



APPENDIX 2: OPTIONAL CLAUSES

MODERN SLAVERY

OC1 “The Contractor shall, and shall ensure that all Sub-Contractors, comply with the requirements of the Modern Slavery Act 2015 and Modern Slavery 2015 (Duty to Notify) Regulations 2015 (SI 2015/1743) and in particular the Contractor shall ensure that it notifies and provides the Employer with all relevant information to enable the Employer to comply with its duty to notify under Section 52 of the Modern Slavery Act 2015.”

COMPLAINTS

OC2 “The Contractor will deal with any complaints promptly, courteously and efficiently and will notify the Employer in writing of all complaints received and the steps the Contractor has taken in response to them, within 5 working days.”

ANNUAL REVIEW

OC3 “The Contractor and Employer will hold an annual review meeting to: i) discuss and agree end of year performance, ii) further develop and agree the performance indicators, and iii)

CONFIDENTIAL INFORMATION

OC4.1 “If the Contractor discovers any Confidential Information at the site where the Works are being carried out (which is not required for completion of the Works), the Contractor shall notify the Employer within 48 hours. The Employer shall confirm to the Contractor [in writing] whether the Contractor should:

- .1 securely destroy the Confidential Information (in a manner approved by the Employer); or
- .2 return the Confidential Information to the Employer.

OC4.2 In the event that the Employer instructs the Contractor to return any Confidential Information in accordance with Optional Clause 4.1.2 above, the Contractor shall return the Confidential Information to the Employer:

- .1 by a method which keeps the Confidential Information secure; and
- .2 within the timescale specified by the Employer”.



BUSINESS CONTINUITY

OC 5.1 The Contractor shall have in place a business continuity plan and shall ensure that it is implemented at any time in accordance with its terms.

OC5.2 The Contractor shall undertake regular risk assessments and/or a regular business impact analysis in relation to the provision of the Works at intervals of not less than every six months and shall notify the Employer of any risk or business impact that may affect the provision of the services under the Contract.”

APPRENTICESHIPS

OC6.1 The Contractor acknowledges that the Employer is committed to improving opportunities for young people to obtain work placements and apprenticeships which enable them to gain work skills and increase their opportunity of obtaining permanent employment. In pursuance of this commitment, it requires the Contractor to:

- .1.1 use its reasonable endeavours to provide work placements and apprenticeships for young people resident within the London Borough of Lewisham during the contract period and;
- .1.2 comply with, and deliver its obligations under this Agreement in a manner which is consistent with achieving any performance indicators relating to its arrangements for work placements and apprenticeships;
- .1.3 assess its performance in relation to this requirement throughout the currency of this Agreement and report to the Employer on a regular basis, appropriate to the monitoring period for any performance indicators for this provision (detailing the level of performance against the performance indicators).”

GENERAL LIABILITY

OC7 “The Employer shall be entitled to recover from the Contractor as a debt or from any payment due to the Contractor an amount representing costs, damages or liabilities, arising out of any breach of the terms of this Contract of whatsoever nature, except where the breach of contract has arisen through the Employer’s action, omission or negligence.”

SAFEGUARDING

“**Enhanced DBS Check**” means “an ‘enhanced’ type check by DBS.”

“**Enhanced with Adult List DBS Check**” means “an ‘enhanced with list checks’ type check by DBS that searches the vulnerable adult barred list but not the children barred list.”

“Enhanced with Children List DBS Check” means “an ‘enhanced with list checks’ type check by DBS that searches the children barred list but not vulnerable adult barred list.”

“Sensitive Works” means “Works Involving Children or Works Involving Vulnerable Adults.”

“Works Involving Children” means “the carrying out of any part of the Works (including the making good of any defects) in or on any part(s) of the Site which may allow direct access to premises occupied or used, or likely to be occupied or used, during the course of the Works, by persons under the age of 16 (or 18, if they have special needs).”

“Works Involving Vulnerable Adults” means “the carrying out of any part of the Works (including the making good of any defects) in or on any part(s) of the site which may allow direct access to premises occupied or used, or likely to be occupied or used, during the course of the Works, by vulnerable adults.”

- OC8.1 The Contractor shall, and shall procure that any sub-contractors shall, undertake a Standard DBS Check or Enhanced DBS Check in respect of any Contractor’s Persons at the Employer’s request and within 10 Business Days of such request.
- OC8.2 The Contractor shall, and shall procure that any sub-contractors shall, undertake an Enhanced with Children List DBS Check in respect of any Contractor’s Persons they intend to engage in Works Involving Children.
- OC8.3 The Contractor shall, and shall procure that any sub-contractors shall, question any Contractor’s Persons subject to any DBS Check as to whether she or he has any Convictions (Questioning).
- OC8.4 The Contractor shall, and shall procure that any sub-contractors shall, notify the Employer and the Employer’s Agent of the results of any DBS Checks and Questioning to the extent permitted by legislation.
- OC8.5 The Contractor shall ensure that no Contractor’s Persons (whether employed by the Contractor or a sub-contractor):
- .1 due to undergo or currently undergoing a DBS Check;
 - .2 whose DBS Check results indicate that the individual has any Convictions; or
 - .3 who reveals that they have any Convictions after Questioning;
- undertakes any of the Works (on or off Site) until the Employer gives written consent (such consent not to be unreasonably withheld or delayed).
- OC8.6 The Contractor shall, and shall procure that any sub-contractors shall, immediately notify the Employer and the Employer’s Agent if any of the Contractor’s Persons who was subject to a DBS Check subsequently receives a Conviction or whose previous Conviction becomes known to the Contractor or any sub-contractor.
- OC8.7 This optional clause 8 will not apply to individuals who are required by the Contractor to attend on Site to provide emergency reactive services. The Contractor shall ensure that such individuals are accompanied at all times while on site by one of the Contractor’s Persons other than an individual who:
- .1 had a DBS Check which revealed that the individual has convictions; and/or

