

## **NATIONAL INSTITUTE FOR HEALTH AND CARE EXCELLENCE**

### **Terms and Conditions of Contract for External Assessment Centres Framework (Framework Agreement: NICE EACFA 22-25)**

#### **Document Version Controls**

Version Number	Last Updated	Amendment	Initials
V0.1	22/07/2021	1 <sup>ST</sup> draft review	■
V0.2	18/08/2021	Contract manager review	■
V0.3	30/09/2021	Changes accepted, comments added, final outstanding issues to be addressed	■
V0.4	01/10/2021	Clean up – final update required once notice is released	■
V0.5	04/11/2021	Review and sign off by ■	■

# 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	Provision of an External Assessment Centre for the CHTE
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)	01 07 2022
1.11	DATE AGREEMENT ENDS (IF FIXED DATE)	31 03 2025
1.12	AGREEMENT NUMBER	
1.13	FRAMEWORK REFERENCE NUMBER	

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### 3. Framework Agreement

3.1. This FRAMEWORK AGREEMENT is made on the [ ] day of [ ] month 2022

BETWEEN:-

- 1) National Institute for Health and Care Excellence (NICE) whose principal office is Level 1 City Tower, Piccadilly Plaza, Manchester M1 4BT (“the Authority”); and
- 2) [supplier name and address] Registration number: [xxxx] (‘the Supplier’).

NOW IT IS HEREBY AGREED as follows:-

WHEREAS:-

- 3.2. An advertisement was placed by the Authority on Tender Finder on 15th November 2021, in respect of a Framework Agreement for the provision of External Assessment Centre Services to the Authority herein.
- 3.3. The External Assessment Centre Framework Agreement can be used by internal departments within NICE for the provision of a range of services within the following Lots:
  - 3.3.1. LOT 1 Clinical and Economic Evidence Assessment
  - 3.3.2. LOT 2 Decision and Methodological Support
  - 3.3.3. LOT 3a Primary Data Generation and Analysis
  - 3.3.4. LOT 3b Real World Evidence Generation for Managed Access
  - 3.3.5. LOT 4 Additional Capacity and Supplementary Services

### 4. Overriding Provisions

- 4.1. The Supplier agrees to supply the External Assessment Services in accordance with these terms any Call-off Order Agreement terms. For the avoidance of doubt, all terms in this framework agreement (NICE EACFA 22-25) apply to any Aall-off Order Agreement.
- 4.2. In the event of and only to the extent of any conflict or ambiguity between the clauses of this Agreement, the provisions of the Schedules, any document referred to in the clauses of this Agreement and the Call-off Order Agreement, the conflict shall be resolved in accordance with the following order of precedence:
  - 4.2.1. the “Terms and Conditions of Contract for External Assessment Centre Framework Agreement” and any Schedules (NICE EACFA

22-25);

4.2.2. the Call-off Order Agreement and any annexes or appendices (this Agreement);

4.2.3. The Instructions to Proceed specific terms and any annexes or appendices.

4.3. The Supplier acknowledges and accepts that the order of prevailing provisions in this Agreement is as set out in this clause 4.

## **5. Interpretation**

5.1. 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.

5.2. 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.

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

5.4. 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.

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

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

5.7. In these terms and conditions "staff" and "employees" shall have the same meaning.

5.8. 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.

- 5.9. All monetary amounts are expressed in pounds sterling.
- 5.10. 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.
- 5.11. 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. For the avoidance of doubt, where an obligation expressly or impliedly imposes an obligation, restriction or requirement on the External Assessment Centre (or any of the External Assessment Centre Members) or any Sub-contractor or representative of the Supplier, the Supplier shall procure that the Consortium, External Assessment Centre Member, Sub-contractor or representative (as appropriate) shall comply with such obligation, restriction or requirement.
- 5.12. 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.

## 6. Defined Terms

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

Term	Meaning
Agreement Commencement Date	The date this Agreement comes into effect as detailed in 1.10.
Authorised Officer	Means the person or persons appointed by the Authority to manage this Agreement.
Authority	Means the National Institute for Health and Care Excellence (NICE), or any successor body.
Business Manager	Means the single person in the Supplier's organisation responsible for the administrative processes of running a Work Package. Their duties include, but are not limited to, liaising with the Authority to arrange meetings (face to face or virtual), forwarding the paperwork from meetings to the relevant individuals within the Supplier's Organisation, and making sure that the administrative processes surrounding the Work Package are fully supported and fulfilled.
Call-off Order(s)	Means an order for specific Project Work Package(s) raised by the Authority for the supply of Service(s) under the Call-off Order Agreement pursuant to this Framework Agreement.



<b>Term</b>	<b>Meaning</b>
Call-off Order Agreement	Means Terms and Conditions of Contract concluded between the Authority and the Supplier for the Services defined the Call-off Order Agreement, Schedule 8 to this Framework Agreement.
Commencement of Services Date	The Services deliverable under this agreement shall commence on 01 July 2022, unless the Supplier requires an Implementation period where the latest date shall be 01 September 2022.
Confidential Information	Means information, data and material of any nature which either Party may receive or obtain in connection with the operation of the Agreement and: <ul style="list-style-type: none"> <li>(a) which comprises Personal Data or Sensitive Personal Data (as both terms are defined in the Data Protection Act 2018) or which relates to any patient of the Authority or his or her treatment or medical history;</li> <li>(b) the release of which is likely to prejudice the commercial interests of the Authority or the Supplier respectively; or</li> <li>(c) which is a trade secret.</li> </ul>
Consortium	Means a combination, as of businesses, financial institutions, or investors, for the purpose of engaging in a joint venture.
Contractual Date	Means any date of any key milestone as specified in Schedule 6, or as defined in clause 15.1.1 and 15.3.2.
Convictions	Means other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by Section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).
Costs	Includes costs, charges, outgoings and expenses of every description as defined in Schedule 2.
Credit	A sum of money owed by either party to the other.
Credit Note	A credit to be issued to the Authority for any payment invoiced by the Supplier that: <ul style="list-style-type: none"> <li>(a) should not have been charged;</li> <li>(b) in error of any invoice charge;</li> <li>(c) any chargeable Service Credit charge.</li> </ul>
Data	Means facts, statistics, or items of information.
Data Protection Legislation	Means (i) the UK GDPR, and any applicable national implementing laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable law about the processing of personal data and privacy.

<b>Term</b>	<b>Meaning</b>
Data Subject	Take the meaning given in the UK GDPR.
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.
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	Means any data, report, drawing, specification, design, invention, plan, program, document, agreement, and/or other material (whether audible, in writing or otherwise) produced by or to be produced by or acquired by or to be acquired by the Supplier in the course of the performance of the Services including, for the avoidance of doubt, anything more specifically set-out the Service Specification, Service Level Agreement, Milestones, Implementation and Transition, Work Package, and any agreed Variation to Agreement in this Agreement and any Call-off Order Agreement or Instruction to Proceed.
Direct Award	Means a Call-off Order placed where the Authority can identify all the terms of the agreement are met without the need for a Mini-competition.
Dispute Resolution Procedure	Means the process of resolving disputes between Parties as set out in clause 34.
Documentation	Means such manuals, reports, drawings, specifications, training materials, use policies, plans and other documents, in each case relating to the Services (or any part of the Services), that are developed by the Supplier or any Sub-contractor for the Authority and/ or which are jointly developed by the Supplier or any Sub-contractor with the Authority.
DPA 2018	Means the Data Protection Act 2018.
EOI	Means a call for an Expression of Interest for Work Packages issued under a multi Work Package Call-off Order Agreement.
Exit Plan	Means the detailed plan to be specified 6 months prior to the Agreement end or termination date, to ensure a smooth transition from the provision of the Services by the Supplier to the provision of replacement services by the Authority or any replacement Supplier.

<b>Term</b>	<b>Meaning</b>
External Assessment Centre (EAC)	Means the unincorporated body comprised of the organisations listed in Schedule 3 and formed to work with the Supplier in its provision of the Services - the External Assessment Centre Members are not partners of each other in any legal sense.
External Assessment Centre Members	Means those Sub-contractors of the Supplier who have been approved in advance by the Authority in accordance with Clause 26.10 and are listed in Schedule 3.
Framework Agreement	Means the Terms and Conditions of Contract concluded between the Authority and the Supplier for NICE External Assessment Centre Services of which defines, in broad terms, the scope and terms and conditions under which this agreement will be entered into. The Framework Agreement includes: <ul style="list-style-type: none"> <li>(a) the clauses contained herein;</li> <li>(b) the Schedules attached hereto</li> <li>(c) any variations in writing as shall be agreed by the Authority and the Supplier according to the provisions of clause 35 (Variations to the Agreement);</li> <li>(d) the “Call-off Order Agreement” and any Annex’s; and any Appendices, specific to the Call-off Order Agreement and any variations according to the provisions of clause 18 (Variations to the Agreement) of the Call-off Order Agreement.</li> </ul>
Force Majeure	Means one or more of the following to the extent that it is not attributable to the Supplier or the Supplier’s staff: war, civil war (whether declared or undeclared), riot or armed conflict; acts of terrorism, radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions, pandemic, epidemic, and SARS-CoV-2, enforced closure or restriction by government or by a competent regulatory authority which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the Deliverable(s), but which is not confined to the workforce of the Supplier or is site specific; pestilence; the actions of governmental Authority’s to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Agreement.

<b>Term</b>	<b>Meaning</b>
Foreground Intellectual Property	Means all Intellectual Property developed and produced under this agreement;
UK GDPR	Means the General Data Protection Regulation as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2019 (as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc)(EU Exit) Regulations 2020
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 them, or shall make any composition or scheme of arrangement with or for the benefit of their creditors, or shall make any conveyance or assignment for the benefit of their creditors, or shall purport to do so, or any application shall be made for sequestration of their estate, or a trust deed shall be granted by them for the benefit of their 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.
Implementation	Means the implementation and delivery of any service as detailed in Schedule 6.
Implementation Charge	Means the portion of the fee chargeable by the Supplier to the Authority for the implementation of any deliverable or service as defined in Schedule 7.
Implementation Liquidated Damages	Means a sum of money specified in clause 22 and Schedule 7, for each day of delay or until the service is implemented or the Agreement is terminated, whichever is sooner.
Implementation Period	The Implementation period shall be the commencement date of this agreement as shown in 1.10 till to Commencement date of the Services, which shall be 01 October 2022.

