dispute between the parties cannot be resolved in accordance with clause 23.5.3 within one month of such referral the dispute shall be referred to the Board of the Contractor and the Board of NICE for resolution.

23.5.5 If a dispute cannot be resolved in accordance with clause 23.5.4 within one month of such referral, the dispute shall be referred to a person to be agreed between the parties. In default of such agreement within fourteen days of notice from either party to the other calling upon the other so to agree, the dispute shall be referred to a person chosen upon the application of either party by the President, for the time being, of the Institute of Arbitrators. The decision of such person shall be subject to clauses 23.5.6 and 23.5.7 and persuasive but not final. Each party shall bear its own costs in relation to the dispute resolution save that the costs of any reference to an external arbitrator under this clause 23.5.5 shall be borne equally by the parties.

23.5.6 Nothing in this clause 23.5.6 shall require NICE to publish or give its approval to publication of any publication related to the Services and/or required under the Memorandum of Agreement.

23.5.7 In the event that the decision referred to in clause 23.5.5 is rejected by either party:

23.5.7.1 NICE may:

- (a) reduce the future workload available to the Contractor and review the Funding;
- (b) reduce the Contractor's current workload and review the Funding; or
- (c) terminate this Agreement.

23.5.7.2 the Contractor may decline to continue with the Agreement to which the dispute relates.

23.6 Notices

23.6.1 Any notice to be given under this Agreement shall either be delivered personally, sent by first class recorded delivery post (airmail if overseas) or electronic mail. The address for service shall be as follows:

NICE: Level 1A
City Tower
Piccadilly Plaza
Manchester M1 4BT

Addressed to the Contract Manager and the Programme Director Guidelines.

The Contractor:

of 4-8 Rodney Street London N1 9JH

or such other address as they may previously have notified to the other party in writing. If the notice is sent via email then it shall be copied to the Responsible officer, Chief Financial Officer and Company Secretary [REDACTED] and the Divisional Director [REDACTED].

23.6.2 A notice shall be deemed to have been served:

23.6.2.1 if personally delivered, at the time of delivery;

23.6.2.2 if sent by email at the time of transmission;

23.6.2.3 if posted, at the expiration of 48 hours or (in the case of airmail seven days) after the envelope containing the same was delivered into the custody of the postal authorities; and

23.6.2.4 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 email is sent.

- 23.6.3 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 time the electronic mail was sent.

23.7 Relationships

This Agreement does not make any party the employee, agent, partner or legal representative of the other party for any purpose whatsoever. No party is granted any right or authority to assume or create any obligation or responsibility, expressed or implied, on behalf of or in the name of another party. Nothing in this Agreement shall create a partnership between the parties or between the Contractor.

23.8 Third Party Rights

The rights of any third party under this Agreement, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, are hereby excluded.

23.9 Entire Agreement

Subject to Clause 2, this Agreement together with all the Schedules contains the whole agreement between the parties in respect of the Services and supersedes any prior written or oral agreement between them relating to it.

23.10 Agreement, Head Notes, Clauses and Schedules

- 23.10.1 In this Agreement unless the context otherwise requires:
- 23.10.1.1 words in the singular include the plural and vice versa;
 - 23.10.1.2 references to clauses, sub-clauses, and Schedules of this Agreement and Schedules are references to the clauses, sub-clauses and Schedules of this Agreement; and
 - 23.10.1.3 references to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended or

re-enacted by any subsequent enactment, order, regulation or instrument.

23.10.2 The headings in this Agreement shall not affect its interpretation.
All the Schedules of this Agreement constitute an integral part hereof.

23.11 Law and Jurisdiction

The parties hereby submit to the exclusive jurisdiction of the English Courts and agree that the interpretation, validity and performance of this Agreement and its subject matter shall be construed in accordance with the laws of England and Wales.

23.12 Variation

This Agreement may not be varied except by an instrument in writing signed by the Contractor's authorised representative and by NICE's authorised representative in advance of any expenditure or any commitment to make expenditure to which it relates.

