

Increasing Capacity Framework Agreement (ICFA)

GUIDANCE DOCUMENT

Area of Business	Healthcare Services
Target Audience	NHS Trusts and NHS Foundation Trusts providing acute services; Clinical Commissioning Groups; NHS England as commissioner of specialised services
Applicable Sectors	National Health Service
Contacts	Increasing Capacity Support Team NHS Arden GEM CSU E: increasingcapacityframework@nhs.net
Framework Reference Number	NHS England – AGEM 41574
Project Stakeholders	NHS England Regional Teams NHS Trusts and NHS Foundation Trusts Clinical Commissioning Groups
Framework Duration	Framework agreements are due to cease on 20 th November 2024.

Version Control

Revision Date	Summary of Changes	Version No	Author
09/10/2020	Initial Draft	0.1	MT
10/11/2020	Approach, simplification, and content	0.2 to 0.13	DL & WS
24/11/2020	New tariff notification	v1.0	DL & MT
01/12/2020	Addition of Database confidentiality	V2.0	MT & CW (DACB)
17/12/20	Annex 1 revision: Pricing – removal of no 6 MFF note that referred to MFF applying to the organisation’s largest activity site.	V3.0	MT & CW (DACB)
22/02/21	Insourcing & payment mechanism added	V4.0	MT & CW (DACB)

08/04/21	Contract Award Notice - NHS E opinion	V5.0	MT & CW (DACB)
24/05/21	Annex 4 – Unbundling of National Price addition	V6.0	MT & CW (DACB)
31/01/22	Refresh - Framework Guidance	V7.0	MT & CW (DACB)
23/05/22	Framework expiry	V8.0	MT & CW (DACB)
11/10/22	Removal of six-month transition direct awards	V9.0	MT
17/11/22	ICBs referenced in place of CCG	V10	MT
15/01/24	Removal of eContract system references & NHS Standard Contract links	V11	MS
TBC	Guidance added for Provider Selection Regime	V12	MS
01/10/24	Guidance added for Provider Selection Regime	V16	MS

PLEASE NOTE CONTRACTING AUTHORITIES MUST ENSURE THEY CROSS REFERENCE WITH THE NEW PUBLISHED NATIONAL TARIFF BEFORE CALLING OFF UNDER THE FRAMEWORK

AIM OF DOCUMENT

This document is to be used as a guide for NHS England, NHS Trusts, NHS Foundations Trusts and Clinical Commissioning Groups (each a “**Contracting Authority**”) to call off from the Increasing Capacity Framework (the “**Framework**”).

The guidance is structured into a three-step process (select, confirm, award):

- Step 1: Use the on-line Database to **select** relevant Framework Providers.
- Step 2: Use the Direct Award or Mini-Comp Templates to **confirm** with selected Framework Providers if they can meet the requirement.
- Step 3: Use the NHS Standard Contract or Sub-Contract Templates to **award**.

NOTICE

Contracting Authorities that intend to use the Framework must ensure appropriate due diligence is undertaken to satisfy themselves that identified Framework Providers are able to meet their local requirements.

STEP ONE: SELECT

Framework Provider Database

The available Framework Providers, by site and service line, can be searched in the Framework Provider Database. The web link below will enable Contracting Authorities to register system users to access the Database.

<https://www.increasingcapacityframework.co.uk>

The information in the Database is intended to be shared with ICBs, NHS Trusts and NHS Foundation Trusts only for the purposes of the operation of the Framework. Certain information contained in the Database is confidential. This information is being shared with ICBs, NHS Trusts and NHS Foundation Trusts in confidence. Where ICBs, NHS Trusts and NHS Foundation Trusts obtain such information from the Database, they may disclose the information to other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Contracting Authority.

If you have a query regarding the Database, please e-mail: support@adviseinc.co.uk

Pricing

The Framework provides for the prices and any discounts offered by a Framework Provider in respect of Services for which the National Tariff specifies a national price and/or a best practice tariff and other non-mandatory published rate (for convenience all referred to in this guide as a “**National Price**”). Where there is a National Price for a Service or Services, they are termed “**Nationally Priced Services**” in this guide. Where Services are not subject to a National Price, these are referred to in this guide as “**Locally Priced Services**”. Further detail on Nationally Priced and Locally Priced Services is included at **Annex 1**.

EACV and payments on account

In response to various queries, we have received on this issue, we can provide the following clarification:

Where parties to a proposed contract have agreed an Indicative Activity Plan and can from that extrapolate an agreed Estimated Annual Value, they may document that EACV in their contract, and the purchasing authority may agree to make payments on account on the basis of that EACV. The relevant provisions of SC36 indicated as “EACV agreed” will then apply.

Scope of Services

NHS England has been asked to clarify whether certain services are in or out of scope of the Framework. NHS England may periodically update the list below.

- **Insourcing – this is out of scope of the Framework.**

Framework Providers may tell Contracting Authorities that insourcing is within the scope of the Framework. It is not. This was made very clear in the procurement process leading to the award of the Framework and this has been repeatedly made clear to a number of individual Framework Providers. There is no prohibition on Contracting Authorities seeking to engage an insourcing organisation outside the Framework, but it should not be done under the Framework. The funding available to Contracting Authorities in respect of contracts entered into under the Framework does not extend to insourcing arrangements. There is a separate framework, established by NHS SBS, that relates to insourcing. That is separate to the Increasing Capacity Framework.

