



Department
for Work &
Pensions

CONTRACT

For the

**Commissioned Review for the
Research into the Occupational and Non-Malignant
Respiratory Prescriptions**

Between

The Secretary of State for Work and Pensions

And

The Institute of Occupational Medicine

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THE AGREEMENT

**This Agreement is made on
the 13th September 2021**

between the Parties of The Secretary of State for Work and Pensions
("the Authority")

And The Institute of Occupational Medicine

with registered number SC123972

having the main or registered office at Research Avenue North
Riccarton
Edinburgh EH14 4AP

("the Contractor")

and hereinafter called "the Parties"

Whereas:

The Contractor has agreed to provide a Commissioned Review for the Research into the Occupational and Non-malignant Respiratory Prescriptions (“the Services”) on the terms and conditions set out in this Contract.

The Contract Period is from 13th September 2021 to midnight of 12th September 2023, with an option to extend the contract for a further one year after expiration.

A. GENERAL PROVISIONS

A1 Definitions and Interpretation

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

“Administration” means a rescue mechanism under the Insolvency Act 1986 where a company may be rescued or reorganised or its assets realised under the protection of a statutory moratorium. The company is put into Administration and an Administrator is appointed.

“Activity Date” means the date from when activities start on the contract if this date is later than the Commencement Date.

“Approval” means the prior written consent of the Authority.

“Authority” means the Department for Work and Pensions

“Authority Data” means any Personal Data for which the Authority is the Data Controller.

“Bribery Act 2010” means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

“Commencement Date” means the date from when this Contract becomes legally binding.

“Commercially Sensitive Information” means the Information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the Authority in writing (prior to the commencement of this Contract) which has been clearly marked as Commercially Sensitive Information comprised of information:

- a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule or notification; and/or
- b) which constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Confidential Information” means:

- a) any information which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored) including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being

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confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential; and

- b) the Commercially Sensitive Information and does not include any information:
- i) which was public knowledge at the time of disclosure (otherwise than by breach of clause E4 (Confidential Information));
 - ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - iii) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or
 - iv) is independently developed without access to the Confidential Information.

“Contract” means the written agreement between the Authority and the Contractor consisting of these clauses and any attached Schedules, and any document referred to in the Schedules

“Contract Year” means a period of 12 calendar months beginning on either the Commencement Date or the anniversary of the Commencement Date.

“Contracting Body” means the Department for Work and Pensions or where the context requires any other Contracting Body as defined in the Public Contracts Regulations 2006 (as amended).

“Contractor” means the person, firm or the company with whom the Authority enters into the Contract.

“Contract Period” means the period from the Commencement Date to:

- a) the date of expiry set out in clause A2 (Initial Contract Period), or
- b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

“Contract Price” means the price (exclusive of any applicable VAT), payable to the Contractor by the Authority under the Contract, as set out in the Prices & Rates Schedule, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period).

“Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer” take the meaning given in the GDPR.

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“Crown” means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Government and The Welsh Government), including, but not limited to, government ministers, government departments, government and particular bodies, and government agencies.

“DPA 2018”: means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Data Controller” shall have the same meaning as set out in the DPA 2018.

“Data Subject” shall have the same meaning as set out in the DPA 2018.

“Data Processing” shall have the same meaning as set out in the DPA 2018.

Data Protection Legislation: (i) the GDPR, the LED 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;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Request: 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.

“Debtors” means those active employers’ liability insurers who are required to pay an annual levy based on their relative market share for the purpose of meeting the costs of the Diffuse Mesothelioma Payment Scheme (DMPS).

“Default” means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

“DPA” means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

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“DWP” means the Department for Work and Pensions including the Representatives who are named within the contract to act on behalf of DWP and the Industrial Injuries Advisory Council.

“Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“Extension Period” means a period of one (1) year from the end of the initial term of the contract.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

“Force Majeure Event” means any event, occurrence, circumstance, matter or cause affecting the performance by either Party of its obligations under the Contract arising from acts, events, omissions, happenings or non-happenings beyond reasonable control which prevent or materially delay it from performing its obligations under the Contract but excluding: i) any industrial dispute relating to the Contractor, the Contractor’s Staff (including any subsets of them); ii) any event, occurrence, circumstance, matter or cause which is attributable to the wilful act, neglect or failure to take reasonable precautions against it by the Party concerned; and, iii) any failure caused by lack of funds.

“Fraud” means any offence under laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract or defrauding or attempting to defraud or conspiring to defraud the Crown.

“GBP” means British Pounds Sterling the official currency of the United Kingdom.

“GDPR” means the General Data Protection Regulation 2018.

“Good Industry Practice” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

“IIAC” means the Industrial Injuries Advisory Council.

“Information” has the meaning given under section 84 of the FOIA.

“Initial Contract Period” means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

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“Intellectual Property Rights (IPR)” means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel” means those persons named in the Schedule1, Appendix B.

“Law” means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

“LED” means Law Enforcement Directive (*Directive (EU) 2016/680*)

“Liquidation” means the appointment of a Liquidator who collects in and distributes the company's assets and dissolves the company. The company can also be put into provisional Liquidation before a final winding up order is granted.

“Loss” means direct losses, liabilities, claims, damages, costs, charges, outgoings and expenses (including legal expenses) of every description, provided in each case that such losses are reasonable, direct, proper and mitigated.

“Malicious Software” means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.

“Management Information” means the management information specified in Schedule 1 Appendix D.

“Milestone” means an event or task described in Schedule 1 which, if applicable, shall be completed by the relevant milestone date.

“Milestone Payment” means a payment identified in Schedule 4 (Prices and Rates) to be made following the achievement of a Milestone.

“Monitoring Requirements Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month and “monthly” shall be interpreted accordingly.

“Party” means a party to the Contract.

“Parties” means the Contractor and the Authority privy to the contract.

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“Persistent Breach” means a Default which has occurred on three or more separate occasions with a continuous period of six (6) months.

“Personal Data” shall have the same meaning as given in the GDPR.

“Premises” means the location where the Services are to be supplied, as set out in the Specification.

“Prices & Rates Schedule” means the Schedule 4 containing details of the Contract Price.

“Protective Measures”: appropriate technical and organisational measures which may include: pseudonyms and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 6 (Security).

“Quarter” means the first three Service Periods and each subsequent three Service Periods (save that the final Quarter shall end on the date of termination or expiry of this Agreement).

“Regulatory Bodies” means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Authority and “Regulatory Body” shall be construed accordingly.

“Replacement Contractor” means any third party service provider appointed by the Authority to supply any services which are substantially similar to any of the Services and which the Authority receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

“Representative” means the person(s) nominated by the Authority to act on its behalf and on the behalf of the Industrial Injuries Advisory Council.

“Request for Information” shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

“Schedule” means a schedule attached to, and forming part of, the Contract.

“Security Plan” means the Contractor’s security plan prepared pursuant to paragraph 3 of Schedule 6 (Security Requirements & Plan)

“Security Policy” means the Authority’s Security Policy annexed to Schedule 6 (Security Requirements and Plan) as updated from time to time.

“Services” means any and all of the services to be provided by the Supplier under this Agreement, including those set out in Schedule 1 and as specified in the Specification.

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“Specification” means the description of the Services to be supplied under the Contract as referred to in Schedule 1, The Services, including, where appropriate, the Key Personnel, and the Premises.

“Staff” mean all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and Sub-contractors used in the performance of its obligations under the Contract.

“Staff Vetting Procedure” means the Authority’s procedures for the vetting of personnel and as advised to the Contractor by the Authority.

“Sub-contractor” means any third party appointed by the Contractor under clause F1.1 which through its employees or agents directly delivers the Services and declared in Schedule 1 Appendix C and Appendix D.

“Sub-processor”: any third Party appointed to process Personal Data on behalf of that Processor related to this Agreement

“Term” means the period commencing on the Effective Date and ending on the expiry of the Initial Term or any Extension Period or on earlier termination of this Agreement.

“Termination Date” means the date set out in a Termination Notice on which this Agreement) or a part of it as the case may be) is to terminate.

“Termination Notice” means a written notice of termination given by one party to the other, notifying the Party receiving the notice of the intention of the Party giving the notice to terminate this Agreement (or any part thereof) on a specified date and setting out the grounds for termination.

“TUPE Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006, as amended.

“Variation” has the meaning given to it in clause F3.1 (Variation).

“VAT” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“Working Day” means any day (other than a Saturday or Sunday) or public holiday in England and Wales.

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A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- a) Words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- b) Words importing the masculine include the feminine and the neuter;
- c) Reference to a clause is a reference to the whole of that clause unless stated otherwise;
- d) Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- e) Reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- f) The words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”;

Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 Initial Contract Period

The Contract shall expire automatically on the second anniversary of the Commencement Date unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

A3 Contractor's Status

At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the Terms of the Contract.

A4 Authority's Obligations

Save as otherwise expressly provided, the obligations of the Authority under the Contract are obligations of the Authority in its capacity as a contracting counterparty. Nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Authority in any other capacity, nor shall the exercise by the Authority of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Authority to the Contractor.

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A5 Notices

- A5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.
- A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail. Such letters shall be addressed to the other Party in the manner referred to in clause A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters, or item of electronic mail.
- A5.3 For the purposes of clause A5.2, the address of each Party shall be:
- a) For the Authority: **Department for Work and Pensions**
Address: **Caxton House, Tothill Street, London, SW1H 9NA**
For the attention of: **Redacted**
Email: **Redacted**
 - b) For the Contractor: **Institute of Occupational Medicine**
Address: **Research Avenue North, Ricarton, Edinburgh, EH14 4AP**
For the attention of: **Redacted**
Tel: **0131 4498033**
Email: **Redacted**
- A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Authority by the Contractor in connection with the supply of the Services and shall pay the Authority any extra costs occasioned by the Authority by any discrepancies, errors or omissions therein.

A7 Conflicts of Interest

- A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The Contractor will promptly disclose to the Authority full particulars of any such conflict of interest which may arise.
- A7.2 The Authority reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Authority under the provisions of the Contract. The actions of the Authority

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pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.

A7.3 This clause A7 shall apply during the continuance of the Contract and for a period of two (2) years after its termination.

A8 Prevention of Fraud

A8.1 The Authority places the utmost importance on the need to prevent fraud and irregularity in the delivery of this Contract. Contractors and Sub-contractors are required to (if more than one individual is involved in the performance of the Contract);

- a) Have an established system that enables Contractor and Sub-contractor staff to report inappropriate behaviour by colleagues in respect of contract performance claims;
- b) Ensure that Contractor or Sub-contractors performance management systems do not encourage individual staff to make false claims regarding achievement of contract performance targets;
- c) Ensure a segregation of duties within the Contractor's or Sub-contractors operation between those employees directly involved in delivering the service/goods performance and those reporting achievement of contract performance to the Authority;
- d) Ensure that an audit system is implemented to provide periodic checks, as a minimum at six (6) Monthly intervals, to ensure effective and accurate recording and reporting of contract performance.