<b>Term</b>	<b>Meaning</b>
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 Quote (ITQ)	Means the document submitted to the Supplier by the Authority, to which the Supplier will submit an offer and the basis on which the Authority will place the Call-off 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 Performance Indicator (KPI)	Means the metrics used to quantify the performance of the Supplier and monitor adherence to the Service Level Agreement as defined in Annex 2 of the Call-off Order Agreement.
Key Personnel	Means the representative(s) of the Supplier nominated by the Supplier as the duly authorised representative of the Supplier for all purposes connected with the Agreement and the senior personnel whose skills and experience are required for the delivery of the services under the Agreement, as defined in Schedule 3. Any such replacement of any Key Personnel as shall be agreed in advance with the Authority.
Know How	Means all information not publicly known which is used or required to be used in or in connection with the Services and / or Services existing in any form (including, but not limited to, that comprised in or derived from engineering, chemical and other data, specifications, formulae, experience, drawings, manuals, component lists, instructions, designs and circuit diagrams,

<b>Term</b>	<b>Meaning</b>
	brochures, catalogues and other descriptions) and relating to the design, development, manufacture or production of any products; the operation of any process; the performance of any Service and / or Services; the selection, procurement, construction, installation, maintenance or use of raw materials, plant, machinery or other equipment or processes; the rectification, repair or service or maintenance of products, plant, machinery or other equipment; the supply, storage, assembly or packing of raw materials, components or partly manufactured or finished products; quality control, testing or certification of any person.
Liquidated Damages	Means the charges payable under clause 22 and Schedule 7.
Liquidated Damages Period	Means the period of time that the Liquidated Damages apply as defined in clause 22.2 and Schedule 7.
Location	Means any premises of the Authority.
Loss	Includes losses, liabilities, claims, costs, charges and outgoings of every description (including legal expenses), compensation payable under contracts with Supplier and/or customers, loss of normal operating profits, loss of opportunity, loss of goodwill, loss of reputation, loss of revenue from related contracts and pure economic loss.
“Lot(s)”	Means the Lots as advertised in Find a Tender ( <a href="https://www.gov.uk/find-tender">https://www.gov.uk/find-tender</a> on 15th November 2021, in respect of a Framework Agreement for the provision of Services: LOT 1 – Clinical and Economic Evidence Assessment LOT 2 – Decision and Methodological Support Services LOT 3a – Primary Data Generation LOT 3b – Real World Evidence Generation for Managed Access LOT 4 – Additional Capacity and Supplementary Services
Milestone	Means any Milestone as set out in Schedule 6, and Annex 2 of the Call-off Order Agreement and any Instruction to Proceed.
Mini Competition	Means, a further competition of Suppliers capable of meeting the particular need. For the avoidance of doubt, the Authority invites Suppliers that supply the Service(s) required to Quote and Award to the most economically advantageous offer. All Suppliers capable of meeting the particular need, must be invited to quote.
Module	Means an individual Service as defined in the Schedule 1 which can be of any kind within a Lot or multiple Lots (where a Supplier is able to supply within that Lot), make in total a Work Package).

<b>Term</b>	<b>Meaning</b>
Month	Means a calendar month.
NHS	National Health Service
NHS Research Governance Standard	<a href="https://www.hra.nhs.uk/planning-and-improving-research/policies-standards-legislation/uk-policy-framework-health-social-care-research/">UK Policy Framework for Health and Social Care Research</a> – <a href="https://www.hra.nhs.uk/planning-and-improving-research/policies-standards-legislation/uk-policy-framework-health-social-care-research/">https://www.hra.nhs.uk/planning-and-improving-research/policies-standards-legislation/uk-policy-framework-health-social-care-research/</a> published by the Health Research Authority.
NICE	The National Institute for Health and Care Excellence
"the Offer"	Means all the terms of the Offer submitted by the Supplier in response to an Invitation to Quote.
Party	Means any party to the Agreement individually and "Parties" refers to all of the parties to the Agreement collectively. A Party shall include all permitted assigns of the Party in question. All persons who are not a Party to the Agreement are third parties as detailed in 1.1.
Person	Includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency, unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and permitted assigns.
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.
Premises	Means any location or premises of the Supplier where the Services are delivered.
Programme Director	The Director of the Authority responsible for the delivery of the Services under this agreement as defined in Schedule 1 and any Call-off Order Agreement.
Replacement Supplier	Means any Supplier engaged to replace the Supplier or any Sub-contractor of the Supplier.
Schedules	All Schedules to the Agreement, which are:  Schedule 1 Lots, Modules and Specification of Services

<b>Term</b>	<b>Meaning</b>
	<p>Schedule 2 Pricing and Discounts</p> <p>Schedule 3 External Assessment Centre Structure and Key Personnel</p> <p>Schedule 4 External Assessment Centre Sub-contractors</p> <p>Schedule 5 Suppliers and Third Party Software</p> <p>Schedule 6 Implementation of new External Assessment Centre</p> <p>Schedule 7 Liquidated Damages</p> <p>Schedule 8 Call-off Order Terms and Conditions</p> <p>Schedule 9 Variation to Agreement.</p> <p>Schedule 10 Framework Agreement Structure</p> <p>Schedule 11 Arrangements for Call-off Orders placed under this Framework</p> <p>Schedule 12 Rules on Call-off Orders Agreements on expiry or termination of the Framework Agreement</p> <p>Schedule 13 Communications and Guidelines for Appointed Suppliers</p> <p>Schedule 14 Supplier Data</p>
Senior Lead	Means a member of the senior management team of the Supplier's organisation, who is authorised to speak on behalf of the Supplier in Committee meetings and other high level meetings with the Authority.
Sensitive Personal Data	As defined in the Data Protection Act 2018.
Services	Means the services defined in Schedule 1 and Annex 1 of any Call-off Order Agreement and/or Instruction to Proceed.
Service Credit	Means a credit applicable to the quarterly service charge that results from the failure of the service as detailed in clause 23 and Annex 2 of Schedule 8 KPIs and Reporting.
Service Continuity Damages	Means a sum of money specified in Schedule 7, for any delay over the specified timetable contained in Schedule 7.
Service Level Agreement	Means the agreement in Annex 2 of the Call-off Order Agreement and / or Instruction to Proceed that records the common understanding about services and responsibilities and minimum service levels.
Service Levels	Means the standards of service or service objectives which the Supplier is required to achieve in the performance of Services details of which are contained in Annex 2 of the Call-off Order Agreement and / or Instruction to Proceed.
Service Transfer	Any transfer of the Services (or any part of the Services), from the Supplier or any Sub-contractor to the Authority or a third



<b>Term</b>	<b>Meaning</b>
	party supplier for any reason including upon the termination, partial termination or expiry of this Agreement.
Software	Means any Supplier or Third Party Software as listed in Schedule 5.
Specification	Means the description of the Services as set out in Schedule 1: Services delivered under this Framework Agreement to this document.
Supplier	Means an organisation appointed to the External Assessment Centre Framework Agreement which has entered into this Agreement to supply the Services as detailed in the Specification.
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 and Conditions of Contract	Means the contractual terms of the Framework Agreement and the contractual terms of the Call-off Order Agreement.
Termination Consideration Date	Means any date as defined in Schedule 6 and 7 where the Authority may exercise its rights to terminate the contract.
Third Party Software	The information and other content used for the Services, owned by a third party and sourced and supplied by the Supplier, as listed in Schedule 5.
Transition	Means a deliverable(s) required to achieve the transfer of responsibility for the provision of Services between parties with the minimum disruption to processing the Authority's workload, whether at the commencement of the Services (the assumption of responsibility by the Supplier for the provision of the Services) or on discontinuance of Services by the Authority (transfer of responsibility between the Supplier and the Authority or its third-party Supplier).
Transition Plan	Means any agreed plan between the parties where any Deliverables and Contractual Dates are required to achieve any transition of the services.
TUPE	Means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any subsequent amendment or statute replacing such regulations as it may apply to the Agreement.
UK government Transparency Agenda	The UK's governments procurement transparency guidance as detailed at <a href="https://www.gov.uk/government/policies/government-transparency-and-accountability">https://www.gov.uk/government/policies/government-transparency-and-accountability</a>
Virus	Means any Software intended to corrupt, destroy or otherwise damage or interfere with the use of Software or other Software

Term	Meaning
	or data owned by or under the control of the Authority whether such Software is introduced wilfully or negligently.
Work Package	Means a Service issued to the Supplier from the Authority that contains Work Package specific Specification, Modules, Milestone's, SLAs and KPIs.

## 7. Framework Agreement

- 7.1. In consideration of (a) the Authority agreeing to appoint the Supplier to this Framework Agreement and (b) the Authority agreeing to pay £5 (five pounds) to the Supplier on demand (such payment being refundable to the Authority on the Supplier receiving any Order for such Service(s) from the Authority pursuant to this Framework Agreement) the Supplier undertakes to supply such Service(s) 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 "Framework Agreement". The Framework Agreement shall not be valid unless signed by all relevant parties pursuant to the Framework Agreement.
- 7.2. All pricing on this Framework Agreement includes payment in full for all facilities and resources required by the Supplier to perform the Services in accordance with the Framework Agreement. Any facilities or resources needed or used by the Supplier to perform the Services shall be provided by the Supplier without additional cost to the Authority.
- 7.3. The Supplier confirms its satisfaction of its abilities and experience in all respects to perform the Services pursuant to the Agreement to the reasonable satisfaction of the Authority.

## 8. Agreement Term

- 8.1. 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 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.
- 8.2. Subject to 8.1, the extension term available for this Framework Agreement shall be 01 (one) x 12 (twelve) Month period and an additional 01 (one) x 3 (three) Month period.

## 9. Obligations of the Supplier

- 9.1. The Supplier will accept Call-off Orders pursuant to this Framework Agreement for Service(s) from the Authority.
- 9.2. The Supplier shall enter into an agreement with the Authority with each new Call-off Order (the Call-off Order Agreement). The Call-off Order Agreement

shall consist of the Call-off Order “Terms & Conditions of Contract” and any Annex’s, Appendices and Instruction to Proceed specific to the Call-off Order Agreement. The Call-off Order Agreement shall not be valid unless signed by all relevant parties pursuant to the Call-off Order Agreement.

- 9.3. The Supplier agrees that the “Framework Agreement” and any Schedules, the “Call-off Order Agreement” and any Annex’s, Appendices and Instruction to Proceed; shall apply to all supplies of Service(s) made by the Supplier to the Authority pursuant to this Framework Agreement.
- 9.4. No material changes to the Services shall be permitted without the written consent of the Authorised Officer.
- 9.5. The Supplier agrees that it will not in its dealings with the Authority seek to impose or rely on any other contractual terms which in any way vary or contradict this “Framework Agreement” and any Schedules; for External Assessment Centre Services or the “Call-off Order Agreement” and Annex’s, Appendices and Instruction to Proceed.
- 9.6. The Supplier shall carry out the Services in accordance with Schedule 1 and Schedule 8 to a quality acceptable to the Authority in accordance with:
  - 9.6.1. the terms of this Framework Agreement (including, but not limited to, the Schedules);
  - 9.6.2. the terms of any Call-off Order Agreement (including, but not limited to, the Annex’s);
  - 9.6.3. all applicable UK laws and regulations; and
  - 9.6.4. the policies, rules, procedures and quality standards of the Authority (as amended from time to time).
  - 9.6.5. the Authority shall supply copies of all applicable policies, rules, procedures and quality standards of the Authority in order to allow the Supplier to comply with this Clause 9.6.
- 9.7. If any dispute is resolved so that monies are due from the Supplier to the Authority such monies shall be repaid without undue delay.
- 9.8. The Supplier shall also use all reasonable endeavours to assist the Authority to comply with the Health Research Authority (HRA) UK Policy for Health and Social Care Research (a copy of which is available on the Health Research Authority website).
- 9.9. The Supplier must comply with the Authority’s Conflicts of Interest Policy. A copy of this policy shall be provided to the Supplier on request.
- 9.10. No changes to this Framework Agreement or any Call-off Order Agreement shall be permitted without the written consent of the Authority and the

Supplier.

