



**CONTRACT**

**between**

**THE HEALTH AND SAFETY EXECUTIVE**

**and**

**THE UNIVERSITY OF MANCHESTER**

**for**

**Discovering Safety Programme:  
Safety Risk Library for Construction  
Use Case 1**

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This Contract is made between:

The **HEALTH AND SAFETY EXECUTIVE** (acting as part of the Crown) of Redgrave Court, Merton Road, Bootle, Merseyside, L20 7HS (hereinafter called 'the HSE' of the one part) and

**THE UNIVERSITY OF MANCHESTER**, (a Royal Charter corporation registered under number RC000797) an exempt charity of Oxford Road, Manchester, M13 9PL (hereinafter 'the Contractor' of the other part), in accordance with the details, terms and conditions stated herein.

## **WHEREAS**

The Contractor is hereby requested to provide support to the HSE for the completion of Phase 2 – Use Case 1 of the Discovering Safety Programme Safety Risk Library for Construction being undertaken, subject to grant funding, on behalf of Lloyds Register Foundation. A detailed breakdown of the proposed programme of work and charges is provided in Schedule A.

## **1 GENERAL CONDITIONS**

- 1.1 This Contract will be subject to the HSE Standard Terms and Conditions of Contract for the Provision of Research Services, attached as Schedule B. However, where any conflict exists between the clauses in this Contract and the Terms and Conditions at Schedule B, then the clauses in this Contract will prevail. The Clauses in this Contract and the Terms and Conditions at Schedule B will also govern all Purchase Orders placed against this Contract.

## **2 ENTIRE AGREEMENT**

- 2.1 This Contract constitutes the entire agreement and understanding between the parties concerning the subject matter hereof and supercedes all prior agreements, both oral and written, representations, statemetns, negotiations and undertakings.

## **3 STATEMENT OF SERVICE REQUIREMENTS**

- 3.1 The Contractor will carry out on behalf of the HSE a Statement of Services (hereinafter called the "Services") as detailed in Schedule A to this Contract.
- 3.2 The Contractor shall organise and conduct the entire Research Services in consultation with the HSE where appropriate, and provide all necessary resources of personnel, materials, Services and equipment, except for such resources that may be provided by the HSE at its discretion.
- 3.3 No undertaking shall be deemed to have been made by the HSE in respect of the total quantities or values of the Research Services to be ordered pursuant to this contract and the Contractor acknowledges and agrees that it has not entered into this contract on the basis of any such undertaking.

## **4 MANAGEMENT OF THE CONTRACT**

- 4.1 The HSE Contract Manager who will be responsible for liaison and certifying completion of the provision and overall management of the Research Services is identified at Annex 1.
- 4.2 The Research Services will be monitored by the Contract Manager who will also evaluate the provision on completion.
- 4.3 In all cases, both parties will work within the agreed timescales/constraints and costs outlined at the beginning of the commission.

## **5 DURATION**

- 5.1 The Research Services shall be deemed to have commenced on **21 July 2020** and shall be completed by **31 March 2021**, with the possibility to extend for a further 12 months, following agreement from the Lloyds Register Foundation.

## **6 COSTS**

- 6.1 The total amount to be paid by the HSE to the Contractor for the Research Services shall not exceed £230,000.00, exclusive of VAT.
- 6.2 Any additional costs will be agreed in advance with the HSE Contract Manager and subject to Clause 13 Variation to Contract.
- 6.3 Where appropriate, and subject to the HSE Contract Manager's approval, actual and reasonable travel and subsistence costs shall be payable in line with the rates agreed at Annex 2.

## **7 INVOICING AND PAYMENTS**

- 7.1 All invoices raised must include the relevant Purchase Order number which will be issued by HSE Procurement Unit. Failure to include the Purchase Order Number may delay payment. Invoices should be submitted electronically in PDF format to [APinvoices-HAS-U@gov.sscl.com](mailto:APinvoices-HAS-U@gov.sscl.com)
- 7.2 Invoices should also include details of work satisfactorily carried out and any VAT properly chargeable.
- 7.3 HSE shall make payment of agreed costs, in arrears, within 30 days of the acceptance of the invoice.
- 7.4 The Contractor shall send a copy invoice along with details of any work satisfactory carried out to the HSE Contract Manager identified at Annex 1.

## **8 DELIVERABLES**

- 8.1 The Contractor shall provide the deliverables detailed in Schedule A.

## **9 INTELLECTUAL PROPERTY**

- 9.1 Your attention is drawn to clauses E8 within Schedule B of the attached standard terms and conditions.

## **10 ACCESS TO HSE PREMISES**

- 10.1 It shall be the Contractor's responsibility to ensure that, where access to HSE Premises or HSE confidential information is necessary, personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Security Standard.
- 10.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out. Guidance on pre-employment checks may be found at <http://www.cabinetoffice.gov.uk/sites/default/files/resources/hmg-personnel-security-controls.pdf>

## **11 CONFIDENTIALITY**

- 11.1 The Contractor shall not at any time divulge any information or material acquired during the performance of this Contract to any third party without prior permission in writing of the Executive, except where required in the course of any legal proceedings.
- 11.2 The Contractor shall keep documents and other materials produced or acquired in the course of the contract in accordance with The Criminal Procedure and Investigations Act 1996 (CPIA).
- 11.3 HSE may disclose the Confidential Information of the Contractor:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Authority or of the relevant Central Government Body;
  - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (c) to the extent that the Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 13.3(a) (including any benchmarking organisation) for any purpose relating to or connected with this Contract;
  - (e) on a confidential basis for the purpose of the exercise of its rights under this Contract; or
  - (f) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Authority under this Clause.

## **12 PUBLICATION**

- 12.1 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. HSE 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.
- 12.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.
- 12.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.
- 12.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

## **13 VARIATION TO CONTRACT**

- 13.1 Except where expressly stated in this contract, no change, amendment or modification shall be effective unless in writing and signed by the duly authorised representatives of both parties.
- 13.2 Any agreed changes to the Contract or Schedule A (Statement of Service Requirement) will be in the form of a Contract Change Note (CCN), which will be raised and issued by the HSE Procurement Unit.

## **14 GOVERNING LAW**

- 14.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

## **15 TERMINATION**

- 15.1 This Contract may be terminated by either party by giving ninety days written notice. In the event of termination by HSE, the Contractor shall be provided with any re-imbursement of costs, actually and reasonably incurred, up to the date of termination, subject to the limit specified in Clause 6 above.

**Contract No. 1.11.4.3626.UC1**

As Witnessed at the Hands of the Parties

## SIGNATORIES



IN WITNESS WHEREOF THIS CONTRACT HAS BEEN AGREED :

Institution Signature 



Name in Capitals 

Position 

Date 26 August 2020

  
Head of Department Signature 

Name in Capitals 


 25/08/2020 





















26 August 2020









## STATEMENT OF SERVICE REQUIREMENT

The Contractor shall undertake the following Statement of Service requirement, dated **29 April 2020** and referenced **HSE/T3626**:-



Schedule%20A%20-%  
%20Statement%20o

and the Contractor's submission, dated 29 May 2020, embedded below:-



Provision%20of%20  
a%20\_ITT\_Thomas%2

Schedule B

**THE HEALTH AND SAFETY EXECUTIVE (HSE)**  
**TERMS AND CONDITIONS OF CONTRACT FOR THE PROVISION OF RESEARCH SERVICES**

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**A GENERAL PROVISIONS**

**A1 Definitions**

A1.1 In these Terms and Conditions of Contract the following definitions shall apply:

“Acceptance” shall take place when the HSE notifies the Contractor in writing that the most recently due Progress Report has passed Acceptance Tests. For the avoidance of doubt Contractor shall only be responsible for and accountable for the elements of the Progress Report that refer to, or a result of Contractor’s performance under this Agreement

“Acceptance Criteria” shall mean whether or not the Progress Report meets, to the reasonable satisfaction of the Lloyds Register Foundation, the administrative and technical assurances made by the HSE in the grant application (Grant reference G/102293), such acceptance criteria shall be subject to the provision of Clause G2.2).

