****

NATIONAL INSTITUTE FOR HEALTH

AND CARE EXCELLENCE

Terms & Conditions of Contract for

**NICE Knowledge Resources
Framework Agreement** **(NICENHSFA/2528)**

1. General Summary

|  |  |  |
| --- | --- | --- |
| 1.1 | NAME AND REGISTERED AND PRINCIPAL ADDRESS OF SUPPLIER (including Company Registration Number if relevant) |  |
|  |  |  |
| 1.2 | DESCRIPTION OF SUPPLIER |  |
|  |  |  |
| 1.3 | LOT(s) |  |
|  |  |  |
| 1.4 | DESCRIPTION OF SERVICES |  |
|  |  |  |
| 1.5 | NICE BUDGET HOLDER |  |
|  |  |  |
| 1.6 | NICE CONTRACT MANAGER |  |
|  |  |  |
| 1.7 | NOMINATED MANAGER OF SUPPLIER |  |
|  |  |  |
| 1.8 | SUPPLIER AUTHORISED SIGNATORY |  |
|  |  |  |
| 1.9 | DATE AGREEMENT SIGNED |  |
|  |  |  |
| 1.10 | DATE AGREEMENT COMES INTO EFFECT (IF DIFFERENT FROM ABOVE) |  |
|  |  |  |
| 1.11 | DATE AGREEMENT ENDS (IF FIXED DATE) |  |
|  |  |  |
| 1.12 | ATAMIS AGREEMENT NUMBER |  |

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1. Framework Agreement

THIS FRAMEWORK AGREEMENT is made the [ ] day of [ ]

**BETWEEN**:-

1. **National Institute for Health and Care Excellence (NICE)** whose principal office is 3rd Floor, 3 Piccadilly Place, Manchester M1 3BN (“**the Contracting Authority**”); and
2. **[Supplier name]** whose registered office is at [address] (Reg No.) (‘the Supplier”).

**NOW IT IS HEREBY AGREED as follows:-**

**WHEREAS:-**

The NICE Knowledge Resources Framework Agreement can be used by eligible Purchasing Authorities and Beneficiaries throughout England, Wales, Northern Ireland and Scotland to purchase health and social care related Knowledge Resources. The Knowledge Resources that can be purchased through this Framework Agreement are:

* + 1. **Print Journals**: a journal is a scholarly publication containing articles written by researchers, professors and other experts. Journals focus on a specific discipline or field of study. Unlike newspapers and magazines, journals are intended for an academic or technical audience, not general readers. Also known as periodicals, print journals are published as physical hard copies.
		2. **Electronic Journals:** digital or electronic versions of Print Journals. Also known as journals, e-Journals or electronic serials that are published in electronic format(s) including HTML and PDF. Electronic Journals may be offered as single titles, named collections, or bespoke collections of titles and will often include additional content such as articles ahead of print, early access, e-pub ahead of print, in press, in process or online early. Access to Electronic Journals may also include a range of features including but not limited to table of contents alerts, access to news items, CME / CPD and learning opportunities. Electronic Journals can be purchased in-perpetuity (content paid for available to the subscribing organisation indefinitely) or Access only (access for the term of the subscription only.
		3. **Print Books**: books published as physical hard copies including textbooks and monographs.
		4. **Electronic Books**: digital or electronic versions of Print Books. Also known as eBooks, e-books that are published in electronic format(s) including but not limited to HTML, PDF and ePub. Electronic Books may be offered as single titles, named collections or bespoke collections of titles and will often include additional functionality such as 'search within'. Electronic Books are available through a range of purchase or subscription based models with a range of licencing options.
		5. **Databases**: searchable online collections of structured information to support healthcare practice, learning, teaching and research to include:
			1. Bibliographic Databases: An organised and searchable collection of structured information or data available electronically that references published written works including but not limited to journals, newspapers, conference proceedings, dissertations, reports, government and legal publications and books.
			2. Full Text Databases: The same as a Bibliographic Database with the inclusion of full text Electronic Journals and Electronic Books licenced for inclusion in the database.
			3. Citation Databases: The same as a Bibliographic Database with the addition of allowing searching by cited references, enabling you to find, check and track citation data year-by-year, navigating forward and backward through the literature related to a topic.
		6. **Evidence Summaries:** referential, digital, clinical decision support resources that provide knowledge summaries as Topics. Designed to provide health professionals with comprehensive evidence, clinical decision support and “actionable knowledge” to: support decision-making at the point of care e.g. at the bedside, in the ward, in the clinic, and in community settings, including the patient’s or carer’s home; and to support education and learning before, during and after the patient consultation. Such resources may include a full text component(s) e.g. ejournals, journal articles, eBooks, alongside the Topics. For the purposes of the Framework such resources providing a full text component(s) are known as “Evidence Summaries with Full Text”.
		7. **Continuing Medical Education (CME) Resources**: evidence-based online learning platforms specifically designed to help healthcare professionals enhance their knowledge and support their ongoing professional development. They offer interactive, peer-reviewed medical and healthcare related course modules or reflective practice opportunities that enable healthcare staff to earn CME points and/or track CME/Continuous Professional Development (CPD) activity.
		8. **Digital Anatomy Reference (DAR) Resources**: encompass online platforms, which can be interactive, designed to aid healthcare staff in their clinical practice, research, continuous learning, and professional development. Additionally, they can be used for patient education purposes. The resources provided include both content and multimedia materials e.g. 2D, 3D and interactive images and models, CT and MRI scans, animations, videos, augmented and virtual reality options. Primary focus is anatomy and physiology.

All Knowledge Resources supplied under this Framework MUST be health and social care related content. Subject and topic areas are numerous within this field and include (but not limited to):

* Allied Health.
* Anatomy.
* Biomedical Sciences.
* Clinical Practice.
* Complementary Medicine.
* Dentistry.
* Environmental Health.
* Health administration & management including but not limited to informatics, digital, human resources, finance, business management, change management, equality and diversity, healthcare facilities & estates.
* Healthcare Policy.
* Medicine.
* Mental Health & Wellbeing.
* Nursing.
* Nutritional Sciences.
* Optometry.
* Pharmacology.
* Pharmacy and Medicines Information.
* Psychiatry / Psychology.
* Public Health.
* Sociology and Social Care.
* Surgery.

The Framework Agreement does not provide for the purchase of:

* + 1. health technologies tools and medical devices that integrate with individual health records at a local level, or clinical decision support resources aimed at medical devices and tools rather than published healthcare content;
		2. knowledge related technical products or services such as (but not limited to): Resource Discovery Systems (RDS) and associated services e.g. A-Z Finders, link resolvers, workflow solutions, Horizon Scanning products, reference management software/products, examination software/products and A-Z Finders;
		3. eLearning resources typically used by health and care students to support their learning or examinations; those resources not related or focussed on health and care professions or specialisms; resources that support with examination and revision, statistical analysis.

Full details of the Framework’s specification are set out in “Annex FOUR: NICE Framework Agreement Structure” to this document. Knowledge Resources can be purchased from the following Lots:

* + 1. LOT 1 Sole supplier - direct award.
		2. LOT 2 Print Books.
		3. LOT 3 eBooks.
		4. LOT 4 Print & eJournals.
		5. LOT 5 Databases.
		6. LOT 6 Evidence Summaries.
		7. LOT 7 Continuing Medical Education (CME) Resources.
		8. LOT 8 Digital Anatomy Reference (DAR) Resources.
1. Overriding Provisions

The Supplier agrees to supply the print and digital Knowledge Resources in accordance with these Terms, including the Supplier’s terms as identified in the Framework and incorporated into any Order Agreement.

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 and the Order Agreement, the conflict shall be resolved in accordance with the following order of precedence:

* + 1. the “Call Off Order Form” and any annexes and the “Call Off Terms & Conditions” and any annexes (excluding Supplier Terms);
		2. the “Health & Social Care Content (HSCC) Licence” and any appendices; or the Publisher’s Licence, whichever applies
		3. the “Terms & Conditions of Contract for NICE Knowledge Resources Framework Agreement” and any annexes;

The Supplier acknowledges and accepts that the order of prevailing provisions in this Agreement is as set out in this clause 3.