To ensure Contracting Authorities are clear on what constitutes an insourcing arrangement, an explanation is provided below.

- Provision of staff by an organisation to carry out clinical activity at a Trust’s premises providing NHS services to Trust patients using Trust equipment, resources and systems.
- An insourcing organisation may potentially use some of its own equipment, resources and systems.
- Insourcing has often been used to enable a Trust’s theatres to be used when they would not otherwise be used, e.g., nights or weekends.
- Insourcing organisations often rely on the Trust’s CQC registration for the activity regardless of whether the organisation has its own registration or not

The key feature of an insourcing arrangement is use of the Trust’s premises. Please note however that not all use of Trust premises is automatically considered insourcing. A Framework Provider may have a long-term lease of a previously unused part of a Trust’s campus and be employing its own staff, using its own equipment, operating under its own CQC registration listing those specific premises and having patients referred to it and to which it provides contracted NHS services. This arrangement is unlikely to be considered insourcing.

If any Contracting Authority is considering a proposal that services are provided from a Trust's premises, it must assume that where a Framework Provider's listed sites (as set out in the Database) do not include the Trust's premises, then the Framework Provider is not able to provide Services from that Trust premises under the Framework. If the Contracting Authority is in any doubt as to whether a proposed arrangement is an insourcing arrangement and so not funded under the Framework, the Contracting Authority should contact increasingcapacityframework@nhs.net before it commits to the arrangement.

- **Supplies of goods and equipment – this is out of scope of the Framework**

This includes arrangements whereby a Trust is seeking to hire on a day rate equipment to be used by Trust staff on Trust premises.

STEP 2: CONFIRM

Call-Off Process

A Contracting Authority is able to award a contract or sub-contract (see “Call-off Contract and Sub-Contracts” section of this guide for an explanation of this) to a Framework Provider by a direct award or by undertaking a mini-competition, as set out in this section.

To support Contracting Authority’s all template forms are available via the dedicated website.

www.ardengemcsu.nhs.uk/icf

A template Direct Award form can be used to provide and request information from an identified Framework Provider. A template Mini-Competition form can be used to launch a mini-competition with identified Framework Providers.

Circumstances in which direct award can be used

- 1) Throughout the entire term of the Framework, Contracting Authorities can place NHS Standard Contracts or Sub-Contracts (as appropriate) for Nationally Priced Services by direct award if any of the following three situations apply:
 - a. the Framework Provider operates a site offering the relevant Services that is within a geographical area that the Contracting Authority (acting reasonably) considers is appropriate to enable its patients to access the Services
AND
in comparison to other Framework Providers within the geographical area referred to above, the Framework Provider has submitted the lowest prices (including MFF) for the Services taking into account where applicable, any discount options;
 - b. all the selected Framework Providers within the defined geographical area (see point a. above) are needed to meet the Contracting Authorities requirement (i.e., a call-off contract will be placed with all the identified Framework Providers within the defined geographical area); or
 - c. a mini competition is undertaken (see below) and only one response is received.

Process for direct award

The process to be followed where one or more Contracting Authorities intend to award an NHS Standard Contract or Sub-Contract by direct award is set out below:

- 1) The Contracting Authority will develop a clear statement detailing its requirements for the provision of the Services (“**Statement of Requirements**”).

- 2) The Contracting Authority will send a populated version of the NHS Standard Contract (full length version) Particulars or a populated version the NHS Standard Contract template Sub-Contract (full length version) (as appropriate), reflecting the Statement of Requirements, to the Framework Provider. This should be accompanied by a request for the Framework Provider to provide specific information to enable the Contracting Authority to finalise the NHS Standard Contract or Sub-Contract. The template Direct Award form contains the information most likely to be requested. Contracting Authorities will need to request all information necessary to finalise the NHS Standard Contract or Sub-Contract. It is preferable for Contracting Authorities to request the information and add it themselves to the NHS Standard Contract or Sub-Contract as this enables the Contracting Authority to retain version control over the NHS Standard Contract or Sub-Contract.
- 3) On receipt of the populated version of the NHS Standard Contract or Sub-Contract and any request for information, the Framework Provider must promptly indicate to the Contracting Authority whether it is able to accept the NHS Standard Contract or Sub-Contract and any information required by the Contracting Authority to finalise it.

[Circumstances in which a mini competition can be undertaken](#)

- 1) Throughout the entire term of the Framework, Contracting Authorities will have the option to undertake a mini competition for an NHS Standard Contract or Sub-Contract (as appropriate) for Nationally Priced Services or Locally Priced Services.
- 2) Contracting Authorities should note that where a Contracting Authority is seeking to procure Services by unbundling the National Price, a mini competition is required to determine the final price.