“Acceptance Tests” means the consideration given by the Lloyds Register Foundation as to whether the most recently due progress report meets the Acceptance Criteria

“Condition” means a condition of this contract;

“Confidential Information” means any information, which has been designated as confidential by either Party in writing or that ought reasonably to be considered as confidential or required to be held in confidence however it is conveyed or on what media it is stored, and may include by way of example, but without limitation, performance test results, data, know-how, patent applications, patents pending, specifications, formulations, processes, designs, drawings, samples, models, reports, studies, photographs, findings, inventions, ideas, business plans, marketing information, customer lists, pricing information, software, information that relates to the business, affairs, developments, trade secrets, personnel, and suppliers of the Contractor, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as “confidential”) or which ought reasonably to be considered to be confidential;

“Contract” means the agreement between the HSE and the Contractor consisting of the Specification, the HSE Form of Agreement or Purchase Order, these Conditions and any other documents or parts of documents relating to the Contract;

“Contract Manager” means the person for the time being appointed by the HSE as being authorised to administer the Contract on behalf of HSE or such person as may be nominated by the Contract Manager to act on its behalf.

“Contractor” means the person, firm or company to whom the Contract is issued;

“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 legislation;

“Equipment” means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under 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 in relation to such legislation;

“HSE” means the Health and Safety Executive acting as part of the Crown;

"Information" has the meaning given under section 84 of the FOIA;

“Key Personnel” means the staff employed by the Contractor to perform the Research Services in a Principal Investigator (or equivalent) role.

“Parties” means HSE and the Contractor;

“Programme Advisory Group” means the Group which will peer review the technical content of the programme and provide steer and advice to the Programme Delivery team and also the Programme Governance Board, as referred to in page 19 of the Programme Definition Document within the grant application.

“Programme Governance Board” means the board of the Programme referred to in pages 17-18 of the Programme Definition Document within the grant application. Consisting of two Lloyds Register Foundation representatives, two HSE representatives and the Programme Director.

“Progress Report” means a report on the outcomes and impact of the work programme for preceding period and potential outcomes and impact of the proposed work programme for the upcoming year”

"Requests for Information" shall have the meaning set out in FOIA or any apparent request for information under the FOIA, 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.

“Research Services” means the Research Services to be provided as specified in the specification and shall include any materials, articles and/or goods necessary to provide the Research Services;

“Specification” means the description of the Research Services to be supplied under the Contract as set out in Schedule A.

“Staff” means all persons employed by the Contractor to perform the Contract together with the Contractor’s servants, agents and sub-contractors used in the performance of the Contract.

“GDPR Clause Definitions”:

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.

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

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Contractor under this Agreement, 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.

DPA 2018: Data Protection Act 2018.

GDPR: the General Data Protection Regulation (Regulation (EU) 2016/679).

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing.

LED: Law Enforcement Directive (Directive (EU) 2016/680).

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

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

**A2 Interpretation**

- A2.1 The interpretation and construction of this Contract shall be subject to the following provisions:

The terms and expressions set out in A1.1 shall have the meanings ascribed therein;  
Words importing the singular meaning include where the context so admits the plural meaning and vice versa;

Words importing the masculine include the feminine and the neuter;

Reference to a Condition is a reference to the whole of that Condition unless stated otherwise;

Reference to a Paragraph is a reference to a paragraph within a Condition unless stated otherwise;

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;

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;

The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation"; and

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

**A3 Contract Period**

- A3.1 The Research Services shall finish in accordance with the date specified in Clause 5.1.

- A3.2 If completion of the Research Services is delayed by reason of any act or default of HSE or any other circumstance which is beyond the control of the Contractor, the time for completion shall be extended by such period as may be reasonable, provided that:

- (a) on being aware of the nature and extent of the delay the Contractor shall forthwith notify HSE of such nature and extent;
- (b) the delay was unforeseeable when the Contract commenced; the Contractor takes all reasonable steps to minimise the delay.

- A3.3 The Contractor shall not be entitled to an extension of time where such delay is attributable to any negligence, default, acts or omissions on his part.

**A4 Contractor's Status**

- A4.1 At all times during the contract period the Contractor shall be an independent contractor. Nothing in this Contract shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between HSE and the Contractor. 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.

**A5 Entire Agreement**

- A5.1 This Contract constitutes the entire agreement between the Parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations, understandings and undertakings, whether written or oral, except that this Condition shall not exclude liability in respect of any fraudulent misrepresentation.

- A5.2 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;
- (b) The Schedules; and

- (c) any other document referred to in the clauses of the Contract.

**A6 Notices**

A6.1 Any notice given in connection with the Contract may be sent by hand or by post or by registered post or by recorded delivery service, or other agreed telecommunication or electronic means. When it is sent or transmitted to the address of the party shown in the Contract, or to any other address agreed between the parties, it shall be deemed to have been received:

- (a) if delivered by hand, on the day of delivery if it is the recipient's business day and otherwise on the first business day of the recipient immediately following the day of delivery;
- (b) if sent by first class prepaid post (or airmail if appropriate) on the third business day (or on the tenth business day in the case of airmail) after the day of posting;
- (c) if sent by facsimile or other agreed telecommunication or electronic means:
- (d) if transmitted between 09.00 and 17.00 on a business day (recipient's time) on completion of receipt by the sender of verification of the transmission from the receiving instrument;
- (e) if transmitted at any other time, at 09.00 on the first business day (recipient's time) following the completion of receipt by the sender of verification of the transmission from the receiving instrument.

**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 HSE, 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 HSE under the provisions of the Contract. The Contractor will disclose to the HSE full particulars of any such conflict of interest which may arise.

A7.2 The HSE reserves the right to terminate the Contract with four (4) weeks notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the HSE, 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 HSE under the provisions of the Contract. The actions of the HSE 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 HSE. The notice shall include a detailed statement describing the breach. If the breach is of such a nature that it is fully remedied within the four (4) week notice period, then the termination shall not take effect. If the breach is of a nature such that it can be fully remedied but not within the four (4) week notice period, then the Contractor and HSE shall agree a date by which the breach will be remedied and the termination shall also not be effective if the Contractor begins to remedy the breach within the four (4) week notice period and then continues diligently to remedy the breach until it is remedied fully by the agreed date. If the breach is incapable of remedy, or a persistent breach, then the termination shall take effect at the end of the four (4) week notice period in any event.

**A8 Fraud**

A8.1 The Contractor shall safeguard HSE's funding of the Contract against fraud generally and, in particular, fraud on the part of the staff, or the Contractor's directors and suppliers. The Contractor shall notify HSE immediately if it has any reason to suspect that any fraud has occurred or is occurring or is likely to occur.

A8.2 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the HSE) the HSE may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the HSE resulting from the termination, including the cost reasonably incurred by the HSE of making other arrangements for the supply

- of the Research Services and any additional expenditure incurred by the HSE throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the HSE in consequence of any breach of this clause.

## **B PROVISION OF THE RESEARCH SERVICES**

### **B1 The Research Services**

- B1.1 The Research Services shall be in accordance with the Contract specification and shall be performed with reasonable skill, care and diligence and to the reasonable satisfaction of HSE or its authorised representative. During the course of the Contract HSE or its authorised representative shall have the power to inspect and examine any work being performed under the Contract at any reasonable time. If HSE requires access to Contractor premises in accordance with this Clause B1.1 due notice shall be given in writing no less than four (4) weeks in advance. The Contractor shall where it is legally able to do so, give all such facilities as HSE or its authorised representative may reasonably require for such inspection and examination.
- B1.2 Where the Research Services are to be carried out on HSE premises, on completion of the Research Services the Contractor shall remove his plant, equipment, unused materials and waste and leave the premises in the condition as found.

### **B2 Contractor's Personnel**

- B2.1 The Contractor shall provide and maintain an organisation having the necessary facilities and employees of appropriate qualifications and experience to undertake the tasks identified in the specification.
- B2.2 All persons employed on work relating to the Contract must have appropriate qualifications and competencies and be acceptable to HSE in all respects. Where requested full particulars of all personnel to be used shall be forwarded by the Contractor in advance to HSE for confirmation of their acceptability.
- B2.3 Where requested the Contractor shall provide HSE with a list of names and official addresses of all persons who are or may be at any time concerned with the Research Services or any part of them, specifying the capacities in which they are to be employed and giving such other particulars and evidence of identity and any other supporting information which HSE may reasonably require.
- B2.4 The Contractor shall take all reasonable steps to avoid changes of original personnel assigned to and accepted for the work under the Contract except where changes are unavoidable or of a temporary nature caused by sickness, holidays or any other reasonable absence. The Contractor shall give at least one month's notice to HSE of proposals to change Key Personnel and Conditions B2.2 to B2.3 and E11.1 shall apply to the replacement personnel. Where Key Personnel of the Contractor may be unavailable or unfit to perform the Services for a significant length of time and at short notice due to no fault of the Contractor, the Contractor and HSE agree to work together as far as possible to mitigate the effects of such absence for both Parties and shall take reasonable steps to attempt to remedy the absence in a collaborative manner.
- B2.5 The Contractor shall take the steps reasonably required by HSE to prevent unauthorised persons being admitted to HSE premises. Where HSE gives the Contractor notice that any person is not to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if requested by HSE the Contractor shall replace any person removed under this Condition with another suitably qualified person and ensure that any pass issued to the person removed is surrendered.
- B2.6 The decision of HSE as to whether any person is to be admitted to or is to be removed from HSE premises or is not to become involved in or is to be removed from

involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required in Conditions B2.3 to B2.6 shall be final and conclusive.