A8.2 The Contractor shall use its best endeavours to safeguard the Authority's funding of the Contract against fraud generally and, in particular, fraud on the part of the Contractor's directors, employees or Sub-contractors (as applicable). The Contractor shall pay the utmost regard to safeguarding public funds against misleading claims for payment and shall notify the Authority immediately if it has reason to suspect that any serious irregularity or fraud has occurred or is occurring.

A8.3 If the Contractor, its Staff or its Sub-contractors commits Fraud in relation to this or any other contract with the Crown (including the Authority) the Authority may:

- a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- b) recover in full from the Contractor any other loss sustained by the Authority in consequence of any breach of this clause.

A8.4 Any act of fraud committed by the Contractor or its Sub-contractors (whether under this Contract or any other contract with any other Contracting Body) shall entitle the

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Authority to terminate this Contract, and any other contract the Authority has with the Contractor, by serving written notice on the Contractor.

- A8.5 If the Authority finds that the Contractor has deliberately submitted false claims for Contract payments with the knowledge of its senior officers the Authority will be entitled to terminate this Contract, or any other contract the Authority has with the Contractor, with immediate effect.

A9 Volumes

The Contractor acknowledges and has submitted its Tender on the understanding that no guarantee is given by the Authority in respect of levels or values of Services referred to in the Schedules which are indicative only and shall not be binding on the Authority.

B. SUPPLY OF SERVICES

B1 The Services

- B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Authority's requirements as set out in the Specification, the Contractor's service delivery proposal (Appendix F to Schedule1), and the provisions of the Contract in consideration of the payment of the Contract Price.
- B1.2 The Contractor must co-operate with the Authority on all aspects connected with the delivery of the Services and comply with any reasonable instructions from the Authority.
- B1.3 The Contractor must allocate sufficient resources and appropriate expertise to the Contract.
- B1.4 If the Authority informs the Contractor in writing that the Authority reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Authority, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Authority.
- B1.5 Late delivery of the Services will be a default of the Contract.

B2 Provision and Removal of Equipment

- B2.1 The Contractor shall procure and provide all the Equipment necessary for the supply of the Services at its own expense.

B3 Manner of Carrying Out the Services

- B3.1 To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Authority prior to the supply of the Services and in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

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- B3.2 The Contractor shall provide and ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.
- B3.3 The Authority will conduct a review of the performance of this contract at least annually during the Contract Period. During this review, a performance report will be agreed.
- B3.4 The Contractor shall, in connection with the provision of the Services, use reasonable endeavours to;
- a) comply and procure that its sub-contractors comply with Supplier Code of Conduct appearing at;
https://assets.publishing.service.gov.uk/government/uploads/attachment_data/file/779660/2010220-Supplier_Code_of_Conduct.pdf) and such other corporate social responsibility requirements as the Authority may notify to the Contractor from time to time; and
 - b) not use nor allow its sub-contractors to use modern slavery, child labour or inhumane treatment.

B4 Key Personnel

- B4.1 Key personnel appointed by the Contractor to administer the contract and deliver the services are declared in Schedule 1 Appendix A.

B5 Contractor's Staff

- B5.1 The Authority may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Authority's Premises:

- a) any member of the Staff; or
- b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Authority, be undesirable.

- B5.2 At the Authority's written request, the Contractor shall provide a list of the names and business addresses of all persons who may require admission in connection with the Contract to the Authority's Premises, within seven (7) Working Days from date of request, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Authority may reasonably request.
- B5.3 The decision of the Authority as to whether any person is to be refused access to the Authority's Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.
- B5.4 The Contractor and Staff, engaged within the boundaries of the Authority's Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Authority's Premises.

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- B5.5 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor shall have complied with the Staff Vetting Procedures prior to commencing the Services and accessing the Premises.
- B5.6 The Contractor shall provide training on a continuing basis for all Contractor Staff employed or engaged in the provision of the Services in compliance with the Security Policy and Security Plan (as applicable).
- B5.7 The Contractor shall be responsible for ensuring that its staff are not claiming any Social Security Benefit, where payment of that Social Security Benefit is precluded due to earnings.
- B5.8 The Contractor shall further use all reasonable endeavours to ensure that all Staff are legally entitled to be resident in the United Kingdom and have a work permit, where applicable. The Contractor shall promptly take all reasonable steps to ensure compliance with this clause.
- B5.9 Without prejudice to clause B5.2, if the Contractor fails to comply with clause B5 in the reasonable opinion of the Authority, such failure may be prejudicial to the interests of the Crown, then the Authority may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Authority.
- B5.10 The Contractor Staff involved in the performance of the Contract must be appropriately trained and qualified.
- B5.11 The Contractor indemnifies the Authority against all claims brought by any person employed by the Contractor, caused by an act of omission of the Contractor or any Contractor Staff or Sub-Contractor.

B6 Employee Provisions on Expiry or Termination

Handover on Termination

- B6.1 During the six (6) Months preceding the expiry of this Contract or after the Authority has given notice to terminate this Contract or at any other time as directed by the Authority, and within fifteen (15) Working Days of being so requested by the Authority, the Contractor shall fully and accurately disclose to the Authority and shall procure that any relevant Sub-contractor shall accurately disclose any and all information in relation to all personnel engaged in providing the Services, (whether engaged by the Contractor or any Sub-contractor) including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Authority may request, in particular but not necessarily restricted to any of the following:
- a) a list of employees employed by the Contractor, or any Sub-contractor;
 - b) a list of agency workers, agents and independent contractors engaged by the Contractor;

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- c) the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel;
- d) the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, accrued holiday entitlement, pension details, location, retirement age, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- e) details of any current disciplinary or grievance proceedings ongoing or circumstances likely to give rise to such proceedings and details of any claims current or threatened; or
- f) details of all collective agreements with a brief summary of the current state of negotiations with such bodies and with details of any current industrial disputes and claims for recognition by any trade union

B6.2 Where information has been provided in accordance with clause B6.1 above and the Contractor or Sub-contractor makes or becomes aware of any changes or discovers new information the Contractor shall notify the Authority within seven (7) days of any such change or discovery.

B6.3 The Contractor shall warrant the accuracy and completeness of all the information provided to the Authority pursuant to clause B6 and authorises the Authority to use any and all the information as it may consider necessary for the purposes of its businesses or for informing any tenderer for any services which are substantially the same as the Services (or any part thereof).

B6.4 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall allow the Authority or such other persons as may be authorised by the Authority to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Authority may reasonably request.

B6.5 During the six (6) Months preceding the expiry of this Contract or where notice to terminate this Contract for whatever reason has been given, the Contractor shall not without the prior written consent of the Authority unless bona fide in the ordinary course of business:

- a) vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
- b) increase or decrease the number of employees employed in connection with the Services; or
- c) assign or redeploy any employee employed in connection with the Services to other duties unconnected with the Services.

B6.6 The Contractor confirms that it will comply fully with its obligations under the TUPE Regulations in respect of providing information to any subsequent Contractor and hereby warrants that any information provided in accordance with Regulation 11 shall be accurate and complete.

Indemnity

- B6.7 The Contractor shall indemnify the Authority and any Replacement Contractor appointed by the Authority and keep the Authority and any Replacement Contractor appointed by the Authority indemnified in full from and against all direct, indirect or consequential liability or Loss awarded against or incurred or paid by the Authority or any Replacement Contractor appointed by the Authority as a result of or in connection with:
- (a) the employment or termination of employment of any Relevant Employee or employee of any Sub-contractor during any period prior to and including the date of expiry or termination of this Contract.
 - (b) any claim brought against the Authority or any Replacement Contractor as a result of the Contractors failure to comply with any of its obligations under the TUPE Regulations.
- B6.8 Notwithstanding any other provisions of this Contract for the purposes of clause B6.7 to B6.9, and in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties accept that any Replacement Contractor shall be entitled to enforce the benefits conferred by it here under. Provided that if the Parties rescind this Contract or vary any of its terms (including any release or compromise in whole or in part) in accordance with the relevant provisions of this Contract or terminate this Contract, the consent of any Replacement Contractor shall not be required for such rescission, variation of termination.
- B6.9 This Clause B6 shall apply during the Contract Period and indefinitely thereafter.

C. PAYMENT AND CONTRACT PRICE

C1 Contract Price

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Authority shall pay the Contract Price in accordance with clause C2 (Payment and VAT).
- C1.2 The Authority shall, in addition to the Contract Price and following evidence of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

C2 Payment and VAT

- C2.1 The Authority shall pay all sums due to the Contractor within thirty (30) days of receipt of a valid invoice, submitted twice yearly, in advance. All payments are in Pounds Sterling GBP.
- C2.2 The Authority shall pay all sums by direct credit transfer into a suitable bank account or by other electronic payment methods as appropriate.
- C2.3 The Contractor shall ensure that each invoice contains a valid purchase order number. All appropriate references and a detailed breakdown of the Services supplied and any

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other documentation reasonably required by the Authority to substantiate the invoice should be supplied in accordance with Schedule 2.

- C2.4 Where the Contractor enters into a sub-contract for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the Sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.
- C2.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Authority shall pay the VAT to the Contractor following its receipt of a valid VAT invoice.
- C2.6 The Contractor shall indemnify the Authority on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Authority at any time in respect of the Contractor's failure to account for or to pay any VAT or other taxes relating this Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Authority.
- C2.7 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Authority on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- C2.8 Where payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Contractor is disputed, this dispute shall be resolved in accordance with the disputed claims procedure as set out in Schedule 2.

C3 Recovery of Sums Due

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Authority in respect of any breach of the Contract), the Authority may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Authority.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Authority without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Authority to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period

- C4.1 The Contract Price shall apply for the Initial Contract Period and any Extension of the Initial Contract Period. In the event that the Authority agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period), and there is a change to the Services to be provided during such Extension, the Authority may, where applicable, in the six (6) Month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than thirty (30) Working Days) to agree a variation in the Contract Price. For the avoidance of doubt both Parties accept and acknowledge that any Variation to the Contract Price shall not have the effect of altering the economic balance of the Contract during the period of extension in favour of the Contractor in a manner not provided for in the terms of the Contract.
- C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.
- C4.3 If a variation in the Contract Price is agreed between the Authority and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension.
- C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Prices & Rates Schedule) between the Commencement Date and the date six (6) Months before the end of the Initial Contract Period.

C5 Euro

- C5.1 Any requirement of Law to account for the Services in Euro (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor at nil charge to the Authority.
- C5.2 The Authority shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

C6 Third Party Revenue

- C6.1 The Contractor may not obtain any third party revenue, income or credit based on the Services and/or copyright works delivered under this Contract without the express prior written agreement of the Authority.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Bribery and Corruption

D1.1 The Contractor shall not, and shall procure that any Staff shall not, commit any of the prohibited acts listed in this clause D1. For the purposes of this clause D1, a prohibited act is committed when the Contractor or any Staff:

- a) directly or indirectly offers, promises or gives any person working for or engaged by the Authority a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- b) directly or indirectly requests, agrees to receive or accepts any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
- c) commits any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the Authority; or
 - (iv) defrauding, attempting to defraud or conspiring to defraud the Authority

D1.2 The Contractor warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Authority, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the Authority before execution of the Contract.