[Process for mini competition](#)

The process to be followed where Contracting Authorities intend to award an NHS Standard Contract or Sub-Contract by undertaking a mini competition is set out below:

- 1) The Contracting Authority will develop a clear Statement of Requirements setting out its requirements for the Services.
- 2) The Contracting Authority will identify the Framework Providers capable of supplying the Services from the on-line Database using the available search facility.
- 3) In identifying the Framework Providers capable of supplying the Services, the Contracting Authority may, acting reasonably, determine a geographical area that it considers appropriate in relation to access to the Services by patients and identify the Framework Providers who, on the basis of the information provided in the on-line Database have a site located within the determined geographical area from which the Services can be provided.
- 4) The Contracting Authority will develop the mini-competition award criteria which may be any of, or a combination of any of, the following:

- quality of the Services as determined by the Contracting Authority;
 - accessibility of the Services to a patient/group of patients;
 - experience of the clinical team providing the Services;
 - capacity/availability of Services;
 - local factors which are proportionate and relevant to the Services; and/or
 - price.
- 5) The Contracting Authority will invite responses by conducting a mini-competition process. The template Mini-Competition form can be tailored and used as the invitation to submit responses. The form and timetable of that process can be determined by the Contracting Authority but must include inviting the Framework Providers identified above to submit a response for the proposed NHS Standard Contract/Sub-Contract. The invitation should be accompanied by a populated version of the NHS Standard Contract (full length version) Particulars or a populated version of the template Sub-Contract (full length version) (as appropriate), reflecting the Statement of Requirements.
- 6) The Contracting Authority will apply the mini-competition award criteria to compliant responses as the basis of its decision to award the proposed NHS Standard Contract/Sub-Contract.

[Financial Standing](#)

Contracting Authorities may want identified Framework Providers to confirm that the financial standing requirements tested during the procurement of the Framework continue to be satisfied. Where a Contracting Authority intends to directly award an NHS Standard Contract or Sub-Contract, this confirmation can be specifically requested as part of the request for information. Where a Contracting Authority intends to launch a mini competition, this confirmation can be built into the invitation to submit responses.

STEP 3: AWARD

Call-Off Contracts and Sub-Contracts

For the purposes of calling off the Framework, Contracting Authorities must consider the following:

- 1) All call-off contracts and sub-contracts are new agreements and cannot be an extension of or variation to an existing contract or sub-contract.
- 2) All call-off contracts and sub-contracts entered into pursuant to the Framework must be in the form of the latest published version of:
 - a. the NHS Standard Contract - if the Contracting Authorities calling off are one or more ICBs and/or NHS England; or
 - b. the Template Sub-Contract to the NHS Standard Contract - if the Contracting Authorities calling off are one or more NHS Trusts and/or NHS Foundation Trusts.
- 3) An NHS Trust or NHS Foundation Trust cannot be a “Commissioner” under an NHS Standard Contract, and a ICB or NHS England cannot be a “Head Provider” under a Sub-Contract. It is not possible for a mixture of commissioning bodies (ICBs and/or NHS England) and NHS providers (Trusts and/or FTs) to be purchasers under the same arrangement, because they are performing different statutory functions.
- 4) As part of the process for being accepted onto the Framework, each Framework Provider has confirmed acceptance of the terms of the NHS Standard Contract and the Template Sub-Contract.
- 5) The NHS Standard Contract is published in full-length and shorter-form versions. The full-length version is appropriate for all Services under the Framework and must be used by ICBs and by NHS England when calling off the Framework.
- 6) The Template Sub-Contract is published in full-length and shorter-form versions. Any call-off of Services by a NHS Trust or NHS Foundation Trust will involve placing a sub-contract in accordance with the terms of the (full length) NHS Standard Contract(s) which that NHS Trust or NHS Foundation Trust has in place with its commissioners, including the requirement for the consent of the co-ordinating commissioner (see GC12 of the NHS Standard Contract). The Template Sub-Contract (full-length version) must be used by NHS Trusts and Foundation Trusts when calling off the Framework.
- 7) The Contracting Authority must not agree to any request from a Framework Provider:
 - a. that a local designed agreement or the Framework Provider’s own terms and conditions apply in place of the NHS Standard Contract or Template Sub-contract; or
 - b. to vary any provision of the NHS Standard Contract except (after it has been awarded) as permitted by General Condition 13 (Variations).
- 8) An Activity Reporting Guidance document is set out at **Annex 2** of this guide. The Contracting Authority must consider if any activity reporting as set out in the Activity

Reporting Guidance document is required under the call-off contract or sub-contract (in addition to any other reporting requirements set out in the call-off contract or sub-contract). If such activity reporting is required, it must be incorporated into the call-off contract or sub-contract. Framework Providers are required by the Framework Agreement to:

- not refuse the inclusion of such activity reporting in the call-off contract or sub-contract; and
 - assist in including such activity reporting in the call-off contract or sub-contract.
- 9) Contracting Authorities should satisfy themselves that the Framework Provider to whom they intend to award a contract has appropriate indemnity arrangements in place. This can be achieved by requiring provision of appropriate documentation prior to signature of the contract/sub-contract or by use of a condition precedent within the contract/sub-contract.
- 10) Contracting Authorities must consider how price should be treated in the NHS Standard Contract and the Template Sub-contract. **Annex 3** provides further information on how price should be treated under certain circumstances.
- 11) When completing the NHS Standard Contract or the Template Sub-contract for a specific call-off, the Contracting Authority must ensure it contains:
- the requirements as set out in the Contracting Authority's Statement of Requirements;
 - any activity reporting requirements set out in the Activity Reporting Guidance document set out at **Annex 2** of this guide.
 - the Framework Provider's response to the mini-competition process (where relevant);
 - the prices payable including any discount to a National Price and the relevant MFF (if applicable).