- 9.11. The Supplier will ensure that the Services of each Call-off Order Agreement will be performed by a multi-disciplinary group of appropriately experienced, qualified and trained personnel (with reference to relevant stakeholders) with all due skill, care and diligence.
- 9.12. The Supplier will procure that the External Assessment Centre is established with the membership detailed in Schedule 3, the purpose of which is to ensure that there is a collaborative approach to the Services undertaken which reflects the multi-dimensional nature of the delivery of NHS care and that products are developed in a fair and inclusive manner and in accordance with the Authority's methodological principles
- 9.13. The Supplier shall provide at its own expense all staff, equipment, tools, appliances, materials or items required for the provision of the Services to the Framework Agreements standard.
- 9.14. The Supplier will immediately notify the Authority of any actual or potential problems (including, but not limited to, industrial action) that might affect their ability to provide the Services.
- 9.15. The Supplier will be responsible for providing and maintaining performance of the Services to the Framework Agreement standard at all times and will ensure continuity of performance (at no extra cost to the Authority) in accordance with the Specification.

**9.16. Obligations concerning Sub-Contractors**

- 9.16.1. The Supplier shall ensure that any sub-contractors it uses adhere to the obligations of this Agreement as if the sub-contractors were the Supplier.
- 9.16.2. Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain responsible for the acts and omissions of its sub-contractors as though they were its own.
- 9.16.3. Contracts between the Supplier and any approved sub-contractors shall contain terms, conditions and obligations as may be necessary to enable the Supplier to meet all its obligations to the Authority under this Agreement.
- 9.16.4. The Supplier must warrant that appropriate and adequate insurance is in place for the life of the sub-contract and that the Supplier and will fully comply with Clause 25.6; and
- 9.16.5. The Supplier must engage the most appropriate and qualified sub-contractor to undertake the supply of the Services.

**9.17. Instructions and Communication**

- 9.17.1. The Supplier shall comply with the reasonable instructions of the

Authorised Officer which are consistent with the terms and objectives of the Framework Agreement and any Call-off Order Agreement, if the Supplier is working in the Authority's premises, with the office rules of the Authority.

- 9.17.2. The Supplier shall ensure that all communications with the Authority concerning the Services shall only be between the nominated representatives of both Parties, that is, the Authorised Officer, the Business Manager and the Senior Lead.
- 9.17.3. The Supplier and the External Assessment Centre members shall attend meetings with the Authority when the Authority, acting reasonably, considers it appropriate.

## **9.18. Financial Control**

- 9.18.1. The Supplier shall keep accurate books, records and accounts in respect of the Services and any Order (in accordance with sound and prudent financial management) and, if requested in writing by the Authority, shall (at the Authority's expense) have them certified by a professional firm of auditors.
- 9.18.2. The Supplier shall permit the Authority to inspect and take copies of any books, records and accounts that the Authority may require in relation to this Framework Agreement. If, at the Authority's request, the Supplier undertakes any copying on behalf of the Authority will be responsible for the responsible costs of such copying.
- 9.18.3. For the purpose of:
  - 9.18.3.1. the examination and certification of the Authority's accounts; or
  - 9.18.3.2. any examination pursuant to section 6(1) of the National Audit Act 1983 or any re-enactment thereof of the economy, efficiency and effectiveness with which the Authority has used its resources;
  - 9.18.3.3. the Controller and Audit General and the Authority or its auditors may examine such documents as he may reasonably require which are owned, held or otherwise within the control of the Supplier and may require the Supplier to produce such oral or written explanation as he considers necessary. For the avoidance of doubt it is hereby declared that the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 or any re-enactment thereof in relation to the Supplier is not a function exercisable under this

## Agreement.

### 9.19. Laws and Regulation

- 9.19.1. The Supplier shall adhere to all laws and regulations relating to the performance of the Services. In particular the Supplier shall adhere to all Health and Safety, employment, and environmental legislation.
- 9.19.2. The Supplier shall comply with the Data Protection Act 2018 ("the DPA") and any subsequent replacements or amendments for the time being in force.
- 9.19.3. The Supplier shall comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Supplier shall comply with such agreements or codes of practices as if they were incorporated into English law subject to those voluntary agreements being cited in tender documentation.
- 9.19.4. The Supplier shall use reasonable endeavours to ensure that its employees or agents and/or Sub-contractors shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998.
- 9.19.5. The Supplier shall use all reasonable endeavours to assist the Authority to comply with such obligations as are imposed on the Authority by the Code of Openness in the NHS and the Freedom of Information Act 2000 ("FOIA") including, but not limited to, providing the Authority with reasonable assistance in complying with any Request For Information served on the Authority under the FOIA. The Authority shall use all reasonable endeavours to assist the Supplier to comply with such obligations as are imposed on the Supplier by the FOIA including, but not limited to, providing the Supplier with reasonable assistance in complying with any Request For Information served on the Supplier under the FOIA.
- 9.19.6. While at the Location, the Supplier shall comply, and shall ensure that its employees comply with, the requirements of relevant Health and Safety and other relevant legislation, including regulations and codes of practice issued there under, and with the Authority's own policies and procedures. The Authority shall provide the Supplier with copies of any of the Authority's own policies and procedures on request.
- 9.19.7. The Supplier shall at all times maintain a specific Health and Safety at Work policy relating to the employment of his own staff whilst carrying out their duties in relation to the Agreement on the Authority's premises. The Supplier shall ensure the co-operation of its employees in all prevention measures designed against fire, or any other hazards, and shall notify the Authority of any change in the

Supplier's working practices or other occurrences likely to increase such risks or to cause new hazards.

## **10. Supplier Warranty**

- 10.1. The Supplier warrants to the 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 Authority and accordingly the Supplier shall not be authorised to bind the Authority.
- 10.2. The Supplier warrants that in performance of the Agreement it shall meet and the Services shall meet all relevant standards listed in Schedule 1, Annex 1 of the Call-off Agreement, and any Work Package.
- 10.3. The Supplier warrants that it has taken all practical steps, in accordance with good industry practice, to prevent the introduction of any Virus into data or Software owned by or under the control of the Authority including Authority Software.
- 10.4. The warranty and undertakings set out in clauses 10.1 and 10.2 shall not be limited in time and constitute fundamental terms of the Agreement. In the event of any breach of the same, the Supplier shall forthwith, at its own expense, carry out all such alterations or corrections as are necessary to ensure that the Services comply fully with this Agreement and the Supplier shall remain liable for all loss, costs, claims, liabilities, damages and expenses incurred by the Authority in respect of any breach subject to clause 21.

## **11. Supplier Marketing Communications**

- 11.1. The Supplier shall ensure that all global communication that refer to the contractual agreement entered into with the Authority for this Framework Agreement follow the criteria and guidance set out in Schedule 13.

## **12. The Position of the Authority**

- 12.1. Other Suppliers, in addition to the Supplier named in 1.1, 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 Authority is under no obligation to place any Orders, or any particular level or volume of Orders with the Supplier under or pursuant to this Framework Agreement. The Supplier accepts that the 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.

## **13. Obligations of the Authority**

### **13.1. Monitoring**

13.1.1. The Authority shall monitor the provision of the Services at its discretion. To assist in this, the Supplier shall provide such written or verbal reports as the Authority shall reasonably request.

13.1.2. The Authority shall use its best endeavours to meet its obligations under this Agreement and those specified in any Call-off Order.

### **13.2. Implementation**

13.2.1. The Authority shall provide key documentation and examples required by the Supplier to achieve its obligations under this contract, within 10 working days of the Agreement Commencement Date.

13.2.2. The Authority shall provide training and support as required to be agreed with the Supplier within 10 working days of the Agreement Commencement Date.

## **14. Services**

14.1. Wherever the Supplier is required to provide a Service:

14.1.1. such Service will be delivered in the form prescribed and in accordance with the Specification and any Call-off Order Agreement and Instruction to Proceed. If no such form is prescribed in the Specification and any Call-off Order Agreement, the Supplier will provide Services in a professional form to the requirements (including as to time of delivery) notified to the Supplier by the Authorised Officer in writing;

14.1.2. the Authority may accept such Service or reject it in its reasonable discretion on the grounds that such Service 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 Authority;

14.1.3. the Authority will not reject any Service (wholly or in part) without providing written response to the Supplier as to why such Service has been rejected;

14.1.4. any dispute as to whether the Authority has exercised its right to reject any Service reasonably shall be resolved by the Dispute Resolution Procedure; and

14.1.5. any Services which are rejected shall be replaced by the Supplier (at



no extra charge to the Authority) by Services which are reasonably satisfactory to the Authorised Officer.

## **15. Implementation (NOT USED)**

### **15.1. Implementation Period**

15.1.1. The Implementation Period shall be the commencement date of this agreement as shown in 1.10 until the date specified in the Implementation plan, Schedule 6, which if no such date is specified in Schedule 6, shall be 01 July 2022. The Commencement of Services Date shall be a Contractual Date.

### **15.2. Implementation at Commencement**

15.2.1. The Supplier shall co-operate with the Authority in the development and implementation of the services prior to Commencement of Services Date.

15.2.2. Within any period specified in Schedule 6 the Supplier shall prepare a detailed plan for the Implementation of the EAC incorporating the Milestones and timetable dates contained in Schedule 6 and obtain agreement to such plan by the Authority, such agreement not to be unreasonably withheld or delayed. If no such period is stated in Schedule 6 within thirty (30) days of the date of commencement of the Agreement.

### **15.3. Implementation Timetable and Milestones**

15.3.1. The Supplier shall implement the Services according to the timetable contained in Schedule 6.

15.3.2. The timetable shall contain planned dates for major events in the implementation of the Services including:

15.3.2.1. Each Milestone Due Date for the Services; and

15.3.2.2. A Commencement of Services Date in respect of the Services, which if no such date is specified in Schedule 6, shall be the 1st July 2022. The Commencement of Services Date shall be a Contractual Date.

15.3.3. Delay or failure by the Supplier to meet any Contractual Date contained in the timetable specified shall be subject to the provisions of clause 15.4 (Delays), 15.5, (Implementation Extensions of Time), 22 (Liquidated Damages), 21, (Liability) and 24, (Insurance).

### **15.4. Implementation Delays**

15.4.1. The provisions of clause 15.1.1 shall apply to delay by the Supplier in meeting any Contractual Dates, notwithstanding the previous application of such provisions to delay or failure by the Supplier to

meet any other Contractual Dates.

- 15.4.2. The Authority acknowledges that the Supplier's ability to meet its obligations under the Agreement according to the timetable in Schedule 6 may depend on the Authority likewise meeting its obligations. Each such obligation together with the latest date by which the Authority ought to have met those without potentially risking the Supplier to be delayed in meeting its obligations shall be expressly identified in the Schedule 6 as the Authority's obligations. The Authority shall not bear any liability to the Supplier in respect of any failure to meet its obligations but, to the extent that the Supplier is prevented from fulfilling any of its obligations as a direct result of an Authority delay.
- 15.4.3. Consequently, insofar as the Supplier is prevented from fulfilling any of its obligations as a direct result of a delay by the Authority, it shall not be liable to the Authority for such failure and shall be entitled to an extension of time.