D1.3 The Contractor shall if requested, provide the Authority with any reasonable assistance, at the Authority's reasonable cost, to enable the Authority to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010.

D1.4 The Contractor shall have an anti-bribery policy which is intended to deter any Staff (if the Contractor employs Staff), from committing any prohibited acts as set out in clause D1.1 and a copy of this shall be provided to the Authority upon request.

D1.5 If any breach of clauses D1.1 or D1.2 is suspected or known, the Contractor must notify the Authority immediately.

D1.6 If the Contractor notifies the Authority that it suspects or knows that there may be a breach of clauses D1.1 or D1.2, the Contractor must respond promptly to the Authority's enquiries, co-operate with any investigation, and allow the Authority to audit books, records and any other relevant documentation.

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D1.7 If the Contractor, its Staff or anyone acting on the Contractor's behalf engages in conduct prohibited by clauses D1.1 or D1.2, the Authority may;

- a) terminate the Contract and recover from the Contractor the amount of any Loss suffered by the Authority resulting from the termination, including the cost reasonably incurred by the Authority of making other arrangements for the supply of the Services and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period; or
- b) recover in full from the Contractor any other Loss sustained by the Authority in consequence of any breach of those clauses.

D1.8 Despite clause I (Disputes and Law), any dispute relating to:

- a) the interpretation of clause D1; or
- b) the amount or value of any gift, consideration or commission, shall be determined by the Authority, acting reasonably having given due consideration to all relevant factors, and its decision shall be final and conclusive.

D1.9 Any termination under clause D1.7 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Authority.

D1.10 In exercising its rights or remedies under clause D1.7, the Authority shall:

- a) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the identity of, the person performing the conduct prohibited by clauses D1.1 or D1.2;
- b) give all due consideration, where appropriate, to action other than termination of the contract

D2 Discrimination

D2.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex or sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D2.2 The Contractor shall take all reasonable steps to secure the observance of clause D2.1 by all Staff.

D2.3 The Contractor shall comply with the provisions of the Human Rights Act 1998.

D2.4 The Contractor shall use reasonable endeavours to support the Authority in fulfilling its Public Sector Equality duty under S149 of the Equality Act 2010.

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D3 The Contracts (Rights of Third Parties) Act 1999

A person who is not a party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

D4 Environmental Requirements

D4.1 The Contractor shall, perform its obligations under the Contract in accordance with the Authority's environmental principles, which are to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances, minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D5 Health and Safety

D5.1 The Contractor shall promptly notify the Authority of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract.

D5.2 While on the Authority's Premises, the Contractor shall comply with any health and safety measures implemented by the Authority in respect of Staff and other persons working there.

D5.3 The Contractor shall notify the Authority immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.

D5.4 The Contractor shall comply with the requirements of the Health and Safety at Work Act etc.1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.

D5.5 The Contractor shall ensure that its health and safety policy statement if applicable (as required by the Health and Safety at Work Act etc.1974) is made available to the Authority on request.

E. PROTECTION OF INFORMATION

E1 Authority Data

E1.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Authority Data.

E1.2 The Contractor shall not store, copy, disclose, or use the Authority Data except as necessary for the performance by the Contractor of its obligations under this Contract or as otherwise expressly authorised in writing by the Authority.

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- E1.3 To the extent that Authority Data is held and/or processed by the Contractor, the Contractor shall supply that Authority Data to the Authority as requested by the Authority.
- E1.4 The Contractor shall take responsibility for preserving the integrity of Authority Data and preventing the corruption or loss of Authority Data.
- E1.6 The Contractor shall ensure that any system or media on which the Contractor holds any Authority Data, including back-up data, is a secure system that complies with the Security Policy detailed in Appendix A to Schedule 6.
- E1.7 If the Authority Data is corrupted, lost or sufficiently degraded as a result of the Contractor's default so as to be unusable, the Authority may;
- a) require the Contractor (at the Contractor's expense) to restore or procure the restoration of the Authority Data or Personal Data and the Contractor shall do so as soon as practicable. and/or;
 - b) itself restore or procure the restoration of the Authority Data or Personal Data, and shall be repaid by the Contractor any reasonable expenses incurred in doing so.
- E1.8 If at any time the Contractor suspects or has reason to believe that the Authority Data or Personal Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Contractor shall notify the Authority immediately and inform the Authority of the remedial action the Contractor proposes to take.
- E1.9 In accordance with the DWP Offshoring Policy and while not in any way limiting any other provision of this Contract, the Contractor, or any of its Sub-contractors, shall not process, host at or access Authority Data from premises outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question.
- E1.10 Where the Authority has given its prior written consent to the Contractor to process, host or access Authority Data from premises outside the United Kingdom (in accordance with E1.9 of the Contract):
- (a) the Contractor must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data;
 - (b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption."
- E1.11 Any breach by the Contractor of this clause E1 shall be a material breach for the purposes of clause H2 (Termination on Default) and shall entitle the Authority (at its

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absolute discretion) to exercise its rights under the corresponding provisions of clause H2 (Termination on Default).

E1.12 In the event the Contractor is put into Liquidation as outlined in clause H1.1(b) and H1.1(c) or the Contract is terminated by the Authority pursuant to the provisions of the Contract relating to termination on insolvency in accordance with clause H1.1, the Contractor (or a liquidator or provisional liquidator acting on behalf of the Contractor) shall at its own cost, and at no cost to the Authority:

- a) conduct a full and thorough search for any electronic and paper records held by the Contractor which contain Authority customer information; in accordance with the Authority instructions;
- b) return all such records to the Authority in accordance with their instructions;
- c) permanently destroy all copies of any relevant electronic records; and
- d) provide written confirmation to the Authority that the actions outlined above in this paragraph have been completed.

E1.13 In the event of a Sub-contractor of the Contractor being in liquidation (in accordance with clause F1.2) then it is the responsibility of the Contractor to recover records held by the Sub-contractor and provide assurance to the Authority that they have been recovered.

E1.14 In the event the Contractor is put into Administration as outlined in clause H1.1(a) the Authority will work closely with the Administrator to ensure the Contractor is able to maintain Authority customer and other records they have created and held in accordance with clause E1 of this contract and maintain these standards in the safekeeping of Authority information i.e. these records must be stored in accordance with Authority information assurance and HMG Cabinet Office information security standards.

E1.15 Whilst in Administration the duty of the Administrator is to help the Contractor trade. This may involve the Administrator seeking an organisation to buy up the Contractor. The assignment or novation of this contract to new ownership is not automatic and the Authority must be consulted (in accordance with clause F1.1) and prior approval obtained from the Authority before assignment or novation may take place.

E2 Protection of Personal Data

DATA PROTECTION

E2.1 The Contractor and the Authority will comply at all times with their respective obligations under Data Protection Legislation.

E2.2 To the extent that the Contractor and the Authority share any Personal Data for the

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purposes of this Contract, the Parties accept that they are each a separate independent Controller. in respect of such Personal Data each Party;

- a) shall comply with the applicable Data Protection Legislation in respect of their processing of such Personal Data;
- b) will be individually and separately responsible for its own compliance; and;
- c) do not and will not process any Personal Data as Joint Controllers.

E2.3 Each Party shall, with respect to its processing of Personal Data as independent Controller, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) (a), (b), (c) and (d) of the GDPR, and the measures shall at a minimum, comply with the requirements of the Data Protection Legislation, including Article 32 of GDPR.

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E3 Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989

E3.1 The Contractor shall comply with, and shall ensure that its Staff comply with, the provisions of:

- a) the Official Secrets Acts 1911 to 1989; and
- b) Section 182 of the Finance Act 1989.

E3.2 In the event that the Contractor or its Staff fails to comply with this clause, the Authority reserves the right to terminate the Contract by giving notice in writing to the Contractor.

E4 Confidential Information

E4.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- a) treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- b) not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.

E4.2 Clause E4 shall not apply to the extent that;

- a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E5 (Freedom of Information);
- b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- c) such information was obtained from a third party without obligation of confidentiality;
- d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- e) it is independently developed without access to the other Party's Confidential Information.

E4.3 The Contractor may only disclose the Authority's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E4.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Authority's Confidential Information received otherwise than for the purposes of this Contract.

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- E4.5 At the written request of the Authority, the Contractor shall procure that members of Staff or such professional advisors or consultants identified by the Authority give a confidentiality undertaking before commencing any work in accordance with this Contract.
- E4.6 Nothing in this Contract shall prevent the Authority from disclosing the Contractor's Confidential Information:
- a) to any government department or any other Contracting Body. All government departments or Contracting Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other Contracting Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any Contracting Body;
 - b) to any consultant, contractor or other person engaged by the Authority or any person conducting a Cabinet Office gateway review;
 - c) for the purpose of the examination and certification of the Authority's accounts; or
 - d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority has used its resources.
- E4.7 The Authority shall use all reasonable endeavours to ensure that any government department, Contracting Body, employee, third party or Sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E4 is made aware of the Authority's obligations of confidentiality.
- E4.8 Nothing in this clause E4 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- E4.9 In the event that the Contractor fails to comply with clauses E4.1-3, the Authority reserves the right to terminate the Contract with immediate effect by notice in writing.
- E4.10 Clauses E4.1-6 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.
- E4.11 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA.

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E4.12 Notwithstanding any other term of this Contract, the Contractor hereby gives consent for the Authority to publish the Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the Contract, to the general public.

E5 Freedom of Information

E5.1 The Contractor acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Authority to enable the Authority to comply with its Information disclosure obligations.

E5.2 The Contractor shall and shall procure that its Sub-contractors shall;

- a) transfer to the Authority all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
- b) provide the Authority with a copy of all Information in its possession or power in the form that the Authority requires within five (5) Working Days (or such other period as the Authority may specify) of the Authority's request; and
- c) provide all necessary assistance as reasonably requested by the Authority to enable the Authority to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

E5.3 The Authority shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

E5.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Authority.

E5.5 The Contractor acknowledges that (notwithstanding the provisions of clause E5) the Authority may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services;

- a) in certain circumstances without consulting the Contractor; or
- b) following consultation with the Contractor and having taken their views into account;

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provided always that where E5.5 (a) applies the Authority shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

- E5.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Authority to inspect such records as requested from time to time.
- E5.7 The Contractor acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Authority may be obliged to disclose it in accordance with clause E5.5.

E6 Publicity, Media and Official Enquiries

- E6.1 The Contractor shall not:

- a) make any press announcements or publicise this Contract or its contents in any way; or
- b) use the Authority's name or brand in any promotion or marketing or announcement of orders;

without the written consent of the Authority, which shall not be unreasonably withheld or delayed.

- E6.2 Where applicable, the Authority shall give advance notice of proposed visits to the Contractor's premises or any premises of its Sub-contractors (including proposed visits of Members of Parliament, members of the press and media) to observe the delivery of the Service(s) by the Contractor or its Sub-contractors.
- E6.3 If so requested by the Authority the notepaper and other written material of the Contractor and Sub-contractors relating to the delivery of the Services(s) shall carry only logos and markings approved by the Authority. This may include, but shall not be limited to, such banner or logo as the Authority shall use to identify the Service(s) ("Trade Mark") from time to time. All publicity and marketing material produced by the Contractor (or its Sub-contractors) in relation to this Contract shall be submitted to the Authority for approval, and no such items shall be printed (other than for approval purposes) until such approval is received.