The web links to the full-length version of the NHS Standard Contract (and technical guidance) and the Template Sub-Contract are included below. Note that both have been updated for 2023/2024.

<https://www.england.nhs.uk/publication/full-length-nhs-standard-contract-2023-24-particulars-service-conditions-general-conditions/>
<https://www.england.nhs.uk/publication/nhs-standard-contract-2023-24-technical-guidance/>
<https://www.england.nhs.uk/publication/nhs-standard-contract-2023-24-sub-contracts/>

[Framework Guidance](#)

[Contract Award Notice](#)

NHS England has been asked to clarify whether a Contracting Authority is required to issue a contract award notice following the award of the Call-Off Contract pursuant to the Framework.

It is NHS England's view that a contract award notice must be issued in respect of a Call-Off Contract where the contract is for "Social and Other Specific Services" as is the case in respect of this Framework. We note that there is a general obligation under Regulation 75(3) of the Public Contracts Regulations 2015 to issue contract award notices for all contracts entered into for "Social and Other Specific Services".

Please note that the above is an opinion of NHS England – it is not a clarification. Each Contracting Authority must obtain its own legal advice on its obligations under the procurement legislation and must not rely on the above opinion of NHS England. NHS England does not accept any responsibility or liability for any loss or damage caused to a Contracting Authority or any third party as a result of reliance on the above information and / or for failure to obtain own legal advice in respect of this matter

[Refresh](#)

The original procurement of the Framework indicated the Framework could be refreshed from time to time. Any refresh is at the sole discretion of NHS England and would allow:

- organisations not currently on the Framework an opportunity to bid to hold a Framework Agreement; and
- organisations currently on the Framework to make changes to their pricing structure (within the scope of the original pricing approach, i.e., capped at National Tariff).

In respect of organisations currently on the Framework, the intention is that, at the same time as the refresh occurring, their Framework Agreements would be extended to match the end date of Framework Agreements of any new organisations coming onto the Framework such that all Framework Agreements end on the same date. This means there is no need for organisations currently on the Framework to re-bid at the refresh simply to obtain a longer Framework Agreement.

The refresh will comply with applicable procurement law requirements in place at the time the refresh is commenced. For those organisations that successfully bid to join the Framework at the refresh, their details and service offerings will be included in the Framework Provider Database from the date set out in their Framework Agreement. If NHS England proposes to launch a refresh, it will notify the market using the appropriate mechanisms.

[Social Value and Sustainability](#)

In accordance with Procurement Policy Note 06/21 and NHSE&I Policy (Publication approval reference: PAR1030) - Applying net zero and social value in the procurement of NHS goods and services, new Framework Agreements entered into after 1 April 2022 expressly include in the definition of "Mini-Competition Award Criteria" the need to include a provider's approach to sustainability and implementing social value factors to the delivery of services. For Framework Agreements entered into prior to this date, Framework Providers have been asked to sign a variation that incorporates this requirement.

Contracting Authorities conducting mini competitions must ensure they are acting in accordance with Procurement Policy Note 06/21 and NHSE&I Policy (Publication approval reference: PAR1030).

[Call-off contract duration](#)

Contracting Authorities entering into call-off contracts should not contract for a duration of more than two years.

[Provider Selection Regime Implications \(PSR\)](#)

The Provider Selection Regime (PSR) came into force in January 2024 and, as explained in the accompanying Statutory Guidance, contracts called-off under this Framework Agreement must now comply with the PSR. Contracting Authorities are to satisfy themselves as to their compliance. Further information on the PSR is available at:

[NHS England » The Provider Selection Regime \(PSR\) statutory guidance](#)

As mentioned in previous communications, we will now provide some further guidance on options for contracting following the close down of the ICF on 20th November 2024. Every ICF contract will be different and it is vital that the ICB lead/commissioner is considering next steps right away, if they have not already done so.

Assuming the commissioner does want to continue commissioning the same service as was in the ICF contract there will be a number of options in doing so, but PSR is the procurement methodology which all relevant authorities must follow and we have provided some further detail below on this.

The PSR is designed to offer a flexible and proportionate process for selecting providers of health care services, ensuring all decisions can be made with a view to securing the needs of the people who use the services, improving the quality of the services, and improving the efficiency in the provision of the services. Therefore when arranging services previously provided under the ICF, relevant authorities (NHSE, LAs, ICBs, NHS trusts and FTs) should consider each specific circumstance when deciding which PSR process is most appropriate and should consider seeking legal advice if in doubt. To help ensure service provision, relevant authorities could consider these options:

1. If the service offered is one covered under patient choice legislation then you must use direct award B.

(Note: ICBs and NHSE have a statutory obligation to provide patient choice (and therefore use direct award B when awarding those contracts) where the service is covered by patient choice legislation, however, where this does not apply all relevant authorities are able to choose to provide unrestricted patient choice and, where they do, can also use direct award B.