1. Defined Terms

In this Agreement the words and expressions below will be interpreted to have the meanings adjacent to them:-

|  |  |
| --- | --- |
| “**Agent**” | means the Supplier, subject to the Agreement, to act on the Purchasing Authority’s behalf, who may undertake any or all of the obligations of the Purchasing Authority under the “Call Off Terms & Conditions” and the Licence Agreement(s), as agreed between the Purchasing Authority and the Supplier; an organisation or intermediary which does not own the intellectual property rights (IPR) to the Goods or Licensed Materials provided.For the avoidance of doubt, Agent also includes booksellers under this Framework;  |
| “**Aggregator**” | 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. For the purposes of this Framework, Aggregators are subject the same requirements as Publishers |
| “**Agreement**” | means the whole Agreement, which consists of the “Call Off Order Form” and any annexes; the “Call Off Terms & Conditions” and any annexes; the Licence Agreement(s) and any appendices, specific to this Agreement; |
| “**AIMS**” | means an Access and Identity Management Service which provides authenticated access for eligible users to the digital Knowledge Resources purchased;The JISC NHS Open Athens is currently the national contracted AIMS for England, Scotland, Northern Ireland and Wales. The eligible persons entitled to have OpenAthens accounts in England are described at: https://www.nice.org.uk/about/what-we-do/evidence-services/journals-and-databases/openathens/openathens-eligibility (which may be amended from time to time).These persons can access digital Knowledge Resources purchased at a national level in England. For all other purchasing levels across England made through the Framework eligibility will consist of the eligible persons as listed within geographically or organisationally-defined areas. Additionally, those Beneficiaries who choose to purchase through the Framework, will have their own specific eligibility requirements. |
| “**AIMS Disaster Recovery Support Plan**” | means a plan to be put in place by the Supplier which details alternative routes of access to purchased digital content in the event of an AIMS failure; |
| “**Authorised Users”** | means, the eligible persons as set out in the Specification to the “Call Off Order Form” or “Call Off Terms & Conditions,” who are permitted access to the Goods and / or Service(s) and / or Licensed Materials; |
| “**Beneficiary**” | means, the Beneficiary or Beneficiaries of the Agreement between the Supplier and the Purchasing Authority, as defined in the “Call Off Order Form” or the “Call Off Terms & Conditions;”  |
| “**Buyers Guide”** | means the information and guidance provided by the Contracting Authority to Purchasing Authorities to support the purchase of Knowledge Resources through this Framework; |
| **“Call Off Order Form”** | means the form to be completed by the Purchasing Authority which forms part of the “Call Off Terms & Conditions;” |
| "**Call Off Terms & Conditions" or “Order Agreement”** | means the terms to be agreed between the Purchasing Authority and / or Beneficiary and the Supplier on which the Order is placed and any annexes; |
| **“Complaint”** | means a formal expression of dissatisfaction or concern raised by the Contracting Authority or Purchasing Authority under this Agreement; |
| **“Contract Manager”** | Means a person designated as such by the Contracting Authority from time to time as notified in writing to the Supplier to act as the representative of the Contracting Authority for all purposes connected with the Agreement, including any authorised representative of such person;  |
| "**Contracting Authority**" | 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;  |
| **“Controller”** | 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; |
| **“Data Subject Access Request”** | 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; |
| **“Data Protection Impact Assessment”** | means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data; |
| **“Data Protection Legislation”** | means (i) the UK GDPR, and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 as it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy; |
| **“Data Subject, Data Protection Officer”** | take the meaning given in the UK GDPR; |
| **“Data Loss Event”** | means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier 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; |
| “**Default**”  | 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; |
| "**Deliverable(s)"** | means the Services, which include Goods and / or Service(s) and / or Licensed Materials detailed in “Annex ONE: Services delivered under this Framework Agreement;” the Service Level Agreement(s) and Key Performance Indicators(s); |
| **“Direct Award”** | means an award made to a Supplier without running a Mini competition; |
| “**Dispute Resolution Procedure**” | means the process of resolving disputes between Parties as set out in clause 25; |
| **“DPA 2018”** | means Data Protection Act 2018; |
| “**Framework Agreement”** | means the terms and conditions of contract for NICE Knowledge Resources Framework Agreement that has been entered into between the Supplier 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; |
| **“Framework Website”** | means the website that hosts the information and documents to support buyers purchasing knowledge resources through the Framework which is located at: <https://www.nice.org.uk/about/nice-communities/library-and-knowledge-services-staff/buy-books-journals-and-databases> and includes supporting and linked webpages. |
| “**Goods**” | meansprint Knowledge Resources such as books and journals, as set out in the Specification, or in new Specifications to the “Call Off Order Form” or the “Call Off Terms & Conditions,” or in, that may be agreed by the Parties from time to time; |
| “**Government Procurement Card (GPC**)” | 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; |
| "**Insolvent**" | means:if the Supplier is an individual, that individual or where the Supplier 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 deed shall be granted by him for the benefit of his creditors; if the Supplier is a company, the passing by the Supplier 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 Supplier or the dissolution of the Supplier, 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 Supplier 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 Supplier's assets, or if the Supplier makes an arrangement with its creditors generally or makes an application to a court of competent jurisdiction for protection from its creditors generally; and any event in any jurisdiction other than England and Wales which is analogous to any of the above; |
| "Intellectual Property" | means any and all patents, trademarks, 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, 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; |
| "**Intellectual Property Right (IPR)"** | 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; |
| "**Invitation to Tender**" | means the Invitation to Tender issued by the Contracting Authority on which the Framework is awarded;  |
| “**Invitation to Quote (ITQ**)” | means the document submitted to the Supplier by the Purchasing Authority or any Beneficiary specifying the requirements of that Purchasing Authority or any Beneficiary, to which the Supplier will submit an offer and the basis on which the Purchasing Authority or any Beneficiary will place the Order;  |
| "**In writing"** | 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; |
| “**Key Stakeholders**” | means stakeholders who provide funding, support and direction for this Framework Agreement: NHS England (NHSE) |
| “**Knowledge Resources**” | means published health and social care related content such as books, journals, databases, clinical decision support resources, evidence summaries, in either or a combination of print, digital and multimedia formats and resources to support continuous professional development. |
| “**Licence Agreement(s**)” | means the terms detailed in the “Health & Social Care Content (HSCC) Licence” to this Agreement, for digital Knowledge Resources; |
| “**Licensed Materials**” | means, the digital material as set out in the Specification, or in new Specifications to the “Call Off Order Form” or the “Call Off Terms & Conditions,” that may be agreed by the Parties from time to time; |
| “**Link Resolver & Knowledge Base**” | means, a service which enables users to take citations (typically from searches against abstracting and indexing database) and direct users to 3rd party full text content they are eligible to access; |
|  “**Lot(s**)” | means:* + - LOT 1: Sole supplier - direct award.
		- LOT 2: Print Books.
		- LOT 3: eBooks.
		- LOT 4: Print & eJournals.
		- LOT 5: Databases.
		- LOT 6: Evidence Summaries
		- LOT 7: Continuing Medical Education (CME) Resources.
		1. LOT 8: Digital Anatomy Reference (DAR) Resources.
 |
| “**Mini Competition**” | means, a further competition of Suppliers capable of meeting the particular need. For the avoidance of doubt, the Purchasing Authority or Beneficiary invites Suppliers that supply the Goods, Service(s) or Licensed Materials required, to Quote and Award to the most economically advantageous offer.All Suppliers capable of meeting the particular need, must be invited to quote; |
| “**Month**” | means a calendar month; |
| **“Resource Discovery System (RDS)”** | means, technical solutions that help to manage access to digital and print Knowledge Resources by offering users a single interface to discover content and access the knowledge resources available to them; |
| **“NICE Framework**” | means the NICE Knowledge Resources Framework Agreement; |
| "**the Offer**" | means all the terms of the Offer submitted by the Supplier in response to an Invitation to Quote; |
| "**Order**" | 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; |
| **"Personal Data"** | 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; |
| **“Personal Data Breach”** | 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; |
| **“Processing”** | 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; |
| **“Processor”** | means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller; |
| **“Protective Measures”** | 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 such measures adopted by it; |
| “**Supplier**” | means, an organisation appointed to the NICE Knowledge Resources Framework Agreement to supply Deliverables which has entered into this Agreement to supply the Deliverables as detailed in the Specification; |
| “**Publisher**” | means, an entity which owns the intellectual property rights (IPR) to the Licensed Materials. For the purposes of this Framework, Publishers are subject the same requirements as Aggregators. |
| "**Purchasing** **Authority**" | means the organisation placing the Order as detailed in the “Call Off Order Form” or the “Call Off Terms & Conditions” of the NICE Knowledge Resources Framework and shall be any, or all of, NHS organisations in England, Wales, Northern Ireland and Scotland as well as other UK wide health and social care related organisations as listed below:* the Secretary of State for Health;
* the Department of Health and all agencies thereof;
* Integrated Care Boards or other bodies responsible for commissioning NHS services;
* any NHS Trust or Foundation Trust;
* any Care Trust;
* Health Protection Agency;
* National Treatment Agency for Substance Misuse;
* Healthcare Improvement Scotland;
* Public Health Scotland;
* Care Quality Commission;
* The Care Inspectorate (Scotland);
* Healthwatch England and local Healthwatch organisations;
* Health and Wellbeing Boards;
* Local Authorities with a public health role;
* GPs;
* Royal Colleges and Societies;
* NHS Wales Health Boards and Trusts and hosted organisations;
* NHS Wales Special Health Authorities;
* Public Health Wales;
* National Assembly of Wales;
* Welsh Government;
* NHS Education for Scotland (NES);
* NHS Scotland Health Boards;
* Any Integration joint boards (Scotland);
* Any health and social care partnerships (Scotland);
* Scottish Government healthcare related directorates;
* All Scottish Local Authorities;
* the Health and Social Care Board (Northern Ireland);
* Health and Social Care Trusts (Northern Ireland);
* Health and Social Care Business Services Organisation (Northern Ireland);
* special health and social services agencies (Northern Ireland);
* the Department of Health, Social Services and Public Safety (Northern Ireland);
* 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;
* the Medical Research Council;
* Higher Education institutions engaged in providing commissioned healthcare or commissioned education;
* 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;
* any body which replaces or provides similar or equivalent services to the above;
* any statutory successor to any of the above.
 |
| “**Service(s)”** | means the services provided by the Supplier pursuant to, and in accordance with the Agreement as detailed in the Specification; |
| “**Specification**” | means the description of the Deliverables as set out in “Annex ONE: Specification: Services delivered under this Framework Agreement” to this document; |
| **“Sub-processor”** | means any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement; |
| **“Term”** | 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 1.10; |
| "**Terms & Conditions of Contract"** | means this Framework Agreement; |
| **“UK GDPR”** | means the UK version of the General Data Protection Regulation (Regulation (EU) 2016/679) 2021; |
| “**Year**” | means during the Agreement Term, any twelve (12) Month Term commencing on the Commencement Date or an anniversary thereof. |