- B2.7 The Contractor shall bear the cost of any notice, instruction or decision of HSE under Conditions B2.3 to B2.7 and E11.1.

**B3 Legitimacy of the Workforce**

- B3.1 The Contractor shall take all reasonable steps to ensure that any servants, employees or agents of the Contractor and any sub-contractors, their servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming Unemployment Benefit or any other benefit payable to persons registered as unemployed.

**B4 Inspection of Premises and Nature of Research Services**

- B4.1 Where Research Services are to be carried out on HSE premises the Contractor is deemed to have inspected the premises before tendering so as to have understood the precise nature and extent of the Research Services to be carried out and satisfied himself in relation to all matters connected with the Research Services and premises. HSE shall grant such access as may be reasonable for this purpose.

- B5 Not used.

**B6 Purchasing on behalf of HSE**

- B6.1 In the event that the Contractor procures Goods or Services including equipment from third parties on behalf of HSE then they shall at all times do so in accordance with the provisions of the Public Contracts Regulations 2015 as though the Contractor were a Contracting Authority within the meaning of the said Regulations.
- B6.2 The Contractor shall ensure that any article purchased by the Contractor (for the purposes of this Clause hereinafter "the purchaser") for the purposes of this Contract shall
- (a) be maintained and kept in good condition by the purchaser of such article and at the purchaser's expense throughout the term of the Contract.
  - (b) be insured by the purchaser of the article in accordance with the purchaser's current policy and practice; and
  - (c) on completion of this Contract remain the property of the purchaser.
- B6.3 If any article is loaned to the Contractor by any member of the Lloyds Register Group
- (a) the property therein shall remain the property of the Lloyds Register Group but the risk shall pass to the Contractor upon delivery to or collection by the Contractor;
  - (b) such article shall be kept in such a way as to be readily identifiable as the property of said member of the Lloyds Register Group. The Contractor shall effect and maintain adequate insurance in respect of each item of equipment or any component of it or otherwise provide warranty for its full replacement value;
  - (c) such article should be returned to said member of the Lloyds Register Group on written request and at reasonable notice in good serviceable condition, fair wear and tear excepted;
  - (d) the Contractor shall not use such articles for purposes other than the purpose of this Contract, nor shall the Contractor pass any such article to any third party without the written consent of said member of the Lloyds Register Group; and
  - (e) the Contractor shall ensure that any article loaned to it shall not become the subject of any lien, tax, charge, duty or encumbrance and the Contractor shall indemnify the relevant member of the Lloyds Register Group against all costs expenses and damages which it incurs or suffers by reason of the indemnifying party failing to carry out its obligations under this Clause.

**B7 Equipment**

- B7.1 All equipment, including information technology equipment, used by the Contractor during the performance of the Contract shall be risk assessed, and as far as reasonably possible, free from defect, and shall be fit for purpose.

**B8 Programme Governance Board**

- B8.1 HSE and Lloyds Register Foundation shall establish and maintain a Programme Governance Board having such powers and responsibilities as set out in the contract between them and/or otherwise agreed by them from time to time and which shall be communicated to the Contractor. It shall operate as agreed by HSE and Lloyds Register Foundation from time to time in terms of reference. All decisions of the Programme Governance Board shall be by consensus. The Parties to this Agreement must follow the decisions made by the Programme Governance Board.
- B8.2 The Contractor shall have a place on the Programme Governance Board as a non-participating observer.

**C PAYMENT AND CONTRACT PRICE**

**C1 Contract Price**

- C1.1 The price of the Research Services and Equipment shall be as stated in the Contract and shall be exclusive of VAT where VAT is applicable.

**C2 Invoicing and Payment**

- C2.1 Invoices for the provision of Research Services shall be submitted at agreed intervals during the Contract period in a format agreed between the parties.
- C2.2 The HSE may withhold payment in the event that the Contractor does not comply in all material respects with the conditions contained in this Contract and has not rectified any such default within thirty (30) days of a notice from the HSE including a detailed statement describing the nature of the breach.
- C2.3 Payment of invoices is subject to Acceptance of the most recently due Progress Report by Lloyds Register Foundation.
- C2.4 Subject to Clauses C2.2 and C2.3 above, payment shall be made within 30 days of receipt and agreement of invoices for Research Services provided to the satisfaction of HSE. HSE's usual method of payment is through the Banks Automated Clearing System (BACS). All payments made by HSE to the Contractor shall be through BACS unless the Contractor provides advance written notice to HSE that this method of payment is not possible or shall cause undue inconvenience.
- C2.5 Any complaints which may arise concerning late payment of invoices should be addressed in the first instance to the Contract Manager. The Contractor shall not suspend the supply of the Research Services unless the Contractor is entitled to terminate the Contract in accordance with Clause H2.6 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by HSE on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

**C3 Value Added Tax (VAT)**

- C3.1 Where applicable the prevailing rate and total of Value Added Tax (VAT) shall be shown separately on all invoices.

**C4 Tax Status**

- C4.1 Where the Contractor, or its staff, is liable to be taxed in the UK in respect of consideration received under this contract, it shall at all times comply with the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) and all other statutes and regulations relating to income tax in respect of that consideration.
- C4.2. Where the Contractor, or its staff, is liable to National Insurance Contributions (NICs) in respect of consideration received under this contract, it shall at all times comply

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with the Social Security Contributions and Benefits Act 1992 (SSCBA) and all other statutes and regulations relating to NICs in respect of that consideration.

- C4.3 HSE may, at any time, request that the Contractor provides information which demonstrates how it, or its staff, has complied with Clauses C4.1 and C4.2 above or why those Clauses do not apply to it.
- C4.4 A request under Clause C4.3 above may specify the information which the Contractor, or its staff, must provide and the period within which that information must be provided.
- C4.5 HSE may terminate this contract if-
- (a) in the case of a request mentioned in Clause C4.3 above-
    - (i) The Contractor, or its staff, fails to provide information in response to the request within a reasonable time, or
    - (ii) The Contractor, or its staff, provides information which is inadequate to demonstrate either how it complies with Clauses C4.1 and C4.2 above or why those Clauses do not apply to it;
  - (b) in the case of a request mentioned in Clause C4.4 above, The Contractor, or its staff, fails to provide the specified information within the specified period, or
  - (c) it receives information which demonstrates that, at any time when Clauses C4.1 and C4.2 apply the Contractor, or its staff, is not complying with those Clauses C4.6 HSE may supply any information which it receives under Clause C4.3 to the Commissioners of Her Majesty's Revenue and Customs for the purpose of the collection and management of revenue for which they are responsible.

**C5 Prompt Payment to Sub-Contractors**

- C5.1 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such 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 30 days from receipt of a valid invoice.

**C6 Recovery of Sums Due**

- C6.1 Whenever 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 HSE in respect of any breach of this Contract) HSE may unilaterally deduct that sum from any sum then due or which at any later time becomes due to the Contractor under this Contract.
- C6.2 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.
- C6.3 The Contractor shall make all payments due to HSE 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 HSE to the Contractor
- C6.4 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.

**D STATUTORY OBLIGATIONS AND REGULATIONS****D1 Prevention of Corruption**

- D1.1 The Contractor shall not offer or give, or agree to give, to any employee, agent, servant or representative of HSE any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of this Contract or any

other contract with HSE, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under The Bribery Act 2010.

- D1.2 The Contractor shall not enter into this Contract if in connection with it commission has been paid or is agreed to be paid to any employee or representative of HSE by the Contractor or on the Contractor's behalf, unless before this Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to HSE.
- D1.3 Where the Contractor or Contractor's employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor's behalf, engages in conduct prohibited by Conditions D1.1 or D1.2 in relation to this or any other contract with HSE, HSE has the right to:
- (a) terminate the Contract in whole or in part immediately and without liability to the Contractor and without prejudice to rights already accruing to HSE and recover from the Contractor the amount of any loss or damage suffered by HSE resulting from the termination; or
  - (b) recover in full from the Contractor any other loss or damage sustained by HSE in consequence of any breach of this Condition, whether or not the Contract has been terminated.
- D1.4 In exercising its rights or remedies under this Condition, HSE 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 prohibited act;
  - (b) give all due consideration, where appropriate, to action other than termination of the Contract.

