

DATED

2019

INNOVATE UK – Part of UK Research and Innovation

and

[CONTRACTOR]

CONSTRUCTION CONTRACT INCORPORATING THE NEC3 ENGINEERING AND CONSTRUCTION
CONTRACT (OPTION A)

relating to

River Frontage Remedial Works
at The National Renewable Energy Centre at Blyth Northumberland



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DRAFT

THIS CONTRACT is made as a deed on

2019

BETWEEN:-

- (1) **INNOVATE UK**, a Council of UK Research and Innovation, an Executive Non Departmental Public Body established by the Higher Education and Research Act 2017, whose registered office of which is at Polaris House, North Star Avenue, Swindon, SN2 1FL (the "**Employer**"); and
- (2) [] (incorporated and registered in England and Wales under company registration number []), the registered office of which is at [] (the "**Contractor**").

IT IS AGREED as follows:-

- 1 This contract incorporates:-
 - The core clauses, and the clauses for Options indicated in the Contract Data of the NEC3 ECC April 2013 edition and
 - The other documents comprising this contract as defined in the Contract Data (copies of which are annexed and/or have been signed for identification purposes by or on behalf of the Employer and the Contractor).
- 2 Any disputes, difference or questions arising out of or relating to this contract are to be resolved in accordance with the dispute resolution provisions of this contract.
- 3 The Contract Date (the date when this contract came into existence) is 2019.

SIGNED AS A DEED by the parties in duplicate on the date which first appears in this Contract.

CONTRACT DATA

Part one – Data provided by the *Employer*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

**Statements
given in all
contracts**
1 General

- The conditions of contract are the core clause and the clauses for main Option A resolution Option W2 and secondary Options [Option x4 (Parent company guarantee)], Option X5 (Sectional Completion), [Option X7 (Delay damages), [Option x13 (Performance Bond)], Option X15 (Limitation of the Contractor's Liability for his design to reasonable skill and care), Option X16 (Retention), Option x17 (Low performance damages), Option X18 (Limitation of liability), of the NEC3 Engineering and Construction Contract (April 2013).
- The works are engineering remedial works to the river frontage at the National Renewable Energy Centre, Blyth.
- The *Employer* is
Name **Innovate UK**
Address **Polaris House, North Star Avenue, Swindon, SN2 1FL**
- The *Project Manager* is
Name **Mr Steve Best**
Address **1 Arngrove Court, Barrack Road, Newcastle Upon Tyne, NE4 6DB**
- The *Supervisor* is
Name **Fairhurst**
Address **1 Arngrove Court, Barrack Road, Newcastle Upon Tyne, NE4 6DB**

Commented [AW1]: NOTE TO TENDERING
CONTRACTORS:
The Client reserves the right to call for a Parent Company Guarantee or a Performance Bond at its sole discretion.

The Adjudicator is nominated by the Adjudicator nominating body

- The Works Information is in document referenced **D/I/D/128055/015 included in Appendix ###**
- The Site Information is in document referenced **D/I/D/128055/014 included in Appendix ###**
- The boundaries of the site are **shown on drawing 128055/9002**
- The language of this contract is **English**
- The law of the contract is the law of **England and Wales**
- The period for reply is **2 weeks**
- The Adjudicator nominating body is the **Chartered Institute of Arbitrators**
- The tribunal is **arbitration**
- The Following matters will be included in the Risk Register
 - Works in [River noting water levels are subject to tidal movements]

.....
.....
.....

3 Time

- The starting date is.....
- The access dates are
Part of the Site Date
1.....
2.....
3.....
- The Contractor submits revised programmes at intervals no longer than **4 weeks.**

4 Testing and Defects

- The defects date is **52 weeks** after Completion of the whole of the works.
- The defect correction period is **4 weeks** except that

5 Payment

- The currency of this contract is the **pound sterling**
- The assessment interval is **4 weeks**
- The interest rate is **3%** per annum (above the base rate of **Bank of England**)

6 Compensation events

- The place where weather is to be recorded is **OREC Training Tower, Blyth, Northumberland**
- The weather measurements to be recorded for each calendar month are
 - the cumulative rainfall (mm)

- the number of days with rainfall more than 5 mm
- the number of days with minimum air temperature less than 0 (zero) degrees Celsius
- the number of days with snow lying at 0800 hours GMT
- and these measurements
[the number of days with mean wind speed exceeding X kt (Y km/hr) and/or maximum gusts exceeding S kt (T km/hr)]

- The *weather measurements* are supplied by OREC
 The *weather data* are the records of past weather measurements for each calendar month which were recorded at OREC Training Tower, Blyth, Northumberland and which are available from OREC, Blyth
Where no recorded data are available

8 Risks and insurance

- The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is []
- The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of any in the course of their employment in connection with this contract for any one event is []

Optional statements

If the Employer has decided the completion date for the whole of the works

- The *completion date* for the whole of the *works* is.....

If no programme is identified in part two of the Contract Data

- The *Contractor* is to submit a first programme for acceptance within [2] weeks of the Contract Date.

If the Employer has identified work which is to meet a stated condition by a key date

- The *key dates* and *conditions* to be met are
condition to be met *key date*
 1...Completion of Area 4 works

- 2...Completion of Area 5 works
- 3...Completion of Area 7 Works
- 4...Completion of Area 8 Works

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is 30 days

If there are additional *Employer's risk*

- These are additional *Employer's risks*
None

If Option X1 is used

- The proportions use to calculate the Price Adjustment Factor are
 0..... Linked to the index for
 0.....
 0.....
 0.....
 0.....
 0.....
 0.....
 0..... non-adjustable
 1.00
- The base date for indices is.....
- The indices are those prepared by

If Option X7 (but not if Option X5 is also used)

- Delay damages for Completion of the whole of the *works* are **0.1%** of the Prices **per week**.

If Option X13 is used

- The amount of the performance bond is

If Option X16 is used

- The *retention percentage* is 10%

If Option X18 is used

- The *Contractor's* liability to the *Employer* for indirect or consequential loss is limited to the amount of his professional indemnity insurance
- For any one event, the *Contractor's* liability to the *Employer* for loss or of damage to *Employer's* property is limited to the amount of his professional indemnity insurance
- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to the amount of his professional indemnity insurance
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to the amount of his professional indemnity insurance The end of liability date is 12 (twelve) years after the completion of the whole of the *Works*:

If Option Y(UK)3 is used

term	person or organisation
.....
.....
.....
.....

If Option Z is used

The *additional conditions of contract* are attached.

Part two - Data provided by the Contractor

Completion of the data in full according to the Options chosen, is essential to create a complete contract.