1. Interpretation

In these terms and conditions some clauses are attributed to either print or digital Knowledge Resources or particular types of Supplier such as an Agent.

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.

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.

Unless otherwise expressly defined in these terms and conditions, the words used in these terms and conditions shall bear their natural meaning.

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.

In these terms and conditions, words importing any particular gender include all other genders.

In these terms and conditions, words importing the singular only shall include the plural and vice versa.

In these terms and conditions “staff” and “employees” shall have the same meaning.

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.

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.

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.

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.

1. Duration and Scope

This Framework Agreement shall commence on the date shown in 1.10 and shall continue in force until the date shown in 1.11 unless the Contracting Authority exercises by notice in writing to the Supplier, no later than 03 (three) Months prior to the date shown in 1.11, its option to extend this Framework Agreement.

Subject to 6.1, the extension term available for this Framework Agreement shall be no greater than 12 (twelve) Months period.

1. Obligations of the Supplier

In consideration of (a) the Contracting Authority agreeing to appoint the Supplier to this Framework Agreement and (b) the Contracting Authority agreeing to pay £5 (five pounds) to the Supplier on demand (such payment being refundable to the Contracting Authority on the Supplier receiving any Order for such Goods and / or Service(s) and / or Licensed Materials from the Contracting Authority, Purchasing Authority or Beneficiary pursuant to this Framework Agreement) the Supplier undertakes to supply such Goods and / or Service(s) and / or Licensed Materials, to such extent and at such times and locations as may be ordered pursuant to this Framework Agreement, in accordance with the terms of the Offer and the “Terms & Conditions of Contract”.

The Supplier accepts the Eligibility Criteria for England and any changes made to these Eligibility Criteria made by the Contracting Authority which may be made from time to time. Details of the [Eligibility Criteria](https://www.nice.org.uk/about/what-we-do/evidence-services/journals-and-databases/openathens/openathens-eligibility) can be found on the Framework Website at: https://www.nice.org.uk/about/what-we-do/evidence-services/journals-and-databases/openathens/openathens-eligibility.

The Supplier will accept Orders pursuant to this Framework Agreement for Goods and / or Service(s) and / or Licensed Materials from the Contracting Authority, the Purchasing Authority or any Beneficiary.

The Supplier shall enter into an Agreement with the Purchasing Authority or Beneficiary with each new Order, the Agreement between these Parties shall consist of the “Call Off Order Form” and any annexes or the “Call Off Terms & Conditions” and any annexes; the Licence Agreement(s) and any Appendices, specific to this Agreement. The Agreement shall not be valid unless signed by all relevant parties pursuant to the Agreement.

The Supplier agrees that the “Terms & Conditions of Contract”, the “Call Off Order Form” and any annexes or the “Call Off Terms & Conditions” and any annexes; the Licence Agreement(s) and any appendices, shall apply to all supplies of Goods and / or Service(s) and / or Licensed Materials made by the Supplier to the Contracting Authority pursuant to this Framework Agreement.

The Supplier agrees that it will not in its dealings with any Purchasing Authority or any Beneficiary, seek to impose or rely on any other contractual terms which in any way contradict this “Terms & Conditions of Contract for NICE Knowledge Resources Framework Agreement” or the “Order Form” and any annexes or the “Call Off Terms & Conditions” and any annexes; and the Licence Agreement(s) and any appendices, specific to this Agreement. In the case of Suppliers acting as Agents, the Supplier shall ensure they will work with the Purchasing Authority to mutually agree to any Publisher licences and that those licences do not conflict with any terms of the Framework Agreement.

In the case where the Supplier is a sole supplier in Lot 1 – Sole Supplier direct award, the Supplier shall ensure that they:

* + 1. shall not attempt to sell to any Purchasing Authority any Licensed Materials that they are not the sole supplier of, where a Purchasing Authority is able to obtain quotes from multiple suppliers;
		2. shall provide a list of all Licensed Materials they own, or have an exclusive licence to sell on behalf of an owner, that they alone sell to market, to the Contracting Authority no later than fourteen [14] days from the contract signature date;
		3. shall provide the Contracting Authority with any updates to the list in 7.8.2 as soon as is reasonable.
1. The Position of the Contracting Authority

Other Suppliers, in addition to the Supplier, may have been awarded the right to participate in this Framework Agreement as a result of the procurement process. Accordingly, the Supplier acknowledges that the Contracting Authority, the Purchasing Authority or Beneficiary is under no obligation to place any, or any particular level or volume of Orders with the Supplier under or pursuant to this Framework Agreement. The Supplier accepts that the Contracting Authority shall have no liability to it in respect of, or arising out of, the volume of Orders received by the Supplier during the continuance of this Framework Agreement.

1. Beneficiaries to this Agreement

The Contracting Authority and the Supplier acknowledge that they have entered into the Framework Agreement for the benefit of each of the Purchasing Authorities as defined.

The Supplier agrees that any Purchasing Authority shall retain the right to place an Order and enter into any Agreement, which shall be personal to the Supplier and the Purchasing Authority under this Framework Agreement.

Save as detailed in 9.2, the Contracting Authority and the Supplier acknowledge, a person who is not a Party to the Framework Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Framework Agreement.

1. Supplier Communications

The Supplier shall ensure that all communications with the Contracting Authority concerning the Goods and / or Service(s) and / or Licensed Materials shall only be between the nominated representatives of both Parties, that is, the Commissioning Manager, and the Supplier’s Authorised Officer.

The Supplier shall ensure that all global communication that refer to the contractual agreement entered into with the Contracting Authority for this Framework Agreement follow the criteria and guidance set out in Annex EIGHT: Communications Guidelines for Appointed Suppliers.