## **D2 Equality and Diversity**

D2.1 The Supplier shall:

- (a) perform its obligations under this Contract (including those in relation to the provision of the Goods and/or Research Services) in accordance with:
  - (i) all applicable equality Law (whether in relation to race, sex, gender re assignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
  - (ii) any other requirements and instructions which HSE reasonably imposes in connection with any equality obligations imposed on the HSE at any time under applicable equality Law;
- (b) take all necessary steps, and inform the Authority of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

## **D3 The Contracts (Rights of Third Parties) Act 1999**

- D3.1 No person who is not a Party to the Contract (including without limitation any employee, officer, agent, representative, or sub-contractor of either HSE or the Contractor) shall have any right to enforce any term of the Contract, which expressly or by implication, confers a benefit on him without the prior agreement in writing of both HSE and the Contractor. This Condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.
- D3.2 The Contractor shall not make any disposition of its rights that would prevent compliance with the conditions of this Contract, nor shall it accept any financial contribution from any third party for any part of the Work without the prior agreement in writing of HSE.

**D4 Environmental Requirements**

- D4.1 The Contractor shall perform the Research Services in accordance with the government's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, Volatile Organic Compounds and other substances damaging to health and the environment.
- D4.2 Throughout the term of the Contract the Contractor shall provide information on new or improved environmentally preferable products when they become available and, where reasonably required, promote their use. Samples of such products shall be provided to the Contract Manager for evaluation and for written agreement before wider use within HSE.
- D4.3 The Contractor shall co-operate with HSE, without charge, in Supplier Environmental Audits or Product Audits which the Contractor or his representative may undertake, such audits to be restricted to claims made by the Contractor for products made by the Contractor, for products supplied by the Contractor, or by the Contractor's environmental policy.
- D4.4 The Contractor shall maintain, and provide proof, at reasonable notice by HSE, of carrying out an environmental management system conforming to ISO 14001 or any subsequent or equivalent standards.

**D5 Health and Safety**

- D5.1 The Contractor shall promptly notify HSE of any health and safety hazards which may arise in connection with the performance of the Contract.
- D5.2 HSE shall promptly notify the Contractor of any health and safety hazards which may exist or arise at HSE's premises and which may affect the Contractor in the performance of the Contract.
- D5.3 Where the Research Services are to be performed on HSE premises the Contractor and the HSE Contract Manager shall undertake a joint risk assessment and take action to minimise the risk, and such actions shall be recorded in the premises' Health and Safety Manual.
- D5.4 While on HSE premises, or other non-Contractor premises for the purposes of undertaking any work under this Contract, the Contractor shall comply with any health and safety measures implemented by HSE in respect of personnel and other persons working on those premises.
- D5.5 The Contractor shall notify HSE immediately in the event of any incident or "near miss" occurring in the performance of the Contract on HSE premises where that incident or "near miss" causes, or may cause, any personal injury or damage to property which could give rise to personal injury.
- D5.6 The Contractor shall take all necessary measures to comply with the requirements of the Health and Safety at Work etc Act 1974 and any other Acts, orders, regulations and Codes of Practice relating to Health and Safety which may apply to staff in the performance of the Contract.
- D5.7 The Contractor shall ensure that his health and safety policy statement and health and safety management arrangements (as required by the Health and Safety at Work etc Act 1974) are kept up to date and made available to HSE on request.

**D6 TUPE**

- D6.1 Both HSE and the Contractor recognise that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in respect of the award of the Contract, and that for the purposes of those Regulations, the undertaking concerned (or any relevant part of the undertaking) shall transfer to the Contractor on the commencement of the Contract.
- D6.2 During the period of six months preceding the expiry of the Contract or after HSE has given notice to terminate the Contract or the Contractor stops trading, and

within 20 working days of being so requested by HSE, the Contractor shall fully and accurately disclose to HSE for the purposes of TUPE all information relating to its employees engaged in providing the Research Services under the Contract, in particular, but not necessarily restricted to, the following:

- (a) the total number of staff whose employment with the Contractor is liable to be terminated at the expiry of this Contract but for any operation of law; and
  - (b) for each person, age and gender, details of their salary, and pay settlements covering that person which relate to future dates but which have already been agreed and their redundancy entitlements (the names of individual members of employed staff do not have to be given); and
  - (c) full information about the other terms and conditions on which the affected staff are employed (including but not limited to their working arrangements), or about where that information can be found; and
  - (d) details of pension entitlements, if any; and
  - (e) job titles of the members of staff affected and the qualifications required for each position.
- D6.3 The Contractor shall permit HSE to use the information for the purposes of TUPE and re-tendering. The Contractor shall co-operate with the re-tendering of the Contract by allowing the transferee to communicate with and meet the affected employees and/or their representatives.
- D6.4 The Contractor agrees to indemnify HSE fully and hold it harmless at all times from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities whatsoever in any way connected with or arising from or relating to the provision of information under Condition D6.2.
- D6.5 The Contractor agrees to indemnify HSE from and against all actions, proceedings, claims, expenses, awards, costs and all other liabilities (including legal fees) in connection with or as a result of any claim or demand by any employee or person claiming to be an employee on any date upon which the Contract is terminated and/or transferred to any third party ("Relevant Transfer Date") arising out of their employment or its termination whether such claim or claims arise before or after the Relevant Transfer Date.
- D6.6 In the event that such information provided by the Contractor in accordance with Condition 6.2 above becomes inaccurate, whether due to changes to the employment and personnel details of the affected employees made subsequent to the original provision of such information or by reason of the Contractor becoming aware that the information originally given was inaccurate, the Contractor shall notify HSE of the inaccuracies and provide the amended information.
- D6.7 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its termination.

## **D7 Welsh Language Scheme**

- D7.1 Where the Research Services are to be provided to Wales, the service provider shall adhere to HSE's Welsh Language Scheme and the Welsh and English Languages shall be treated on a basis of equality in accordance with the Welsh Language Act 1993.

## **E PROTECTION OF INFORMATION**

### **E1 Data Protection Act**

- E1.1 For the purposes of this Clause E1, the terms "Data Controller", "Data Processor", "Data Subject", "Personal Data", "Process" and "Processing" shall have the meaning prescribed under the DPA.

- E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- E1.3 Notwithstanding the general obligation in Clause E1.2, where the Contractor is processing Personal Data (as defined by the DPA) as a Data Processor for HSE the Contractor shall:
- (a) process the Personnel Data only in accordance with instructions from HSE (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by HSE;
  - (b) comply with all applicable laws;
  - (c) process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider's obligations under this Contract or as is required by Law or any Regulatory Body;
  - (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction, damage, alteration or disclosure to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
  - (f) obtain prior written consent from HSE in order to transfer the Personal Data to any third party for the provision of the Research Services;
  - (g) not cause or permit the Personal Data to be transferred outside of the UK and the European Economic Area without the prior consent of HSE;
  - (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause E1;
  - (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by HSE.
  - (j) not disclose Personnel Data to any third parties in any circumstances other than with the written consent of HSE or in compliance with a legal obligation imposed upon HSE.
- E1.4 The Contractor shall notify HSE (within five Working Days) if it receives:
- (a) a request from a Data Subject to have access to that person's Personal Data; or
  - (b) a complaint or request relating to HSE's obligations under the DPA.
- E1.5 The provision of this Clause E1 shall apply during the continuance of this Contract and indefinitely after its expiry or termination.
- E2 Official Secrets Acts 1911, 1989, Section 182 of the Finance Act 1989**
- E2.1 The Contractor undertakes to abide by, and ensure that its Staff performing work on the Research Services herein abide by the provisions of the following where applicable:
- (a) the Official Secrets Acts 1911 to 1989; and
  - (b) Section 182 of the Finance Act 1989.
- E2.2 In the event that the Contractor and its Staff fail to comply with this Condition, HSE reserves the right to terminate the Contract by giving notice in writing to the Contractor.
- E2.3 The provisions of Condition E2.1 shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

**E3 Confidentiality**

- E3.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party:
- (a) shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly; and
  - (b) shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of the Contract.
- E3.2 Notwithstanding the provisions of clause E3.1 above, HSE may disclose the Confidential Information of the Contractor:
- (a) on a confidential basis to any Central Government Body for any proper purpose of HSE or of the relevant Central Government Body; to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - (b) to the extent that HSE (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
  - (c) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause E 3.2(a) (including any benchmarking organisation) for any purpose relating to or connected with this Agreement;
  - (d) on a confidential basis for the purpose of the exercise of its rights under this Agreement; or
  - (e) on a confidential basis to a proposed Successor Body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,
- and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on HSE under this Clause E3.
- E3.3 The Contractor shall take all necessary precautions to ensure that all Confidential Information obtained from HSE under or in connection with the Contract:
- (a) is given only to such of the Staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary for the performance of the Contract and only to the extent necessary for the performance of the Contract;
  - (b) is treated as confidential and not disclosed (without prior Approval) or used by any Staff or such professional advisors or consultants' otherwise than for the purposes of the Contract.
- E3.4 Where it is considered necessary in the opinion of HSE, the Contractor shall ensure that Staff or such professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with the Contract.
- E3.5 The Contractor shall not use any Confidential Information received otherwise than for the purposes of the Contract.
- E3.6 The provisions of Conditions E3.1 to E3.5 shall not apply to any Confidential Information received by one Party from the other:
- (a) which is or becomes public knowledge (otherwise than by breach of this Condition);
  - (b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
  - (c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

- (d) is independently developed without access to the Confidential Information; or
- (e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation 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).