Statement given in all contracts

- The Contractor is
Name:
Address:
- The direct fee percentage is.....%
- The subcontracted fee percentage is..... %
- The working areas are the Site and.....
- The key people are
(1) Name.....
Job.....
Responsibilities.....
.....
Qualifications.....
Experience.....
.....
(2) Name.....
Job.....
Responsibilities.....
.....
Qualifications.....
Experience.....
.....
- The following matters will be included in the Risk Register
.....
.....
.....

Optional statements

If the Contractor is to provide Works Information for his design

- The Works Information for the Contractor's design is
in.....
.....
.....
.....
.....

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is.....

If the Contractor is to decide the completion date for the whole of the works

- The completion date for the whole of the *works* is.....

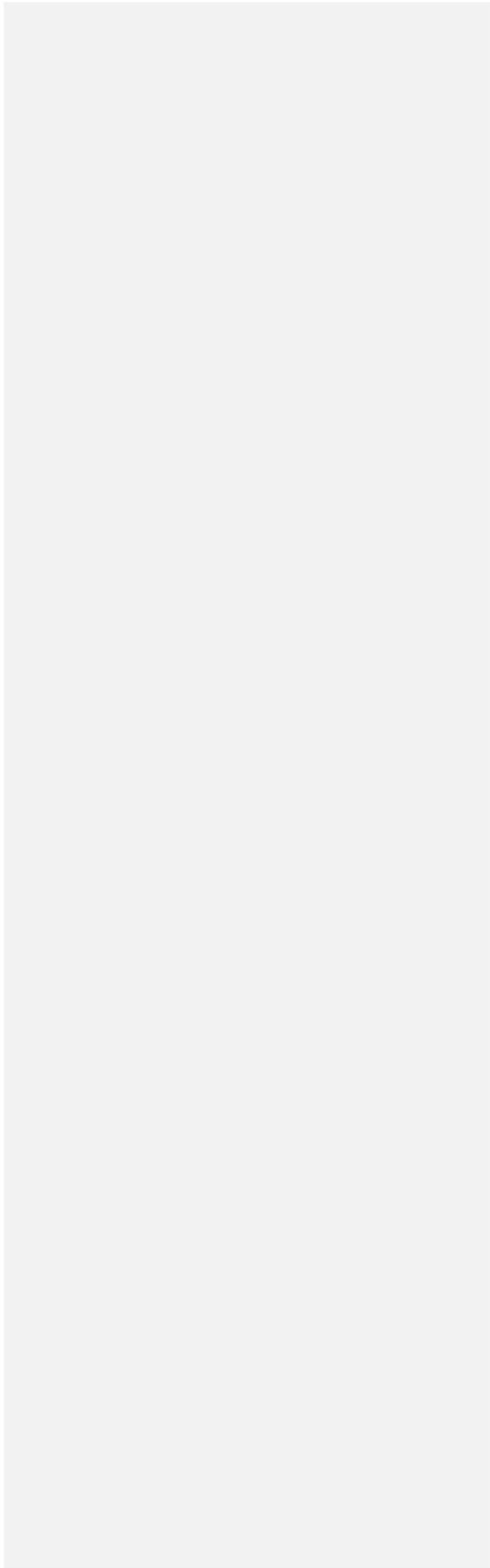
Data for the Shorter Schedule of Cost Components

- The activity schedule is
- The tendered total of the Prices is
- The percentage for people over heads is%.
- The published list of Equipment is the last edition of the list published by
- The percentage for adjustment for Equipment in the published list is% (state plus or minus).

- The rates for other Equipment are
Equipment size or capacity rate
.....
.....
.....

- The hourly rates for Defined Cost of design outside the Working Areas are
category of employee hourly rate
.....
.....
.....

- The percentage for design over heads is %.
- The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Costs are
.....
.....
.....



OPTION Z: ADDITIONAL CONDITIONS OF CONTRACT

Z1 General

Z11 Identified and defined terms

Z11.2A Insert the following additional defined terms:

- (1) "The Contract Agreement is the document recording the terms of this contract to which these conditions of contract are attached.
- (2) Business Day means a day other than a Saturday or Sunday, Christmas Day or Good Friday or any other day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales.
- (3) Business Hours mean 8 am - 6 pm on a Business Day.
- (4) The CDM Regulations are the Construction (Design and Management) Regulations 2015.
- (5) The Contractor's Group Company is any undertaking which is a group undertaking in relation to the *Contractor* and/or in relation to any other undertaking in which the *Contractor* or any such group undertaking holds more than 50% of the shares (and, for these purposes, the expressions "undertaking", "group undertaking" and "shares" have the meanings given in Section 1161 of the Companies Act 2006).
- (6) The Crown means the Government of the United Kingdom of Great Britain and Northern Ireland.
- (7) The Defects Date is the *defects date* unless later changed in accordance with this contract.
- (8) Good Industry Practice is exercising the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced contractor engaged in activities of a similar nature, scope, value and complexity to the *works* and under the same or similar circumstances, where such contractor is seeking to comply with his contractual obligations and the *law of the contract*.
- (9) [Guarantor means the ultimate parent company of the *Contractor*.]
- (10) HSE means the Health and Safety Executive (and all sub-divisions thereof) or any body having responsibility for health and safety in the United Kingdom or any part thereof which replaces the same from time to time.
- (11) Material means all materials prepared by or on behalf of the *Contractor* for the works and all updates, additions and revisions to them and any designs, or inventions incorporated in them.
- (12) Permitted Uses means the design, construction, completion, reconstruction, modification, refurbishment, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, building information modelling and repair of the works.
- (13) The Project has the meaning given to this term in the Contract Agreement.
- (14) Purchaser means any purchaser or prospective purchaser of the completed Project (or any part thereof).
- (15) Software means any and all software, computer programmes, protocols, operating system, middleware, applications and other instructions or information technology functions required for the safe and proper operation of the *works* or any part thereof as part of the Project, together with:

- any manuals, technical reference materials, tools, ancillary software, ancillary programmes, maintenance and operation schedules and other information required and documents required to operate and maintain such software, and
- all updates, enhancements, additions, improvements and new releases of such software from time to time made available (1) by the *Contractor* to any person, (2) by any person to the *Contractor*, or (3) by the person or persons who originally authored, published or marketed the software to the market generally.

Z12 Interpretation and the law

Z12.4 Insert a new sentence at the end of clause 12.4: "Neither Party has relied upon any prior representation by the other in entering into this contract."

Z12.5 Insert a new clause 12.5:

"The invalidity, illegality or unenforceability in whole or in part of any of the terms of this contract does not affect the validity of any other term or the remainder of any affected term."

Z12.6 Insert a new clause 12.6:

"A reference to a person includes a reference to a firm, a body corporate, an unincorporated association, a partnership or a legal entity of any kind."