2. If the service offered is not in scope of patient choice legislation, you must select an appropriate PSR process to award the contract, this includes the following options:

- Use direct award process A (if appropriate) or C to award a contract to an existing provider

- Using the most suitable provider process to award a contract where the relevant authority is of the view that it is likely to be able to identify the most suitable provider
- Running a competitive process;
- Establishing your own framework agreement; or
- Contract modifications are permitted under PSR in specific circumstances, for example where the modification is being made due to circumstances outside the control of the relevant authority or within set value thresholds. However, this must be done fairly and proportionately and in line with the terms and conditions of the framework agreement.

Depending on the provider selection process adopted, the relevant authority would need to follow the transparency requirements for that process and publish the required notices for that process.

More information can be found in the statutory guidance.

Finally, at this stage as mentioned above it is vital that steps are taken right away to ensure there is not a gap in service provision. If you have technical queries, please engage your local PSR procurement lead or the national PSR inbox: psr.development@nhs.net. Please seek specific legal advice from your local team if you are otherwise unsure.

Annex 1: Pricing

Nationally Priced Services

- 1) The approach to pricing under a call-off contract/sub-contract is on a cost per case basis which is calculated by the multiplication of actual units of activity delivered by the relevant price for that activity.
- 2) The on-line database contains the Pricing Schedule for each site at which each Framework Provider has been appointed to offer Services under the Framework. If a Framework Provider has bid a discount to the National Price, it will be set out in the Pricing Schedule.
- 3) It should be noted that all Framework Providers' prices for Services subject to a National Price are capped at a maximum of National Price plus relevant MFF. There was no ability for a Framework Provider to submit a price for a Service that is higher than the National Price for that Service.
- 4) Framework Providers were able to propose a percentage discount that would apply if the combined spend with the Framework Provider across all commissioned activity from that Contracting Authority exceeds the threshold levels of £1m, £5m, and £10m. Where a Framework Provider has proposed such discounts, then the pricing schedule of the call-off contract/sub-contract needs to make clear that the discount will be applied. This type of discount, if applicable, is in addition to any other discounts submitted by the Framework Provider.
- 5) The NHS Trust/NHS Foundation Trust for the purpose of calculating the MFF for each of the Framework Providers' sites is included in the on-line database¹.
- 6) The National Tariff may be amended from time to time and prices, currencies, rules and principles set out in the National Tariff may change. Where a Framework Provider has provided a percentage discount for a Nationally Priced Service, that percentage discount will be applied to the National Price under the latest version of the National Tariff. Similarly, where a Framework Provider has submitted percentage discounts in return for spend thresholds with any given Contracting Authority of £1m, £5m, and £10m, those discounts will continue to apply notwithstanding any changes to the National Prices.
- 7) Contracting Authorities have the option to agree to unbundle a National Price with a Framework Provider in accordance with the National Tariff, for example, where an NHS Trust or NHS Foundation Trust calls off the Framework and wishes to provide clinical staff to the Framework Provider to assist in delivery of the relevant Service in return for a discount from the applicable price. Any such unbundling must keep the total amount payable for the relevant currency within the relevant National Price. Further information is provided in Annex 4

¹ The relevant NHS Trust/NHS Foundation Trust is the one which operates the closest hospital to the relevant Framework Provider site assessed on a basis of straight-line distance. Reference to hospital is reference to a hospital run by the relevant NHS Trust or NHS Foundation Trust that routinely provides NHS services to NHS funded Service Users.

Locally Priced Services

- 1) Where a Framework Provider has offered to provide a Locally Priced Service that is not subject to a National Price, those Services are listed in the on-line database.
- 2) As there is no National Price for these Services and therefore no reference to the price of these Services in the on-line database, the relevant price must be determined in accordance with the following principles:
 - a. the Contracting Authority and the Framework Provider will agree the relevant price per activity;
 - b. the Contracting Authority and the Framework Provider must agree whether any percentage discounts in return for committed spend thresholds with any given Contracting Authority of £1m, £5m, and £10m that may have been offered by the Framework Provider in respect of Nationally Priced Services are applicable;
 - c. MFF will not be applied to the price agreed between the Contracting Authority and the Framework Provider;
 - d. the price agreed between the Contracting Authority and the Framework Provider will be determined in accordance with the provisions of the National Tariff that apply to local pricing; and
 - e. if the Contracting Authority has paid for the same type of Services in either the financial year 2019/20 or the 12 months prior to the commencement of the Services under the call-off contract or sub-contract (whichever is later), then the price agreed between the Contracting Authority and the Framework Provider for the purposes of the call-off contract or sub-contract must not exceed that previous price.
- 3) If a call-off contract or sub-contract includes:
 - a. Locally Priced Services - for which a price needs to be agreed as set out above; and
 - b. Nationally Priced Services - for which there will be a price that can be already determined,then the Contracting Authority and the Framework Provider are not permitted to agree a price for the call-off contract or sub-contract as a whole. The relevant price per activity for the Nationally Priced Services elements of the call-off contract or sub-contract (which will be either the National Price or the Framework Provider's discounted price as set out under the heading "Nationally Priced Services" above) must be applied to those elements.
- 4) If the National Tariff is updated to include prices for Services or elements of Services that did not previously have a price and are being provided under one or more call-off contracts or sub-contracts (as Locally Priced Services), then the relevant Services or elements of Services will be priced in accordance with the relevant prices set out in the National Tariff. Where this occurs, the price in the National Tariff will apply to the relevant Services or elements of Services from the date that the price in the National Tariff applies.