E3.7 Nothing in this Condition shall prevent HSE:

- (a) disclosing any Confidential Information for the purpose of:
  - (i) the examination and certification of HSE's accounts; or
  - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources; or
- (b) disclosing any Confidential Information obtained from the Contractor:
  - (i) to any other department, office or agency of the Crown; or
  - (ii) to any person engaged in providing any Research Services to HSE for any purpose relating to or ancillary to the Contract;

provided that in disclosing information under Condition E3.7 HSE discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given via a disclosure subject to an arrangement no less stringent than those placed on HSE under this Clause E3

E3.8 Nothing in this Condition 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 does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

E3.9 In the event that the Contractor fails to comply with this Condition E3, HSE reserves the right to terminate the Contract by notice in writing with immediate effect.

E3.10 The provisions under this Condition E3 are without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information.

#### **E4 Publication of the Contract**

E4.1 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. HSE 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.

E4.2 Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for HSE to publish the Contract in its entirety, including from time to time agreed changes to the Contract, to the general public.

E4.3 HSE may consult with the Contractor to inform its decision regarding any redactions but HSE shall have the final decision in its absolute discretion.

E4.4 The Contractor shall assist and co-operate with HSE to enable HSE to publish this Contract.

#### **E5 Freedom of Information**

E5.1 Both Parties acknowledge that the other Party is subject to the requirements of the FOIA and the Environmental Information Regulations and shall facilitate that Party's compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses E5.2-6 (inclusive) below. A Party that is subject to a request under the FOIA and the Environmental Information Regulations Act ("the Act") shall be defined as the "Subject Party" and the other Party shall be defined as the "Facilitating Party".

E5.2 Where the Subject Party receives a Request for Information in relation to Information that the Facilitating Party is holding on its behalf and which the Subject Party does not

hold itself, the Subject Party shall refer such Request for Information to the Facilitating Party as soon as practicable and in any event within 5 Working Days of receiving a Request for Information and the Facilitating Party shall:

- (a) provide the Subject Party with a copy of all such Information in the form that the Subject Party requires as soon as practicable and in any event within 10 Working Days (or such other period as the Subject Party acting reasonably may specify) of the Subject Party's request; and
- (b) provide all necessary assistance as reasonably requested by the Subject Party in connection with any such Information, to enable the Subject Party to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information.

E5.3 Following notification under Clause E5.2, and up until such time as the Facilitating Party has provided the Subject Party with all the Information specified in Clause E5.2(a), the Facilitating Party may make representations to the Subject Party as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Subject Party shall be responsible for determining at its absolute discretion:

- (a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and
- (b) whether Information is to be disclosed in response to a Request for Information, and

in no event shall the Facilitating Party respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Subject Party.

E5.4 In the event of a request from the Subject party pursuant to Clause E5.2, the Facilitating Party shall as soon as practicable, and in any event within 5 Working Days of receipt of such request, inform the Subject Party of the Facilitating Party's estimated costs of complying with the request to the extent these would be recoverable if incurred by the Subject Party under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Subject Party's own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the "Appropriate Limit") the Subject Party shall inform the Facilitating Party in writing whether or not it still requires the Facilitating Party to comply with the request and where it does require the Facilitating Party to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as the Subject Party is entitled to under Section 10 of the FOIA. In such case, the Subject Party shall notify the Facilitating Party of such additional days as soon as practicable after becoming aware of them and shall reimburse the Facilitating Party for such costs as the Facilitating Party incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

E5.5 The Facilitating Party shall ensure that all Information held on behalf of the Subject party is retained for disclosure for at least six years (from the date it is acquired) and shall permit the Subject Party to inspect such Information as requested from time to time.

E5.6 The Subject Party shall transfer to Facilitating Party any Request for Information received by the Subject Party as soon as practicable and in any event within 2 Working Days of receiving it.

E5.7 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) HSE may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA

(the "Code"), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:

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

provided always that where E5.7(a) above applies HSE shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

- E5.8 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that HSE may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

**E6 Publicity, Media and Official Enquiries**

- E6.1 Neither Party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other.
- E6.2 The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by all its servants, employees, agents, professional advisors and consultants. The Contractor shall take all reasonable steps to ensure the observance of the provisions of Condition E6.1 by its sub-contractors.
- E6.3 HSE reserves the right to publish the results of the Research Services carried out under the Contract with appropriate acknowledgement of the work contributed by the staff of the Contractor unless the Contractor requests in writing that its name be withheld
- E6.4 The provisions of this Condition shall apply during the continuance of this Contract and indefinitely after its expiry or termination.
- E6.5 In accordance with normal academic practice, all employees, students, agents or appointees of the Contractor who work on the Project shall be permitted, to discuss Confidential Information in internal seminars, and to give instructions within the University on questions related to such work.
- E6.6 Subject to ensuring that any such publishing complies with the publishing policy which shall be agreed by the Programme Governance Board, the HSE recognises that the Contractor shall have freedom in accordance with normal academic practice to publish results and agrees that the Contractor shall be permitted to present at meetings and to publish the methods and results of the Study provided however that the HSE shall have been furnished with copies of any proposed publication or presentation at least four weeks in advance of the submission of such proposed publication or presentation to a journal editor or other third party. The HSE shall have the power to delay proposed publication or presentation if in its reasonable opinion such delay is necessary to protect its business interests, those of Lloyds Register Foundation or Lloyds Register Group or the commercial uses to the HSE of the information. A written reply indicating approval of or delay to, disclosure shall be sent by the HSE within 28 days of receipt of the request providing that the delay to disclosure of the results shall in no case exceed six months from the date of receipt by the HSE.
- E6.7 Where in the opinion of the Parties a proposed publication contains patentable or commercially sensitive subject matter which needs protection then the Party proposing to publish may be requested to refrain from doing so for a maximum of six months in order to allow for application for patent protection in the name and at the cost of the relevant owner of the Resulting IP.

- E6.8 Nothing contained in this Agreement shall prevent the submission of a thesis to examiners in accordance with the normal regulations of any academic Parties subject where appropriate to such examiners being bound by conditions of confidentiality in no less terms than those outlined in Clause E10, nor to the placing of such thesis in the library of the University provided that access to such thesis shall only be available on conditions of confidentiality no less onerous than those contained in Clause E10 hereof.
- E6.9 In publishing and publicising the work undertaken within this contract unless a Party requests in writing that its name be withheld, both Parties undertake to use the logos of the HSE and the Thomas Ashton Institute, and where appropriate, the logo of the University of Manchester. In publishing academic journals, both HSE and the LRF will be acknowledged in a suitable way, using wording agreed by the Governance Board.
- E6.10 Each student or research fellow funded or partly funded under this Agreement who publishes in accordance with the above provisions shall refer to themselves as a 'Lloyds Register Foundation Scholar' or 'Lloyds Register Foundation Fellow' during the period of funding. This title may be used alongside any other title required by other funders or host (academic) organisations, however it must not be abbreviated. The University of Manchester must communicate this requirement to the funded students and/or fellows.

## **E7 Security**

- E7.1 Where the Research Services are to be carried out on HSE premises the Contractor shall comply with the security requirements of HSE and the premises manager, and shall ensure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements.