E7 Security

- E7.1 The Contractor shall take all measures necessary to comply with the provisions of any enactment relating to security that may be applicable to the Contractor in the performance of the Services.
- E7.3 The Contractor shall comply, and shall procure the compliance of the Staff, with the Security Plan.

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- E7.4 The Authority shall notify the Contractor of any changes or proposed changes to the Security Plan.

E8 Intellectual Property Rights

- E8.1 Save as granted under the Contract, neither the Authority nor the Contractor shall acquire any right, title or interest in the other's pre-existing Intellectual Property Rights. The Contractor gives the Authority a non-exclusive perpetual, royalty-free, irrevocable, transferable worldwide licence to use, change and sub-licence the Contractor's pre-existing Intellectual Property Rights to the extent necessary to receive and use any new Intellectual Property Rights created pursuant to the Services.
- E8.2 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, reports or other material:
- a) furnished to or made available to the Contractor by or on behalf of the Authority shall remain the property of the Authority; and
 - b) prepared or created by or for the Contractor, in relation to the performance by the Contractor of its obligations under the Contract are the property of the Authority.
- E8.3 The Contractor shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the Authority reasonable requires from time to time for the purpose of effecting clause E8.2(b).
- E8.4 If any claim is made against the Authority for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply of the Services (an "IPR Claim"), then the Contractor indemnifies the Authority against all losses, damages, costs or expenses (including professional fees and fines) incurred as a result of the IPR Claim.
- E8.5 If an IPR Claim is made or anticipated the Contractor must at its own expense and at the Authority's sole option, either;
- a) obtain for the Authority the rights in clauses E8.1 and E8.2 without infringing any third party intellectual property rights;
 - b) replace or modify the relevant item with substitutes that do not infringe intellectual property rights without adversely affecting the provision of the Services.

E9 Audit and the National Audit Office

- E9.1 The Contractor shall keep and maintain until six (6) years after the end of the Contract Period, or such longer period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Authority, and all payments made by the Authority. The Contractor shall on request afford the Authority or the

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Authority's representatives such access to those records as may be requested by the Authority in connection with the Contract.

- E9.2 The Contractor (and its agents) shall permit the Controller and Auditor General (and his appointed representatives) access free of charge during normal business hours on reasonable notice to all such documents (including computerised documents and data) and other information as the Comptroller and Auditor General may reasonably require for the purpose of his financial audit of the Authority and for carrying out examinations into the economy, efficiency and effectiveness with which the authority has used its resources. The Contractor shall provide such explanations as are reasonably required for these purposes. This clause does not constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Contractor under Section 6(3) (d) and (5) of the National Audit Act 1983.

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

- F1.1 Except where F1.4 and F1.5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract.
- F1.2 The Contractor shall be responsible for the acts and omissions of its Sub-contractors as though they are its own.
- F1.3 Where the Authority has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Authority, be sent by the Contractor to the Authority as soon as reasonably practicable.
- F1.4 -1.7 not used
- F1.8 Subject to clause F1.10, the Authority may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to;
- a) any Contracting Body;
 - b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Authority; or
 - c) any private sector body which substantially performs the functions of the Authority,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.9 Any change in the legal status of the Authority such that it ceases to be a Contracting Body shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Authority.

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F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.8 to a body which is not a Contracting Body or if there is a change in the legal status of the Authority such that it ceases to be a Contracting Body (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):

- a) the rights of termination of the Authority in clauses H1 (Termination on Insolvency and Change of Control) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Authority may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Authority shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A5 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Changes to the Contract

F3.1. No change, amendment, variation, restatement or supplement to this Contract shall be effective unless it is made in writing in accordance with the Change Control Procedure set out in Schedule 8 and signed on behalf of the Parties.

F3.2 Save as provided in clause F3.1 and F3.4 below, the Parties acknowledge

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and agree that no Contract Change or Operational Change may be made to this Contract which has the effect of:

- (a) rendering this Contract materially different in character from this Contract as at the Commencement Date;
- (b) changing the economic balance of this Contract in favour of the Contractor in a manner which is not provided for in this Contract as at the Commencement Date; or
- (c) extending the scope of this Contract considerably unless such Contract Change or Operational Change is otherwise permitted under Regulation 72 of the Public Contracts Regulations 2015.

F3.3 The Parties may agree to make a Contract Change or Operational Change or Substantial Change to this Contract where such change is provided for in the Contract (but not limited to):

- (a) any modification required as a consequence of, or in connection with, changes from time to time to the Authority's administrative or operational structures or procedures;
- (b) any modification required as a consequence of, or in connection with, changes from time to time to any of the Authority's:
 - (i) Information Security Policy;
 - (ii) Physical Security Policy; or
 - (iii) Acceptable Use Policy
- (c) any modification required as a consequence of, or in connection with, any Transfer of Functions Order;
- (d) any waiver (whether permanent or temporary or conditional or unconditional) by a Party of any of its rights under this Contract;
- (e) any settlement and/or compromise agreement entered into in respect of this Contract;
- (f) any modification required as a consequence of, or in connection with, changes in applicable Law; and
- (g) any consequential modifications to this Contract required to give effect to any Contract Change, Operational Change or Substantial Change made pursuant to this clause F3.3.

F3.4 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in the Fees as the result of:

- (a) a General Change in Law; or

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- (b) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Commencement Date.

F3.5 If a Specific Change in Law occurs or will occur during the Contract Period:

- (a) the Contractor shall notify the Authority as soon as reasonably practicable of the likely effects of that change, including:
 - (i) whether any Contract Change, Operational Change or Substantial Change is required to the Services, the Fees or this Contract; and
 - (ii) whether any relief from compliance with the Contractor's obligations is required; and
 - (iii) the Contractor shall provide the Authority with evidence:
 - (iv) that the Contractor has minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its Sub-contractors;
 - (v) as to how the Specific Change in Law has affected the cost of providing the Services; and
 - (vi) demonstrating that any expenditure that has been avoided has been taken into account in amending the Fees; and;
 - (vii) any variation in the Fees or relief from the Contractor's obligations resulting from a Specific Change in Law shall be implemented in accordance with the Change Control Procedure. For the avoidance of doubt, the Authority shall not be obliged to accept any variation in the Fees requested pursuant to this clause and the Authority shall not be obliged to accept any Contract Change, Operational Change or Substantial Change except to the extent that such Contract Change, Operational Change or Substantial Change is necessary for the Contractor or the Services to comply with any Change in Law.

F4 Severability

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

F5 Remedies in the Event of Inadequate Performance

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under

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the Contract, the Authority shall take all reasonable steps to investigate the complaint. Without prejudice to its other rights and remedies under the Contract, the Authority may, in its sole discretion, uphold the complaint and take further action in accordance with clause F5.2 or clause H2 (Termination on Default) of the Contract.

F5.2 In the event that the Authority is of the reasonable opinion that there has been a Default which is a material breach of the Contract by the Contractor, then the Authority may, without prejudice to its rights and remedies under the Contract including under clause H2 (Termination on Default), do any of the following:

- a) require the Contractor to submit a performance improvement plan detailing why the breach has occurred and how it will be remedied within ten (10) Working Days or such other period of time as the Authority may direct;
- b) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Authority that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- c) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- d) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F5.3 Without prejudice to clause C3 (Recovery of Sums Due) and subject to clause G1.4, the Contractor shall pay to the Authority a sum equal to any costs reasonably incurred by the Authority in the event that the Authority makes alternative arrangements for the supply of any part of the Services by the Authority or a third party pursuant to clause[s] F5.2 (b), F5.2 (c) or F5.2(d) above to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Authority shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within ten (10) Working Days or such other period of time as the Authority may direct.

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F5.5 In the event that:

- a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Authority or prevents the Authority from discharging a statutory duty; or
- b) the Contractor persistently fails to comply with clause F5.4 above, the Authority may terminate the Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

F7 Monitoring of Contract Performance

The Contractor shall comply with the monitoring arrangements set out in the Monitoring Requirements Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

F8 Extension of Initial Contract Period

The Authority may, by giving written notice to the Contractor not less than **six (6)** Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of any length up to 2 years. The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

F9 Entire Agreement

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- a) the clauses of the Contract (standard terms and conditions);
- b) the Appendix E to Schedule 1 (the Specification);
- c) Schedules (in the order in which they appear in the Contract) and,
- d) any other document(s) referred to in the clauses of the Contract.

G. LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

- a) death or personal injury caused by its negligence; or
- b) bribery or fraud by it or its employees; or
- c) fraudulent misrepresentation; or
- d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982; or
- e) any liability that cannot be excluded or limited by Law; or
- f) any liability arising from clauses B5.11, C2, E2, or E8; or
- g) any failure to act in accordance with the Law when carrying out this Contract; or
- h) any wilful misconduct, or non-payment of tax by the Contractor in relation to this Contract.

G1.2 Subject to clause G1.3 the Contractor shall indemnify the Authority and keep the Authority indemnified fully

- a) in respect of any personal injury or loss of or damage to tangible property incurred by the Authority or its employees and agents to the extent that such personal injury or loss of property is directly caused by any Default of the Contractor, its employees, agents or Sub-contractors or by circumstances within its or their control in connection with the performance or purported performance of the Contract; and
- b) against all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) and any other liabilities in respect of any personal injury or damage arising from or incurred by reason of the use of the Services by any Participant; and
- c) and subject to the limitation of liability set out in clause G1.4, all sums payable by the Authority in connection with all claims, proceedings, actions, damages, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) 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 Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

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- G1.3 The Contractor 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 Contract.
- G1.4 Subject to clause G1.1, the Contractor's total liability to the Authority, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract shall, be limited to a sum equivalent to 125% of the Contract Price paid or payable by the Authority.
- G1.5 Subject always to clause E2.3 G1.1 and G2, in no event shall either Party be liable to the other for any:
- a) Loss of profits, business, revenue or goodwill; and/or
 - b) Loss of savings (whether anticipated or otherwise); and/or
 - c) Indirect or consequential loss or damage.
- G1.6 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, 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 Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of six (6) years following the expiration or earlier termination of the Contract.
- G1.7 The Contractor shall hold employers' liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.8 The Contractor 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.
- G1.9 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Authority may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.10 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

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G1.11 Each Party must use all reasonable endeavours to mitigate any loss or damage it suffers under or in connection with the Contract, including any indemnities.

G2 Warranties and Representations

G2.1 The Contractor warrants and represents that:

- a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- b) in entering the Contract it has not committed any Fraud;
- c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Authority prior to execution of the Contract;
- d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights and has the know how that are necessary for the performance of its obligations under the Contract;
- h) in the three (3) years prior to the date of the Contract:
 - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

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- ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established or resides (if an individual); and,
- iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

G2.2 If the Contractor becomes aware of a representation or warranty that becomes untrue or misleading, it must immediately notify the Authority.

H. DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on Insolvency and Change of Control

H1.1 The Authority may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- c) a petition is presented for its winding up (which is not dismissed within fourteen (14) days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
- d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- g) being a "small company" within the meaning of section 382(3) of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986.
- h) any event similar to those listed in H1.1 (a)-(g) occurs under the law of any other jurisdiction.

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H1.2 The Contractor shall notify the Authority immediately if the Contractor undergoes a change of control within the meaning of section 1124 of the Corporation Tax Act 2010 (“Change of Control”). The Authority may terminate the Contract by notice in writing with immediate effect within six (6) Months of:

- a) being notified that a change of control has occurred; or
- b) where no notification has been made, the date that the Authority becomes aware of the change of control;
but shall not be permitted to terminate where an Approval was granted prior to the change of control.

H2 Termination on Default

H2.1 The Authority may terminate the Contract by written notice to the Contractor with immediate effect if the Contractor commits a Default and if:

- a) the Contractor has not remedied the Default to the satisfaction of the Authority within twenty five (25) Working Days, or such other period as may be specified by the Authority, after issue of a written notice specifying the Default and requesting it to be remedied; or
- b) the Default is not, in the opinion of the Authority, capable of remedy.

H2.2 Without prejudice to the provisions of clause H1 or H2.1, where the Authority considers that the Contractor has committed a Persistent Breach in relation to the Contract or any part thereof (including any part of the Services), the Authority shall be entitled to serve a written notice (a “Formal Warning Notice”) on the Contractor:

- a) specifying that it is a Formal Warning Notice;
- b) giving reasonable details of the Persistent Breach; and
- c) stating that if the Persistent Breach recurs two or more times within a six (6) Month period after the date of service of the Formal Warning Notice, this may result in a termination of the Contract or that part of the Services affected by such Persistent Breach.

H2.3 If:

- a) twenty (20) Working Days after service of a Formal Warning Notice, the Contractor has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not continued and that the Contractor has put in place measures to ensure that such Persistent Breach does not recur; or
- b) within a six (6) Month period after the date of service of the Formal Warning Notice, the Contractor has failed to demonstrate to the satisfaction of the Authority that the Persistent Breach specified has not recurred two or more times within such six (6) month period and that the Contractor has put

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in place measures to ensure that such Persistent Breach does not recur;

then the Authority may deem such failure shall be a Default which is a material breach of the Contract not capable of remedy for the purposes of clause H2.1 (b).

H2.4 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Authority in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.5 If the Authority fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Authority in writing of such failure to pay. If the Authority fails to pay such undisputed sums within ninety (90) Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Authority exercising its rights under clause C3.1 (Recovery of Sums Due).

H3 Break

H3.1 The Authority shall have the right to terminate the Contract at any time for any reason by giving two (2) Weeks' written notice to the Contractor. The Authority may extend the period of notice at any time before it expires, subject to agreement on the level of Services to be provided by the Contractor during the period of extension.

H3.2 On the expiry or termination of this Contract or any part thereof:

- a) the Contractor shall repay forthwith to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) the Contractor shall cease all use of all the Authority Intellectual Property Rights, including any Authority brand or trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.

H4 Consequences of Expiry or Termination

H4.1 Subject to clause G1.4, where the Authority terminates the Contract under clause F5.5 (Remedies in the Event of Inadequate Performance) or clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Authority may recover from the Contractor a sum equal to the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Authority throughout the remainder of the Contract Period. The Authority shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause

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F5.5 or clause H2 (Termination on Default), no further payments shall be payable by the Authority to the Contractor until the Authority has established the final cost of making those other arrangements.

H4.2 Subject to clause H4.3, where the Authority terminates the Contract under clause H3 (Break), the Authority shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Contractor shall reduce its unavoidable costs by any insurance sums available to it under any insurance policy. The Contractor shall submit a fully itemised and costed list of such loss, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (Break). Any payment paid by the Authority in accordance with this clause H4.2 shall be in full and final settlement of any claim, demand and/or proceedings of the Contractor in relation to any termination by the Authority pursuant to clause H3 (Break), and the Contractor shall be excluded from all other rights and remedies it would otherwise have been in respect of any such termination.

H4.3 The Authority shall not be liable under clause H4.2 to pay any sum which:

- a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy; or
- b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period.

H4.4 On the expiry or termination of this Contract or any part thereof:

- a) the Contractor shall repay forthwith to the Authority any moneys paid up to and including such date of termination other than moneys in respect of the Service(s) or part thereof properly performed in accordance with this Contract;
- b) the Contractor shall cease all use of all the Authority's Intellectual Property Rights, including any Authority brand and any trade mark and shall return or destroy as the Authority requires, all documents and materials (including those in electronic format) incorporating or referring to the same.

H4.5 Save as otherwise expressly provided in the Contract:

- a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to

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termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

- b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Authority or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Bribery and Corruption), E1 (Authority Data), E2 (Protection of Personal Data), E3 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E4 (Confidential Information), E5 (Freedom of Information), E8 (Intellectual Property Rights), E9 (Audit and National Audit Office), F6 Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Expiry or Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

- H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Authority, its employees or any other contractor employed by the Authority.
- H5.2 The Contractor shall immediately inform the Authority of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Authority acting reasonably, then the Contract may be terminated with immediate effect by the Authority by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business by direction of the Authority, an appropriate allowance by way of extension of time will be approved by the Authority. In addition, the Authority will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.
- H5.6 Any party affected by a Force Majeure Event is excused from performing its obligation under the Contract while the inability to perform continues, if it both;
 - a) provides written notice to the other Party;
 - b) uses all reasonable measures practical to reduce the impact of the Force Majeure Event.
- H5.7 Either Party can partially or fully terminate the Contract if the provision of the Services are materially affected by a Force Majeure Event which lasts for ninety (90) days continuously.

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H5.8 Where a Party terminates under clause H5.7;

- a) each Party must cover its own losses; and,
- b) for the avoidance of doubt clauses H4.4 and H4.5 shall apply.

H6 Recovery upon Termination

H6.1 At the expiry or earlier termination of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Authority or as directed upon request all Property (including materials, documents, information and access keys) used or created in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or Sub-contractors and in the event the Contractor fails to do so, the Authority may recover possession thereof and the Contractor grants a licence to the Authority or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or Sub-contractors where any such items may be held.

H6.2 At the expiry or early termination of the Contract Period (howsoever arising) and/or after the Contract Period the Contractor shall provide assistance to the Authority and the Replacement Contractor in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide such assistance at nil charge. Where the contract ends for other reasons the Authority shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

I. DISPUTES AND LAW

I 1 Governing Law and Jurisdiction

The Contract shall be governed by and interpreted in accordance with English law and the Parties irrevocably submit to the jurisdiction of the courts of England.

I 2 Dispute Resolution

I 2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute ultimately to the Commercial Director (or such other person as he may direct) of each Party.

I 2.2 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.

I 2.3 If the dispute cannot be resolved by the Parties pursuant to clause I 2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I 2.5 unless (a) the Authority considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.

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- I 2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and its Staff shall comply fully with the requirements of the Contract at all times.
- I 2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- a) a neutral adviser or mediator (the “Mediator”) shall be chosen by agreement between the Parties, or if they are unable to agree upon a Mediator within ten (10) Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator, or within ten (10) Working Days of notice to either Party that he is unable or unwilling to act, apply to a mediation provider to appoint a Mediator.
 - b) The Parties shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from a mediation provider to provide guidance on a suitable procedure.
 - c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
 - d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
 - e) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties.
 - f) If the Parties fail to reach agreement in the structured negotiations within sixty (60) Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

FORM OF AGREEMENT

This agreement has been entered into on the date stated at the beginning of it for the commencement date of 13/09/2021 to Midnight of 12/09/2023, (with an option to extend the contract for an additional one year).

SIGNED for and on behalf of
The Secretary of State for Work and Pensions:

Name	<u>Redacted</u>
Position	<u>IIAC Secretariat & Partnership</u>
Signature	<u>Redacted</u>
Date	<u></u>

SIGNED for and on behalf of
The Institute for Occupational Medicine:

Name	<u>Redacted</u>
Position	<u>Research Director</u>
Signature	<u>Redacted</u>
Date	<u></u>

SCHEDULE 1 – THE SERVICES

1 General

The following additional documents shall be deemed to be incorporated into this Contract;

Document
The Specification
The Contractor's Service Submission
The Pricing Schedule - Redacted
All Supporting Schedules, Appendices and Annexes

2 Performance Requirements

In delivering the Services the Contractor acknowledges that it shall be under an obligation to meet the following performance targets. The following performance targets have been agreed between the Parties;

Deliverable Description Milestone	Date Required By (Milestone Date)	Target
<i>Phase 1</i> 1) Using reviews and key studies identification and prioritisation of occupations and exposures associated with respiratory diseases and the production of interim report on the analysis and findings.	6 months form start of contract	100%
<i>Phase 2</i> 2) An extensive evaluation of the more detailed research – focussing on elements which will require more attention identified in the interim report. A subsequent report to be produced for the attention of IIAC. Any elements which require more attention will be decided by IIAC after reviewing the report and the contractor will be directed accordingly to the topics to be covered.	1 year from start of contract	100%
<i>Phase 2</i> 3) Production of a further report relevant to epidemiological literature.	18 months from start of contract	100%
<i>Phase 3</i> 4) Production of final, comprehensive report for the members of IIAC which summarises all the elements investigated and also inclusive of appropriate recommendations to the Council.	1 month prior to end of contract	100%
5) Production of Management Information.	Quarterly – to coincide with IIAC meetings	100%

3 Appendices

The following appendices form part of this schedule;

Appendix A	Contractor's Anticipated Resource Structure - Redacted
Appendix B	Contractor's Key Personnel - Redacted
Appendix C	Approved Sub-Contractor - Redacted
Appendix D	List of Management Information Requirements
Appendix E	The Specification
Appendix F	The Institute of Occupational Medicine Response to Service Delivery

Appendix A – Contractor's Anticipated Resource Structure

NAME	ROLE TITLE
Redacted	Statistics and Occupational Epidemiology
Redacted	Statistics and Epidemiology
Redacted	Workplace Exposure
Redacted	Statistics and Epidemiology
Redacted	Information Science
Redacted	Respiratory Disease

Appendix B – Contractor's Key Personnel

Team Member	Expertise	Role
Redacted	Statistics and Occupational Epidemiology	Project Leader; Liaison with IIAC; Lead author of reports; Epidemiological assessment of evidence with a focus on quality, assessment of bias and methods of data synthesis
Redacted	Workplace Exposure	Advice and support to the project for the assessment of exposure methods and data with a focus on quality and assessment of bias in exposures
Redacted	Statistics and Epidemiology	Health-related aspects of the identification, screening and data extraction of the publications in Phases 1 and 2 quality assessment of the statistical methodology and health related aspects of the work.
Redacted	Information Science	Creation and testing of the search strings; conduct of literature searches and provision of publication materials
Redacted	Respiratory Disease	Provision of medical expertise to the project. Will advise on the medical interpretation of the study findings, with a particular focus on the plausibility of any identified associations between exposure and disease
Redacted	Statistics and Epidemiology	Support and advice to the project, including statistical, epidemiological and health impact assessment expertise, quality assurance and peer review of all study outputs.