1. Deliverables

Wherever the Supplier is required to provide a Deliverable:

* + 1. such Deliverable will be delivered in the form prescribed and in accordance with the Specification. If no such form is prescribed in the Specification, the Supplier will provide Deliverables in a professional form to the requirements (including as to time of delivery) notified to the Supplier by the Authorised Officer;
		2. the Contracting Authority, 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 the requirements otherwise made known to the Supplier by the Contracting Authority, Authority or any Beneficiary;
		3. the Contracting Authority, Purchasing Authority or any Beneficiary will not reject any Deliverable (wholly or in part) without providing written reasons to the Supplier as to why such Deliverable has been rejected;
		4. any dispute as to whether the Contracting Authority, Purchasing Authority or any Beneficiary has exercised its right to reject any Deliverable reasonably shall be resolved by the Dispute Resolution Procedure; and
		5. any Deliverables which are rejected shall be replaced by the Supplier (at no extra charge to the Contracting Authority, Purchasing Authority or any Beneficiary) by Deliverables which are reasonably satisfactory to the Authorised Officer.
1. Purchasing Models and Discounts

The Supplier warrants that it will propose the most cost effective purchasing model in any Offer it makes to a Purchasing Authority or any Beneficiary.

Where a discount purchasing model has been agreed under this Framework Agreement, the Supplier cannot decrease the percentage discount offered (as set out in the Framework Agreement) which it applies to the Goods and / or Services and or Licensed Materials. Nothing in this Agreement shall prevent or restrict the Supplier from increasing the percentage discount and the Supplier shall ensure that any reduction in price is passed on to the Purchasing Authority and / or Beneficiary at the earliest opportunity after agreement with the Contracting Authority.

Where a maximum percentage cap for annual increases is detailed in the purchasing model that has been agreed under this Framework Agreement, the Supplier cannot increase the percentage cap offered (as set out in the Framework Agreement) which it applies to the Goods and / or Services and or Licensed Materials. Nothing in this Agreement shall prevent or restrict the Supplier from decreasing the percentage discount and the Supplier shall ensure that any reduction in price is passed on to the Purchasing Authority and / or Beneficiary at the earliest opportunity after agreement with the Contracting Authority.

For clarity, nothing in clauses 12.2 and 12.3 shall prevent Suppliers from offering Purchasing Authorities, at the point of quotation, the best possible price, which could include improved discount offers or decreases on an annual percentage cap. Where improved offers have been made to Purchasing Authorities in any quotation, these shall not affect the pricing model placed on the Framework.

In accordance with the Framework Agreement, the Supplier will ensure any purchasing model used in any Offer shall be fully transparent to the Purchasing Authority and / or Beneficiary. Only the purchasing models and discounts agreed under this Framework may be offered by the Supplier to Purchasing Authorities or Beneficiaries. Any additional purchasing models which the Supplier may want to offer over the lifetime of this Framework must be agreed with the Contracting Authority prior to providing a quotation to any Purchasing Authority and / or Beneficiary.

Purchasing models and discounts agreed under this Framework will be held on a password protected server by the Contracting Authority. Access will be granted on request to eligible Purchasing Authorities as set out in “Defined Terms.”

In accordance with the Framework Agreement, the Supplier will not impose any minimum Order quantities or values on the Purchasing Authority and / or Beneficiary.

The Purchasing Authority and / or Beneficiary shall pay all valid invoices submitted by the Supplier in accordance with the provisions of the “Call Off Order Form” or the “Call Off Terms & Conditions.”

1. Access to Digital Knowledge Resources

The Supplier of digital Knowledge Resources in this Framework Agreement agrees to grant access for the duration of the agreed subscription or Agreement term, to any Authorised User of the Purchasing Authority or any Beneficiary that has purchased that Knowledge Resource under this Framework Agreement.

Subject to clause 13.1, 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.

Subject to clause 13.2, if a change is made to the provision of any AIMS contracted for national use, the Supplier agrees to work closely with any new AIMS supplier and make best efforts to implement (within three (03) Months of being contacted by the new AIMS supplier) and to meet all costs incurred by the Supplier for such implementation at the Supplier’s organisation.

Subject to clause 13.2, where the access route is via the Contracting Authority’s AIMS contracted for national use in England, the Supplier agrees to assist the Contracting Authority in providing alternative access to digital resources in the form of an AIMS Disaster Recovery Support Plan where the AIMS fails or ceases to operate for a significant period of time.

In the case of Wales, Scotland or Northern Ireland, where any AIMS provision is provided nationally by a relevant contracting authority of that country, the Supplier shall seek to work with that contracting authority to achieve similar or the same aims of this clause 13 for that country.

The Contracting Authority agrees that subject to clauses 13.3 and 13.4, NICE or any such successor body shall supply the Supplier with the relevant user information in order for the Supplier to grant access to those eligible users, via an alternative authentication route provided by the Supplier, until such time that the Access and Identity Management System contracted by NICE or any such successor body is operational.

Subject to clauses 13.4 and 13.5, the Supplier shall meet all costs incurred by the Supplier for the set up and management of any alternative authentication route.

The Supplier of digital Knowledge Resources in this Framework Agreement agrees to make the Licensed Materials compliant with the Link Resolver and Knowledge Base service contracted for national use by the Contracting Authority, for the duration of the agreed Term, to any Authorised User of the Purchasing Authority or any Beneficiary that has purchased that Knowledge Resource under this Framework Agreement.

Subject to clause 13.8, if a change is made to the provision of the Link Resolver and Knowledge Base service contracted for national use, the Supplier agrees to work closely with any new supplier or service to implement and to meet all costs incurred for such implementation at the Supplier’s organisation.

Subject to 13.8, in the case of Scotland, Wales or Northern Ireland, where any Link Resolver and Knowledge Base service provision is provided nationally by a relevant contracting authority of that country, the Supplier shall seek to work with that contracting authority to achieve similar or the same aims of clause 13.9 for that country.

1. Audit, Accounts and Sales Information

The Supplier shall provide the Contracting Authority with statements giving accurate and complete details of the quantity and value of the Goods / Services / Licensed Materials supplied by the Supplier to the Contracting Authority pursuant to this Framework Agreement. The frequency, format and level of detail to be included in such statements shall be as specified by the Contracting Authority in Annex THREE, or as otherwise agreed between the Contracting Authority and the Supplier.

The Supplier shall keep at its normal place of business detailed, accurate and up to date records of the quantity and value of the Goods and / or Services and / or Licensed Materials sold by it to any Purchasing Authority pursuant to this Framework Agreement. Subject to any other auditing process being agreed between the Contracting Authority and the Supplier in writing, the Contracting Authority shall be entitled by prior appointment, on prior written request (and no more often than once per year) to enter the Supplier’s normal place of business during normal office hours and to solely inspect such records in order to verify whether any statement supplied by the Supplier to the Contracting Authority pursuant to clause 14.1 is accurate and complete.

1. Monitoring and reporting

Framework Purchasing Performance Data

* + 1. All Suppliers must supply the Contracting Authority with sales and purchasing data on a Monthly basis, as set out in Annex THREE to this Agreement unless otherwise agreed between Supplier and Contracting Authority.
		2. Subject to 15.1.1 all information provided to the Contracting Authority shall remain confidential.
		3. The Supplier agrees that the Contracting Authority will share the sales and purchasing data with Key Stakeholders to inform future purchasing decisions across the NHS.

Annual Service Review

* + 1. All Suppliers shall attend an Annual Service Review meeting with the Contracting Authority and provide an annual service report no later than two (02) weeks before the scheduled meeting.
		2. Subject to 15.2.1, an annual management reporting template as set out in Annex THREE (A) will be supplied to Suppliers in order to summarise details of their performance and adherence to the Terms & Conditions of the Agreement to include (but not limited to):
			1. aggregated annual purchasing and sales data;
			2. a demonstration of the Supplier’s quality of service, to include (but not limited to) details of levels of helpdesk services and customer support;
			3. adherence to SLAs and KPIs;
			4. a summary of purchasing models and discounts provided under this Agreement and lessons learned;
			5. confirmation that Open Access materials are not included in the pricing methodology for purchasing models agreed on the Framework (for print and electronic journals; databases only);
			6. updated links to all relevant accessibility statements.
		3. Subject to clauses 15.2.2, data provided will be incorporated into an “Annual Quality Review.” The final review document may include feedback from the Framework purchasers on the quality and performance of Suppliers.
1. Warranty

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

1. Liability

Neither Party excludes or limits liability to the other Party for:

* + 1. death or personal injury caused by its negligence; or
		2. fraud; or
		3. fraudulent misrepresentation; or
		4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

Subject to clauses 17.1, 17.3 and 17.4, the Supplier shall indemnify the Contracting Authority and keep the Contracting Authority indemnified fully against all claims, proceedings, actions, damages, costs, reasonable expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Supplier of its obligations under the Agreement or the presence of the Supplier 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 Supplier.