## **E8 Intellectual Property Rights**

- E8.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs, rights to inventions, rights in confidential information (including know-how and trade secrets, trademarks, business names, domain names, goodwill copyrighted materials, or other material, whether registered or unregistered, and all similar or equivalent rights or forms of protection which subsist now or will subsist in the future in any part of the world (the "**IP Materials**")):
- (a) furnished to or made available to the Contractor by or on behalf of the HSE shall remain the property of the HSE; and
  - (b) prepared by or for the Contractor on behalf of the HSE directly arising from the Research Services for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the HSE;
- and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.
- E8.2 The Contractor hereby assigns to the HSE to the fullest extent possible, all Intellectual Property Rights which may subsist in the prepared in accordance with clause E8.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.
- E8.3 HSE and the Contractor recognise that the Contractor shall retain any moral rights arising under the Copyright, Designs and Patents Act 1988 in any Results created during the performance of the Research Services. However, the Contractor hereby agrees that HSE shall be able to use any such Results in an unfettered and unencumbered manner and agrees that it shall not enforce such moral rights against HSE unless it is able to demonstrate that HSE's use of said Results undermines the

integrity of the Research Services. The Contractor confirms that such moral rights shall not be used in any manner that conflicts with this Contract or the intention of the Contract or in any way that will embarrass or bring HSE or LRF into disrepute.

- E8.4 The Contractor shall ensure that where it is legally able the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the HSE a non-exclusive licence or, if itself a licensee of those rights, shall grant to the HSE an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the HSE to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third-party supplying Research Services to the HSE.
- E8.5 Contractor makes no representation or warranty that advice or information given by or any of its employees, students, agents or appointees who work on the Research Services, or the content or use of any materials, works or information provided in connection with the Research Services, will not constitute or result in infringement of third-party rights. The Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the HSE and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the HSE or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the HSE; or
  - (b) the use of data supplied by the HSE which is not required to be verified by the Contractor under any provision of the Contract.
- E8.5.1 For the avoidance of doubt the indemnity contained herein this Clause E8.5 shall be limited under the total contractual liability of this Contract as specified in Clause G3.1
- E8.6 The HSE shall notify the Contractor in writing of any claim or demand brought against the HSE for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.
- E8.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:
- (a) shall consult the HSE on all substantive issues which arise during the conduct of such litigation and negotiations;
  - (b) shall take due and proper account of the interests of the HSE; and
  - (c) shall not settle or compromise any claim without the HSE's prior written consent (not to be unreasonably withheld or delayed).
- E8.8 The HSE shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the HSE or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the HSE for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the HSE in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E8.5(a) or E8.5(b).
- E8.9 The HSE shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the HSE or the Contractor in connection with the performance of its obligations under the Contract.
- E8.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the

reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the HSE and, at its own expense and subject to the consent of the HSE (not to be unreasonably withheld or delayed):

- (a) modify any or all of the Research Services without reducing the performance or functionality of the same, or substitute alternative Research Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Research Services or to the substitute Research Services; or
- (b) procure a licence to use and supply the Research Services, which are the subject of the alleged infringement, on terms which are acceptable to the HSE, and in the event that the Contractor is unable to comply with clauses E8.7(a) or E8.7(b) within 20 Working Days of receipt of the Contractor's notification the HSE may terminate the Contract with immediate effect by notice in writing.

E8.11 "Background IP" shall be defined as any IP Materials made available by either Party for use in the Research Services or necessary to exploit the results, but not (in either case) directly arising from and developed in the course of the Research Services and belonging to such Party or to which such Party has rights which permits its use in the Research Services.

E8.12 Any and all Background IP is and shall remain, as between the parties, the exclusive property of the party making such Background Intellectual Property available. Each party hereby grants to the other party a non-exclusive, royalty-free licence to use its Background Intellectual Property for the purpose of carrying out the Research Services and for no other purpose whatsoever.

E8.13 The University and HSE shall, prior to the commencement of the Research Services, or as soon as is reasonably possible in relation to any particular specified Research Services, establish and agree the existence of any Background IP belonging to the University where it is anticipated that such Background IP will be necessary to utilise the results obtained under this Agreement. All such Background IP shall be agreed and listed in Annex 2.

E8.14 It is hereby the expressly stated intention of both Parties that the results of the Research Services shall as far as possible be utilised and commercialised for maximum benefit and both Parties agree to act in good faith in accordance with this aim in their obligations under this Clause E8.

E8.15 If HSE requires access to use any of the Contractor's Background IP, the Contractor will use reasonable endeavours to grant to HSE a licence to such relevant Background IP for such purpose to be negotiated on fair and reasonable market terms provided such licence is requested in writing by HSE within twelve (12) months of the expiry of this Contract. The Contractor shall not unreasonably refuse to grant such a licence in accordance with this Clause E8.

E8.16 HSE agrees to grant Contractor a non-exclusive, irrevocable, perpetual, royalty free license to use the Results for further non-commercial teaching, education and research purposes, provided that the Contractor claims no rights to such Foreground Intellectual Property.

## **E9 Retention of Documentation and Right of Audit**

E9.1 The Contractor shall keep secure and maintain until six years after the final payment of all sums due under the Contract, or such shorter period as may be agreed between HSE and the Contractor, accurate accounts, full and accurate records of the Research Services, all receipts for expenditure reimbursed by the Contractor and all payments made by HSE.

E9.2 The Contractor shall:

- (a) produce such records retained pursuant to Condition E9.1 as HSE may reasonably require;
- (b) afford such facilities as the HSE, or its representatives, may reasonably require for its representatives to inspect and take copies or extracts of the records retained pursuant to Condition E9.2 (a). Provided that the Contractor takes all reasonable steps to prevent this exception from applying, the right granted by this Condition E9.2 (b) shall not apply to the extent that the confidentiality of information relating to the Contractor's other clients would be jeopardised by such inspection; and
- (c) provide such explanations of records produced pursuant to Condition E9.2 (a) or inspected pursuant to Condition E9.2 (b) as HSE may reasonably require.

E9.3 For the purpose of:

- (a) the examination and certification of HSE's accounts; or
- (b) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which HSE has used its resources, the Comptroller and Auditor General may examine such records as he may reasonably require which are owned, held or otherwise within the control of the Contractor and may require the Contractor to provide such oral and/or written explanations as he considers necessary. This Condition 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.

#### **E10 Security of Confidential Information**

- E10.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the performance of the Contract, the Contractor undertakes to maintain security systems and procedures in line with standard commercial practice.
- E10.2 The Contractor will immediately notify HSE of any breach of security in relation to Confidential Information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Contractor will recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor's obligations under Condition E10.3. The Contractor will co-operate with HSE in any investigation that HSE considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.
- E10.3 HSE may require the Contractor to alter any security systems and procedures at any time during the Contract Period at the Contractor's expense.

#### **E11 Baseline Personnel Security Standard**

- E11.1 It shall be the Contractor's responsibility to ensure that all personnel engaged in the performance of this Contract shall have undergone pre-employment checks covering identity, the last three years employment history, nationality and immigration status and criminal record for unspent convictions. Such checks shall meet the requirements of HMG Baseline Personnel Security Standard.
- E11.2 HSE reserves the right, at its sole discretion, to carry out audits and spot checks at any time during the Contract Period to satisfy itself that the checks have been carried out.

#### **E12 GDPR Data Protection**

- E12.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, HSE is the Controller and the Contractor is the Processor unless otherwise specified in Schedule B. The only processing that the Processor is authorised to do is listed in Schedule B by the Controller and may not be determined by the Processor.
- E12.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.

E12.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Research Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

E12.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- a) process that Personal Data only in accordance with Schedule B, unless the Processor is required to do otherwise by Law. If it is so required, the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
- b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- c) ensure that:
  - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule B);
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

E12.5 Subject to clause E12.6, the Processor shall notify the Controller immediately if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - b) receives a request to rectify, block or erase any Personal Data;
  - c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
  - e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - f) becomes aware of a Data Loss Event.
- E12.6 The Processor's obligation to notify under clause E12.5 shall include the provision of further information to the Controller in phases, as details become available.
- E12.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause E12.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- a) the Controller with full details and copies of the complaint, communication or request;
  - b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
  - c) the Controller, at its request with any Personal Data it holds in relation to a Data Subject;
  - d) assistance as requested by the Controller following any Data Loss Event;
  - e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- E12.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- a) the Controller determines that the processing is not occasional;
  - b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
  - c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- E12.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- E12.10 Each Party shall designate its own data protection office if required by the Data Protection Legislation.
- E12.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
- a) notify the Controller in writing of the intended Sub-processor and processing;
  - b) obtain the written consent of the Controller;
  - c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause E12 such that they apply to the Sub-processor; and
  - d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- E12.12 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.
- E12.13 The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

- E12.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- E12.15 Where the Parties include two or more Joint Controllers as identified in Schedule C in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule B in replacement of Clauses 1.1-1.14 for the Personal Data under Joint Control.
- E12.16 In the case of either Party, liability for any breach of its obligations under the General Data Protection Regulation (Regulation (EU) 2016/679) (GDPR) and the Data Protection Act (DPA) 2018 shall not in the aggregate exceed the total financial value agreed in Clause G3.2.