Z12.7 Insert a new clause 12.7:

"All references to Acts of Parliament include references to any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 made thereunder and include references to any Acts of Parliament or statutory provisions which amend, consolidate or replace the same or which are amended, consolidated or replaced by the same."

Z12.8 Insert a new clause 12.8:

If there is any ambiguity or inconsistency in or between the documents comprising this contract, the priority of the documents is in accordance with the following sequence:

- this Agreement,
- the completed Contract Data,
- the additional conditions of contract,
- the other conditions of contract,
- the Works Information and
- any other document forming part of the contract.
-

Z13 Communications

Z13.1 In clause 13.1 insert before the full stop at the end of the first sentence: "and in accordance with any communications protocol set out in the Works Information."

In the second sentence of clause 13.1 delete "Writing is" and replace with: "All communication and all Contractor's Documents are".

Z13.2 Delete clause 13.2, and replace with:

"Any communication sent by hand is deemed to be received upon delivery at the address of

delivery of the recipient stated in the Contract Data. Any communication sent by first class inland post is deemed as having been received two Business Days following the date of posting. Any communication sent by airmail is deemed as having been received six Business Days following the date of posting. Any communication sent by e-mail is deemed to have been received on the day of transmission in legible form (and provided that a valid transmission report certifying good receipt is generated) unless outside Business Hours in which case it is treated as having been received at 10.00 am on the first Business Day after transmission."

Z13.4 In the clause 13.4 second sentence after the words "states his reasons" insert "in accordance with the requirements of this contract".

Z13.9 Insert a new clause 13.9:

"No failure or delay by the *Employer* to exercise any right or remedy (in whole or in part) provided under this contract or by law constitutes a waiver of that or any other right or remedy."

Z14 The Project Manager and the Supervisor

Z14.6 Insert a new clause 14.5:

"Irrespective of clause 60.1(6), the *Project Manager's* or *Supervisor's* issue of (or failure to issue) submissions, proposals, records, notifications, replies, comments, advice, acceptances, decisions, approvals, certificates, instructions, enquiries, directions or other communications or the carrying out of (or the failure to carry out) any inspection, test or other enquiry does not change the *Contractor's* responsibility to Provide the Works or his liability under this contract."

Z16 Early warning

Z16.1 Add the following bullet points to clause 16.1

- "16.1
- interfere with or delay the work of, or constitute interference or delay by, the *Employer* or Others,
 - affect safety of any person or the security of the Site.

16.5 Add the following as Clause 16.5:

"Decisions made or discussions at risk reduction meetings do not alter or exclude the respective duties or liability of the Parties under this contract and the Risk Register is not a contract document for this purpose."

Z17 Ambiguities, inconsistencies and illegal requirements

Z17.2 After clause 17.1, insert a new clause 17.2:

"The *Contractor* warrants that he has reviewed and scrutinised the Works Information, the Site Information, Activity Schedule and other documents forming part of this contract prior to the Contract Date exercising Good Industry Practice with a view to identifying:

- any mistake, ambiguity, inconsistency, inaccuracy, discrepancy or omission that is contained in the Works Information, the Site Information, Activity Schedule and other documents forming part of this contract, and
- whether or not any further information is required (including without limitation any further investigations and/or reports) to enable the *Contractor* to design and construct the works in accordance with this contract,

and the *Contractor* has notified the *Project Manager* of the same prior to the Contract Date. The *Contractor* acknowledges that the Works Information, the Site Information, Activity Schedule and other documents forming part of this contract have been revised and updated to take account of any such mistakes, ambiguities, inconsistencies, inaccuracies, discrepancies, omissions and such required further information (including without limitation any further investigations and/or reports) that has been identified by the *Contractor* in accordance with this clause 17.2 and the Contractor has included for such matters in the Contract Sum."

Z17.3 Insert a new clause:

"The *Contractor* is deemed to have satisfied himself, before entering into the contract, as to the physical conditions of the Site (so far as practicable having exercised Good Industry Practice in inspecting the Site and reviewing the Site Information and any other information that a prudent and experienced contractor could reasonably be expected to have or to obtain) and as to the adequacy of the Works Information and the Site Information for the purposes of Providing the Works including carrying out any design of the works subject to and in accordance with the conditions of contract."

Z2 The Contractor's main responsibilities

Z20 Compliance with legislation

Z20.1 The *Contractor* Provides the Works:

- regularly and diligently,
- in a proper and workmanlike manner, and
- in compliance with
 - all statutes, statutory instruments, regulations, rules and orders made under any statute or directive having the force of law which affect the works or performance of any obligations under this contract, and
 - any regulation, bye-law, permission or approval of any local authority or statutory undertaker having jurisdiction in relation to the works or with whose systems the works are, or are to be, connected.

Z21 The Contractor's design

Z21.1 At the end of the clause before the full stop insert: "using Good Industry Practice."

Z21.4 Insert a new clause 21.4:

"The *Contractor* does not specify or approve for use in, or incorporate into the works any Plant or Materials which are generally known within the construction or engineering industry in the United Kingdom to be deleterious, harmful or prejudicial to health and safety or to sustainability of the performance, physical integrity or durability of buildings, structures, plant and equipment or materials or damaging to the environment in each case in the particular circumstances in which they are used, or any Plant and Materials which are potentially hazardous or are not in conformity with relevant Standards."

Z24 People

Z24.1 In the second sentence after "of a" insert "key person or a".

Add the following sentence to clause 24.1. "The *Contractor* provides an appropriate handover period of not less than two weeks for the replacement of any key person in accordance with the handover plans that have been agreed with the *Project Manager* in advance. All the *Contractor's* costs associated with such handover are not recoverable unless accepted by the

Project Manager in the handover plan."

Z24.2 In clause 24.2 after "employee" in both sentences, insert: "or any employee of a Subcontractor or lower tier subcontractor".

Insert a new sentence at the end of clause 24.2: "The *Project Manager* may, having stated his reasons, deny any employee of the *Contractor* or any Subcontractor or lower tier subcontractor access to the Site."

Z25 Working with the *Employer* and Others

Z25.4 Insert a new clause 25.4: "The *Contractor*:

- uses Good Industry Practice to ensure he does not cause any interruption or interference to the carrying out or progress of any work to be undertaken by Others,
- makes available design information which is relevant to the work of Others in a timely fashion and upon the *Project Manager's* request."

Z26 Subcontracting

Z26.4 Insert a new clause 26.4:

"The *Contractor* does not vary or amend any subcontract he has entered into or waive or release a Subcontractor from its obligations under the relevant subcontract or otherwise stop himself from enforcing or seeking redress for any obligation or duty owed by a Subcontractor without the *Project Manager's* prior acceptance. A reason for withholding acceptance is:

- the proposed variation, amendment, release or other failure to enforce would result in an increase in cost to the *Employer*;
- the *Contractor* will not be able to comply with his obligations under this contract;
- it will be detrimental to recovery of additional costs due to the Subcontractor's fault; or
- the *Employer's* rights and remedies under a warranty agreement given to him by the Subcontractor will be prejudiced."