The Supplier 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 Contracting Authority or by breach by the Contracting Authority of its obligations under the Agreement.

Subject always to clauses 17.1 and 17.5, in no event shall the Supplier be liable for any of the following incurred by the Contracting Authority:

* + 1. loss of profits, business, revenue or goodwill; and/or
		2. loss of savings (whether anticipated or otherwise); and/or
		3. indirect or consequential loss or damage;

The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure incurred by the Contracting Authority resulting from the direct Default of the Supplier.

1. Limitation of Liability

The Contracting Authority shall not be liable to the Supplier for any claims, proceedings, actions, damages, costs, expenses and any other liabilities, indirect or consequent loss, damage, injury or costs whatsoever which arise out of or are connected with the Contracting Authority's adherence or non-adherence to the terms and conditions of this Agreement except in the case of death or personal injury caused by negligence, breach of its confidentiality obligation according to Section 21 and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law.

1. Insurance

Minimum Insurance Period shall be 06 (six) Years following the expiration or earlier termination of this Agreement and any Order Agreement.

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

* + 1. professional indemnity insurance or equivalent is held by the Supplier for 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 Contracting Authority may reasonably require (and as required by Law) from time to time;
		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.

The Supplier shall maintain an appropriate insurance policy to cover its liabilities to the Contracting Authority under this Agreement and any Agreement entered into under this Framework Agreement.

The Supplier 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 Supplier, arising out of the Supplier’s performance of its obligations under the Agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier. Such insurance shall be maintained for the duration of the Agreement Period and for a minimum of six (06) years following the expiration or earlier termination of the Agreement.

The Supplier shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker’s verification of insurance to demonstrate that the appropriate cover is in place.

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

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

1. Staff and Resources

The Supplier shall be fully responsible in every way for its entire staff and all consultants (whether part-time or full-time).

The Supplier 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 (as amended) 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 Services. The Supplier shall take all reasonable steps (at its own expense) to ensure that any employees employed in the provision of the Services do not unlawfully discriminate within the meaning of this Clause 20.2 and shall impose on any sub-contractor obligations substantially similar to those imposed on the Supplier by this Clause 20.2; and

in the management of its affairs and the development of its equality and diversity policies, the Supplier shall co-operate with NICE in respect of NICE’s obligations to comply with statutory equality duties. The Supplier shall take such steps as the Contracting Authority considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in the provision of the Service(s).

The Supplier shall notify Contracting Authority immediately of any investigation of or proceedings against the Supplier 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.

The Supplier shall indemnify Contracting Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by Contracting Authority 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 Supplier, its agents, employees or sub-contractors.

The Supplier shall impose on any sub-contractor obligations substantially similar to those imposed on the Supplier by this Clause 20.

In fulfilling its obligations under this Framework Agreement, the Supplier shall ensure that it complies with all current Employment Legislation and in particular, does not unlawfully discriminate in breach of any Employment Legislation.

The Supplier shall take all reasonable steps (at its own expense) to ensure that any employees employed to fulfil the Supplier’s obligations under this Framework Agreement do not unlawfully discriminate in breach of any Employment Legislation.

In the management of its affairs and the development of its equality and diversity policies, the Supplier shall co-operate with the Contracting Authority in light of the Contracting Authority’s obligations to comply with statutory equality duties. The Supplier shall take such steps as the Contracting Authority reasonably considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age in the fulfilment of its obligations under this Framework Agreement.

1. Confidentiality

In respect of any Confidential Information it may receive from the other party (“the Discloser”) and subject always to the remainder of this clause 21, 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:

* + 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;
		2. the provisions of this clause 21 shall not apply to any Confidential Information which:
			1. is in or enters the public domain other than by breach of the Agreement or other act or omissions of the Recipient;
			2. is obtained by a third party who is lawfully authorised to disclose such information; or
			3. is authorised for release by the prior written consent of the Discloser; or
		3. the disclosure of which is required to ensure the compliance of the Contracting Authority with the Freedom of Information Act 2000 (the FOIA).

Nothing in this clause 21 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 Supplier is the Recipient, to the Supplier's immediate or ultimate holding company provided that the Supplier procures that such holding company complies with this clause 21 as if any reference to the Supplier in this clause 2 were a reference to such holding company.

The Supplier authorises the Contracting Authority to disclose the Confidential Information to such person(s) as may be notified to the Supplier in writing by the Contracting 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 Contracting Authority 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 Contracting Authority shall not without good reason claim that the lowest price available in the market is the realistic market price.

The Supplier acknowledges that the Contracting Authority is or may be subject to the Freedom of Information Act (FOIA). The Supplier 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 Supplier 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 Supplier from time to time) to the extent that they apply to the Supplier's performance under the Agreement.

The Supplier agrees that:

* + 1. Without prejudice to the generality of clause 21.2, the provisions of this clause 21 are subject to the respective obligations and commitments of the Contracting Authority 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;
		2. subject to clause 21.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Contracting Authority;
		3. where the Contracting Authority is managing a request as referred to in clause 21.5.2, the Supplier shall co-operate with the Contracting Authority and shall respond within five (05) working days of any request by it for assistance in determining how to respond to a request for disclosure.

The Supplier shall and shall procure that its sub-contractors shall:

* + 1. transfer the any request for information, as defined under section 8 of the FOIA, to the Contracting Authority as soon as practicable after receipt and in any event within five (05) working days of receiving a request for information;
		2. provide the Contracting Authority with a copy of all information in its possession or power in the form that the Contracting Authority requires within five (05) working days (or such other period as the Contracting Authority or a Beneficiary may specify) of the Contracting Authority or a Beneficiary requesting that Information; and
		3. provide all necessary assistance as reasonably requested by the Contracting Authority to enable the Contracting Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

The Contracting Authority may consult the Supplier in relation to any request for disclosure of the Supplier's Confidential Information in accordance with all applicable guidance.

This clause 21 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 21 shall remain in force for a period of 06 (six) years after the termination or expiry of this Agreement.

In the event that the Supplier fails to comply with this clause 21, the Contracting Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.

1. Data Protection

[Guidance note, these clauses may be negotiated with the Supplier and the Purchasing Authority under the Call-Off Order]
	1. It is recognised and agreed by both Parties to this Agreement that no Personal Data is shared or used under this Agreement. However, it is agreed that as these terms govern the Framework Agreement, that the Supplier shall agree to the following terms of Data Protection governance.
	2. Subject to 22.1 the Purchasing Authority and the Supplier under the “Call Off Order Form” and “Call Off Terms & Conditions” may choose to amend these terms, where such amendments are requested by the Supplier, the Purchasing Authority shall retain the right to reject or agree to any such amendments.
	3. The Supplier shall comply with the Data Protection Legislation. In particular the Supplier agrees to comply with the obligations placed on the Purchasing Authority as set out in Data Protection Legislation, namely:
		1. to maintain technical and organisational security measures sufficient to comply with the obligations imposed on the Purchasing Authority and the Supplier by the Data Protection Legislation;
		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 the ““Call Off Order Form” and “Call Off Terms & Conditions” and for the purpose of performing the Services in accordance with the Agreement and to ensure compliance with the Data Protection Legislation;
	4. The Parties acknowledge that for the purposes of the Data Protection Legislation, that the Controller, and the Processor shall be agreed between the parties in the Call-off Order.
	5. The Supplier shall only process Personal Data as authorised by the Purchasing Authority and described in the “Call Off Order Form” or “Call Off Terms & Conditions” and shall not process or use the Personal Data for any other purpose. The details in the “Call Off Order Form” and “Call Off Terms & Conditions” may not be determined by the Supplier.
	6. The Supplier shall notify the Purchasing Authority immediately if it considers that any of the Purchasing Authority’ instructions infringe the Data Protection Legislation.
	7. The Supplier 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:
		1. a systematic description of the envisaged processing operations and the purpose of the processing;
		2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
		3. an assessment of the risks to the rights and freedoms of Data Subjects; and
		4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
	8. The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
		1. process that Personal Data only in accordance with the “Call Off Order Form” and “Call Off Terms & Conditions,” unless the Supplier is required to do otherwise by Law. If it is so required, the Supplier shall promptly notify the Purchasing Authority before processing the Personal Data unless prohibited by Law;
		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:
			1. nature of the data to be protected;
			2. harm that might result from a Data Loss Event;
			3. state of technological development; and
			4. cost of implementing any measures;
		3. ensure that:
		4. the Supplier’s Personnel do not process Personal Data except in accordance with this Agreement (and in particular, Annex SEVEN: Personal Data Processing Instructions to the “Call Off Order Form”);
		5. it takes all reasonable steps to ensure the reliability and integrity of any Supplier’s Personnel who have access to the Personal Data and