Appendix C – Schedule of Approved Sub-contractors

Name of Sub Contractor	Nature of the Services being Sub Contracted	Anticipated Value £
Redacted	Respiratory Physician	Refer to Schedule 4

Appendix D – Management Information (MI) Requirements

The Contractor shall supply management information listed below relevant to the delivery of the Services to the Authority, using formats and, to timescales as specified by the Authority.

Frequency	Management Information
Quarterly	Provision of written summaries to inform IIAC quarterly meetings. The content of each summary may vary depending on the progress of the project and will be agreed with IIAC before each meeting. Brief notes, structured tables, and discussion points on key issues may be included.

Appendix E - The Specification



Department
for Work &
Pensions

Commissioned Review on Behalf of IIAC for Research into Occupational Malignant and Non- Malignant Respiratory Diseases to Inform the Industrial Injuries Disablement Benefit

SPECIFICATION

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GLOSSARY OF ABBREVIATIONS

COPD	Chronic Obstructive Pulmonary Disease
DWP	Department for Work & Pensions
IIAC	Industrial Injuries Advisory Council
IIDB	Industrial Injuries Disablement Benefit
IIS	Industrial Injuries Scheme
PD	Prescribed Diseases
SoS	Secretary of State

Section 1: Introduction

- 1.1 The Industrial Injuries Scheme (IIS) provides non-contributory, no-fault benefits for disablement because of an accident at work, or because of one of over 70 prescribed diseases known to be a risk from certain occupations. **(See Appendix 1 for the list of relevant prescribed respiratory diseases for this review.)** The benefits payable under the scheme are known as Industrial Injuries Scheme Benefits (IISB). Industrial Injuries Disablement Benefit (IIDB) is one of these benefits.
- 1.2 The law provides for payment of IIDB to people who are suffering certain types of respiratory diseases contracted in the course of some types of employment. These diseases are referred to as “prescribed diseases” (PD) and are listed in the Regulations.
- 1.3 The Industrial Injuries Advisory Council (IIAC) is an independent statutory body and (est. 1946) makes recommendations to the Secretary of State (SoS) on what diseases the IIS covers. IIAC will only recommend that a disease be added to the list of prescribed diseases if it finds that the disease can be attributed to occupational exposure with reasonable confidence; for this purpose, ‘reasonable confidence’ is interpreted as being based on the balance of probabilities. The Council thus looks for evidence that the risk of developing the disease associated with a particular occupational exposure or circumstance is more than doubled.
- 1.4 IIAC are requiring a comprehensive review and evaluation of literature on selected occupational malignant and non-malignant respiratory diseases in order to inform, update and expand the existing Industrial Injuries Disablement Scheme (IIDB).
- 1.5 Not all respiratory diseases which qualify for IIDB have been reviewed in recent times and much of the IIAC’s time is spent considering whether the list of prescribed diseases for which benefits may be paid should be broadened in line with current occupations and industrial realities.
- 1.6 Therefore, in order for IIAC to provide robust advice to the Secretary of State (SoS), they are proposing to review the current prescriptions for respiratory diseases to bring these up to date and ensure that they are fit for purpose.
- 1.7 Furthermore, the research will allow for the opportunity to make recommendations to amend and/or add prescriptions where necessary.

Section 2: Background & Scope

- 2.1 This is a unique service requirement which will help shape the future of the IIS.
- 2.2 IIAC regularly receives correspondence from a number of sources indicating that there are concerns that the current prescriptions for respiratory diseases do not meet the realities of modern day occupations.
- 2.3 Ultimately, the final commissioned, evidence based research and subsequent reports will form the basis of IIAC's advice to the SoS for changes to the IIS and the legislation relating to IIDB.
- 2.4 Therefore, IIAC seeks to commission a comprehensive review and evaluation of all current associated literature on;
 - i) selected current work-related malignant and non-malignant respiratory diseases including lung cancer and chronic obstructive pulmonary disease (COPD),
 - ii) relevance of existing prescribed diseases,
 - iii) identification of respiratory diseases which currently do not qualify for IIDB and which, potentially, could be added to the prescribed list of diseases.
- 2.5 The duration of the contract will be determined by the length of time needed to conduct investigative research and analysis and, the number of days required to produce a final comprehensive and professional report. The maximum contract period should be no longer than two years.
- 2.6 The long-term aim of the service delivery is to determine if the current IIDB respiratory prescriptions are entirely fit for purpose. Any recommendations and agreed outcomes which invoke changes to IIDB will be made with the intention of improving the Scheme and provide a positive outcome for claimants.

Section 3: Service Requirement and Service Levels

- 3.1 This service requirement is a one-off purchase and includes **four** phased, key service deliverables;
 - 3.1.1 Using reviews and key studies identify and prioritise occupations and exposures associated with respiratory diseases detailed in appendix 1.
 - 3.1.2 Extensive evidenced based research into occupational respiratory diseases and interim report on the analysis and findings.
 - 3.1.3 An extension of the more detailed research – focussing on elements which will require more attention identified in the interim report.
 - 3.1.4 Production of a further report relevant to epidemiological literature.
 - 3.1.5 Production of a final, comprehensive report for the members of IIAC which summarises all the elements investigated and also inclusive of appropriate recommendations to the Council.
- 3.2 Activity Timeframes:
 - 3.2.1 **Table A** below provides details of the timeframes required against each of the key service deliverables;
 - 3.2.2 The timeframes will be subject to review post contract award. IIAC reserves the right to extend the timeframes where necessary if;
 - i) this is requested by the contracted service provider;
 - ii) IIAC require additional evidence to substantiate any findings and recommendations made by the contracted service provider.

3.2.3 **Table A**

Milestone / Deliverable	PHASE	Date Required By
<i>Phase 1</i> 1) Using reviews and key studies identification and prioritisation of occupations and exposures associated with respiratory diseases and the production of interim report on the analysis and findings.	1	6 months from start of contract
<i>Phase 2</i> 2) An extensive evaluation of the more detailed research – focussing on elements which will require more attention identified in the interim report. A subsequent report to be produced for the attention of IIAC. Any elements which require more attention will be decided by IIAC after reviewing the report and the contractor will be directed accordingly to the topics to be covered.	2	1 year from start of contract
<i>Phase 2</i> 3) Production of a further report relevant to epidemiological literature.		18 months from start of contract
<i>Phase 3</i> 4) Production of final, comprehensive report for the members of IIAC which summarises all the elements investigated and also inclusive of appropriate recommendations to the Council.	3	1 month prior to end of contract
5) Production of Management Information.		Quarterly – to coincide with IIAC meetings

3.3 Service Levels and Performance

3.3.1 IIAC will measure the quality of the Contractor's performance using the metrics detailed in Table B.

3.3.2 **Table B**

Deliverable	Description	Target
1	All Deliverables are as described in Table A at 3.2.3	100%
2		100%
3		100%
4		100%
5		100%

Section 4: Management Information and Performance Standards

4.1 *Table C*

Frequency	Management Information
Quarterly	Provision of written summaries to inform IIAC quarterly meetings. The content of each summary may vary depending on the progress of the project and will be agreed with IIAC before each meeting. Brief notes, structured tables, and discussion points on key issues may be included.

- 4.2 The Contractor will be required to work collaboratively with DWP representatives and IIAC throughout the contract period.
- 4.3 The Contractor will be required to submit Management Information as described above at 4.1 to enable DWP to review the Contractor's performance.
- 4.4 The Contractor will be required to attend performance review meetings as requested by DWP. These will be held every quarter period for the first year of the contract. The meetings will cover (but are not limited to) the following items:
- 4.4.1 The production of Management Information as described above;
- 4.4.2 Performance regarding overall service delivery.
- 4.4.3 Any updates regarding priority occupations.
- 4.5 The Contractor will acknowledge that the IIAC respiratory disease and epidemiological experts will review, evaluate and validate the analytics and reports provided by the contractor at the required intervals.
- 4.6 The Contractor shall develop and agree with IIAC, a systematic approach to evidence gathering and synthesis. In addition to a comprehensive description of the nature and magnitude of identified occupations or exposures a critical evaluation of the quality of the information and triangulation of findings across studies should be reported.
- 4.7 Services will be carried out at the Contractor's premises.
- 4.8 The Contractor will acknowledge that IIAC members will have responsibility to agree and sign-off the quality and accuracy of the reports produced by the contractor.
- 4.9 The performance of the contract will be monitored by DWP employees who represent IIAC.

- 4.10 The Contractor shall be required to attend the meetings as requested and at the Contractor's expense.

Section 5: Invoicing and Payments

- 5.1 Payment Milestones will be agreed with the contracted service provider prior to contract signature.
- 5.2 Payments made to the Contractor will be made within 30 days of receipt of a valid invoice.
- 5.3 Invoices are to be marked for the attention of:
(*Details to be provided at contract award stage*)
- 5.4 Payments will be made to the contracted service provider upon successful achievement of each milestone as detailed in *Table B* at 3.3.2 and in accordance with *Table D* below.
- 5.5 Payment due dates will be confirmed at contract award stage and are subject to the key service deliverables being achieved within the agreed timeframes.
- 5.6 In order for invoices to be validated before payment, each invoice must include a detailed breakdown of the work completed and include the associated charges.

5.7 *Table D*

Contractor Payment Schedule		
Key Milestone	Description	Payment Due £
Phase 1	In-depth review of the current prescriptions as per Appendix 1	30% of total contract value
Phase 2	A focussed review of the scientific literature on topics identified and selected by IIAC from Phase 1, for further review and research and the production of an interim report	40% of total contract value
Phase 3	The production of the qualitative report that provides details of the outcomes from the review and including recommendations	30% of total contract value

Section 6: Contract Exit

- 6.1 The Contractor will acknowledge that upon termination of the contract, the information obtained from the research and any subsequent reports, including the final report for IIAC, are solely for the use between DWP and IIAC.
- 6.2 The Contractor shall acknowledge that the Commissioned Review shall be published on the IIAC Website.
- 6.3 The Contractor shall not use or publish any of the information without the express permission IIAC.
- 6.4 The Contractor will acknowledge that all work undertaken and reports produced by the Contractor will remain the property of IIAC.

Appendix 1

List of Current Respiratory Prescriptions



201209 Respiratory
diseases in scope.doc

Appendix F - The Institute of Occupational Medicine Response to Service Delivery

Research into Occupational Malignant and Non-Malignant Respiratory Diseases to Inform the Industrial Injuries Disablement Benefit Addendum updating Scope of Work Including Justification of Resources

Introduction

Subsequent to written and verbal feedback from the sponsor on the IOM proposal to undertake the review of occupational malignant and non-malignant respiratory diseases, we provide here an updated scope of work, justification of resources and budget. We have taken the opportunity to refine the scope of the proposal in line with IIAC's original intention, with a consequent reduction in the proposed budget.