## **15.5. Implementation Extensions of Time**

- 15.5.1. If the delivery of the Commencement of Services be delayed by reason of the Supplier or by its employees or agents or by other Suppliers of the Supplier, the Authority shall be entitled to grant a reasonable extension of time at no additional cost to the Authority, subject to clause 22.1 and Schedule 6.
- 15.5.2. Should an extension of time, post the Commencement of Services Date, be granted under clause 15.5.1, the Supplier shall be liable to pay the Authority, as Liquidated Damages, a sum of money specified in clause 22.1 and Schedule 6 for each day of delay up to the expiry date of the extension of time that may be granted under 15.5.1.
- 15.5.3. Any extension of time granted by the Authority shall be at the sole discretion of the Authority. The Supplier agrees that any such extension period granted by the Authority shall be a maximum period of extension and that the Supplier shall continue to meet its obligations under clause 15 and Schedule 6 and that time shall be of the essence.
- 15.5.4. If the performance of implementing the services prior to the Commencement of Services Date be delayed by reason of Default by the Authority or by its employees or agents or by other Suppliers of the Authority, the Supplier shall be entitled to a reasonable extension of time to be agreed by the Authority in writing without undue delay.
- 15.5.5. If the performance of implementing the services prior to the Commencement of Services Date by either party be delayed by reason of any event of force majeure (as defined in clause 33), both parties shall be entitled to a reasonable extension of time provided

that the party so delayed notifies the other party in writing without undue delay. Neither party shall be entitled to any additional costs incurred as a result of such delay.

- 15.5.6. Where an extension is granted subject to clause 15.5.1 the Authority shall issue the Supplier with a change in date notice in writing to any Milestone other than the Commencement of Services Date. Where the extension is granted to the Commencement of Services Date it shall be considered an amendment to this agreement and subject to clause 35 and Schedule 6.

## **16. Pricing, Discounts, Payment and VAT**

- 16.1. All prices and costs on this framework must be in GBP and exclude VAT.
- 16.2. The unit prices and costs on this Framework Agreement as detailed in Schedule 2 shall be the maximum unit price chargeable by the Supplier for the Services. Prices and costs proposed by the Supplier under any Mini-competition or Direct Award Invitation to Quote (ITQ) shall not exceed the unit prices and costs in Schedule 2.
- 16.3. Nothing in this Agreement shall prevent or restrict the Supplier from decreasing the pricing agreed under this Framework Agreement and the Supplier shall ensure that any reduction in price and costs proposed by the Supplier under any Mini-competition or Direct Award Invitation to Quote (ITQ) shall be detailed in any such quote.
- 16.4. Where a discount 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 Services. Nothing in this Agreement shall prevent or restrict the Supplier from increasing the percentage discount and the Supplier shall ensure that any discount increase proposed by the Supplier under any Mini-competition or Direct Award Invitation to Quote (ITQ) shall be detailed in any such quote.
- 16.5. The Supplier warrants that it will propose the most cost effective quote in any ITQ it makes to the Authority.
- 16.6. In accordance with the Framework Agreement, the Supplier will ensure any pricing used in any ITQ offer shall be fully transparent to the Authority. Only the Pricing and discounts agreed under this Framework may be offered by the Supplier to the Authority.
- 16.7. Pricing and discounts agreed under this Framework will not be shared with any other Supplier awarded to this Framework by the Authority.
- 16.8. In accordance with the Framework Agreement, the Supplier will not attempt to impose any minimum Order quantities or values on the Authority.
- 16.9. The Authority shall pay all valid invoices submitted by the Supplier in accordance with the provisions of the "Call-off Order Agreement" specific to

any Services or Work Package.

## **17. Performance Measurement**

- 17.1. In addition to any more specific obligations imposed by the terms of the Agreement, it shall be the duty of the Supplier to perform the Services to the Agreement standard and to the reasonable satisfaction of the Authorised Officer.
- 17.2. The Supplier shall institute and maintain a properly documented system of quality control (which is and remains to the satisfaction of the Authorised Officer) to ensure that the Agreement standard is met.
- 17.3. In addition to any other rights of the Authority under the Agreement, the Authorised Officer shall be entitled to inspect the Supplier's quality control system referred to in Clause 17.2 above.
- 17.4. During the Agreement Period, the Authorised Officer may inspect and examine the performance of the Services being carried out by the Supplier at any time on reasonable notice. The Authorised Officer shall notify the Supplier in writing of any such inspection and not less than 30 days' notice of such inspection. The Supplier shall provide to the Authority all such facilities (including, but not limited to, access to any staff or personnel involved in the delivery of the Services) as the Authority may require for such inspection and examination. Where the Supplier requires that the Authorised Officer complies with any health and safety or security policies while carrying out any such inspection or examination the Supplier will notify the Authorised Officer of such policies at the time of the visit. Following notification of the health and safety or security policies, the Authorised Officer will comply with these policies to the extent that they are a legal requirement, or that they are reasonable and do not frustrate the purposes of the inspection or examination.
- 17.5. The Supplier shall allow the Authority and any person, firm or organisation authorised by the Authority to have access to and to audit all records maintained by the Supplier in relation to the supply of the Services. The Supplier shall assist the Authority or any party authorised by the Authority (as the case may be) in the conduct of the audit.
- 17.6. If any part of any Services is found to be defective or different in any way from the Specification (as may be varied in accordance with Clause 35) or otherwise has not been provided to the Agreement standard (other than as a result of a default or negligence on the part of the Authority) the Supplier shall at its own expense re-perform the part of the Services in question (without additional remuneration therefore) within such time as the Authority may reasonably specify failing which the Authority shall be entitled to procure performance of the defective part of the Services from a third party or to execute the tasks in question itself.
- 17.7. If the performance of the Agreement by the Supplier is delayed by reason of any act or default on the part of the Authority or, by any other cause that the

Supplier could not have reasonably foreseen or prevented and for which it was not responsible, the Supplier shall be allowed a reasonable extension of time for completion of the Services so affected.

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

## **18. Monitoring and reporting**

- 18.1. The Supplier shall attend a quarterly review meeting and an annual service review meeting with the Authority. The Authority to take minutes of meeting and circulate to all within 05 (five) working days of the meeting.
- 18.2. These quarterly review meeting shall discuss the progress of all Orders and Work Packages the Supplier is supplying to the Authority subject to this Agreement and any Call-off Order Agreement for that period.
- 18.3. The Supplier shall provide a quarterly service report, to be provided by the Authority, and the KPI data as described in Annex 2 of the Call-off Order Agreement no later than ten (10) working days before the scheduled quarterly review meeting, to summarise performance against the KPI's. A quarterly management reporting template will be provided by the Authority to the Supplier for this purpose and will include items such as (but not limited to):
- 18.3.1. The completed KPI spread sheet – Annex 2 of the Call-off Order Agreement;
  - 18.3.2. An exception report if the current performance on topics deviates from the status reports already supplied to the Authority;
  - 18.3.3. A summary of the issues discussed at the review meetings and any related actions taken by the Supplier;
  - 18.3.4. The finances of the Supplier in relation to the Services for the period covered by the report;
  - 18.3.5. The risk register (which must be maintained by the Supplier) detailing all severe or moderate risks identified by the Management Team and details of how these were, or are to be, handled; and
  - 18.3.6. A summary of any actions and decisions taken by the Supplier in relation to Work Packages which were not contemplated in the preparation of the Milestones. The Supplier shall provide an annual report no later than ten (10) working days before the scheduled annual review meeting. An annual management reporting template will be provided by the Authority to the Supplier for this purpose to

summarise performance.

- 18.4. The Supplier acknowledges that the submission and acceptance of such reports shall not prejudice any other rights or remedies of the Authority under the Agreement.
- 18.5. Additional ad-hoc reports may from time to time be required by the Authority, the production time for these will be agreed with the Supplier as they occur. The Supplier shall provide information in a format, medium and at times specified by the Authority, relating to the performance of the Deliverable and / or Work Package as the Authority may reasonably require.

#### **18.6. Annual Framework Service Review**

- 18.6.1. All Suppliers shall attend an Annual Service Review meeting with the Authority and provide an annual service report no later than two (02) weeks before the scheduled meeting.
- 18.6.2. Subject to 18.6.1, an annual management reporting template will be supplied to Suppliers in order to summarise details of their performance and adherence to the Terms and Conditions of this Framework Agreement to include (but not limited to):
  - 18.6.2.1. a demonstration of the Supplier's quality of service, to include (but not limited to) details of levels of delivery for each Order placed under this Framework Agreement;
  - 18.6.2.2. adherence to SLAs and KPIs;

### **19. Intellectual Property and Copyright**

- 19.1. The Supplier warrants that it has authority to grant to the Authority any rights to be granted hereunder and owns or has obtained valid licences to any Intellectual Property Rights necessary for the fulfilment of all its obligations under the Agreement.
- 19.2. Subject to 19.10, the Supplier shall ensure the publisher does not obtain, hold or own exclusive copyright in any published deliverable pursuant to this Agreement and shall obtain any such valid licences from the publisher that shall allow the Authority's rights under clause 19.9.
- 19.3. The Supplier warrants so far as it is aware having made its usual enquiries but not having carried out any patent searches that in relation to any Foreground Intellectual Property:
  - 19.3.1. it does not infringe any copyright of any third party anywhere to the reasonable knowledge of the Supplier;
  - 19.3.2. it does not violate any existing Intellectual Property Rights anywhere;
  - 19.3.3. it does not contain anything offensive, obscene, libellous or

otherwise unlawful; and

19.3.4. it has taken all reasonable care to ensure that all statements contained within it which purport to be factual are true.

19.4. In order that the Supplier may fulfil its obligations clause 20.1, the Supplier shall ensure that any independent author or part author of any copyrightable material created as part of the Supplier's performance of the Project assigns his/her Intellectual Property Rights in such material to the Supplier.

19.5. All Intellectual Property owned by or licensed to either Party prior to the commencement of this Agreement (Background IP) will remain the property of that Party or the licensor to that Party as appropriate.

#### **19.6. Authority's IPR**

19.6.1. The Authority shall own:

19.6.1.1. The Authority's Background IPR;

19.6.1.2. The Authority's Personal Data;

19.6.1.3. All Intellectual Property developed and produced under this agreement;

19.6.1.4. the Data.

#### **19.7. Supplier's IPR**

19.7.1. The Supplier shall own:

19.7.1.1. The Supplier's Background IPR;

19.7.1.2. The databases (in relation to this agreement, including Contact databases);

19.7.1.3. Suppliers Software.

#### **19.8. Third Party IPR**

19.8.1. The Supplier shall own:

19.8.1.1. Third Party Background IPR;

19.8.1.2. Third Party Software.

19.8.2. The Supplier shall ensure where Third Party software is required for the Authority and or any Beneficiary to access, use or manipulate any data, that the Supplier shall ensure the Third Party grants Data

Access Licence to the Authority.

## **19.9. Supplier's Licence**

19.9.1. The Authority hereby grants to the Supplier a world-wide, irrevocable, royalty-free, non-exclusive licence to use, publish, edit, update, amend, republish, translate, extract from, commercially exploit and otherwise utilise in full or in part all the Supplier's right, title and interest including all Intellectual Property Rights, and all other rights of whatever nature in each and every part of the world in and to any Foreground Intellectual Property which includes, without limitation, any Deliverables (including, but not limited to, documents, reports, publications and all electronic publications including websites) that are supplied to the Authority pursuant to this Agreement.