Annex 2: Activity Reporting Guidance

1.0 Introduction

- 1.1 It is important that all providers of NHS-commissioned care undertake appropriate activity reporting in order to inform local and national reporting and the production of national statistics.
- 1.2 A Framework Provider providing Services pursuant to a Contract put in place under this Framework Agreement will be required to report the following (where relevant):
- Aggregate Contract Monitoring (ACM)
 - COVID Weekly Activity Report (WAR)
 - Patient Level Contract Monitoring (PLCM)
 - Drug Patient Level Contract Monitoring (DrPLCM)
 - Devices Patient Level Contract Monitoring (DePLCM)
 - Admitted Patient Care Commissioning Data Set (APC CDS)
 - Outpatient Commissioning Data Set (OP CDS)
 - Diagnostic Imaging Data Set (DIDS)

This guidance provides information on the process for reporting the above data.

- 1.3 Data collected by a Framework Provider is required to be consistent with NHS data definitions as documented within the NHS Digital Data Dictionary version 3 (see <https://www.datadictionary.nhs.uk/>). Organisation codes including Framework Provider and site codes must be consistent with information held by NHS Digital Organisation Data Service (see <https://digital.nhs.uk/services/organisation-data-service>). Acute NHS Provider codes are 3 characters in length and should not contain trailing zeros. Ward codes should not be used as a mechanism to distinguish different hospital / organisation sites.
- 1.4 Each Framework Agreement allows:
- a commissioner (e.g., ICBs or NHS England) to put in place a contract with a Provider or
 - an NHS Trust or NHS Foundation Trust to put in place a sub-contract with a Framework Provider.

Where a commissioner puts in place a contract with a Framework Provider, then the “reported provider” of the activity is the Framework Provider (because the Framework Provider is receiving the monies for the activity directly from the commissioner).

Where an NHS Trust or NHS Foundation Trust puts in place a sub-contract with the Framework Provider, then the NHS Trust or NHS Foundation Trust that enters into the sub-contract is required to be recorded as the “reported provider” organisation.

- 1.5 When a contract is put in place pursuant to a Framework Agreement, the Parties should ensure that the contract specifies the following:
- provider organisation code to be documented in all reporting
 - provider site codes used for the service(s)
 - commissioner organisation code (or clarify the process of identifying the appropriate commissioner)
 - which organisation will be responsible for submitting which data flows
 - data quality expectations.

2.0 Overview to the required data flows

2.1 Aggregate Contract Monitoring (ACM)

- 2.1.1 The purpose of the ACM is to create an aggregated summary of the activity and cost of the clinical service performed under a contract put in place pursuant to the Framework and is to be exchanged between the commissioner and the provider organisations.
- 2.1.2 The specification for the ACM can be found [Contract Monitoring - NHS Digital](#).
- 2.1.3 The ACM is required to be submitted on a **monthly** basis and in accordance with the data submission timetable agreed between the commissioner and the Framework Provider.
- 2.1.4 Where a commissioner puts in place a contract with a Framework Provider, then the requirement is that the ACM is submitted to the relevant commissioner by the Provider via the NHS Digital Data Landing Portal (DLP). In this instance the contract will need to stipulate which DSCRO will be receiving the data submission and the name of the data template stored on the DSCRO DLP instance. Where an NHS Trust or NHS Foundation Trust puts in place a sub-contract with the Provider, then the ACM should be submitted by the Framework Provider directly to the NHS Trust or NHS Foundation Trust that enters into the contract.

2.2 COVID Weekly activity report (WAR)

- 2.2.1 The purpose of the COVID WAR report is to capture high level summary information about activity being performed in the independent sector in support of the covid pandemic.
- 2.2.2 The specification for this report can be found here [COVID-19 Situation Reports - NHS Digital](#). Healthcare providers are required to submit data via SDS direct to NHS Digital on a weekly basis.
- 2.2.3 It is anticipated that during the lifetime of this contract the requirement to submit the COVID weekly activity return will cease. Once the weekly CDS flows to SUS are suitably robust then this data collection will cease to be required, preferring instead to use the content of CDS flows to evidence activity undertaken.