Z26.5 Insert a new clause 26.5:

Payment to other parties

"The *Contractor* ensures, pursuant to Regulation 113(2)(c) of the Public Contracts Regulations 2015 (as amended), that any subcontract awarded by the *Contractor* contains suitable provisions to impose, as between the parties to the subcontract, requirements that:

- (i) any payment due from the *Contractor* to the subcontractor under the subcontract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
- (ii) any invoices for payment submitted by the subcontractor are considered and verified by the *Contractor* in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
- (iii) any subcontractor will include, in any subcontract which it in turn awards, suitable provisions to impose, as between the parties to that subcontract, requirements to the

same effect as those imposed in paragraphs (i), (ii) and (iii) of this Clause 26.5, subject to suitable amendment to reflect the identities of the relevant parties.”

Z26.6 Insert a new clause 26.6:

“The *Employer* may (without cost to or liability of the *Employer*) require the *Contractor* to replace any subcontractor where in the reasonable opinion of the *Employer* any mandatory or discretionary grounds for exclusion referred to in Regulation 57 of the Public Contracts Regulations 2015(as amended) apply to the subcontractor.”

Z26.7 Insert a new clause 26.7:

Supply Chain Visibility

Governmental oversight on Improving visibility of subcontract opportunities available to SMEs and VCSEs in the supply chain

1) The *Contractor*:

- 1.1 subject to clause 26.7.(3) below, advertises on Contracts Finder all subcontract opportunities arising from or in connection with the provision of the Works above a minimum threshold of (£100,000.);
 - 1.2 within 90 days of awarding a subcontract to a subcontractor, updates the notice on Contracts Finder with details of the successful subcontractor;
 - 1.3 monitors the number, type and value of the subcontract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;
 - 1.4 provides reports on the information at clause 1.1.3 to the *Employer* in the format and frequency as specified by the *Employer* below; and
 - 1.5 promote Contracts Finder to its Contractors and encourage those organisations to register on Contracts Finder.
- 2) Each advert referred to in clause 26.7(1)1.1 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*.
- 3) The *Employer* does not require the *Contractor* to comply with Clause 26.7(1)1.1 under its contractual obligation to any and all subcontracts that were arranged or existed prior to the award of the contract i.e. when the *Contractor* has already established its supply-chain as part of the tendering process.

For the avoidance of doubt the obligation at Clause 26.7(1)1.1 shall only apply in respect of subcontract opportunities arising after the contract award date.

- 4) Notwithstanding clause 26.7(1), the *Employer* may, by giving its prior written approval, agree that a subcontract opportunity is not required to be advertised on Contracts Finder.

26.8 **Management Charges and Information**

- 1) 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 below which is:

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

MI Reporting Template

Report Subject matter	Dateline From XX/XX/XXXX to X/X/XXXX	Value in Sterling
total contract revenue received directly on a specific contract		
the total value to date of report of sub-contracted revenues under the contract (including revenues for non-SMEs/non-VCSEs)		
the total value of sub-contracted revenues to SMEs and VCSEs		

- 4) The *Contractor* shall provide the following above MI Reporting Template to the *Employer* on the following basis:

The *Contractor* shall complete and return the report to the Project Manager on the anniversary of the commencement of the Contract.

- 4.1 The Employer may be required by the Cabinet Office Crown Commercial Services to amend the MI reporting table from time to time. The Employer shall give the Contractor at Least (30) Days' notice in writing of any such change and shall specify the date from which it must be used.
- 4.2 The Contractor agrees that any financial burden associated with the completion and submission in a timely, full and accurate manner of this MI reporting table at any time, shall be at the Contractors cost to do so and will not be reimbursable.
- 5) The Employer will not specify or direct the Contractor in regard to how it undertakes any procurement activity, however the Contractor is expected to allow a reasonable and proportionate amount of time for bidders to reply to its advertised opportunities.

Any and all contracts awarded by the Contractor as a result of the advertised opportunity, shall be the subject of an update to the original advertised notice within 90 days of award and details of the successful Contractor shall be published on Contracts Finder.

Contractor Guidance and assistance

The Contractor can register on Contracts Finder by following link:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/694326/Contracts_Finder_public_sector_contractors_user_guide_v_2.0.pdf

Z27 Other responsibilities

Z27.1 Add the following additional sentences to clause 27.1

"Where it is stated in the Works Information as being the responsibility of the *Contractor*, the *Contractor* obtains approval or sanction of the *Contractor's* design from Others including regulators and the *Contractor* communicates to the *Project Manager* the approvals or sanctions he obtains. Approval or sanction of the *Contractor's* design by Others does not alter or exclude any duty or liability of the *Contractor* under this contract."

Z28 Health and safety

Z28 Insert a new clause 28:

"28.1 The *Contractor* complies with the Works Information in respect of Health and Safety.

28.2 The *Contractor* is the principal contractor under the CDM Regulations in respect of the *works* and performs all the functions and obligations required to be performed by the principal contractor under the CDM Regulations.

28.3 The *Contractor* carries out and fulfils, and ensures that all designers, Subcontractors and suppliers engaged in connection with the *works* carry out and fulfil, in all respects their respective duties under the CDM Regulations."

Z29A Contamination and nuisance

Z29A Insert a new clause 29A:

"29A.1 The *Contractor* uses Good Industry Practice to protect the environment (both on and off the Site) and to avoid or limit damage and nuisance to people and property resulting from contamination, pollution, noise and other results of his operations.

29A.2 The *Contractor* prevents any actionable trespass or nuisance to or interference with the rights and activities of any adjoining or neighbouring land owner, occupier, licensee or operator or any utility company or statutory undertaker arising out of the execution of the *works* being caused or contributed to by any act or omission of the *Contractor* or any of the Subcontractors or lower tier subcontractors."

Z29B Collateral warranties

Z29B Insert a new clause 29B:

"29B.1 The *Contractor* procures warranty agreements from those Subcontractors identified in the Works Information as required to provide them and if so required by the *Contractor*, each in the forms set out in and otherwise in accordance with this contract. If the *Contractor* does not procure from a Subcontractor a warranty agreement as required by this clause then, without prejudice to the *Employer's* other

rights and remedies, the *Employer* deducts from any amount due to the *Contractor* an amount equal to

- 10% of the total of the Prices in respect of the relevant Subcontractor where the subcontract is based on an NEC subcontract, or
- 10% of the equivalent subcontract sum or price where the subcontract is based on an alternative form."