		ensure that they:
		6. are aware of and comply with the Supplier’s duties under this clause;
		7. are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;
		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
		9. have undergone adequate training in the use, care, protection and handling of Personal Data; and

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:

* + 1. that the Purchasing Authority or the Supplier has provided appropriate safeguards in relation to the transfer in accordance with UK GDPR or DPA 2018 as determined by the Purchasing Authority;
		2. the Data Subject has enforceable rights and effective legal remedies;
		3. the Supplier 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
		4. the Supplier complies with any reasonable instructions notified to it in advance by the Purchasing Authority with respect to the processing of the Personal Data;
		5. 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 Supplier is required by Law to retain the Personal Data.
	1. Subject to clause 22.8, the Supplier shall notify the Purchasing Authority immediately if it:
		1. receives a Data Subject Access Request (or purported Data Subject Access Request);
		2. receives a request to rectify, block or erase any Personal Data;
		3. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
		4. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
		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
		6. becomes aware of a Data Loss Event.
	2. The Supplier’s obligation to notify under clause 22.7 shall include the provision of further information to the Purchasing Authority in phases, as details become available.
	3. Considering the nature of the processing, the Supplier 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 22.7 (and as far as possible within the timescales reasonably required by the Purchasing Authority) including by promptly providing:
		1. the Purchasing Authority with full details and copies of the Complaint, communication or request;
		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;
		3. the Purchasing Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
		4. assistance as requested by the Purchasing Authority following any Data Loss Event;
		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.
	4. The Supplier shall maintain complete and accurate records and information to allow the Purchasing Authority to audit the Supplier’s compliance with the requirements of this Clause 22 on reasonable notice and/or to provide the Purchasing Authority with evidence of its compliance with the obligations set out in this Clause 22 and to demonstrate its compliance with this clause.
	5. The Supplier shall allow for audits of its Data Processing activity by the Purchasing Authority or the Purchasing Authority’s designated auditor.
	6. The Supplier shall designate a data protection officer if required by the Data Protection Legislation.
	7. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:
		1. notify the Purchasing Authority in writing of the intended Sub-processor and processing;
		2. obtain the written consent of the Purchasing Authority;
		3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 22 such that they apply to the Sub-processor; and
		4. provide the Purchasing Authority with such information regarding the Sub-processor as the Purchasing Authority may reasonably require.
	8. The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.
	9. 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).
	10. 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 Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.
	11. The Supplier 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 Supplier’s unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Supplier, its employees or agents in the Supplier’s performance of the Agreement or as otherwise agreed between the Parties.
1. Platform Accessibility Statement

The Supplier will publish an accessibility statement on the Service platform and will make best efforts to ensure that both the Service platform and Licensed Materials are accessible in accordance with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018 and complies with accessibility standards (WCAG 2.2 Level AA). Where the Service platform and Licensed Materials is only partially compliant with the WCAG 2.2 Level AA accessibility standard, the Supplier must publish those areas where it is non-compliant and update the Contracting Authority on non-compliance issues on an annual basis through an accessibility statement as part of the annual review process.

1. Termination

The Contracting Authority may terminate this Framework Agreement by serving written notice on the Supplier in any of the following circumstances:

* + 1. a material failure by the Supplier to perform any obligation of the Supplier under this Framework Agreement provided that (if capable of remedy) such failure has not been remedied to the Contracting Authority’s reasonable satisfaction within a period of thirty (30) days following written notice demanding remedy of the failure in question being served by the Contracting Authority on the Supplier; or
		2. the Supplier fails to perform any material obligation of the Supplier under this Framework Agreement on more than three (03) occasions; or
		3. the Supplier becomes Insolvent or otherwise ceases to be capable of supplying the Goods and/ or Service(s) and / or Licensed Materials the subject of this Framework Agreement; or
		4. the Supplier is in default of any duty of care or any fiduciary or statutory duty owed to the Contracting Authority and/or any employee or agent of the Contracting Authority; or
		5. there is a change of ownership or control of the Supplier which, in the reasonable opinion of the Contracting Authority, will have a material impact on the supply of the Goods and/ or Service(s) and / or Licensed Materials the subject of this Framework Agreement or the image of the Contracting Authority; or
		6. the Supplier purports to dispose of this Framework Agreement in breach of clause 29.1 “Assignment;” or
		7. the Supplier 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 this Framework Agreement or any contract with the Contracting Authority pursuant to this Framework Agreement, or for showing or forbearing to show favour or disfavour to any person in relation to this Framework Agreement or any contract with the Contracting Authority pursuant to this Framework Agreement; 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 Supplier); or
		8. if in relation to this Framework Agreement or any contract with the Contracting Authority pursuant to this Framework Agreement, the Supplier 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 Contracting Authority 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.

The Supplier agrees and acknowledges that the Contracting Authority is entitled to recover any costs the Contracting Authority may reasonably incur in consequence of the Contracting Authority terminating this Framework Agreement pursuant to this clause 24.

The Supplier agrees that upon termination for any reason or expiry of this Framework Agreement it shall not be entitled to make a claim against the Contracting Authority in relation to costs incurred by the Supplier in providing the Goods and/ or Service(s) and / or Licensed Materials costs incurred in acquiring equipment and/or materials used in the provision of the Goods and/ or Service(s) and / or Licensed Materials or in engaging third parties in connection with the Goods and/ or Service(s) and / or Licensed Materials the subject of this Framework Agreement.

In addition to its rights under any other provision of the Agreement the Contracting Authority may terminate the Agreement at any time by giving the Supplier three (03) Months’ written notice.

1. Dispute Resolution Procedure

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

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

In the first instance each of the Contracting Authority or such Beneficiary and the Supplier shall arrange for a more senior representative than those referred to in Clause 25.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Contracting Authority or such Beneficiary (but the chairperson 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 video conferencing) as to promote a consensual resolution of the dispute in question at the discretion of the chairperson.

If the meeting(s) referred to in Clause 25.3 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 twenty-eight (28) 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 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 thirty (30) 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 them with such information and other assistance as they shall require and will pay their costs, as they shall determine or in the absence of such determination such costs will be shared equally.

1. Variation to Agreement

This Framework Agreement may not be varied in any way without prior written consent and agreement by both Parties.

Subject to 26.1, any agreement by both Parties must be agreed using the template in Annex FIVE: Variation to Agreement of this Agreement.

1. Corrupt Gifts or Payments

The Supplier shall not do (and shall use its best endeavours to ensure that in entering the Framework Agreement they have not done) any of the following: (referred to in this clause as “Prohibited Acts”)

* + 1. offer, give or agree to give any person in the employment of the Contracting Authority, 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 Agreement with the Contracting Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any other Agreement with the Contracting Authority; nor
		2. enter into this or any other Agreement with the Contracting Authority if any commission has been paid or agreed to be paid to any person in the employment of the Contracting Authority or any beneficiary, by or on behalf of the Supplier or to their knowledge, unless particulars of such commission and the terms of any Agreement for the payment of it have been disclosed to the Contracting Authority in writing before the Agreement is made.
		3. If the Supplier 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 Supplier in relation to this or any other Agreement with the Crown, the Contracting Authority shall be entitled:
		4. to terminate the Framework Agreement and recover from the Supplier the amount of any loss resulting from the termination;
		5. to recover from the Supplier the amount or value of any such gift, consideration or commission; and
		6. to recover from the Supplier any other loss sustained in consequence of any breach of this clause 27.1 whether or not the Framework Agreement has been terminated.
		7. In exercising its rights of remedies under clause 27.1, the Contracting Authority shall:
		8. act proportionately in the light of the gravity and circumstances of the particular breach; and
		9. give all due consideration, where appropriate, to action other than termination of the Framework Agreement.
1. Procurement Transparency

The Supplier acknowledges that this Framework Agreement and any tender documentation that forms part of this Framework 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.