2.3 Patient Level Contract Monitoring (PLCM)

- 2.3.1 The purpose of the PLCM is to provide a patient level (and identifiable) report of the activity including costs performed under a contract put in place pursuant to the Framework Agreement and is to be exchanged between the commissioner and the provider organisations. It may be helpful to note that under the contracts that NHS England put in place directly with independent sector providers for the purpose of responding to the Covid-19 pandemic (the “National IS Contracts”) the PLCM was only used to record unbundled (diagnostic) activity since Inpatient and Outpatient activity can be captured in Commissioning Data Set flows to SUS.
- 2.3.1 The specification for the PLCM being used in 2021/21 (and 2021/22)} can be found here Contract Monitoring - NHS Digital [Contract Monitoring - NHS DigitalContract Monitoring - NHS Digital](#).
- 2.3.2 In order to aid financial reconciliation, it is important that the device serial number is inserted into the relevant field of the DePLCM

2.3.2 If the DePLCM is required to be used it must be submitted on a **monthly** basis and in accordance with the data submission timetable agreed between commissioner and Framework Provider.

2.3.3 Where a commissioner puts in place a contract with a Framework Provider, then the requirement is that the DePLCM is submitted to the relevant commissioner by the Provider via the NHS Digital Data Landing Portal (DLP). In this instance the contract will need to stipulate which DSCRO will be receiving the data submission and the name of the data template stored on the DSCRO DLP instance. Where an NHS Trust or NHS Foundation Trust puts in place a sub-contract with the Framework Provider, then the DePLCM should be submitted by the Provider directly to the NHS Trust or NHS Foundation Trust that enters into the sub-contract using appropriate data submission protocols to maintain the confidentiality of the patient data (e.g., encrypted etc).

2.4 Admitted Patient Care Commissioning Data Set (APC CDS)

2.4.1 Where inpatient activity is undertaken under a contract put in place pursuant to the Framework it must be captured within an APC CDS record and submitted to NHS Digital Secondary Usage Services (SUS).

2.4.2 The CDS record must comply with the specification for the Admitted Patient Care CDS type 130 (see [DAPB0092: Commissioning Data Sets - NHS Digital](#)).

It should be noted that CDS v6.3 is due for implementation during the course of 2021/22 and all acute providers are required to have transitioned to the CDS v6.3 format by no later than 1st April 2023.

2.4.3 Inpatient activity undertaken under a contract put in place pursuant to the Framework Agreement can be submitted by:

- The Framework Provider
- The NHS Trust or NHS Foundation Trust that enters into a sub-contract with a Provider
- XML supplier on behalf of the Framework Provider

Where it is possible that the Framework Provider or an NHS Trust or NHS Foundation Trust could submit the data, it is important to clarify (and document in the contract) which organisation is going to submit the data to SUS so as to eliminate the possibility of duplicate activity reporting.

2.4.4 As detailed at paragraph 1.4 of this guidance, the provider organisation code for the activity provided under a contract put in place pursuant to the Increasing Capacity Framework is required to be the organisation that is being paid by the commissioner for the activity. Therefore, in the case of an NHS Trust or NHS Foundation Trust putting in place a sub-contract with the Framework Provider, that NHS Trust or NHS Foundation Trust must be shown as the provider organisation code.

2.3.4 It is very important that the organisation site in which the Service User is receiving the clinical care is recorded accurately. The provider site code recorded must be one that is recognised by NHS Digital Organisation Data service. It is not appropriate to use ward codes as a mechanism to distinguish different physical hospital organisation sites.

2.4.5 The APC CDS is required to be submitted to SUS on a **weekly** basis.

2.5 Outpatient Commissioning Data Set (OP CDS)

2.5.1 Where Outpatient activity is undertaken under a contract put in place pursuant to the Increasing Capacity Framework it must be captured within an OP CDS record and submitted to NHS Digital Secondary Usage Services (SUS).

2.5.2 The CDS record must comply with the specification for Outpatient CDS type 020 [DAPB0092: Commissioning Data Sets - NHS Digital](#)). It should be noted that CDS v6.3 is due for implementation during the course of 2021/22 and all acute providers are required to have transitioned to the CDS v6.3 format by no later than 1st April 2023. .

2.5.3 Outpatient activity undertaken under a contract put in place pursuant to the Increasing Capacity Framework can be submitted by:

- The Framework Provider
- The NHS Trust or NHS Foundation Trust that enters into a sub-contract with a Provider
- XML supplier on behalf of the Framework Provider

Where it is possible that the Framework Provider or an NHS Trust or NHS Foundation Trust could submit the data it is important to clarify (and document in the contract) which organisation is going to submit the data to SUS so as to eliminate the possibility of duplicate activity reporting.

2.5.4 As detailed at paragraph 1.4 of this Guidance, the provider organisation code for the activity provided under a contract put in place pursuant to the Framework Agreement is required to be the organisation that is being paid by the commissioner for the activity. Therefore, in the case of an NHS Trust or NHS Foundation Trust putting in place a sub-contract with the Framework Provider, that NHS Trust or NHS Foundation Trust must be shown as the provider organisation code.

2.5.5 The OP CDS is required to be submitted to SUS on a **weekly** basis.

2.6 Unfinished episode CDS

2.6.1 It is anticipated that all acute providers (including Framework Providers covered by this Framework Agreement) will be instructed imminently to submit unfinished episode CDS (type 190) to SUS on a weekly basis.