.2 revealed any Convictions after Questioning, and was not subsequently granted written consent by the Employer to be engaged in the Works.”

ADMISSION TO SITE

- OC9.1 Subject to the remainder of this clause OC9, the Contractor shall at least twenty (20) Business Days before the date on which the Contractor first carries out any Sensitive Works provide the Employer with a written list of the names and addresses of all employees or other persons who it expects may require admission to the Site in connection with the carrying out of any Sensitive Works, specifying the capacities in which those employees or other persons are concerned with any Sensitive Works and giving such other particulars as the Employer may require. The Contractor shall update this information as and when any such individuals are replaced or complemented by others, not less than twenty (20) Business Days before their inclusion. The decision of the Employer on whether any person is to be refused admission to the Site shall be final and conclusive and the Employer shall not be obliged to give reasons for its decision.
- OC9.2 Where the Contractor is unable (acting reasonably) to comply with clause OC9.1 by the time period specified in it then the Contractor shall comply with its obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on Site. Until such time as the Contractor has complied with its obligations in respect that individual, he or she shall at all times be accompanied on Site by a member of the Contractor or Contractor’s Persons who has been properly notified to the Employer in accordance with clause OC9.1.
- OC9.3 This clause OC9.3 shall not apply to those individuals who shall be required by the Contractor or by a Contractor’s Persons to attend on Site to provide emergency reactive services. In the case of such individuals, the Contractor shall, or shall procure that any Contractor’s Persons shall ensure that such individuals are accompanied at all times whilst on Site by a member of the Contractor or Contractor’s Persons who has been properly notified to the Employer in accordance with clause OC9.1.

CONDUCT OF STAFF

- OC 10.1 If the Contractor has identified specific staff to carry out the Works, those staff shall not be changed without notifying the Employer and confirming that their replacements have equivalent skills and experience by supplying copies of their CVs. There must be a sufficient number of appropriately trained and skilled staff and supervisors available at all times. The Contractor will use reasonable endeavours to ensure that all members of their staff are properly and sufficiently qualified, reference checked, competent, skilled, honest and experienced to carry out the Works, and at all times exercise proper care in the execution of their duties and tasks.
- OC10.2 The Employer shall be entitled to interview any proposed replacement and may object to any such proposed appointment within 5 working days of being informed of or meeting such replacements, and, if in its reasonable opinion, the replacement is not suitable, the Employer may insist on removal from the contract.
- OC10.3 The Employer may reasonably require the Contractor in writing to remove any member of staff employed or used by you to carry out the Works. Upon receiving such notification the Contractor will ensure that the specified person is removed and replaced as soon as

possible, and within reasonable timescales specified by the Employer. The Employer shall not be liable to the Contractor or to the specified person in respect of any costs, expenses, liability, loss or damage caused by this removal.”

LONDON LIVING WAGE

“**Equivalent Hourly Wage**” means “the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act).”

“**London Living Wage**” as follows: “the most recently identified London Living Wage hourly figure (or equivalent set figure(s)) published from time to time by the Greater London Authority or any successor body with responsibility for setting this figure.”

“**Relevant Staff**” as follows: “all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers (Amendment) Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged on the Services for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.”

OC 11 “The Contractor shall:

- (a) ensure that all Relevant Staff employed or engaged by the Contractor are paid an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (b) ensure that all Relevant Staff employed or engaged by its Subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the London Living Wage;
- (c) provide to the Employer such information concerning the London Living Wage and the performance of its obligations under this clause as the Employer may reasonably require and within the deadlines it reasonably imposes;
- (d) co-operate and provide all reasonable assistance to the Employer in monitoring the effects of the London Living Wage including without limitation assisting the Employer in conducting surveys and assembling data in respect of the affect of payment of London Living Wage to Relevant Staff.”

OC11.2 “For the avoidance of doubt, any breach by the Contractor of this clause be a breach of a material obligation in relation to which the Employer is entitled to rely upon its termination rights under this agreement.”

AUDIT

OC12.1 “During the term of the Agreement and for twelve years afterwards, the Contractor shall give to the Employer, their auditors, and representatives such information, explanations and access to and copies of any documents as may reasonably be required to satisfy the Employer as to the Contractor’s compliance with the terms of this Agreement.