## **19.10. Rights to Publish**

19.10.1. The Authority acknowledges that the Supplier will:

19.10.1.1. publish in academic journals any part of the Deliverables or any other material containing or relying upon any part of the Deliverables; and

19.10.1.2. use any part of the Deliverables or any other material containing or relying upon any part of the Deliverables for teaching purposes;

19.10.1.3. in all cases provided that prior to such publication or use the Supplier submits the relevant material to the Authority for review, following which the Authority shall respond to the Supplier within a mutually agreed timeframe, such response not to be unreasonably withheld or delayed, with any comments and suggestions in respect of such publication. The Supplier shall give proper consideration to any such comments/ suggestions but shall not be obliged to make consequent amendments to the publication.

19.10.2. The Supplier warrant to the Authority that all publications associated with specific pieces of the Authority guidance will not be published by the Supplier before the Authority publishes that guidance.

19.10.3. The Supplier shall acknowledge the Authority's funding of the Project giving rise to the publication, pursuant to clause 20.4.2 save that where the Authority has requested amendments to the publication and the Supplier has not incorporated such amendments, the Authority may require that the Supplier make no reference which links such material, its publication or use in any way to Authority and the Supplier shall comply with this



requirement.

- 19.10.4. No reference is made to the External Assessment Centre or to the External Assessment Centre Members as a body.
- 19.10.5. The Supplier publishes and uses at its own cost any part of the Deliverables or any other material containing or relying upon any part of the Deliverables; and the Supplier complies with any relevant obligations of confidentiality.
- 19.10.6. It is the policy of the Authority to associate authors with their works wherever practicable. However, there may be circumstances in which, in the reasonable opinion of the Authority, such association would be impracticable or would place on the Authority an undue administrative or other burden or would otherwise be detrimental to the Authority. In such circumstances the Authority may, at its sole discretion, choose not to make such association. The Supplier shall ensure that at the time of any assignment pursuant to Clause 19.4 the relevant author agrees that in such circumstances he/she shall not assert or enforce any moral right to be identified as author under the Copyright, Designs and Patents Act 1988. The Supplier shall do this as soon as possible after the creation of any such work.
- 19.10.7. In publishing any Foreground Intellectual Property arising out of the Project other than any Deliverables, the Authority shall acknowledge the Supplier as joint contributor.

## **20. Publicity**

- 20.1. The Supplier and External Assessment Centre Members are required to work with the Authority's staff in dealing with any media interest on the Authority's supported projects. The Supplier shall ensure that External Assessment Centre Members comply with this obligation.
- 20.2. The Authority reserves the right to use data or other material from collaborations, which it funds as part of its publicity activities.
- 20.3. All interaction with the media should be channelled through the Authority's Communications Department.
- 20.4. Identifying outputs as supported by the Authority:
  - 20.4.1. Unless the Authority notifies the Supplier to the contrary in writing any Additional Publication shall acknowledge the Authority's assistance and carry a disclaimer in such form as shall be agreed by the Authority and the Supplier or, in the absence of any agreement, a notice as follows:
  - 20.4.2. "This work was undertaken by [name of External Assessment Centre Member(s)] which received funding from the National

Institute for Health and Care Excellence. The views expressed in this publication are those of the authors and not necessarily those of NICE.”

## **21. Liability**

- 21.1. Neither Party excludes or limits liability to the other Party for:
  - 21.1.1. death or personal injury caused by its negligence; or
  - 21.1.2. fraud; or
  - 21.1.3. fraudulent misrepresentation; or
  - 21.1.4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- 21.2. Subject to clauses 21.3 and 21.4, the Supplier shall indemnify the Authority and keep the Authority indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the 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, financial loss, or any other loss which is caused directly by any act or omission of the Supplier.
- 21.3. 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 Authority or by breach by the Authority of its obligations under the Agreement.
- 21.4. Subject always to clauses 21.1 and 21.5, in no event shall the Supplier be liable for any of following incurred by the Authority:
  - 21.4.1. loss of profits, business, revenue or goodwill; and/or
  - 21.4.2. loss of savings (whether anticipated or otherwise).
- 21.5. The Supplier shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure incurred by the Authority resulting from the direct Default of the Supplier.

## **22. Liquidated Damages (NOT USED)**

- 22.1. Subject to 15.4 (Implementation Delays) and 15.5 (Implementation Extension of Time), if the Supplier fails to meet any Contractual Date specified in the timetable contained in Schedule 7, by reason of Default by the Supplier or by its employees or agents or by other Suppliers of the Supplier, the Supplier shall be liable to pay to the Authority, the Liquidated

Damages:

- 22.1.1. Service Continuity Damages, as a sum of money specified in Schedule 7, for any delay over the specified timetable contained in Schedule 7; and
- 22.1.2. Implementation Liquidated Damages, a sum of money specified in Schedule 7, for each day of delay or until the service is implemented or the Contract is terminated, whichever is sooner.

## **22.2. Liquidated Damages Period**

- 22.2.1. The Liquidated Damages Period, subject to clause 15.4, 15.5, and 15, shall commence on the first day after the Commencement of Services Date and shall continue in 30 (thirty) day (or less) extension periods to the maximum extension period granted by the Authority, as detailed in Schedule 7.
- 22.2.2. Any payments due during the Liquidated Damages Period shall be in full and final settlement of the Supplier's liability for all such loss incurred by the Authority for any delays in the implementation of the service to the Termination Consideration Date(s) as defined in Schedule 6 and Schedule 7. If the cause of such delay has not been rectified, at the expiry of the extension period granted under 17.1 during which liquidated damages are payable as detailed in Schedule 7, the Authority shall be entitled to:
  - 22.2.2.1. during the liquidated damages period, serve a notice on the Supplier placing the Supplier on notice that if, at the end of the extension period granted under 17.1, the delay is not remedied, at the sole discretion of the Authority a further Liquidated Damages Period shall commence as detailed in Schedule 6 and Schedule 7, or;
  - 22.2.2.2. terminate this agreement with immediate effect, or;
  - 22.2.2.3. seek any remedy available to it for all losses, costs, damages or expenses incurred as a result of such delay after the end of the liquidated damages period under 22.2.1 and 22.2.2.
- 22.2.3. Both parties acknowledge that any liquidated damages specified in Schedule 7, represented as a sum of money relating to either the Service Continuity Charge and/or Implementation Liquidated Damages is a genuine pre-estimate of the loss likely to be suffered by the Authority in the event of delay and that the figures specified therein are reasonable.
- 22.2.4. Subject to 22.1, the Supplier agrees to pay the Authority within 30 days of receipt of the invoice to be issued by the Authority, the

Service Continuity Damages as detailed in Schedule 7.

- 22.2.5. Subject to 22.1, the Supplier agrees to pay the Authority within 30 days of receipt of the invoice to be issued monthly by the Authority, the Implementation Liquidated Damages as detailed in Schedule 7. Invoices for the Implementation Liquidated Damages shall be issued to the Supplier from the Authority in week one (1) of each following month to which the Implementation Liquidated Damages are applicable.
- 22.2.6. Subject to 22.1, the Authority agrees that the maximum liquidated damages payable for the Implementation Liquidated Damages shall be 15% of the contract value. For the avoidance of doubt, the Service Continuity Damages shall not be included in the 15% maximum Implementation Liquidated Damages above. The Service Continuity Damage costs are fixed.

## **23. Service Credit Liability**

- 23.1. The Supplier agrees to pay Service Credits to the Authority in respect of any failure to achieve the Service Levels as detailed in Annex 2 of the Call-off Order Agreement will be calculated in accordance with the provisions detailed in Annex 2 of the Call-off Order Agreement. Any Service Credit payable in any quarter will be issued as a Credit Note, to the Authority.
- 23.2. Subject to 23.1 the Credit Note shall be sent to the address in 24.5 and detail:
  - 23.2.1. The Work Package and KPI (s) to which the Credit applies;
  - 23.2.2. The invoice to which the Credit applies.
- 23.3. The overall total payable Service Credit for any quarter shall be the total sum calculated for each KPI 001 and 002 where a supplier is providing services with the Lots applicable to KPI001 and KPI002.
- 23.4. The Authority agrees that Service Credits for KPI001 and/or KPI002 shall be subject to a quarterly limit which is equivalent to 15% of the quarterly Agreement Charge.
- 23.5. The Supplier agrees to provide a detailed KPI report in the format required by the Authority to ensure Service Levels are met, and where any failure occurs, the Service Credits shall be calculated accordingly as detailed in Annex 2 of the Call-off Order Agreement.
- 23.6. Where an exception applies to any incident or Service Level, the Authority, at its discretion, may (but shall not be obliged) to waive its rights in respect of any Service Credits referable to any Service Level which has not been

achieved.

## **24. Limitation of Liability**

24.1.1. The Authority shall not be liable to the Supplier for any consequent loss, damage, injury or costs whatsoever which arise out of or are connected with the Authority's adherence to the terms and conditions of this Agreement. Except in the case of death or personal injury caused by negligence and fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law.

24.1.2. Subject always to clause 23.1, the Suppliers liability for Defaults shall be subject to the following financial limits:

24.1.2.1. The aggregate liability for all Defaults arising in each twelve-month contract period from the commencement date of this Agreement, in connection with this Agreement shall in no event exceed 125% of the fees payable by the Authority to the Supplier. This limit shall exclude Service Credits due and payable under clause 23 and Annexe 2 of the Call-off Order Agreement.

24.1.2.2. The aggregate liability in circumstances where the Authority terminates this Contract pursuant to clause 30.1 and 22.2.2.2 shall in no event exceed 125% of the fees payable by the Authority to the Supplier. This limit shall exclude Service Credits due and payable under clause 23 and Annexe 2 of the Call-off Order Agreement.

## **25. Insurance**

25.1. Minimum insurance period shall be 06 (six) years following the expiration or earlier termination of this Agreement and any Call-off Order Agreement.

25.2. The Supplier shall maintain appropriate insurance policies to cover its liabilities to the Authority under this Agreement. To comply with its obligations under this Agreement and as a minimum, where requested by the Authority in writing the Supplier shall ensure that:

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

25.2.2. employers' liability insurance with a minimum limit of five million pounds sterling (£5,000,000) or such higher minimum limit as

required by Law from time to time.

- 25.3. The Supplier shall maintain an appropriate insurance policy to cover its liabilities to the Authority under this Agreement and any Agreement entered into under this Framework Agreement.
- 25.4. The Supplier shall affect 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 06 (six) years following the expiration or earlier termination of the Agreement.
- 25.5. 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, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 25.6. 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.
- 25.7. 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.

## **26. Staff And Resources**

- 26.1. The Supplier shall be fully responsible in every way for its entire staff and all consultants (whether part-time or full-time).
- 26.2. 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 26.2 and shall impose on any Sub-contractor obligations substantially similar to those imposed on the Supplier by this Clause 26.2; and
- 26.3. In the management of its affairs and the development of its equality and

diversity policies, the Supplier shall co-operate with the Authority in respect of the Authority's obligations to comply with statutory equality duties. The Supplier shall take such steps as the 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).