Description of work

Phase 1

In phase 1, we will carry out develop, pilot and run searches of recent systematic reviews (SRs) and/or meta-analyses (MA) of the epidemiology (or key studies in the absence of a SR/MA) of chronic obstructive pulmonary disease and respiratory cancers, in order to identify those occupational exposures and work circumstances that might be associated with a consistent and robust increased relative risk. We will develop criteria (in liaison with IIAC) in order to prioritise exposure disease-combinations for more in-depth investigation. This will include definite candidates for further investigation, those that can be set aside and those where it will not be clear into which of these categories they should be placed. We will screen, extract and then tabulate the epidemiological evidence from the SRs and MAs. This will include those carcinogen-cancer combinations listed by IARC as having definite or suggestive evidence of respiratory system carcinogenicity, and also the work reviewing the burden of cancer in GB led by Redacted, for exposure-disease combinations, in order of priority for further investigation. Other sources of information will include a rapid scan of relevant websites (e.g. charities such as the British Lung Foundation) to ensure that no potentially important occupational exposures have been missed. Our assessment will include a re-examination of currently prescribed exposure-disease combinations as well as identification of any new and potentially important combinations. After consultation with IIAC, we will then finalise a report on phase 1 of the work.

From the evidence table/report from phase 1, we will agree with IIAC, candidate exposure-disease combinations e.g. silica and COPD, welding fume and COPD for more in-depth review in stage 2.

Phase 2

In phase 2, we will carry out more in-depth searches, after piloting, for relevant epidemiological evidence for the chosen (half a dozen or so) exposure-disease combinations. We will screen, extract and tabulate the epidemiological evidence for these priority occupational circumstances, giving due focus to the exposure circumstances potentially associated with a doubling of the relative risk. After consulting with IIAC we will then finalise a report on phase 2 of the work, which will include an evaluation of the quality and robustness of the epidemiological evidence, including the relevance and practicality of exposures measures used. Interim reports for each exposure-disease combination can also be provided as they are completed, if required. Results will be presented in a format based on

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that used in previous work of this kind, notably the review of firefighters and cancer carried out by IOM

Phase 3

In phase 3, we will produce a final consolidated report that bring together the work from phases 1 and 2 of the project.

SCHEDULE 2 – ADMINISTRATION REQUIREMENTS

1 Authority's Authorisation

- 1.1 The following person is the Authority's Representative and is authorised to act on behalf of the Industrial Injuries Advisory Council on all matters relating to the Contract. Contact details are shown in clause A5.3.

Name: **Redacted (Department for Work and Pensions)**
Title: **Authority's Representative**

- 1.2 The Authority's Representative may approve Deputy Authority's Representatives to exercise on his/her behalf such powers as are contained in this Contract.

Name: **Redacted – (Department for Work and Pensions
IIAC Secretariat)**
Title: **Authority's Deputy Representative**

2 Contractor's Authorisation

- 2.1 The following person is the Contractor's Representative and is authorised to act on behalf of the Contractor on all matters relating to the Contract. Contact details are shown in clause A5.3.

Name: **Redacted – (Institute of Occupational Medicine)**
Title: **Research Director**

3 Payment Information

- 3.1 The Authority shall issue a purchase order number to the Contractor prior to commencement of the Service.
- 3.2 All invoices payable in compliance with the requirements of clause C2, must include the appropriate purchase order number printed on the invoice and shall be sent to the following address;

For the attention of;

Redacted

Department for Work and Pensions

Arm's Length Body Partnership Division Policy Group

Caxton House

Tothill Street

London SW1H 9NA

E-mail; Redacted

4 Disputed Claims

- 4.1 Notwithstanding paragraph 4.5 of this Schedule, payment by the Authority of all or any part of any invoice rendered or other claim for payment by the Contractor shall not signify approval of such invoice/claim. The Authority reserves the right to verify invoices/claims after the date of payment and subsequently to recover any sums which have been overpaid.
- 4.2 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority either before or after payment then the Authority may

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call for the Contractor to provide such further documentary and oral evidence as it may reasonably require to verify its liability to pay the amount which is disputed or subject to question and the Contractor shall promptly provide such evidence in a form satisfactory to the Authority.

- 4.3 If any part of a claim rendered by the Contractor is disputed or subject to question by the Authority, the Authority shall not withhold payment of the remainder.
- 4.4 If any invoice rendered by the Contractor is paid but any part of it is disputed or subject to question by the Authority and such part is subsequently agreed or determined not to have been properly payable then the Contractor shall forthwith repay such part to the Authority.
- 4.5 The Authority shall be entitled to deduct from sums due to the Contractor by way of set-off any amounts owed to it or which are in dispute or subject to question either in respect of the invoice for which payment is being made or any previous invoice.

SCHEDULE 3 – MONITORING REQUIREMENTS

This Schedule sets out the contract and performance management requirements which are applicable to the delivery of the Services.

1 Reviewing Contract Performance

- 1.1 The Contractor shall work with the Authority to establish and maintain an effective and beneficial working relationship to ensure the Contract is delivered to at least the minimum required standard as specified in the Schedule (The Services).
- 1.2 The Contractor shall work with the Authority to establish suitable administrative arrangements for the effective management and performance monitoring of the Contract and shall provide information as requested to monitor and evaluate the success of the Contract and the Contractor's management and delivery of it.
- 1.3 The Contractor shall supply information requested relevant to the delivery of the Services to the Authority, using formats and to timescales specified by the Authority in Schedule 1.
- 1.4 The Authority intends, wherever it can, to capture and collate information through its IT system(s). However, the Authority does reserve the right to make reasonable requests for information (at no additional charge) from the Contractor including ad-hoc requests for information from time to time.
- 1.5 Any additional requests for information shall be considered in consultation with the Contractor as shall the process of defining the methods of collection.
- 1.6 Where an on-going, short-term or one-off requirement is agreed, both Parties agree that it shall be included, or deemed to be included within this Schedule.
- 1.7 Review meetings between the Authority and the Contractor shall also cover, as appropriate, resolving disputes and/or dealing with contractual breaches in accordance with the terms and conditions of this Contract. Roles and responsibilities will be documented and the personnel involved in managing the relationship identified and suitably empowered.
- 1.8 The Authority may undertake spot checks at any time to ensure that the Contractor is complying with its obligations under this Contract and the Contractor shall co-operate fully, at its own cost, with the Authority.
- 1.9 The Contractor will be responsible for managing and reporting on any sub-contractual arrangements. Arrangements shall include mechanisms for the provision of management information, including feedback to and from customers, stakeholders and employers; change control procedures and the prompt resolution of any problems. The Authority will agree with the Contractor day-to-day relationship management, contact points, communication flows and escalation procedures.
- 1.10 The Contractor will be expected to continuously improve the quality of the provision including that delivered by Sub-contractors. Where quality falls

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below acceptable levels the Contractor will be expected to have suitable escalation procedures in place and, in respect of sub-contracted provision, take action where necessary to terminate the contract.

2 Access

- 2.1 In all instances, the Contractor shall co-operate and provide such reasonable assistance as may be necessary to facilitate such monitoring. Failure to provide such reasonable assistance shall be deemed a "Serious Breach" for the purposes of clause H2 (Termination on Default).

3 Security Requirements

- 3.1 The Authority will review the Contractor's Security Plan when submitted by the Contractor in accordance with the Schedule (Security Requirements and Plan) and at least annually thereafter.

4 HMG Baseline Personnel Security Standards

- 4.1 The authority will review the Contractor's HMG Baseline Personnel Security Standards Declaration in accordance with HMG Baseline Personnel Security Standard – A Guide For DWP Contractors.

5 Health and Safety Responsibilities of the Authority Visiting Officers

- 5.1 The Authority representatives visit Contractors and its Sub-contractors for a variety of reasons. In the course of their normal duties such representatives of the Authority shall adopt an 'eyes and ears' approach to monitoring health and safety. In doing this the Authority representatives shall not be conducting a health and safety inspection, nor shall they be in a position to offer advice on whether something is safe or not. Instead they shall approach this from the position of any lay person. If, however, the Authority representative does notice something on which they require assurance or clarification, they shall raise this with the Contractor or the Contractor's Sub-contractor's representative at the location where they are visiting. In no event are the Authority representatives to be seen as offering professional advice on health and safety matters and as such, shall not be liable for any advice or comments or otherwise given to the Contractor or its Sub-contractors or any omission to give such advice, comments or otherwise.

6 Audit Requirements

- 6.1 The Contractor will be required to account for the funds that it handles. Accounts will need to be ratified and supplied to the Authority at an agreed frequency.
- 6.2 The Contractor must demonstrate that audit data stored is reportable and able to be interrogated to enable misuse of the service to be detected.
- 6.3 Access to auditable data must be performed by a secure process and audit data must be retained from the operation of the contract to six years from the end date of the contract in a secure area. It is the Contractor's responsibility to undertake an impact assessment of the data they possess.
- 6.4 The Contractor will produce a set of pre-defined audit reports. Reports should be made available to the Authority electronically. The definition of these reports will undertaken after contract award.

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- 6.5 To provide assurance that the services are being performed in accordance with the contract, the Contractor must allow the Authority to perform checks upon any aspect of their services within the following timeframes:
 - 6.5.1 7 days' notice for performance checks.
 - 6.5.2 24 hours' notice where fraudulent breaches or other serious breaches are suspected.
- 6.6 The Authority has the right at any time to request all financial information relating to this contract.

Appendix A – Contractor's Performance Review Table

The following definitions shall be used to determine the standard rating scale for the Performance Index rating in the Contractor's Performance Review Table: -

- | | | |
|----------|----------------------------|---|
| 4 | High Standard | <ul style="list-style-type: none">• Sometimes exceed and consistently achieves the required standard• Very few weaknesses• Limited management support needed. |
| 3 | Acceptable Standard | <ul style="list-style-type: none">• Meets required standard• Few weaknesses• Some management support needed. |
| 2 | Below Standard | <ul style="list-style-type: none">• Usually meets, but sometimes fails to meet required standard• Some weaknesses• Considerable management support needed. |
| 1 | Failure | <ul style="list-style-type: none">• Cannot meet required standard without excessive management support• Many weaknesses. |

Contractor's Performance Review Table

Date

Description	Score	Remarks
-------------	-------	---------

TOTAL
Comments

Signed for the
Authority

Date

Signed for the
Contractor

Date

SCHEDULE 4 – PRICES AND RATES**1 General**

For the performance of the Services, the Contractor shall be paid the Contract Price calculated as specified in Schedule 4, (with the amount due to the Contractor limited to the costs specified below), with the payment of the Contract Price, subject to the achievement of the Milestones by the Contractor, by the applicable Phased Milestone Dates, as specified in Schedule 1. The Contract Price shall be paid in three (3) instalments with an instalment due when a Milestone is achieved (excluding Milestone 5), as specified in Schedule 1.