Z3 Time

Z30 Starting, Completion and Key Dates

Z30.2 Delete clause 30.2 and replace with:

"The *Project Manager* decides the date of Completion and the date on which each condition is met. The *Project Manager* certifies the date of Completion and the date on which each Condition is met within one week of Completion or within one week of the date on which each Condition is met (as appropriate)."

Z31 The programme

Z31.3 In clause 31.3, add new bullet points:

- "it changes the order or timing of activities shown by the *Contractor* on an earlier Accepted Programme
- it fails to provide necessary measures to recover delays, or rectify defects."

Z33 Access to and use of the Site

Z33.1 Delete first sentence of clause 33.1 and replace with:

"The *Employer* allows access to and use of each part of the Working Areas operated by the *Employer* which is necessary for the work included in this contract."

Z33.2 Insert a new clause 33.2:

"The *Contractor* prevents unauthorised persons being admitted on the Site."

Z34 Instructions to stop or not to start work

Z34.2 Insert as a new clause 34.2:

"During any period when work is stopped or not started at the instruction of the *Project Manager*, the *Contractor* keeps secure and protects the works and all Equipment and Plant and Materials against any deterioration, loss, damage or theft as appropriate."

Z35 Take over

Z35.2 At the end of clause 35.2, insert: "Where the *Contractor* allows access and use of the works by Others for work or activities relating to the Project, this access and use does not give rise to a taking-over of any part of the works."

Z35.4 Insert a new clause 35.4:

"The *Contractor* allows the *Employer* and Others authorised by the *Project Manager* access across the *works* and/or Working Areas to any part of the *works* taken over by the *Employer*, in accordance with an access regime agreed from time to time by the Parties."

Z4 Testing and Defects

Z40.6 In clause 40.6 delete the second sentence and replace it as follows:

"The *Project Manager* also assesses the cost incurred by the *Employer* in:

- repeating a test or inspection where the *Contractor* does not give a prior notice of such test or inspection which he is required to give or
- having the test or inspection carried out by Others where the *Contractor* does not carry out a test or inspection as required by the Works Information.

The *Contractor* pays the amount assessed."

Z43 Correcting Defects

Z43.1 After the word "Defect" insert "and any damage caused to the *works* which is a consequence of the Defect".

Z43.5 Insert a new clause 43.5:

"The *Contractor* submits a method statement and programme for correcting a Defect to the *Project Manager* for his acceptance in accordance with the procedures and other requirements set out in the Works Information. The *Contractor* corrects a Defect in accordance with the accepted method statement and programme.

If the method statement and programme for a notified Defect is not accepted, or if the *Contractor* does not comply with the accepted method statement and programme, the *Project Manager* in his sole and absolute discretion may notify the *Contractor* of such revised method statement and programme with which he must comply or the arrangements for uncorrected notified Defects will apply."

Z43.6 Insert a new clause 43.6:

"Until the Defects Date the *Project Manager* notifies the *Contractor* as soon as he considers that the *works* (after being taken over) cannot be used for the purposes for which they are intended as a result of a Defect with his assessment of the extent to which the *works* cannot be used. The Defects Date is extended by the period for which the *works* cannot be used but not by more than two years."

Z43.7 Insert a new clause 43.7:

"Without prejudice to any other right or remedy available to the *Employer*, if, at any time before the Defects Date including in the period before Completion, the *Project Manager* decides that because of any emergency, accident, failure, health and safety related issue or other event, remedial or other work or repair is urgently necessary, the *Project Manager* may instruct the *Contractor* to do at once such remedial or other work or repair. If the *Contractor* is unable or unwilling at once to do such remedial or other work or repair the *Project Manager* may arrange for Others to do it and the *Project Manager* notifies the *Contractor* of those arrangements and the *Project Manager* assesses the cost to the *Employer* of having the

remedial or other work or repair undertaken by Others and the *Contractor* pays this amount."

Z44 Accepting Defects

Z44.2 In clause 44.2, after "reduced Prices" insert: "an earlier Key Date". Delete "or both" in the third line and replace with "or all". After "Prices" in the last line insert ", a Key Date".

Z45 Uncorrected Defects

Z45.2 Delete clause 45.2 and replace with:

"If the *Contractor* is not given access in order to correct a notified Defect before the Defects Date, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect unless the reason for not giving access to the *Contractor* is attributable to or caused by any fault of the *Contractor* in which case the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by Others. The *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect."

Z46 Remedy at Law

Z46 Insert a new clause 46:

"Nothing in clause 4 shall prevent a Defect from being a breach of this contract."

Z5 Payment

Z50 Assessing the amount due

Z50.1 At the end on clause 50.1 add "The *Contractor* submits an application for payment no later than [one week] prior to each assessment date. An application for payment submitted by the *Contractor* meets the requirements stated in the Works Information. Where the *Contractor* fails to submit an application in accordance with this contract the *Project Manager* makes his own assessment of the amount due if appropriate."

Z51 Payment

Z51.1A Insert a new clause 51.1A:

"Within one week after the payment due date, the *Contractor* issues to the *Employer* a properly prepared invoice showing the amount of the payment stated as due in the payment certificate or, if applicable, the application for payment, and any amounts in respect of tax which the law requires the *Employer* to pay to the *Contractor*. The *Contractor's* invoice is accompanied by a copy of the payment certificate and any other items as stated in this contract. If the *Project Manager* or the *Employer* gives the *Contractor* a pay less notice, the *Contractor* issues a revised invoice or credit note showing the revised amount and tax due.

If the *Contractor* fails to provide the invoice or revised invoice within one week from the payment due date or issue of a pay less notice, the *Employer* will not be liable to make a payment until the next final date for payment or if no such date is established six weeks after the relevant final date for payment"

Z51.5 Insert a new clause 51.5:

"In addition to any other rights and remedies of the *Employer*, whenever any sum of money is agreed by the Parties, or determined by the *Project Manager* on this or any other contract, to

be due from or paid by the *Contractor*, the same may be deducted from any sum due to the *Contractor* under this contract."

Z6 Compensation Events

Z60.1(18) In clause 60.1(18) after "of contract" insert: "or any act of prevention or any impediment or any default whether by act or omission on the part of the Employer or any person for whom he is responsible".

Z60.1(19) Delete The word "prevent" in the third bullet point in clause 60.1 (19) and replace with "control".

Z60.4 Insert a new clause 60.4 as follows:

"None of the events listed in clause 60.1 is a compensation event if it arises as a result of the *Contractor's* (or any of its subcontractors') negligence, breach or default or if it is stated elsewhere in this contract to be at the risk of the *Contractor*"

Z61 Notifying compensation events

Z61.3 In clause 61.3 after "of becoming aware" insert "or when he should have become aware".

Z61.4 In clause 61.4, delete "one week" and replace with "two weeks".