- 26.4. The Supplier shall notify the 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.
- 26.5. The Supplier shall indemnify the Authority against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the 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.
- 26.6. The Supplier shall impose on any Sub-contractor obligations substantially similar to those imposed on the Supplier by this Clause 26.
- 26.7. 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.
- 26.8. 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.
- 26.9. Sub-contractors**
- 26.10. The Supplier shall not sub-contract the supply of any Services without the previous consent in writing of the Authorised Officer (such consent not to be unreasonably withheld).
- 26.11. Subject to Clause 26.10 if consent to sub-contract is requested from the Authorised Officer.
- 26.12. The Authority may insist upon the production to it (inter alia) of all reasonable

information and documentation relevant to:

- 26.12.1. the financial liability;
  - 26.12.2. competence; and
  - 26.12.3. relevant experience of the proposed Sub-contractor;
  - 26.12.4. as reasonable and valid conditions of their consent under Clause 26.12.
- 26.13. A list of Sub-contractors approved by the Authority at the date of signature of the Agreement is contained in Schedule 4.
- 26.14. The Supplier shall ensure that any Sub-contractors it uses adhere to the obligations of this Agreement as if the Sub-contractors were the Supplier.
- 26.15. Notwithstanding any sub-contracting permitted hereunder, the Supplier shall remain responsible for the acts and omissions of its Sub-contractors as though they were its own.
- 26.16. Contracts between the Supplier and any approved Sub-contractors shall contain terms, conditions and obligations as may be necessary to enable the Supplier to meet all its obligations to the Authority under this Agreement.
- 26.17. The Supplier must warrant that appropriate and adequate insurance is in place for the life of the sub-contract and that the Supplier and will fully comply with Clause 26.16; and
- 26.18. The Supplier must engage the most appropriate and qualified Sub-contractor to undertake the supply of the Services.

## **27. Equipment**

- 27.1. Should the Authority agree to supply funding to the Supplier for any equipment and personnel required by the Supplier in its performance of the Services, on the termination, howsoever caused, of this Agreement, the Supplier shall deliver up to the Authority, if so required by the Authority, all equipment and assets purchased by or on behalf of the Supplier from funds provided by the Authority under this Agreement.
- 27.2. The Senior Lead shall forthwith inform the Authorised Officer of any defects appearing in or losses of, or damage, occurring to any equipment provided or funded by the Authority. The Supplier shall be liable to pay to the Authority the cost of any replacement necessary as a result of damage caused deliberately or negligently by the Supplier's staff.
- 27.3. The Supplier will, at its own expense, install all equipment necessary for the performance of the Services.
- 27.4. The Supplier shall ensure that all equipment used in connection with the Agreement is maintained in good working order in compliance with



manufacturer's instructions and current legislation.

- 27.5. The Authority reserves the right to inspect equipment used by the Supplier in or about the performance of the Services at any time (upon reasonable notice) and the Supplier shall comply with any reasonable directions of the Authorised Officer as to the manner in which such equipment shall be used.

## **28. Confidentiality**

- 28.1. In respect of any Confidential Information it may receive from the other party ("the Discloser") and subject always to the remainder of this clause 28, 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:
- 28.1.1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Agreement;
  - 28.1.2. the provisions of this clause 28 shall not apply to any Confidential Information which:
    - 28.1.2.1. is in or enters the public domain other than by breach of the Agreement or other act or omissions of the Recipient;
    - 28.1.2.2. is obtained by a third party who is lawfully authorised to disclose such information; or
    - 28.1.2.3. is authorised for release by the prior written consent of the Discloser; or
    - 28.1.2.4. the disclosure of which is required to ensure the compliance of the Authority with the Freedom of Information Act 2000 (the FOIA).
- 28.2. Nothing in this clause 28 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 28 as if any reference to the Supplier in this clause 28 were a reference to such holding company.
- 28.3. The Supplier authorises the Authority to disclose the Confidential Information to such person(s) as may be notified to the Supplier in writing by the 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 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 Authority shall not without good reason claim that the lowest price available in the market is the realistic market price.

- 28.4. The Supplier acknowledges that the 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 Authority's' 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.
- 28.5. The Supplier agrees that:
  - 28.5.1. without prejudice to the generality of clause 28.2, the provisions of this clause 28 are subject to the respective obligations and commitments of the Authority under the FOIA and both the respective Codes of Practice on the Discharge of Public Authority's' 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;
  - 28.5.2. subject to clause 28.5.3, the decision on whether any exemption applies to a request for disclosure of recorded information is a decision solely for the Authority;
  - 28.5.3. where the Authority is managing a request as referred to in clause 28.5.2, the Supplier shall co-operate with the Authority and shall respond within 05 (five) working days of any request by it for assistance in determining how to respond to a request for disclosure.
- 28.6. The Supplier shall and shall procure that its Sub-contractors shall:
  - 28.6.1. transfer any request for information, as defined under section 8 of the FOIA, to the Authority as soon as practicable after receipt and in any event within 05 (five) working days of receiving a request for information;
  - 28.6.2. provide the Authority with a copy of all information in its possession or power in the form that the Authority requires within 05 (five) working days (or such other period as the Authority may specify) of the Authority requesting that information; and
  - 28.6.3. provide all necessary assistance as reasonably requested by the

Authority to enable the Authority to respond to a request for information within the time for compliance set out in section 10 of the FOIA.

- 28.7. The Authority may consult the Supplier in relation to any request for disclosure of the Supplier's Confidential Information in accordance with all applicable guidance.
- 28.8. This clause 28 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 28 shall remain in force for a period of 06 (six) years after the termination or expiry of this Agreement.
- 28.9. In the event that the Supplier fails to comply with this clause 28, the Authority reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 28.10. The Supplier agrees to indemnify and keep indemnified the Authority against all claims and proceedings and all liability, loss, costs and expenses incurred in connection therewith by the Authority 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 confidential information processed by the Supplier, its employees or agents in the Supplier's performance of the Contract or as otherwise agreed between the Parties.
- 28.11. Where the supplier is also subject to the Freedom of Information Act, clause 28 and all its sub-clauses shall be mutual to both parties.

## **29. Data Protection**

- 29.1. The Supplier shall fully comply with the Data Protection Legislation.
- 29.2. The Supplier shall allow the Authority to audit the Supplier's compliance with the requirements of this Clause 29 on reasonable notice and/or to provide the Authority with evidence of its compliance with the obligations set out in this Clause 29.
- 29.3. Both Parties agree to use all reasonable efforts to assist each other to comply with the Data Protection Legislation. For the avoidance of doubt, this includes the Supplier providing the Authority with reasonable assistance in complying with Data Subject Access Request (or purported Data Subject Access Request) served on the Authority and the Supplier consulting with the Authority prior to the disclosure by the Supplier of any Personal Data in relation to such requests.
- 29.4. Both Parties agree that the Authority is neither a Data Controller, or a Data Processor, and any processing of Personal Data made by the Supplier shall

be the sole responsibility of the Supplier. The Supplier shall ensure it enters into all appropriate agreements with Third Parties in relations to any Personal Data processed in relation to any Services the Supplier provides to the Authority under this Agreement.

## **30. Supplier data**

- 30.1. The Supplier agrees to the Authority holding certain Data on the Supplier for the purposes of performing any Mini-competition or Direct Award procedure. The Authority warrants to the Supplier that any such Data will not be shared with any other External Assessment Centre Supplier on the Framework. Details of Supplier Data held shall be described in Schedule 14.
- 30.2. The Supplier may update any Data held by the Authority at any time throughout the duration of the Framework Agreement or any Call-off Order Agreement.
- 30.3. The Supplier will ensure that any Data provided under clause 30.1 and 30.2 will be version controlled and the Authority will only be responsible for assessing the latest version provided to the Authority by the Supplier.
- 30.4. Subject to 30.1, 30.2 and 30.3, the Supplier accepts sole responsibility for the accuracy of any such Data and for updating the Supplier Data. The Authority accepts no responsibility on any decision it may make on any award following a Mini-competition or Direct Award assessment based on out of date or inaccurate Data provided by the Supplier.
- 30.5. The Authority will on an annual basis request from the Supplier a confirmation that the current Data held by the Authority is accurate, complete and correct.
- 30.6. The Supplier may request from the Authority at any time to review the Supplier Data held for the purposes of Mini-competition or Direct Award giving the Authority 30 (thirty) working days' notice and the Authority shall agree with the Supplier the format in which the Supplier may receive or review such data, which may be:
  - 30.6.1. The Supplier may visit the premises of the Authority and be shown the Data by the Authorised Officer of the Authority.
  - 30.6.2. The Authority to electronically submit any Data held by secure file sharing system by a mutually agreed date. In such event the Supplier must inform the Authority of any file size limitation which may restrict the Supplier receiving such information.

## **31. Termination**

- 31.1. The Authority may terminate this Framework Agreement by serving written notice on the Supplier in any of the following circumstances:
  - 31.1.1. 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 Authority's reasonable satisfaction within a period of 30 (thirty) days following written notice demanding remedy of the failure in question being served by the Authority on the Supplier; or

- 31.1.2. the Supplier fails to perform any material obligation of the Supplier under this Framework Agreement on more than three occasions; or
  - 31.1.3. 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
  - 31.1.4. the Supplier is in default of any duty of care or any fiduciary or statutory duty owed to the Authority and/or any employee or agent of the Authority; or
  - 31.1.5. there is a change of ownership or control of the Supplier which, in the reasonable opinion of the 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 Authority; or
  - 31.1.6. the Supplier purports to dispose of this Framework Agreement in breach of clause 39 "Assignment"; or
  - 31.1.7. 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 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 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
  - 31.1.8. if in relation to this Framework Agreement or any contract with the 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 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.
- 31.2. The Supplier agrees and acknowledges that the Authority is entitled to recover any costs the Authority may reasonably incur in consequence of the

Authority terminating this Framework Agreement pursuant to this clause 30.

- 31.3. 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 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.
- 31.4. In addition to its rights under any other provision of the Agreement the Authority may terminate the contract at any time by giving the Supplier 06 (six) months' written notice.
- 31.5. Clauses 9.17 (Financial Control) 31, (Transition on Expiry or Termination), 21 (Liability, Indemnity and Insurance, 24 (Intellectual Property), 27 (Confidentiality), 28 (Data Protection) and 31 (Transfer of Undertakings (Protection of Employment) TUPE) shall continue after this Agreement terminates, 33 (Dispute Resolution), 40 (Law).
- 31.6. The Supplier may terminate this Framework Agreement by serving written notice on the Authority where there is a material failure by the Authority to perform any obligation of the Authority under this Framework Agreement provided that (if capable of remedy) such failure has not been remedied to the Supplier's reasonable satisfaction within a period of 30 (thirty) calendar days following written notice demanding remedy of the failure in question being served by the Supplier on the Authority.

## **32. Transition at Expiry or Termination**

- 32.1. At expiration or termination of this Agreement the Supplier shall reasonably co-operate in the transfer, to the new service provider under arrangements notified by the Authority in a written Exit Plan to be agreed 06 (six) months prior to the end of this Agreement or on notification of termination.
- 32.2. Transfer of responsibility for facilities made available to the Supplier shall be the subject of a mutually agreed inventory between the interested parties at the time of transfer. The transfer shall be arranged between the Authority and the Supplier so as to reasonably reduce any interruption of the Services.
- 32.3. At expiration or termination of the Agreement the Supplier shall, subject to clause 32, hand-over all files, records, documents, plans, drawings, data and / or databases etc., how so ever generated under this Agreement, to the Authority or person or persons designated by the Authority, an inventory of such to be detailed in a written Exit Plan.
- 32.4. The Supplier shall be responsible for ensuring that any computerised filing, recording, documenting, planning and drawing software systems utilised under this Agreement is transferred free of any charges to the Supplier or person or persons designated by the Supplier to facilitate a smooth hand-

over of work at expiration or termination of the Agreement.