Subject to 28.1, 28.3 and 28.4 the Supplier must notify the Contracting Authority of any sections of the tender documentation and/or this Framework Agreement that they regard as Commercial in Confidence or subject to the non-disclosure clauses of the FOIA or DPA 2018. Any such request must provide a clear justification for the proposed redaction.

The total value (bottom line) of the Framework Agreement is required to be published under the UK governments Transparency Agenda.

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 2018, the content of this Framework Agreement is not Confidential Information. the Contracting Authority shall be responsible for determining in its absolute discretion whether any of the content of the Framework Agreement is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA 2018.

Notwithstanding any other term of this Framework Agreement, the Supplier hereby gives his consent for the Contracting Authority to publish the Licence Agreement in its entirety, including from time to time agreed changes to the Framework 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.

Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, Suppliers, professional advisors and consultants comply with this clause 28.

1. Assignment

This Framework Agreement is personal to the Supplier. The Supplier shall not assign, novate, sub-contract or otherwise dispose of this Framework Agreement or any part of it, or the benefit or advantage of this Framework Agreement or any part of it, without the previous written consent of the Contracting Authority.

1. Notices

All notices to be given hereunder shall be in writing and may be served either personally, or by electronic means such as email, or by registered post to the address of the relevant Party or as it may from time-to-time notify in writing to the other Party and shall be deemed to be effective on the business day on which received or if the date of actual receipt is not a business day then on the next business day following receipt.

1. Law

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

1. General

The parties accept the exclusive jurisdiction of the English courts and agree that this Framework Agreement is to be governed and construed in accordance with English law.

No amendment of this Agreement shall be valid unless agreed in writing by a duly authorised representative of each of the Parties.

The failure by the Contracting Authority or the Supplier to insist upon the strict performance of any provision, term or condition of this Framework 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.

1. Agreement Signatures

|  |  |  |  |
| --- | --- | --- | --- |
| Signed for and on behalf of **the Contracting Authority** |  |  |  |
|  | **Signature** | **Name and title** | **Date** |
| Procurement Manager  |  |  |  |
|  |  |  |  |
| Contract Manager |  |  |  |
|  |  |  |  |
| Budget Holder |  |  |  |
|  |  |  |  |
| Signed for and on behalf of **the Supplier** |  |  |  |
|  | Signature | Name and title | Date |
| Supplier contract manager |  |  |  |
|  |  |  |  |
| Authorised Signatory: |  |  |  |
| **This contract is not valid until all Signatures have been completed** |  |  |  |

Annex ONE: Specification: Services delivered under this Framework Agreement:

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |
|  |  |  |
|  |  |  |

1. The Supplier shall supply the above to any eligible Purchasing Authority as detailed in - Definitions “Purchasing Authority.”
2. The Supplier shall respond to any Invitation to Quote (ITQ) requested by any Purchasing Authority as instructed in the Purchasing Authorities ITQ, within the timeframe detailed in the Purchasing Authorities ITQ.
3. The Supplier shall under no circumstances attempt to apply any Terms & Conditions of Contract to any purchase made through this Framework other than those listed in clauses 3 - Overriding Provisions, specifically, those listed in sub-clauses 3.2.1, 3.2.2 and 3.2.3. For the avoidance of doubt, any such attempt will be considered a material breach of this Agreement.
4. The Supplier shall apply the purchasing models as detailed in Annex TWO to any purchase made under this Framework. The Supplier shall not use any other method of pricing other than detailed in Annex TWO.

Annex TWO: Purchasing Models, Discount Structures and Pricing Policies

1. The following purchasing models and discount structures are agreed:

**See “Annex 2A:** **Purchasing Models”**

1. The Contracting Authority will make available the Framework Agreement purchasing models, pricing policies and discounts offered to Purchasing Authorities on request.

Annex THREE: Service Level Agreements (SLAs)

1. The Framework Service Level Agreements (SLAs) are set out in **“Annex 3A: SLAs**”.
2. An annual management reporting template will be provided to in order to summarise details of performance and adherence to the SLAs.
3. Suppliers must attend an Annual Service Review meeting as a minimum with NICE and provide an annual service report no later than two (02) weeks before the scheduled meeting.

Purchasing Performance Data

1. The Supplier should supply sales and purchasing data on a Monthly basis, no later than the 21st of the following Month.
2. The data should be provided for each Lot in an Excel format using the template provided as: “**Annex 3B: Monthly Spend**”.
3. Sales and purchasing data must be supplied for each relevant content category for which the Supplier has made Knowledge Resources sales through the Framework: Print Journals; Electronic Journals; Print Books; Electronic Books; Databases; Evidence Summaries / Clinical Decision Support (CDS) Resources, CPD Resources and Digital Anatomy Reference Resources.
4. Sales and purchasing data provided on template “Annex 3B:“Monthly Spend” must include as a minimum:
* the Purchasing Authority’s organisation details and geographical region;
* discount supplied (where relevant);
* Knowledge Resource titles (for Databases, Evidence Summaries, CME Resources and DAR Resources products ONLY).
1. Monthly data reports must be sent to CommissionedContentReports@evidence.nhs.uk
2. Where no monthly sales have been made, am email to confirm must be sent to CommissionedContentReports@evidence.nhs.uk

Annex FOUR: NICE Framework Agreement Structure

Chart A: NICE Framework Agreement: Structure Model



1. The Framework purchasing process will be detailed on the Framework Website to be provided by the Contracting Authority and made available to Purchasing Authorities and Suppliers as part of the guidance published on the Framework website at: https://www.nice.org.uk/about/nice-communities/library-and-knowledge-services-staff/buy-books-journals-and-databases
2. The purchasing process detailed in the Framework Website may be updated by the Contracting Authority from time to time over the lifetime of the Agreement. Any update to the Framework Website 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 clauses 32: Agreement or Specification Change or Variation to this “Call Off Terms & Conditions” document.

Lots

1. The Framework consists of eight Lots to which Suppliers will be appointed:
* **LOT 1 Sole supplier - direct award:** the Sole supplier Lot shall be used to purchase Knowledge Resources that can only be provided by one Supplier. A list of sole supplied Knowledge Resources by Supplier is available on the Framework Website.

Journal collections are included in this Lot but not individual journals - only those journal collections that are available through one Supplier are included i.e. not collections that can be supplied by both and Agent and a Publisher.

***Note***: Suppliers of a sole supplier product in this Lot may also be appointed in other relevant Lots on the Framework e.g. a unique database may also be appointed to LOT 5: Databases.
* **LOT 2 Print Books:** there are two purchasing options in this Lot:

1. Mini competition for each purchase; OR

2. Mini competition to select a Supplier for a set Term contract. This will allow purchasers to make direct call offs from the successful Supplier for the contract Term implemented.

* **LOT 3 eBooks:** there are two purchasing options in this Lot:

1. Mini competition for each purchase; OR

2. Mini competition to select a Supplier for a set Term contract. This will allow purchasers to make direct call offs from the successful Supplier for the contract Term implemented.

* **LOT 4 Print and eJournals:** there are two purchasing options in this Lot:

1. Mini competition for each purchase; OR

2. Mini competition to select a Supplier for a set Term contract. This will allow purchasers to make direct call offs from the successful Supplier for the contract Term implemented.

* **LOT 5 Databases:** purchasing options will be mini competition or direct award (for sole supplied Knowledge Resources), dependent on the Knowledge Resource title being published.
* **LOT 6 Evidence Summaries:** purchasing options will be mini competition or direct award (for sole supplied Knowledge Resources), dependent on the Knowledge Resource title being published.
* **LOT 7 CME Resources:** – purchasing options will be mini competition or direct award (for sole supplied Knowledge Resources), dependent on the Knowledge Resource title being published.
* **LOT 8 DAR Resources:** – purchasing options will be mini competition or direct award (for sole supplied Knowledge Resources), dependent on the Knowledge Resource title being published.