Insert as a final paragraph in clause 61.4: "If the *Project Manager* decides that an event notified by the *Contractor* has no effect or no substantial effect upon the Prices, he may notify the *Contractor* of his decision that the Prices are not to be changed and instruct the *Contractor* to submit assessments only in respect of delay to the Completion Date and Key Dates."

Z62 Quotations for compensation events

Z62.7 Insert a new clause 62.7: "Whenever the *Contractor* submits a quotation to the *Project Manager*, he provides with his submission detailed particulars of his assessment and of any measures to reduce any additional costs and/or delay to be taken (including in relation to Subcontractors) together with such other supporting information as the *Project Manager* may require in order to assess the quotation."

Z64 The *Project Manager's* assessments

Z64.4 In clause 64.4, after "this notification" in line 5, insert: "the *Contractor* informs the *Project Manager* of the *Project Manager's* failure to reply and if the *Project Manager* does not respond within two weeks of the *Contractor* informing the *Project Manager* of that failure"

Z7 Title

Z70 The *Employer's* title to Plant and Materials

Z70.1 In the first sentence of clause 70.1 after "the *Supervisor*" insert "or the *Contractor*". Insert the following additional sentence at the end of clause 70.1: "No payment is made to the *Contractor* on account of Plant and Materials and Equipment which are outside the Working Areas unless stated otherwise in the Works Information."

Z70.2 Delete clause 70.2 and replace with:

"The *Contractor* ensures that the unencumbered title to Plant and Materials passes to the

Employer

- at the time they are brought on to the Working Areas or
- the date when the Contractor receives payment for the Plant and Materials in question whichever is the earlier."

Z70.3 Insert a new clause 70.3:

"Title to Plant and Materials for which the *Employer* has not paid passes back to the *Contractor* if they are removed from the Working Areas with the *Project Manager's* permission. If the Plant and Materials have been paid for by the *Employer*, the title to them remains with the *Employer* even if they are removed from the Working Areas. It is a precondition to payment for any Plant and Materials that the *Contractor* marks and stores it in accordance with this contract and signs a vesting agreement where required by the Works Information in the form set out in the Works Information (or in such alternative form as is acceptable to the *Project Manager*)."

Z71 Marking Equipment Plant and Materials outside the Working Areas

Z71.1 In clause 71.1 delete reference to "*Supervisor*" and replace with "*Contractor*".

At the end of the second bullet, insert the following new sentence: "The *Contractor* notifies the *Supervisor* in writing that the Plant and Materials have been so marked. Following notice, the *Supervisor* may inspect the Plant and Materials and if satisfied with their marking and if the *Contractor* has provided evidence that loss or damage to such Plant and Materials is covered by appropriate insurance, confirms in writing his satisfaction with their marking."

Z71.2 Insert the following clauses 71.2, 71.3 and 71.4:

"71.2 No amount due in respect of Plant and Materials is eligible to be treated as Defined Cost unless:

- [(if requested by the *Employer* in accordance with Clause 71.3) an on demand bond has been provided as requested; or]
- (if the Plant and Materials are not on the Site) the following conditions are satisfied:
 - that the *Contractor* has confirmed to the *Employer* (or the *Contractor* on the *Employer's* behalf) in writing that title has passed to the *Employer* and that all rights to retain title, to exercise liens or the like (as reasonably specified by the *Employer* having regard to the *law of the contract*) are irrevocably waived.
 - the Plant and Materials are securely stored and have been marked by the seller and (where required by Clause 71) the *Supervisor* as being the property of the *Employer*.

71.3 Where any amount is assessed for Plant or Materials not on the Site then no Fee is assessed on such amounts (or included in the Price for Work Done to Date, or paid) until the Plant and Materials have been delivered to the Site."

Z72 Removing Equipment

Z72.1 In clause 72.1 delete "in the *works*" and replace with "on the Site".

Z8 Risks and insurances

Z84 Insurance cover

Z84.3 Insert a new clause 84.3:

"The *Contractor* gives all such reasonable assistance to the *Employer* as the *Employer* requires in connection with the provision of underwriting information necessary for the placement of the *Employer's* policies of insurance to be provided under the Contract Data or Works Information and any other insurances that the *Employer* requires. Such information is provided to the *Project Manager* and/or the *Employer's* designated insurance representative."

Z84.4 Insert a new clause 84.4:

"Each of the *Contractor* and the *Employer* provides to the other copies of receipts or statements from insurers or other documentation evidencing payment by the insuring party of the premiums in respect of such policies and cover."

Z9 TERMINATION

Z90 Termination

Z90.1 Insert the following sentence at the end of clause 90.1: "The termination certificate states the date of termination and the actions required by the *Contractor* both before and after the date of termination."

Z90.2 Insert the following additional rows into the Termination Table:

Terminating Party	Reason	Procedure	Amount due
Employer	R22 or R23	P1, P2 and P3	A1 and A3
	R24	P1, P2 and P3	A1 and A3
	R25-R29	P1, P2 and P3	A1 and A3

Z90.6 Insert a new clause 90.6:

"Other than any payment which may become due under clause 90.4, no further sum becomes due to the *Contractor* and the *Employer* need not pay any sum that has already become due either:

- insofar as the *Employer* (or the *Project Manager* on its behalf) has given or gives a pay less notice
- if any of the events referred to in clause 91.1 are suffered by the *Contractor* after the last date upon which a pay less notice could have been given in respect of that sum."

Z91 Reasons for termination

Z91.1 In bullet 11, after "(R9)", delete the word "or".

In bullet 12 delete the standard form text and insert: "made a proposal or entered into an arrangement, compromise or composition in satisfaction of his debts (other than in order to amalgamate or reconstruct) or made an arrangement with its creditors (R10) or".

Insert a new bullet point:

- "been subject to any analogous arrangement, or proceedings in any other jurisdiction (R10A)."

Z91.2 In clause 91.2 in bullet 3, delete "for substantial work".

At the end of bullet 3 after "(R13)", insert the following new paragraph: "except where the default relates to a breach of clause 107 (Prohibited Acts),

- abandonment of the whole or any part of the *works* by the *Contractor* or the *Contractor* otherwise plainly demonstrating the intention not to continue performance of the *Contractor's* obligations under this contract at any time after commencement of Providing the Works,
- subcontracting the whole of the *works* or assigning this contract otherwise than in accordance with its terms, or
- the *Contractor* becoming liable for sums which reach the applicable cap(s) on liability agreed in this contract,
- where a notification in respect of a substantial failure to comply with the same obligation has previously been given by the *Employer* pursuant to this clause,

each of the above being a reason R11, but in respect of which the *Employer* may terminate immediately after the occurrence of these events."

Z91.3 In clause 91.3 at the end of bullet point 2 before "(R15)" insert "or otherwise failed to comply with his obligations under this contract with regard to health or safety".