2.7 Diagnostic Imaging Data Set (DIDS)

2.7.1 All providers of NHS commissioned diagnostic imaging tests are required to populate the Diagnostic Imaging Data Set. This is a patient level (and identifiable) dataset which captures details of the test and associated referral. The dataset is required to be completed **monthly** and submitted via the NHS Digital Portal in xml or csv format.

2.7.2 Further information can be found here [SCC11577: Diagnostic Imaging Data Set - NHS Digital](#)

3.0 **Data Quality**

3.1 It is the responsibility of the Framework Provider to ensure that activity reporting is of high quality. Where another provider has been charged with submitting data on behalf of the Framework Provider then the Framework Provider must ensure that they are sighted on the content and quality of data submitted.

3.2 In the case of Inpatient activity, the activity is required to be fully coded using where appropriate ICD diagnosis and OPCS procedure coding to illustrate the clinical care provided.

4.0 Other useful information

4.1 Should a Framework Provider wish to find out more about how to register and submit data to the NHS Digital Data Landing Portal please see <https://digital.nhs.uk/services/data-landing-portal> .

4.2 Information about how to submit Inpatient and Outpatient CD data to SUS can be found here <https://digital.nhs.uk/services/secondary-uses-service-sus> .

4.3 Should a Framework Provider wish to utilise an XML supplier to submit data to SUS on its behalf then luVo are known to provide this service. In this instance the appropriate individual to contact to explore this topic further is lee.williams@iuvo.co.uk.

4.4 Should a Framework Provider (or an NHS Trust or NHS Foundation Trust purchasing services through the Increasing Capacity Framework) require new organisation site codes the following web link provides details of how to request new codes <https://digital.nhs.uk/services/organisation-data-service/services-provided-by-the-organisation-data-service/organisation-data-service-forms>.

Annex 3: Standard Contract and Template Sub-contract Re Pricing

Circumstances	NHS Standard Contract (ICB)	Template Sub-contract (Trust)
A Contracting Authority has undertaken a mini competition	If the price agreed for the Service is different to the relevant National Tariff price, the price will be a "Local Variation" as that term is used in Service Condition 36	The accepted price per activity will need to be set out in Schedule 3
The contract or sub-contract is for Nationally Priced Services and the information in the on-line database indicates that the Framework Provider has not submitted a discount to the National Tariff price	The relevant National Tariff price plus MFF (if applicable) will be considered the "National Price" as that term is used in Service Condition 36.	The relevant price will need to be set out in Schedule 3
The contract or sub-contract is for Nationally Priced Services and the information in the on-line database indicates that the Framework Provider has submitted a discount to the National Tariff price	The price plus MFF (if applicable) will be a "Local Variation" as that term is used in Service Condition 36	The relevant price will need to be set out in Schedule 3
The contract or sub-contract is for Nationally Priced Services and the information in the on-line database indicates that the Framework Provider has submitted percentage discounts in return for committed spend thresholds with any given Contracting Authority of £1m, £5m, and £10m	The effect of the existence of the discount means there is a "Local Variation" as that term is used in Service Condition 36	The discount will need to be set out in Schedule 3

Annex 4: Unbundling of the National Price

Arrangements for the share of unbundled prices will be for local determination between the relevant Framework Provider and Contracting Authority (NHS Trust or NHS Foundation Trust). In addition to the Sub-contract, the relevant NHS Trust or NHS Foundation Trust could enter into a further sub-sub-contract with the Framework Provider for the supply of clinical staff by the relevant NHS Trust or NHS Foundation Trust to the Framework Provider to undertake an agreed set of procedures. The default position would be that the Framework Provider would still be responsible for the procedures and would be paid up to a maximum of the National Price pursuant to the Sub-contract (taking into account any discounts offered by the Framework Provider), but the Framework Provider would pay back to the NHS Trust or NHS Foundation Trust the unbundled element for the supply of clinical staff to it pursuant to the separate sub-sub-contract.

Where NHS Trust or NHS Foundation Trust clinicians are involved in the delivery of a relevant Service by the Framework Provider, the parties will need to be expressly clear as to any effect on the default clinical governance and liability position envisaged under the Sub-contract. The parties must ensure apportionment of responsibility and liability is clearly understood between the parties and clearly recorded. Matters that may be relevant to the arrangements include but are not limited to:

- the scope of activity that the NHS clinician will undertake including clinical activity but also record keeping, responsibility for patient records, etc;
- warranties as to the qualification, training, experience and general suitability of the NHS clinician;
- under which organisations policies and procedures, the NHS clinician will act;
- what indemnity arrangements apply to the activity carried out by the NHS clinician – do the CNST/LTPS arrangements of the NHS Trust or NHS Foundation Trust apply to the acts/omissions of the NHS clinician or are they covered by the Framework Provider's indemnity arrangements;
- which organisation is responsible for the direction and supervision of the NHS clinician (both generally and while the NHS clinician is carrying out activity related to the Service);
- what indemnities need to be in place between the parties to back off liabilities;
- whether there is any impact on CQC registration and determination of which organisation is the Accountable Organisation for the Service;
- respective responsibilities of the parties in responding to complaints and litigation in relation to the Service.