- 32.5. Provide all data required by the Authority in relation to TUPE subject to clause 38.3, 6 months prior to the end of this Agreement or on notification of termination.

### **33. Force Majeure**

- 33.1. For the purposes of this Agreement the expression 'Force Majeure' shall mean any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond their reasonable control as described in the Force Majeure definition.
- 33.2. Neither Party shall in any circumstances be liable to the other for any loss or delay or failure to perform of any kind whatsoever including but not limited to any damages or abatement of charges whether directly or indirectly caused to or incurred by the other Party by reason of any failure or delay in the performance of its obligations hereunder which is due to Force Majeure.
- 33.3. If either of the Parties shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part, it shall forthwith notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 33.4. It is expressly agreed that any failure by the Supplier to perform or any delay by any of the Parties in performing their obligations under this Agreement which results from any failure or delay in the performance of their obligations by any person, firm or company with which the Supplier shall have entered into any contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that the said person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure.
- 33.5. Subject to clause 14.1 and 14.2 of the Call-off Order Agreement, for the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay shall be any event qualifying for Force Majeure herein.

### **34. Dispute Resolution Procedure**

- 34.1. 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 Authority requests in writing that the Supplier does not do so).
- 34.2. If a dispute arises between the Authority 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.

- 34.3. In the first instance each of the Authority and the Supplier shall arrange for a more senior representative than those referred to in Clause 34.2 to meet solely in order to resolve the matter in dispute. Such meeting(s) shall be minuted and shall be chaired by the Authority (but the chairman shall not have a casting vote). Such meeting(s) shall be conducted to promote a consensual resolution of the dispute in question at the discretion of the chairman.
- 34.4. If the meeting(s) referred to in Clause 34.3 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within 28 (twenty-eight) calendar days of the Mediation Notice being served. Neither Party will terminate such mediation until each party 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 30 (thirty) calendar 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 the mediator shall determine or in the absence of such determination such costs will be shared equally.

#### **34.5. Application**

- 34.5.1. Any Dispute shall be resolved in accordance with this Dispute Resolution Procedure.
- 34.5.2. Nothing in this Dispute Resolution Procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 34.5.3. Where a Dispute has arisen (and the parties have not resolved the Dispute in accordance with the relevant terms of this Agreement, if applicable) either Party may invoke this procedure by notice in writing to the other ("Procedure Initiation Notice") and shall consult in good faith in an attempt to come to an agreement in respect of the Dispute. The Procedure Initiation Notice may only be given by either the Authority's representative or the Supplier's representative. The receiving Party shall then send a notice in writing in reply ("Counter Notice") confirming receipt of the Procedure Initiation Notice as soon as reasonably practicable



(and in any event within 02 (two) working days of receipt of the Procedure Initiation Notice). The Party representatives shall meet within 10 (ten) working days of receipt of the Counter Notice and shall attempt to resolve the Dispute within 05 (five) working days of the meeting.

### **34.6. Management Referral**

- 34.6.1. If the Dispute is not resolved between the Party representatives within 05 (five) working days of meeting pursuant to clause 34.5.3 above, either Party may require by notice in writing ("Management Referral Notice") to the other that the Dispute be referred to the relevant Director of the Authority, the Department of Health and Social Care and the Managing Director of the Supplier (together "Management"). In either case, if such individuals are unavailable, the Authority or the Supplier (as appropriate) shall nominate in writing to the other an alternative senior officer, both of whom may bring a technical representative to the meeting. These individuals shall meet for discussion within 10 (ten) working days of service of the Management Referral Notice at a mutually agreed time and place or failing agreement within 05 (five) working days of the service of the Management Referral Notice at the time and place specified by the Party serving notice provided such place is at a neutral location within England and that the meeting is to take place within normal business hours.

### **34.7. Mediation**

- 34.7.1. If the Dispute is not resolved between the Parties through any of the applicable procedures provided for under clause 34.5 and 33.6, then the Parties shall consider whether to refer the Dispute to mediation and it shall be referred to mediation unless either (a) the Authority considers that the Dispute is not suitable for resolution by mediation or (b) the Supplier does not agree to mediation. The mediation shall be conducted in accordance with the Centre for Effective Dispute Resolution Model Mediation Procedure and the following shall prevail in the event of a conflict with that procedure:
- 34.7.1.1. the mediation shall be conducted by a single mediator who shall be appointed by agreement in writing between the Parties or, if the Parties are unable to agree on the identity of the mediator within 10 (ten) working days of the date of the request that the Dispute be determined by a mediator, or if the mediator appointed is unable or unwilling to act, shall be appointed by the Centre for Effective Dispute Resolution on the application of either Party;
  - 34.7.1.2. the mediation shall be conducted in a location

agreeable to both parties and in the English language;

34.7.1.3. the mediation shall be conducted in private and without prejudice to the rights of the Parties in any future proceedings; and

34.7.1.4. the mediation shall be held within 30 (thirty) working days of the appointment of the mediator pursuant to clause 34.7.1 above.

### **34.8. Litigation**

34.8.1. If the Dispute has not been resolved to the satisfaction of both Parties pursuant to the mediation procedure set out in Clause 34.3 above; or

34.8.2. If the Authority considers that the Dispute is not suitable for resolution by mediation in accordance with Clause 34.3 above; or

34.8.3. If the Supplier does not agree to mediation in accordance with Clause 34.3 above; or

34.8.4. If a Procedure Initiation Notice has not been given in accordance with Clause 34.1.3 above; or

34.8.5. If in any event the Dispute is not resolved within 90 (ninety) calendar days after it has arisen, then either Party shall be entitled to issue proceedings and the Courts of England shall have exclusive jurisdiction to hear and determine the Dispute.

## **35. Variation to Agreement**

35.1. Where either Party see a need to make an Agreement change, the Authority may at any time request such change and the Supplier may at any time recommend such change, provided that each party give the other at least one month's written notice of any change or addition and provided that either (a) such change or addition can be achieved without need for additional funding; or (b) that the Authority agrees to provide any additional funding reasonably required by the Supplier in respect of such change or addition; or (c) should the change require an adjustment to the approved cost in Annex 4, that such adjustment is agreed by both parties. The notice shall give details of the variation or addition and the date on which it is to take effect.

35.2. Any request for an Agreement change shall be provided in writing using the form at Annex 10.

35.3. Neither Party shall unreasonably withhold its agreement to any Agreement change. For the avoidance of doubt any withholding of agreement by the Authority shall not be considered to be unreasonable where any Agreement Change recommended by the Supplier would or might (in the opinion of the Authority) result in the Supplier's provision of services failing to conform to

the terms of this Agreement or to the Approved Cost being exceeded.

- 35.4. No such variation or addition shall affect the continuation of the Agreement
- 35.5. Until such time as an Agreement change is made the Supplier shall, unless otherwise agreed in writing, continue to provide the services pursuant to the Agreement as if the request or recommendation had not been made.
- 35.6. Any discussions which may take place between the Parties in connection with a request or recommendation before the authorisation of a resultant Agreement Change shall be without prejudice to the rights of either Party.
- 35.7. Discussion between the Parties concerning an Agreement Change shall result in one of the following:
  - 35.7.1. no action being taken; or
  - 35.7.2. the request to make an Agreement Change by the Authority being implemented; or
  - 35.7.3. the recommendation to make an Agreement Change by the Supplier being implemented.
- 35.8. Subject to clause 35.7, this Agreement cannot be varied except in writing and signed by the lawful representatives of both Parties
- 35.9. Subject to 35.1, any agreement by both Parties must be agreed in Schedule 9 of this Agreement.

## **36. Corrupt Gifts or Payments**

- 36.1. 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”):
  - 36.1.1. offer, give or agree to give any person in the employment of the 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 Authority or for showing or refraining from showing favour or disfavour to any person in relation to this or any other Agreement with the Authority; nor
  - 36.1.2. enter into this or any other Agreement with the Authority if any commission has been paid or agreed to be paid to any person in the employment of the Authority, 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 Authority in writing before the Agreement is made.
- 36.2. 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 Authority shall be entitled:

- 36.2.1. to terminate the Framework Agreement and recover from the Supplier the amount of any loss resulting from the termination;
  - 36.2.2. to recover from the Supplier the amount or value of any such gift, consideration or commission; and
  - 36.2.3. to recover from the Supplier any other loss sustained in consequence of any breach of this clause 36.1 whether or not the Framework Agreement has been terminated.
- 36.3. In exercising its rights of remedies under clause 36.2, the Authority shall:
- 36.3.1. act proportionately in the light of the gravity and circumstances of the particular breach; and
  - 36.3.2. give all due consideration, where appropriate, to action other than termination of the Framework Agreement.

## **37. Procurement Transparency**

- 37.1. 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 Government Transparency Agenda. Limited redactions may be made before publication in order to comply with existing law and for the protection of national security.
- 37.2. Subject to 36.1, 36.3 and 36.4 the Supplier must notify the 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. Any such request must provide a clear justification for the proposed redaction.
- 37.3. The total value (bottom line) of the Framework Agreement is required to be published under Public Contract Regulations 2015 and the UK Government Transparency Agenda.
- 37.4. The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA and/or the DPA, the content of this Framework Agreement is not Confidential Information. The 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.
- 37.5. Notwithstanding any other term of this Framework Agreement, the Supplier hereby gives consent for the Authority to publish the Licence Agreement in

its entirety, including from time-to-time agreed changes to the Framework Agreement, to the general public. The Supplier agrees to the public re-use of the documents provided that such reuse cites the source and do not misuse or deliberately mislead.

- 37.6. Both Parties shall take reasonable steps to ensure that their servants, employees, agents, Sub-contractors, Suppliers, professional advisors and consultants comply with this clause 37.

## **38. Transfer of Undertakings (Protection of Employment) TUPE**

- 38.1. The Parties recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 SI 2006 No 246 may apply in respect of the future next award of the Agreement and that the Supplier shall comply with the requirements of those Regulations.
- 38.1.1. Subject to sub-clauses 37.3 and 37.4 below, any provisions relating to the transfer of personnel which results from the transition of responsibility for the Services and/or to which TUPE shall apply, shall be specified as part of the transition and in the Exit Plan, subject to clause 32.5. The parties shall be responsible for the fulfilment of obligations in respect of such personnel which result from such transfer and which may be specified the Exit Plan, for obligations of the Supplier and for obligations of the Authority.
- 38.1.2. The Supplier shall indemnify the Authority (and any replacement Supplier) against all losses arising on or after the expiry or termination of all or any part of this Contract out of or in connection with or in respect of the actions or omissions of the Supplier (or its Sub-contractors) with regard to the employment or termination of employment of any person, including but not limited to; breach of contract, loss of office, unfair dismissal, redundancy, loss of earnings or otherwise (and all damages, penalties, awards, legal costs, expenses and any other liabilities incurred by the Authority), by the Supplier (or Sub-contractor) before the date of transfer and who has (or would have) transferred to the Authority (or any replacement Supplier) pursuant to TUPE (save to the extent that such losses arise out of or are a result of the actions or omissions of the Authority or replacement Supplier).
- 38.2. The Supplier hereby indemnifies and shall keep indemnified the Authority against any Loss incurred by the Authority connected with or arising from any claim by any current or former employee of the Supplier arising from or connected with any such person's employment by the Supplier or its termination including but not limited to claims arising from the contract of employment, any policy applicable to, or any collective agreement in respect of any such employee or of any other person at any time employed by (or engaged by) the Supplier made against the Authority at any time for breach

of such contract, policy or any such collective agreement, pay, unfair dismissal, statutory or contractual redundancy pay, sex, race, disability, religious or sexual orientation discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment and which results from any act, fault or omission of the Supplier while such employees or such other person was employed or engaged by the Supplier.