Insert new clauses 91.8 and 91.9:

Z91.8 The *Employer* may terminate if the *Contractor* is in breach of:

- Security measures contained in the Works Information or Site Information (R22),
- any secrecy or security obligation imposed by any other contract with the Crown where the *Employer* considers the circumstances of the breach jeopardise the secrecy or security of the Secret Matter (R23).

Z91.9 The *Employer* may terminate if the *Contractor* fails to satisfy a Condition stated for each Key Date by the relevant Key Date (R24).

Z91.10 The *Employer* may terminate the *Contract* by written notice to the *Contractor* in any of the following circumstances:

- (i) Where it considers that the *Contract* has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015(as amended) ("PCR 2015")(R25);
- (ii) Where it considers that the *Contractor* has at the time of the award of the *Contract* been in one of the situations referred to in Regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure (R26);
- (iii) Where the *Contract* should not have been awarded to the *Contractor* in view of a serious infringement of the obligations under the EU Treaties and Directive 2014/24/EU of the European Parliament and of the Council that has been

- declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU (R27);
- (iv) Where the European Commission sends a reasoned opinion to the United Kingdom or brings the matter before the Court of Justice of the European Union under Article 258 of the TFEU alleging that the *Contract* should not have been awarded to the *Contractor* in view of a serious infringement of the obligations under the Treaties and Directive 2014/24/EU of the European Parliament and of the Council (R28); or
 - (v) Where a third party starts court proceedings against the *Employer* seeking a declaration that the *Contract* is ineffective or should be shortened under Regulations 98 to 101 of the PCR 2015, which the *Employer* considers have a reasonable prospect of success (R29).

Z92 Procedures on Termination

Z92.1 In clause 92.1, after "title" insert: "and the *Contractor* hands over to the *Employer* any *Contractor's Documents* which are then in existence."

Z93 Payment on Termination

Z93.4 Insert a new clause 93.4:

"The *Employer* shall not be obliged to make any further payment until the additional cost incurred by the *Employer* has been assessed by the *Project Manager*. In the event the cost incurred by the *Employer* exceeds the amount due to the *Contractor* the *Employer* recovers the excess from the *Contractor*. In the event the cost incurred does not exceed the amount due to the *Contractor* the *Employer* makes payment of the difference to the *Contractor*."

Z94 Other remedies

Z94.1 Insert a new clause 94.1:

"The termination provisions are without prejudice to any other rights or remedies that either Party may have."

Z10 MISCELLANEOUS PROVISIONS

Z100 Insert new clauses

101 Prior Work

101.1 Where the *Contractor* carries out activities prior to the Contract Date in furtherance of the *works* these activities are deemed to have been carried out subject to the requirements of this contract and the warranties and undertakings set out in this contract apply to such activities.

102 Copyright

102.1 The *Contractor* grants to the *Employer*, with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of the *Material* for any purpose relating to the *works*, including without limitation any of the Permitted Uses.

102.2 The *Employer's* licence carries the right to grant sub-licences and is transferable to third

parties without the consent of the *Contractor* and survives termination (for any reason) of the *Contractor's* employment under this contract.

102.3 The *Contractor* is not liable for use of the Material for any purpose other than that for which it was prepared or provided.

102.4 The *Employer* may use the Material in connection with an extension of the works, but may not reproduce the designs contained in the Material in an extension.

103 Confidential Information of the Contractor

103.1 The *Employer* treats as confidential and will not without the prior written consent of the *Contractor* (such consent not to be unreasonably withheld or delayed), disclose to any other person any information or document provided to the *Employer* by the *Contractor* under or in connection with this contract or the works which is identified in writing, at the time of being provided to the *Employer*, as being confidential or proprietary.

103.2 The *Contractor* may require as a precondition to the granting of any consent required under this clause 103, that any person to whom the *Employer* proposes to disclose any information or document referred to in clause 103.1 provides a confidentiality undertaking to the *Contractor* in terms reasonably satisfactory to the *Contractor*.

103.3 Clauses 103.1 and 103.2 do not apply to the disclosure of any information or document referred to in clause 103.1 which

- is already in the public domain at the time of its disclosure other than by breach of these provisions,
- is required to be disclosed by the *law of the contract* or by the regulations of any stock exchange,
- is lawfully in the possession of the *Employer*, having been provided by a third party having the right to provide such information or document or having been obtained, developed or prepared independently by (or on behalf of) the *Employer*,
- the *Employer* reasonably requires to disclose to the *Employer's* personnel or any of the *Employer's* shareholders, directors, officers or employees in connection with this contract, the *works* or the Project,
- the *Employer* reasonably requires to disclose to any of the Others in connection with the *works*,
- the *Employer* reasonably requires to disclose to any professional advisers (including lawyers, auditors, accountants, tax advisers, financial advisers and technical consultants) and any insurers, insurance brokers or underwriters, in connection with this contract, the *works* or the Project or
- the *Employer* reasonably requires to disclose to any Purchaser.

104 Confidential Information of the Employer

104.1 The *Contractor* treats all information obtained under, arising from or in connection with this contract or the works or the Project as confidential. The *Contractor* does not without the prior written consent of the *Employer* (which may be granted or withheld in his sole and absolute discretion)

- disclose to any person any information or documents concerning this contract or the *works* or the Project, or
- disclose to any person any information or document obtained by the *Contractor* concerning the *Employer*, the *Project Manager*, or others retained or engaged by the *Employer* or any *Employer's* Group Company in relation to the Project.

104.2 The *Employer* may require as a precondition to the granting of any consent required under this clause, that any person to whom the *Contractor* proposes to disclose any information or document referred to in clause 104.1 (each such person being a "Recipient") provides a confidentiality undertaking to the *Employer* in terms satisfactory to the *Employer* (in his sole and absolute discretion).

104.3 Clauses 104.1 and 104.2 do not apply to the disclosure of

- any information which is already in the public domain at the time of its disclosure other than by breach of these provisions or
- any information which is required to be disclosed by the *law of the contract* or any information which is required to be disclosed by the regulations of any stock exchange.

104.4 The *Contractor* procures that each Recipient observes the restrictions on disclosure applicable to the *Contractor* under this clause as if the same restrictions were applicable to such Recipient, and the *Contractor* is responsible and liable to the *Employer* for any loss or damage suffered by the *Employer* in consequence of any failure by any Recipient to observe such restrictions.

104.5 The *Contractor* notifies the *Employer* promptly if the *Contractor* becomes aware of and indemnifies and holds harmless the *Employer*, the *Employer's* personnel and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of any breach by the *Contractor* of his obligations under this clause or of any breach by any Recipient of any confidentiality undertaking provided by such Recipient pursuant to clause 104.2 or any failure by any Recipient to observe the restrictions referred to in clause 104.4. The *Contractor* gives the *Employer* all assistance the *Employer* may reasonably require in connection with any proceedings the *Employer* may bring or other steps the *Employer* may take against any Recipient in respect of any such breach or failure or against any other person in respect of a breach of confidence.