SCHEDULE 1**FUNDING****Payment schedule:**

Quarter	Amount
Q1 (April 2023 – June 2023)	
Q2 (July 2023 – September 2023)	
Q3 (October 2023 – December 2023)	
Q4 (January 2024 – March 2024)	
Q1 (April 2024 – June 2024)	
Q2 (July 2024 – September 2024)	
Q3 (October 2024 – December 2024)	
Q4 (January 2025 – March 2025)	
Q1 (April 2025 – June 2025)	
Q2 (July 2025 – September 2025)	
Q3 (October 2025 – December 2025)	
Q4 (January 2026 – March 2026)	

Contract total: £1006902**Staff table of the Key Individuals :**

Role	WTE + name of staff member	Salary cost per staff member 23/24 (as per tender submission)
Clinical Advisor	0.2 WTE,	

Senior Systematic Reviewer	1.0 WTE, [REDACTED]	[REDACTED]
Systematic Reviewer	1.0 WTE, [REDACTED]	[REDACTED]
Senior Health Economist	1.0 WTE, [REDACTED]	[REDACTED]

Additional costs:

Support costs (overheads for directly allocated HR, information governance, finance, audit, IT and workspace costs)

[REDACTED]

Inter-library loans number will be limited as the majority at UCL can be obtained at no cost

[REDACTED]

Annual contract value

[REDACTED]

1. The Contractor shall send all invoices, clearly quoting the contract number: [REDACTED] to [REDACTED] alternatively the contractor can register with [REDACTED] to send invoices electronically and have access to [REDACTED] updates of the progress of invoices.
2. Payments will be made on the basis of invoices presented by the Contractor which shall be accurate in all respects.

SCHEDULE 2


MONITORING REPORTS

Each year NICE will provide reporting templates for the Contractor to complete and submit ahead of each Quarterly Review Meeting. The report templates will contain a minimum of the following criteria for the Contractor to report against

Title	Purpose	Content
Finance report	To display actual and projected costs against budget by quarter, with comments/reasons for variance	<ul style="list-style-type: none"> • Pay costs (roles included in this total as mutually agreed in contract) • Pay costs broken down by role, then WTE • Non-pay costs, including digital costs and papers accessed via library • Detail of remaining funds against projected/actual spend ('margin')
Risk register	A log of all risks identified by the contractor's Management team with details of how these were, or are to be, handled	<ul style="list-style-type: none"> • Name of reviewer and approver • Risk description • Planned actions to mitigate the risk • Risk rating following mitigation, as defined • Target rating, as defined • Date of last review • Date of last amendment
Activity Report	To display planned and actual milestone submission dates in the reporting period for each guideline	<ul style="list-style-type: none"> • Milestone planned date • Milestone actual date

		<ul style="list-style-type: none"> Reason the timeline change was agreed with NICE for all guidelines that have delayed
Annual Compliance Report (Q4 only)	A report detailing compliance with the terms of the Agreement in accordance with clause 7.1.2	<ul style="list-style-type: none"> Name of completer and approver Measures taken by the contractor to comply with clause 6.2 – Internal control Measures taken to implement a records management programme in accordance with clause 8.1.2 Details of compliance with the milestones for each of the guidelines in development during the last year Equality monitoring information for guideline committee recruitment (applicants and appointees) during the last year

SIGNATURE PAGE

SIGNED by 



For and on behalf of the **NATIONAL**

(Signature)

INSTITUTE FOR HEALTH AND CARE EXCELLENCE

18 Apr 2023

.....

(Date)

SIGNED by 



For and on behalf of

(Signature)

The Anna Freud Centre

17 Apr 2023

.....

(Date)



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[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Date	Action
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Relationship Duration	Yes (%)	No (%)
People who have been in a relationship for 10 years or more	85	15
People who have been in a relationship for less than 10 years	75	25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]