**E13 LOGOS/TRADE MARKS**

- E13.1 Neither Party shall, without the prior written permission of the other Party, use any trademarks or logos of the other Party, or those of the Lloyds Register Foundation in connection with any advertising or publicity, either on the internet or otherwise.

**F CONTROL OF THE CONTRACT**

**F1 Assignment and Sub-contracting**

- F1.1 Except where F1.4 and 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 HSE has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of HSE, be sent by the Contractor to HSE as soon as reasonably practicable.
- F1.4 Notwithstanding Clause F1.1, the Contractor may assign to a third party ("**the Assignee**") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which HSE incurs under Clause C2.3). Any assignment under this clause F1.4 shall be subject to:
- (a) reduction of any sums in respect of which HSE exercises its right of recovery under Clause C6 (Recovery of Sums Due);
  - (b) all related rights of HSE under the contract in relation to the recovery of sums due but unpaid; and
  - (c) HSE receiving notification under both Clauses F1.5 and F1.6.
- F1.5 In the event that the Contractor assigns the right to receive the Contract price under Clause F1.4, the Contractor or the Assignee shall notify HSE in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies HSE of the Assignee's contact information and bank account details to which HSE shall make payment.
- F1.7 The provisions of Clauses C2 and 3 (Invoicing and Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of HSE.
- F1.8 Subject to Clause F1.10, HSE may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (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 HSE; or
  - (c) any private sector body which substantially performs the functions of HSE,

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 HSE such that it ceases to be a Contracting Authority 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 HSE.

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 Authority or if there is a change in the legal status of HSE such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the **"Transferee"**):

- (a) the rights of termination of HSE in Clauses H1 (Termination on change of control and insolvency) 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 HSE 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 HSE 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 enforce any provision of the Contract at any time shall not affect any future right to require complete performance by the other party, nor shall the waiver of any individual breach of any provision be taken or held to be a waiver of any subsequent breach of that or any other provision.

## **F3 Variation by HSE**

F3.1 HSE reserves the right to alter the requirements of the Contract, as detailed in the specification, should this at any time become necessary. In any alteration of the contractual requirement, payment under the Contract shall be subject to fair and reasonable adjustment to be agreed between HSE and the Contractor in writing. Failing agreement, the matter shall be determined by dispute resolution in accordance with Condition I.1 or by arbitration in accordance with the provisions of Condition I.2.

F3.2 No variation to this Contract shall be valid unless agreed in writing between the Parties and signed by or on behalf of each of the Parties.

## **F4 Variation by the Contractor**

F4.1 The Contractor may request to alter the requirements of the contract, as detailed in the specification, provided that reasonable prior written notice is given and, should an adjustment be required, it is accompanied by detailed proposals.

## **F5 Severability**

F5.1 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.

- F5.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

**F6 Remedies Cumulative**

- F6.1 Except as otherwise expressly provided by the Contract, all remedies available to either Party for breach of this 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.

**G LIABILITIES**

**G1 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) fraud; or
  - (c) fraudulent misrepresentation; or
  - (d) any loss or damage caused by a deliberate breach of this Contract.
- G1.2 Subject to Clause G1.3, the Contractor shall indemnify HSE and keep HSE indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the premises, including in respect of any death or personal injury, loss of or damage to property, 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.
- 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 HSE or by breach by HSE of its obligations under the Contract.
- G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.5 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 6 (six) years following the expiration or earlier termination of the Contract.
- G1.6 The Contractor shall hold employer's liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.7 The Contractor shall give HSE, 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.
- G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract HSE may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.9 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 Clauses G1.2 and G.13.

G1.10 The Contractor's liability in respect of any breach of obligations implied by Section 2 of the Supply of Goods and Services Act 1982 shall be limited to the value quoted in paragraph 6.1 above

## **G2 Professional Indemnity**

G2.1 The Contractor shall hold and maintain professional indemnity insurance cover and shall ensure that all professional consultants involved in the provision of the Research Services hold and maintain appropriate cover. Such Insurance to be held by the Contractor or by any agent, sub-contractor or consultant involved in the provision of Research Services with a limit of indemnity of not less than £1,000,000 for any occurrences arising out of each and every event. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of this Contract.

G2.2 Contractor accepts no responsibility for any use which may be made of any work carried out under or pursuant to this Contract, or of the results of the work performed under the Contract, nor for any reliance which may be placed on such work or results, nor for advice or information given in connection with them.

## **G3 Limitation of Liability**

G3.1 In any event, the maximum liability of either Party under or otherwise in connection with this Contract or its subject-matter shall, including any indemnities contained herein and subject to Clause G1.1, not exceed in the aggregate, the total sum of £1,000,000.

G3.2 The maximum liability of either Party to the other Party under or otherwise in connection with this Contract relating specifically to a breach of the General Data Protection Regulation (Regulation (EU) 2016/679 (GDPR) and the Data Protection Act (DPA) 2018 shall not exceed in the aggregate the total value of £3,000,000. For the purposes of clarity the limit of liability contained in this Clause G3.2 excludes any liability for fines or penalties imposed by the Information Commissioner's Office or others in respect of any breach of the General Data Protection Regulation (Regulation (EU) 2016/679 (GDPR) and the Data Protection Act (DPA) 2018, except where the Processor is found to have processed data in a manner that is inconsistent with, or not permitted by, Schedule B and the Processor can demonstrate that they have complied with the obligations contained in Clause E12.2.

## **G4 Warranties and Representations**

G4.1 The Contractor warrants and represents that:

- (a) it has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Contractor;
- (b) it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
- (c) all of its obligations pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;
- (d) in entering the Contract it has not committed any Fraud;
- (e) 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 HSE prior to execution of the Contract;

- (f) 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;
- (g) 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;
- (h) 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;
- (i) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (j) 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;
  - (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; 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.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on Insolvency and Change of Control**

H1.1 The HSE 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 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 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 Not used.

H1.3 The Contractor shall notify the HSE immediately if the Contractor undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“**change of control**”). The HSE may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the HSE 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 Where the Services, or any portion of the Services, are not carried out within the time or times specified within the Contract, HSE shall have the option, without prejudice to any of its other rights or remedies, to terminate the Contract by written notice having immediate effect without liability to the Contractor and without prejudice to rights already accruing to HSE in the event of any breach or non-observance of any provision of this Contract, which if capable of remedy, the Contractor fails to remedy within thirty (30) days of notification of the breach or non-observance.

H2.2 Where the Services, or any portion of the Services, are in the reasonable opinion of HSE judged to have been carried out with significant undue care HSE shall have the option, without prejudice to any of its other rights or remedies, to;

- (a) require the Contractor, at his own expense, to re-perform that specific portion of the services to HSE’s reasonable satisfaction. The total cost of such re-performance of Research Services under this Clause H2.2(a) shall not exceed the value of fifty percent of the Contract Price of this Agreement;
- (b) terminate the Contract by written notice having effect within four (4) weeks of such notice and only if Contractor has not to HSE’s reasonable satisfaction begun to significantly remedy such breach of Clause H2.2 in such four (4) week period;

H2.3 Not used

H2.4 Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the HSE to the Contractor (for Services supplied by the Contractor prior to termination and in accordance with the Contract but where the payment has yet to be made by the HSE), until the HSE has established the final cost of making the other arrangements envisaged under this clause.

H2.5 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 HSE in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.6 If HSE fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify HSE in writing of such failure to pay. If HSE fails to pay such undisputed sums within 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 HSE exercising its rights under Clauses C6 (Recovery of Sums Due).

## **H3 Termination – General**

- H3.1 The HSE shall have the right to terminate in whole or in any part this Contract with immediate effect and without liability to the Contractor in the event that Lloyds Register Foundation terminates its Agreement in respect of Grant reference G/102293 with the HSE.
- H3.2 The HSE shall have the right to terminate the whole or any part of this agreement immediately and without liability to the HSE in the event that the Contractor does or omits to do anything which in the reasonable opinion of the HSE or the Lloyds Register Foundation, could cause damage to the Lloyds Register Foundation's reputation due to the existence of this Contract.
- H3.3 In the event of termination of this Contract by the HSE in accordance with Clauses H2.1 or D1.3a the HSE will be entitled to recover monies already paid to the Contractor at the date of termination.
- H3.4 In the event of termination, for whatever reason, and upon expiry of the Contract, the Programme Governance Board shall convene immediately to make decisions as to the future of the Discovering Safety Programme, the Programme Governance Board, and other relevant matters.