2**Redacted****3 Detailed Costs**

	Redacted	Redacted	Redacted	Redacted	Total days	Cost (£)
Phase 1						
Literature searches	1.00		1.00	2.00	4.0	Redacted
Principles for prioritisation	1.00		2.00		3.0	
Data Extraction	1.00		3.00		4.0	
Evidence synthesis & collation	2.00		4.00		6.0	
Identification of Phase 2 priorities	1.00		1.00		2.0	
Management, reporting and liaison with IIAC	1.00				1.0	
Phase 2						
Literature searches	2.00		2.00	2.00	6.0	Redacted
Data extraction	2.00		12.00		14.0	
Evidence synthesis & collation	6.00		15.00		21.0	
Management, reporting and liaison with IIAC	2.00	0.50			2.5	
Phase 3						
Final reporting	2.00	0.50	2.00		4.5	Redacted
Management and liaison with IIAC	2.00				2.0	
Additional costs include Redacted for acquisition of papers and report Redacted subcontract to Dr Redacted and £Redacted travel costs (if required).						

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(a) Total costs per phase

Phase 1	IOM staff costs (from (a) above)	
	Papers/reports	
	Subcontract to Redacted	
	Travel	
	TOTAL	Redacted
Phase 2	IOM staff costs (from (a) above)	
	Papers/reports	
	Subcontract to Redacted	
	Travel	
	TOTAL	Redacted
Phase 3	IOM staff costs (from (a) above)	
	Papers/reports	
	Subcontract to Redacted	
	Travel	
	TOTAL	Redacted

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SCHEDULE 5 – COMMERCIALLY SENSITIVE INFORMATION

- 1 The Authority acknowledges that the Contractor has requested that the following information be treated as Commercially Sensitive Information;

Document	Page	Section	Clause/ Paragraph	Explanation of harm which may result from disclosure and time period applicable to any sensitivity
Schedule 4	76	Prices and Rates	1, 2, & 3	Confidential Pricing specific to this contract

- 2 The Authority will consult with the Contractor on any request for information, identified as Commercially Sensitive, under the FOIA.
- 3 The Authority reserves the right to disclose any Commercially Sensitive Information held within this Contract in response to a request under the FOIA as set out at clause E5 of this Contract.
- 4 The Authority will automatically publish all information provided by the Contractor **not** identified in this Schedule as constituting Commercially Sensitive Information provided that it satisfies the requirements of the FOIA.
- 5 The Authority reserves the right to determine whether any information provided in this Schedule does constitute Commercially Sensitive Information prior to publication.

SCHEDULE 6 – SECURITY REQUIREMENTS AND PLAN

Appendix A – Security Plan

Protection on Information – Security Level 3 / 4

- 1 The Contractor and any of its Sub-contractors, shall not access, process, host or transfer Authority Data outside the United Kingdom without the prior written consent of the Authority, and where the Authority gives consent, the Contractor shall comply with any reasonable instructions notified to it by the Authority in relation to the Authority Data in question. The provisions set out in this paragraph 2 shall apply to Landed Resources.
- 2 Where the Authority has given its prior written consent to the Contractor to access, process, host or transfer Authority Data from premises outside the United Kingdom (in accordance with clause 2 of the Contract):-
 - a) the Contractor must notify the Authority (in so far as they are not prohibited by Law) where any Regulatory Bodies seek to gain or has gained access to such Authority Data;
 - b) the Contractor shall take all necessary steps in order to prevent any access to, or disclosure of, any Authority Data to any Regulatory Bodies outside the United Kingdom unless required by Law without any applicable exception or exemption.
- 3 The Contractor shall notify the Authority in writing of the names, positions, and contact details of all persons that the Contractor intends to allow to have access to the Account.
- 4 The Contractor shall provide the Authority with details of its system for ensuring that no one individual acting alone has access to the account.
- 5 The Contractor shall comply with the below submitted Security Plan (to the extent it does not conflict with the terms of the Contract), with respect to the delivery of the Services in accordance with this Contract.



IIAC

Information_Security_

SCHEDULE 7 - CONTRACT CHANGE PROCEDURE

1 General Principles of Change Control Procedure

- 1.2 This Schedule sets out the procedure for dealing with Contract Changes and Operational Changes and Substantial Changes.
- 1.3 If either Party is in doubt about whether a change falls within the definition of an Operational Change or a Substantial Change, it must be processed as a Contract Change.
- 1.4 For any Change Communication to be valid under this Schedule, it must be sent in accordance with the provisions of clause A5.

2 Costs

- 2.1 The Contractor shall be entitled to request an increase in the Contract price only if it can demonstrate in the Impact Assessment that the proposed Contract Change requires additional resources.
- 2.2 Any change to the Contract Price resulting from a Contract Change, whether the change will cause an increase or a decrease in the Contract Price, will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services affected by the change.
- 2.3 Both Parties costs incurred in respect of any use of this Change Control Procedure as a result of any error or Default by the Contractor shall be paid for by the Contractor.

3 Substantial Change Procedure

- 3.1 Any Substantial Change which is identified within a settlement and/or compromise agreement that is entered into by the Parties under or in connection with this Contract shall constitute a binding change to this Contract and may be implemented by the Parties without following the Change Control Procedure provided that:

(a) the Substantial Change relates to:

- (i) the scope of the Services (including any change which limits, amends or extends the Services to be provided by the Contractor); and/or
- (ii) an agreement between the Parties to waive the application of remedies for breach of this Contract; and/or
- (iii) the standards by which the Services must be performed by the Contractor; and/or

an agreement by the Parties to change the amounts payable by the Authority to the Contractor under or in connection with this Contract (including any change to the manner in which the Fees are calculated),

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provided always that such Substantial Change would not alter the overall nature of the Contract.

4 Operational Change Procedure

- 4.1 Any Operational Changes identified by either Party to improve operational efficiency of the Services may be implemented by the Contractor without following the Change Control Procedure provided they do not:
- (a) involve the Authority in paying any additional Fees or other costs;
 - (b) have an impact on the business of the Authority;
 - (c) require a change to the Terms and Conditions; or
 - (d) have a direct impact on use of the Services.
- 4.2 Either Party may request an Operational Change by submitting an Operational Change Request to other Party at any time during the Contract Period.
- 4.3 If the Party that receives an Operational Change Request wishes to agree to the Operational Change it must submit an Operational Change Confirmation to the other Party.
- 4.4 The Contractor shall inform the Authority of any impact on the Services that may arise from the proposed Operational Change.
- 4.5 The Contractor shall complete the Operational Change by the date agreed by the Parties in the Operational Change Confirmation and shall promptly notify the Authority when it is completed.

5 Contract Change Procedure

- 5.1 Either Party may issue a Change Request to the other Party at any time during the Contract Period. A Change Request shall be substantially in the form of Appendix 1.
- 5.2 If the Authority issues a Change Request, then the Contractor shall provide as soon as reasonably practical, and in any event within ten (10) Working Days of the date of receiving the Change Request, an Impact Assessment to the Authority.
- 5.3 If the Contractor issues the Change Request, then it shall provide an Impact Assessment to the Authority at the same time as the Change Request.
- 5.4 If the Contractor requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall make a request for clarification to the Authority within three (3) Working Days of the date of receiving the Change Request.
- 5.5 Provided that sufficient information is received by the Authority to fully understand the nature of the request for clarification and the reasonable

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justification for the request, the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Authority shall respond to the request for clarification as soon as is reasonably practicable.

6 Impact Assessment

6.1 Each Impact Assessment shall be completed in good faith and shall include:

- (a) details of the impact the proposed Contract Change will have on the Services and the Contractor's ability to meet its other obligations under this Contract;
- (b) any additional changes to the terms of this Contract that will be required as a result of that impact which may include changes to:
 - (i) the Services ;
 - (ii) the format of Authority Data, as set out in the Services;
 - (iii) any timetable previously agreed by the Parties; and
 - (iv) other services provided by third party contractors to the Authority, including any changes required by the proposed Contract Change to the Authority ICT System;
- (c) a timetable for the implementation, together with any proposals for the testing of the Contract Change;
- (d) details of how the proposed Contract Change will ensure compliance with any applicable change in Law which impacts on the performance of the Services which comes into force after the Commencement Date;
- (e) any amendments to the Contract wording proposed in the Change Request Form;
- (f) such other information as the Authority may reasonably request in (or in response to) the Change Request;
- (g) details of the cost of implementing the proposed Contract Change; and
- (h) details of any ongoing costs required by the proposed Contract Change when implemented, including any increase or decrease in the Fees, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party.

6.2 The calculation of costs for the purposes of paragraphs 6.1 (g) and (h) shall:

- (a) include estimated volumes of each type of resource to be employed and the applicable rate card, where appropriate;
- (b) include full disclosure of any assumptions underlying such Impact Assessment;

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- (c) include evidence of the cost of any assets required for the Change; and
- (d) include details of any new Sub-contracts necessary to accomplish the Change.

6.3 The Authority shall review the Impact Assessment and respond to the Contractor in within fifteen (15) Working Days of receiving the Impact Assessment.

- 6.3 If the Authority is the Receiving Party and the Authority reasonably considers that it requires further information regarding the proposed Contract Change so that it may properly evaluate the Change Request and the Impact Assessment or that a Change Request or Impact Assessment contains errors it shall notify the Contractor of this fact and detail any further information that it requires. The Contractor shall then re-issue the relevant Impact Assessment to the Authority within ten (10) Working Days of receiving such notification.
- 6.4 At the Authority's discretion, the Parties may repeat the process set out in paragraph 5 until the Authority is satisfied that it has sufficient information to properly evaluate the Change Request.

7 Authority's Right of Approval

- 7.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Contractor, the Authority shall do one of the following:
- (a) approve the proposed Contract Change; or
 - (b) in its absolute discretion reject the Contract Change, in which case it shall notify the Contractor of the rejection. The Authority shall not reject any proposed Contract Change to the extent that the Contract Change is necessary for the Contractor or the Services to comply with any changes in Law.
- 7.2 No proposed Contract Change shall be implemented by the Contractor until a Change Authorisation Note has been signed and issued by the Authority.
- 7.3 Unless the Authority expressly agrees (or requires) otherwise in writing, the Contractor shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply.
- 7.4 Any discussions, negotiations or other communications which may take place between the Authority and the Contractor in connection with any proposed Contract Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 7.5 If the Authority approves the proposed Contract Change and it has not been rejected by the Contractor, then the Authority shall prepare two (2) copies of a Change Authorisation Note in the form of Appendix 2 and send them to the Contractor, the Contractor shall sign both copies and deliver both signed

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copies to the Authority for its signature. Following receipt by the Authority of the Change Authorisation Note, it shall sign both copies and return one copy to the Contractor. On the Authority's signature the Change Authorisation Note shall constitute a binding change to this Contract.

8 Contractor's Right of Rejection

8.1 Following an Impact Assessment, if the Contractor reasonably believes that any proposed Contract Change which is requested by the Authority would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Services to be performed in a way that infringes any Law,

then the Contractor shall be entitled to reject the proposed Contract Change and shall notify the Authority of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment.

9 Contract Management

9.1 The Parties shall update their contracts to reflect all Contract Changes or Operational Changes agreed in the relevant Change Authorisation Note or Operational Change Letter and annotate with a reference to the Change Authorisation Note or Operational Change Letter pursuant to which the relevant Contract Changes or Operational Changes were agreed.