Framework Documents: Terms & Conditions

1. The following contractual documents will exist on the Framework:
* The “**Terms & Conditions of Contract for NICE Knowledge Resources Framework Agreement**” document for use between NICE and each appointed Supplier. The terms are pre-agreed by Suppliers in order to be appointed to the NICE Framework. This sets out standard contractual terms including (but not limited to) the Suppliers’ obligations, insurance, warranty and liability limitations, monitoring and reporting requirements with NICE in its role as the Contracting Authority.
* The “**Call Off Order Form**” and the “**Call Off Terms & Conditions**” documents. Together these form the Call Off contract. To be used at the point of purchase between the Purchasing Authority and all appointed Suppliers. The Call Off contract sets out the purchasing and supply terms where appropriate to print and digital Knowledge 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. All the terms have been pre-agreed with the appointed Suppliers and should not be amended.

Only the Call Off Order Form needs to be completed by the Purchasing Authority and signed by both parties when purchasing. The Call Off Terms & Conditions and relevant clauses are referred to throughout the Call Off Order Form. The Call Off Terms & Conditions are available as a PDF document for reference on the Framework Website at:

Framework Documents: Licence Agreement(s)

1. The “**Health & Social Care Content (HSCC) Licence**” must be used for all purchases of digital Knowledge Resources from the Framework, **except for purchases through an Agent**, together with the “**Call Off Order Form**” and the “**Call Off Terms & Conditions**” documents, The HSCC Licence includes pre-agreed and non-negotiable terms including (but not limited to): licensing & usage rights; Service Availability levels; service credits; monitoring & reporting requirements; technical standards; Service Level Agreements (SLAs) & Key Performance & Quality Indicators (KPIs), which are known as the Core Standards and set out in full in the “Call Off Terms & Conditions” document.

Purchasing Authorities can add in terms for additional service requirements to the HSCC Licence in Annex SIX: Additional Terms to the “Call Off Order Form” dependent on local purchasing requirement e.g. technical requirements such as a database API specification, ability to integrate content into national or local Resource Discovery Systems (RDS). Any additional terms set out in Annex SIX to the “Call Off Order Form” must not conflict with the terms set out in the Framework as per clauses 2: Overriding Provisions to the “Call Off Terms & Conditions”.

Annex FIVE: Variation to Agreement Template

Variation to Agreement between National Institute for Health and Care Excellence (the Contracting Authority) and [name] (the Supplier) for the NICE Knowledge Resources Framework Agreement on the Day of 20 (“the Agreement”).

For the purposes of this Variation to Agreement:

|  |  |
| --- | --- |
| Contract Manager | means the individual from time to time appointed by the Contracting Authority and notified to the Supplier in writing responsible for the co-ordination of the development specified below; |

This Variation to Agreement, pertains to the development or additions of the NICE Knowledge Resources Framework Agreement and any annexes to be undertaken by the Supplier and is agreed by the Supplier and the Contracting Authority as a current addition to Annex ONE to the Agreement.

The Development Services and Supply will:

be developed by the Supplier in compliance with the specifications contained in this Variation to Agreement, and

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

This Development Services and Supply consists of the following revisions to the Agreement contractual documentation:

[To be completed]

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

The Milestones for deliverables which are required by the Contracting Authority are detailed below.

**Milestones**

|  |  |
| --- | --- |
| Due Date | Milestone |
|  |  |
|  |  |
|  |  |

The Supplier shall be deemed to have completed a Milestone by the Due Date notwithstanding any delay beyond the Due Date if such delay would not have occurred but for any act or omission of the Contracting Authority, anything done or omitted to be done on the Contracting Authority’s instructions or any other act or omission of a third party which was beyond the reasonable control of the Supplier (for the avoidance of doubt such third parties do not include the Supplier’s sub-contractors).

Terms defined in the Agreement shall bear the same meanings in this Variation to Agreement, unless otherwise stated, or the context otherwise requires.

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature on behalf of the SupplierName TitleDate | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature on behalf of the Contracting AuthorityName TitleDate |

Annex SIX: Arrangements for Agreements / Contracts / Orders placed under this Framework Agreement on expiry or Termination of this Agreement

Any Agreement / Order placed under this Framework Agreement shall remain valid and in force until the agreed expiry date or termination date of that Agreement / Order.

The contract term of any Agreement / Order placed under this Framework Agreement shall remain in force until the expiry or termination of the Agreement / Order shall not exceed four (04) years from the first commencement date of the original Agreement / Order.

No Agreement / Order placed on or after the expiry or termination date of this Framework Agreement shall be valid once expiry or termination of this Framework Agreement has occurred.

Extensions or renewals of any Agreement / Order shall be valid once expiry or termination of this Framework Agreement has occurred.

Annex SEVEN: Call Off Terms & Conditions and the Licence Agreement(s)

Any Agreement / Order placed under this Framework Agreement shall be subject to the “Call Off Order Form” and any annexes; the “Call Off Terms & Conditions” and any annexes; the Licence Agreement(s) and any annexes applicable to the Agreement / Order.

Annex EIGHT: Communications Guidelines for Appointed Suppliers

This Annex EIGHT sets out the NICE communications criteria and guidance for appointed Framework Suppliers. For use when publicising and communicating the Framework to NHS and healthcare related organisations through print and digital publications and communications.

1. Subject to (4), the criteria and guidance apply to all communications that refer to the contractual agreement between the Supplier and NICE. Any reference to NICE must be factual and all communications consistent.
2. The Supplier shall not publish or cite any global communication in relation to the Framework without written approval by NICE before distribution.
3. The Supplier shall ensure all communications are written in English.
4. The Supplier shall use reasonable endeavours to ensure all the criteria are incorporated into their related communications in order to ensure clarity and consistency.

|  |  |  |
| --- | --- | --- |
| **Communications Criteria** | **Guidelines** | **Usage Permission** |
| Use of NICE logo | It is **NOT** permitted to use the NICE logo on any communications. | Prohibited – no use of NICE logo is permitted. |
| Framework name | Use contractual name of “NICE Knowledge ResourcesFramework Agreement”  | Mandatory - the Supplier must use this form of words when quoting the Framework name. |
| Quote Framework Contract Number | NICENHSFA/2528 | Optional to use when quoting the Framework – however this will speed up the purchasing process for NHS procurement departments. |
| Strap line | “NICE framework resource supplier”This is the approved strap line for framework related communications ONLY until the end of the Agreement.  | Optional - it could be used in email signatures or on the Suppliers website or other marketing materials. |
| Standard Paragraph | “Eligible purchasers can access all details about how to buy digital and print content from the NICE “Buy books, journals and databases” webpage at: http://www.nice.org.uk/about/nice-communities/library-and-knowledge-services-staff/buy-books-journals-and-databases. | Mandatory - the Supplier must use this form of words. |

If the above guidelines are followed these documents do not need to be sent for approval:

* content on an appointed supplier’s website
* letters to stakeholders
* e-shots to appointed suppliers' mailing lists
* internal newsletters
* Knowledge Resources catalogues

This list is not exhaustive and there will be other communications that do not require NICE approval.

## Process for the approval of Supplier communications

Communications such as press releases and articles that mention contractual arrangements e.g. organisations appointed to the NICE Framework must be sent to CommissionedContentReports@evidence.nhs.uk for approval before dissemination.We aim to return communications submitted to us within 05 (five) -07 (seven) working days.

Documents should be sent in Word format.

NICE will send any documents that include quotes from NICE staff to the individual mentioned, for approval. This will increase the timescale for the return of the document.

## Process for the addition of information to individual Supplier’s web pages on the NICE website

All requests for information to be added should be sent to: CommissionedContentReports@evidence.nhs.uk

The NICE Framework web pages are not a marketing tool for Suppliers, their primary aim is to make buyers aware of what is available on the Framework and how they can purchase from it. We provide a link to a Supplier’s Knowledge Resources catalogue in order to support purchasing decisions, as well include Supplier contact details for purchases.