OC12.2 The Contractor must maintain current complete and accurate financial and operational records in relation to the Works. These records and all other records referred to in this Optional Clause 12.2 and in the Contract and the Employer’s Requirements or

- Contractor's Proposals must be available for inspection by the Employer, Employer's internal or external auditors, and any other person authorised by the Employer at all reasonable times, and copies must be provided to the Employer upon request within [TIMESCALE]. Records must be kept in an approved form, and must be stored in a way which means that they are readily retrievable and do not suffer damage or deterioration, including where such records are held electronically.
- OC12.3 The Contractor shall fully co-operate with any enquiry or investigation (whether routine or specific) made by the Employer's auditors (whether internal or external) which in any way concerns, affects or relates to the Works performed by the Contractor under this Agreement, or any sums claimed or charged in relation to this Agreement. Such co-operation shall include (but not be limited to) the following:
- .1 providing access to or copies of such files, documents, letters, notes, minutes, records, accounts or any other information (whether held or stored electronically, in hard copy format or otherwise) which relate to the investigation;
 - .2 providing access to the premises, vehicles, plant, equipment (including IT hardware and software) or other assets used by the Contractor in the performance of this Agreement;
 - .3 providing access to the Contractor's staff (of whatever seniority) involved in the performance of this Agreement (including management or supervision) or who may be the subject of, or be named in, any enquiry or investigation by the auditors (including providing suitable facilities for interviewing such staff);
 - .4 maintaining the confidentiality of the enquiry or investigation when requested by the auditors to do so.
- OC12.4 The Contractor shall ensure that the terms of any sub-contract include identical provisions to this clause and shall indemnify the Employer against any losses it suffers in consequence of a failure to ensure the inclusion of such identical terms.
- OC12.5 Where the results of such enquiry or investigation identify loss incurred by the Employer in consequence of any breach of contract by the Contractor or any sub-contractor, the Employer shall be entitled to deduct from any sums held by the Employer (and which would otherwise be payable to the Contractor) both the value of such loss etc. attributable to the Contractor and the costs of the audit investigation.
- OC12.6 Where the Employer does not hold any such sums from which deductions may be made, such sums may be recovered from the Contractor as a civil debt."

TERMINATION

Insert new Optional Clause 13 as follows:

- OC13 "The Employer may terminate this Contract by giving the Contractor 7 days' written notice of such termination."

EQUALITY AND DIVERSITY

- OC14 "In carrying out the Works under this Agreement, the Contractor (including the Contractor's Persons) shall (and shall procure that its sub-contractors) adopt and comply with an equality and diversity policy which complies with the Contractor's own obligations under the Equalities Legislation (such policy to be made available to the Employer upon request)."

SUPPLY CHAIN VISIBILITY

“Contract Period” the term of the contract from the Date of Possession of the Site till Practical Completion.

“Contracts Finder” the Government’s publishing portal for public sector procurement opportunities.

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises; and

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

OC 15.1 The Contractor shall:

subject to OC15.3, advertise on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Goods and/or Services and/or Works above a minimum threshold of £25,000 that arise during the Contract Period;

- .1 within 90 days of awarding a subcontract to a subcontractor, update the notice on Contracts Finder with details of the successful subcontractor;
- .2 monitor the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
- .3 provide reports on the information at OC 15.1.2 to an Employer in the format and frequency as reasonably specified by the Employer; and
- .4 promote Contracts Finder to its sub-contractors and encourage those organisations to register on Contracts Finder.

OC15.2 Each advert referred to at OC15.1 above shall provide a full and detailed description of the subcontract opportunity with each of the mandatory fields being completed on Contracts Finder by the Contractor.

OC15.3 The obligation at OC15.1 shall only apply in respect of subcontract opportunities arising after the contract award date.

OC15.4 Notwithstanding OC15.1, the Employer may by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

OC15.5 In addition to any other management information requirements set out in this Contract, the Contractor agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME Management Information (“MI”) Reports to the Employer which incorporate the data described in the MI Reporting template which is:

- .1 the total contract revenue received directly on a specific contract;
- .2 the total value of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs); and
- .3 the total value of sub-contracted revenues to SMEs and VCSEs.

- OC15.6 The SME Management Information Reports shall be provided in the correct format as required by the MI Reporting Template and any guidance issued by the Employer from time to time. The Contractor shall use the initial MI Reporting Template which is set out in the Annex^[1] to this OC15 and which may be changed from time to time (including the data required and/or format) by the Employer by issuing a replacement version. The Employer shall give at least thirty (30) days' notice in writing of any such change and shall specify the date from which it must be used.
- OC15.7 The Contractor further agrees and acknowledges that it may not make any amendment to the current MI Reporting Template without the prior written approval of the Employer.

PROCESSING, PERSONAL DATA AND DATA SUBJECTS

- OC16 The Contractor shall and shall ensure that all Contractor's Persons and Sub-Contractors comply with the provisions on the GDPR in Schedule 4 of this Agreement.

^[1] Crown Commercial Services publish standard from Excel template for use.