#### **H4 Break**

- H4.1 In addition to its rights of termination under Condition H1, the HSE shall be entitled to terminate the Contract by giving to the Contractor not less than ninety (90) days notice in writing to that effect. Upon expiry of the notice the Contract shall be terminated without prejudice to the rights of the parties accrued to the date of termination.
- H4.2 Upon such termination the Contractor shall have the right to claim from HSE reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Research Services, including any commitments, liabilities or expenditure which are reasonably incurred, and would represent an unavoidable loss by the Contractor by reason of the termination of the Contract. Such costs shall be agreed in writing between HSE and the Contractor prior to any commitment by HSE to reimburse the Contractor. For the avoidance of doubt HSE shall not indemnify the Contractor against loss of profit or any indirect or consequential loss. HSE shall not in any case be liable to pay under the provisions of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Contractor under the Contract, shall exceed the total contract price.
- H4.3 Where the Contract is terminated under Condition H4.1 HSE may, during the notice period:
- (a) require the Contractor, where the Research Services have not been commenced, to refrain from commencing such Research Services or where the Research Services have been commenced, to cease work immediately;
  - (b) require the Contractor to complete in accordance with the Contract all or any of the Research Services, or any part or component thereof, which shall be paid at the agreed contract price or, where no agreement exists, at a fair and reasonable price.

#### **H5 Recovery upon Termination**

- H5.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) immediately return to the HSE all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Research Services;
  - (b) immediately deliver to the HSE all Property (including materials, documents, information and access keys) provided to the Contractor under clause B5. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - (c) assist and co-operate with the HSE to ensure an orderly transition of the provision of the Research Services to the Replacement Contractor and/or the

completion of any work in progress. The transfer shall be arranged so as to reduce to a minimum any interruption in the Research Services.

- (d) promptly provide all information concerning the provision of the Research Services which may reasonably be requested by the HSE for the purposes of adequately understanding the manner in which the Research Services have been provided or for the purpose of allowing the HSE or the Replacement Contractor to conduct due diligence.

H5.2 If the Contractor fails to comply with clause H5.1 (a) and (b), the HSE may recover possession thereof and the Contractor grants a licence to the HSE 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.

H5.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H5.1(c) and (d) free of charge. Otherwise, the HSE shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **H6 Force Majeure**

H6.1 Neither HSE nor the Contractor shall be liable to the other by reason of any failure or delay in performing its obligation under the Contract which is due to Force Majeure for the duration of the relevant event, where there is no practical means available to the party concerned to avoid such failure or delay. However if the Force Majeure event prevents performance by either Party of its obligations under this Contract for one month or longer, then either Party may terminate this Contract immediately upon giving written notice to the other Party.

H6.2 If either HSE or the Contractor becomes aware of any circumstances of Force Majeure which give rise to any such failure or delay, or which appear likely to do so, that party shall promptly give notice of those circumstances as soon as practicable after becoming aware of them and shall inform the other party of the period for which it estimates that the failure or delay shall continue.

H6.3 For the purposes of this Condition, "Force Majeure" means any event or occurrence which is outside the control of the party concerned and which is not attributable to any act or failure to take preventative action by the party concerned, but shall not include any industrial action occurring within the Contractor's organisation or within any sub-contractor's organisation.

H6.4 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as Force Majeure only if that agent, sub-contractor or supplier is itself impeded in complying with its obligations to the Contractor by Force Majeure.

H6.5 Where Force Majeure occurs, the party concerned shall take all reasonable steps to minimise the failure or delay.

## **I DISPUTES AND RESOLUTION**

### **I1 Dispute Resolution**

I1.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with the Contract through the Programme Governance Board.

I1.2 If the dispute cannot be resolved by the Parties pursuant to Condition I1.1 within two weeks then the dispute will be put before the Contractor's Chief Executive Officer and the HSE's Director, Science and Commercial. If these two Parties are unable to reach a consensus as to the appropriate resolution within two weeks, then the Parties shall enter into binding arbitration under the Arbitration Act 1996 with a single arbitrator to be chosen in agreement with both Parties or in default of an agreement by the President for the time being of the Law Society in England and Wales. Nothing in this Clause or

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Contract will limit or restrict the ability of a Party to make an application for injunctive or interim relief in cases of urgency.

- I1.3 The performance of the Research Services shall not be suspended, cease or be delayed by the reference of a dispute to arbitration and the Contractor shall fully comply with the requirements of the Contract at all times.
- I1.4 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- I1.5 Any costs incurred shall be decided at the sole discretion of the agreed arbitrator. Such costs shall be in full and final settlement of all disputes, howsoever arising, whether current or in the future, between HSE and the Contractor.
- I1.6 Where it is considered appropriate, subject to the agreement of both parties, alternative methods of dispute resolution shall be considered including adjudication and mediation.

**I2 Governing Law**

- I2.1 This Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

**I3 Survival**

- I3.1 The Parties obligations under Clauses B1, E3,E6, E8, E9 and E13 shall survive the completion of this agreement or any prior termination thereof.

## Schedule C

## SCHEDULE OF PROCESSING PERSONAL DATA AND DATA SUBJECTS

This Schedule shall be completed by the Controller, who may take account of the view of the Processors, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are : Sean Egan, 0203 028 3547, [sean.egan@hse.gov.uk](mailto:sean.egan@hse.gov.uk)
2. The contact details of the Processor's Data Protection Officer are : **insert contact details**
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Placeholder	Data
Subject matter of the processing	[This should be a high level, short description of what the processing is about i.e. its subject matter]	The Discovering Safety projects designed to substantially improve the health and safety of the world's workforce, part of this involves the analysis of HSE's data archive to understand the past and current state of the health and safety of Great Britain
Duration of the processing	[Clearly set out the duration of the processing including dates]	Data sets will be identified as having for specific relevance to discovering safety projects, data processing will only occur on relevant data sets for the duration of those projects
Nature and purposes of the processing	[Please be as specific as possible, but make sure that you cover all intended purposes. The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment etc]	Data will be consulted by individuals and computers to understand its information content to answer specific research questions. Some information will then be codified into appropriate formats (lexicons, ontologies, taxonomies) for the specific research question(s). The methodology will be recorded and along with not "Personal Data" will be disseminated and re-used internally and externally as appropriate.

Type of Personal Data	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]	It is possible all types of personal data may be included in the shared data, as some of it is images or raw text for initial analysis, personal data will be minimised as far as possible
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]	HSE staff past and present Staff from businesses and organisations that HSE regulates or works with Individuals that visit the premises or vicinity of premises that HSE regulates Individuals that have contacted HSE or a member of HSE staff Individuals whose details have been passed to HSE by a third party in a report Individuals involved in or investigatory, legal or enforcement action involving HSE including witnesses and those who had prosecution brought against them
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	[Describe how long the data will be retained for, how it be returned or destroyed]	As all data will be held on encrypted electronic media it must be put 'beyond use' once processing is complete; It is anticipated that this would be by securely erasing encryption keys. Data must then be securely deleted as soon as practical using methods appropriate to the media and understood risks present.

CONTACT LIST

HSE Contacts	Contractor Contacts
Contractual Queries	
<div>[REDACTED]</div>	<div>[REDACTED]</div>
Contract Managers / Technical Queries	
<div>[REDACTED]</div>	<div>[REDACTED]</div>

Annex 2

## HSE UK TRAVEL AND SUBSISTENCE RATES

### Car Mileage Rates (for using your own vehicle) – All engine types and sizes

Up to 10,000 mile per financial year 45p per mile

Over 10,000 miles per financial year 25p per mile

NB: Your vehicle must be insured for Business Use

### Public Transport Fares

Second Class Rail travel, Air fares (within UK only), Bus fares etc will be payable at cost on production of receipts, provided that the most economical means of transport has been used.

## SUBSISTENCE RATES

All receipts **must** be retained to support your claim.

### Day Subsistence

More than 5 hours and up to 10 hours Actual costs up to £6.00

More than 10 hours and up to 12 hours Actual costs up to £10.00

More than 12 hours Actual costs up to £16.00

### Night Subsistence

#### Booked via HSE Accommodation Booking Agency :

The 24 hour overnight subsistence allowance consists of 2 components :

Meal One Actual costs up to £6.00

Meal Two Actual costs up to £15.00

This is payable as a “24 hour” rate and amounts incurred over any individual component will not be reimbursed by HSE. The rates are agreed with HMRC to obtain dispensation from tax liability.

#### Booked making your own Commercial Arrangements

Actual cost of bed and breakfast up to a maximum of: £93.00 per night in London  
or  
£70.00 per night elsewhere