- 38.3. Upon the day which is 06 (six) months before the date of termination of the Agreement or as soon as the Supplier is aware of the proposed termination of the Agreement or the provision by it of the Services if less than 06 (six) months the Supplier shall upon the request of the Authority and to the extent permitted by law, supply to the Authority all information required by the Authority as to the terms and conditions of employment and employment history of any employees then assigned by the Supplier to the provision of the EAC and shall warrant the accuracy of such information.
- 38.4. The Supplier hereby agrees and undertakes to update the information referred to in Clause 38.3 on an ongoing basis from the date it is supplied until the cessation of the provision of the EAC by the Supplier.
- 38.5. The Supplier hereby indemnifies and shall keep the Authority indemnified against any Loss arising out of any claim that the information supplied pursuant to Clause 38.3 or any Loss arising from any failure to keep the said information updated pursuant to Clause 38.4 is incorrect or deficient.

## **39. Assignment**

- 39.1. 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 Authority.

## **40. Notices**

- 40.1. 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.

## **41. Law**

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

and Wales.

## **42. General**

- 42.1. The parties accept the non-exclusive jurisdiction of the English courts and agree that this Framework Agreement is to be governed and construed in accordance with English law.
- 42.2. No amendment of this Agreement shall be valid unless agreed in writing by a duly authorised representative of each of the Parties.
- 42.3. The failure by the 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.

### 43. Agreement Signatures

Signed for and on behalf  
of the Authority

	Signature	Name and title	Date
Procurement		<div></div> Associate Director of Procurement	

Contract Manager  
  
Programme Director – process  
and operations

	<div></div>	
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Budget Holder

	<div></div>	
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Signed for and on behalf  
of the Supplier

	Signature	Name and title	Date
Contract Manager			

Authorised Signatory:

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This contract is not valid until all Signatures have been completed



## **SCHEDULE ONE:**

### **Lots, Modules & Specification of Services**

#### **Introduction**

- 1.1. The Supplier shall provide the services as detailed in this annex to support technology evaluation and related activities
- 1.2. The Supplier shall provide the following services as part of the Work Packages issued to the Supplier under this Agreement:

[To be completed post contract award]

## **SCHEDULE TWO**

### **Pricing and Discounts**

The following pricing structure by module stated in the attached excel file(s) detailed below are agreed and will be applied to all modules commissioned under this Agreement during the dates specified.

[to be completed post contract award]

## **SCHEDULE THREE**

### **External Assessment Centre Structure and Key Personnel**

The following persons are considered Key Supplier personnel for the delivery of the work under these Lots. The named persons below are those named by the Supplier in their bid.

[to be completed post contract award]

## **SCHEDULE FOUR**

### **External Assessment Centre Sub-contractors**

**[to be completed post contract award]**

## **SCHEDULE FIVE**

### **Supplier and Third Party Software**

**[to be completed post contract award]**

## **SCHEDULE SIX**

### **Implementation of new External Assessment Centre**

**NOT USED**

## **SCHEDULE SEVEN**

### **Liquidated Damages**

**NOT USED**

## **SCHEDULE EIGHT**

### **Call-off Order Terms and Conditions**

Any Agreement / Order placed under this Framework Agreement shall be subject to the “Order Terms & Conditions” and any Schedules; and any Appendices applicable to the Agreement / Order.



## SCHEDULE NINE

### Variation to Agreement

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

For the purposes of this Variation to Agreement:

Authority's Commissioning Manager	means the individual from time to time appointed by the Authority and notified to the Supplier in writing responsible for the co- ordination of the development specified below;
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This Variation to Agreement, pertains to the development or additions of the NICE External Assessment Centre Framework Agreement and any Schedules to be undertaken by the Supplier and is agreed by the Supplier and the Authority as a current addition to Schedule 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 Authority, such agreement (if given) not to be unreasonably delayed.

The Milestones for Services which are required by the 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 Authority, anything done or omitted to be done on the 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 Supplier  
Name  
Title  
Date

\_\_\_\_\_  
Signature on behalf of the Authority  
Name  
Title  
Date

## **SCHEDULE TEN**

### **Framework Agreement Structure**

The Framework consists of a core set of contractual Terms and Conditions (T&Cs) document for all appointed Suppliers.

External Assessment Centre Framework Agreement

The T&Cs comprise of two separate contractual documents consisting of the:

- terms between NICE (as the Authority) and each appointed Supplier (the “Terms and Conditions of Contract for External Assessment Centre Framework Agreement” document;

AND

- The “Call-off Order Agreement” document.

The “Terms and Conditions of Contract” for “External Assessment Centre Framework Agreement” document for use between the Authority and each appointed Supplier sets out standard contractual terms including (but not limited to) the Suppliers’ obligations, insurance, warranty and liability limitations, monitoring and reporting requirements, services offered and the specification of those services, pricing and discounts.

The “Call-off Order Agreement” document for between the Authority and the appointed Supplier sets out the purchasing and supply terms of each Work Package ordered under the framework terms, these include (but not limited to): Duration of the Work Package, Modules, specification specific to the Work Package and Modules, Milestones, SLAs and KPIs specific to a Work Package, pricing of the Work Packages, payment schedule of the Work Package, Instruction to Proceed.

## **SCHEDULE ELEVEN**

### **Arrangements for Call-off Orders placed under this Framework**

#### **Mini-competition and Direct Award**

The Authority will perform a Mini-competition or Direct Award process prior to the Award of any Call-off Order in line with the Public Contract Regulations 2015.

The Authority may place an Order for multiple Work Packages and Modules to a committed budget under any Call-off Order Agreement.

**Lot 1 and 2** of this Framework Agreement shall be placed under a Call-off Contract of guaranteed funding for a specified period of time.

**Lots 3 & 4** of this Framework Agreement shall be placed under Call-off Contracts for individual Work Packages or Projects to the winning supplier of a Mini-competition referred to throughout this Agreement as an Expression of Interest. All Suppliers capable of meeting the specification of requirements for any Work Package or Project under these lots, will be invited to Express an Interest.

## Work Package Allocation for multiple Work Packages and Modules Call-off Order Agreement

Work Packages or Modules that have been placed under a multi Work Package Call-off Order will not be subject to a mini-competition unless the Authority is unable to identify the best Supplier capable of completing the work, where the Authority will use the Expression of Interest procedures described below:

Work package category	Work package description	Workload allocation method
Lot 1 – Clinical and Economic Evidence Assessment		
A	A - Guidance Support (Assessment Report)	Allocated by informed rotation
E	Systematic reviews and meta-analysis	Allocated by informed rotation
F	Review of guidance	Allocated by informed rotation
G	Medtech Innovation Briefings	Allocated by informed rotation
H	Support to topic identification, selection and scoping	Allocated by informed rotation
I	Regulatory Advice	Allocated by informed rotation
K	Technical Analyst Support	Allocated by informed rotation
Lot 2 – Decision and Methodological Support Services		
J	Methodological, analytical and other support for programme development	Allocated by informed rotation
J	Complex decision analytic modelling support	Allocation by Expression of Interest
Lot 3a – Primary Data Generation		
B	Facilitating and conducting collaborative research into clinical utility and cost utility	Allocation by Expression of Interest
Lot 3b – Real World Evidence Generation		
C	Managed Access evidence generation and related grant applications	Allocation by Expression of Interest
Lot 4 Additional Capacity and Supplementary Services		

A	A - Guidance Support (Assessment Report)	Allocation by Expression of Interest
E	Systematic reviews and meta-analysis	Allocation by Expression of Interest
F	Review of guidance	Allocation by Expression of Interest
G	Medtech Innovation Briefings	Allocation by Expression of Interest
H	Support to topic identification, selection and scoping	Allocation by Expression of Interest
I	Regulatory Advice	Allocation by Expression of Interest
K	Technical Analyst Support	Allocation by Expression of Interest
J	Methodological, analytical and other support for programme development	Allocation by Expression of Interest
J	Complex decision analytic modelling support	Allocation by Expression of Interest
N	Research Governance & Ethics Support	Allocated by informed rotation
N	Technical Assessment (non-digital)	Allocated by informed rotation

## Allocated by informed rotation

Work packages will be allocated by NICE's EAC Management Group after consideration of the following factors:

- Supplier's established expertise
- Supplier's development
- Supplier's current workload
- Supplier's current capacity

In order to ensure that NICE's operational needs remain paramount, Suppliers will not be able to challenge or change the allocation of work for these work packages, unless circumstances are truly exceptional.

## For Expression of Interest Work Package Allocation

Where a Work Package requires a Supplier to provide an Expression of Interest, (EOI) the Authority shall:

- Issue a written request inviting the centres to express an interest in the Work Package

- Suppliers will only be asked to provide information not already in the Authority's possession
- Assess the centres' expertise in the subject area, capacity and ability to deliver the Work Package
- Assess the centres cost for completing the Work Package
- At its discretion issue an Instruction to Proceed which shall contain:
  - A clear Instruction to Proceed
  - All available documentation and data (or detail of how to access data) that the Authority is aware of at the point of commissioning the Work Package
  - Work Package specific Milestones
  - Work Package specific SLAs / KPIs
  - The Authority's named point of contact for the Work Package

Suppliers who have indicated they do not have capacity will not be sent an Expression of Interest. The Supplier shall respond to the EOI within the allocated timeframe detailed in the EOI request.

On receipt of the Instruction to Proceed, deliver the Work Package to the Milestones, timescales and SLA detailed in the Work Package Instruction to Proceed documentation.

## **SCHEDULE TWELVE**

### **Rules on Call-off Order Agreements on expiry or termination of the Framework Agreement**

Any Call-off Order Agreement placed under this Framework Agreement shall remain valid and in force until the agreed expiry date or termination date of that Agreement / Order. Call-off Order Agreement term must not exceed 03 (three) years after the expiry of the Framework Agreement expiry date.

The contract term of any Work Package placed under any Call-off Order Agreement shall remain in force until the expiry or termination of the Work Package shall not exceed 03 (three) years from the first commencement date of the original Call-off Order Agreement.

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.



## SCHEDULE THIRTEEN

### Communications and Guidelines for Appointed Suppliers

This Schedule thirteen sets out the NICE communications criteria and guidance for appointed Framework Suppliers. This is intended for use when publicising and communicating the Framework by the Supplier.

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.

The Supplier shall not publish or cite any global communication in relation to the Framework without written approval by NICE before distribution.

The Supplier shall ensure all communications are written in English.

The criteria and guidelines in the table below are distinguished as either mandatory or optional. 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
Use of NICE logo	It is NOT permitted to use the NICE logo on any communications.	Mandatory
Framework naming	Use contractual name of "External Assessment Centre Framework Agreement"	Mandatory
Strap line	"External Assessment Group to the National Institute for Health and Care Excellence"  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

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 Supplier's mailing lists
- internal newsletters

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 the Authority 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.

## **SCHEDULE FOURTEEN**

### **Supplier Data**

Supplier data shall include the information submitted by the Supplier as part of their bid for these Services and shall be updated regularly throughout the contract term.