104.6 Without prejudice to any other rights or remedies that the *Employer* may have, the Parties acknowledge and agree that damages alone would not be an adequate remedy for any breach by the *Contractor* of this clause and that the remedies of injunction and specific performance as well as any other equitable relief for any threatened or actual breach of this clause by the *Contractor* would be more appropriate remedies.

105 **Publicity**

The *Contractor* does not without the prior written approval of the *Employer* at any time for any reason disclose to any person or publish or make any statement concerning the *Employer*, the *Project Manager* and/or Others connected with the Project, this contract or the *works*.

106 **Assignment and Novation**

106.1 The *Contractor* does not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under this contract) nor grant, declare a trust of, create or dispose

of any right or interest in it without the prior written consent of the *Employer* (which may be granted or withheld at the sole and absolute discretion of the *Employer*) provided however that the *Contractor* may, without the *Employer's* consent, as security in favour of a bank or financial institution, assign his right to any moneys due, or to become due, under this contract.

106.2 The *Employer* may assign in whole or in part any benefit or right under this contract at any time to any person and the *Employer* gives written notice of the assignment to the *Contractor*. The *Employer* may at any time require the *Contractor* to agree to a novation of this contract to Purchaser in a form reasonably required by the *Employer*.

107 Prohibited Acts

107.1 In this clause 107:

- "associated with" has the meaning set out in section 8 of the Bribery Act 2010, and
- "Prohibited Act" means:
 - engaging in any activity, practice or conduct which could constitute, facilitate or cause (in whole or in part) the commission (whether on the part of the *Employer*, any *Employer's* personnel, any *Employer's* Group Company or the *Contractor* or any third party) of an offence under the Bribery Act 2010, or
 - offering, promising or giving any person connected with this contract (including the *Employer*, any *Employer's* personnel, any *Employer's* Group Company, any Statutory Authority and any officer, employee, agent or representative of any Statutory Authority) any financial or other advantage, which is intended either to induce that person to "improperly perform a relevant function or activity" (within the meaning set out in the Bribery Act 2010) or to reward that person for any such improper performance.

107.2 The *Contractor* warrants and undertakes that it has not committed and shall not commit (and that each person associated with the *Contractor* including any subcontractor or supplier of any tier has not committed and shall not commit) any Prohibited Act.

107.3 The *Contractor*, at all times during performance of this contract, maintains adequate procedures to prevent the commission of any Prohibited Act by the *Contractor* or any person associated with the *Contractor*, properly enforce such procedures and carry out periodic monitoring of its compliance with such procedures on an annual or more frequent basis.

107.4 The *Contractor*, at the *Employer's* request, promptly provides to the *Employer* all such procedures and sufficient evidence so as to satisfy the *Employer* (acting reasonably) that such procedures are properly enforced and such periodic compliance monitoring is taking place and provides such records for a period of 12 years after issue of the Defects Certificate.

107.5 The *Contractor* procures that provisions equivalent to the preceding paragraphs of this clause 107 are included within each subcontract under which a Subcontractor is appointed and uses reasonable endeavours to ensure that subcontractors of lower tiers similarly include such provisions in their subcontracts.

107.6 Without affecting any other right of termination under this contract or at law, if the *Contractor* or any person associated with the *Contractor* commits any Prohibited Act, this entitles the *Project Manager* to withdraw his acceptance of the appointment of any relevant Subcontractor and/or this constitutes "substantially failed to comply with his obligations" on

the *Contractor's* part and entitles the *Employer* to terminate the *Contractor's* obligation to Provide the Works in whole or in part with immediate effect and without giving the *Contractor* the benefit of any remedy period and likewise any other contracts between the *Contractor* and the *Employer*.

108 Freedom of Information Act and the Environmental Information Regulations

108.1 The *Contractor* provides all assistance to enable the *Employer* and/or its clients to comply with any request received under the Freedom of Information Act 2000 and/or the Environmental Information Regulations should either be applicable to the employer.

108.2 In no event does the *Contractor* or its Subcontractors respond directly to a Request for Information unless expressly authorised to do so by the *Employer*.

109 Transparency

109.1 In order to comply with the Government's policy on transparency in the areas of procurement and contracts the *Contractor* agrees that the Contract and the sourcing documents issued by the *Employer* which led to its creation will be published by the *Employer* on a designated web site.

109.2 The entire *Contract* and all the sourcing documents issued by the *Employer* are published on the designated web site save where to do so would disclose information the disclosure of which would:

- (i) contravene a binding confidentiality undertaking that protects information which the *Employer*, at the time when it considers disclosure, reasonably considers to be confidential to the *Contractor*;
- (ii) be contrary to regulation 21 of the Public Contracts Regulations 2015 as amended; or
- (iii) in the reasonable opinion of the *Employer* be prevented by virtue of one or more of the exemptions in the FOIA or one or more of the exceptions in the Environmental Information Regulation (EIR).

If any of the situations in (i), (ii), (iii) apply the *Contractor* consents to the Contract or sourcing documents being redacted by the *Employer* to the extent necessary to remove or obscure the relevant material and being published on the designated website subject to those redactions.

110 Modern Slavery Act 2015 ("MSA 2015")

110.1 The *Contractor* complies with its obligations under the MSA 2015 and further agrees that on request from the *Employer* it shall complete and return a report in relation to the MSA 2015 which shall include the following information in relation to areas relevant and proportionate to the *Contract* evidencing the actions taken, relevant to the *Contractor* and its supply chain associated with this contract:

- Impact assessments undertaken
- Steps taken to address risk/actual instances of modern slavery and how actions have been prioritised
- Evidence of stakeholder engagement
- Evidence of ongoing awareness training
- Business-level grievance mechanisms in place to address modern slavery
- Actions taken to embed respect for human rights and zero tolerance of modern slavery throughout the organisation

110.2 The *Contractor* completes and returns the reports to the *Project Manager* on the anniversary of the commencement of the *Contract*. The *Employer* reserves the right to require the *Contractor* to provide reports more frequently, as it deems necessary to secure assurance in order to

comply with the MSA.

110.3 The *Employer* reserves the right to audit any and all reports submitted by the *Contractor* to an extent as deemed necessary and the *Contractor* shall unreservedly assist the *Employer* in doing so.

110.3 Not used

110.4 In addition to providing full reports as set out in 110.1, the *Contractor* provides such interim assurances as the *Employer* reasonably requires to ensure that the *Contractor* is compliant and is monitoring its supply chain, so as to meet the requirements of the MSA 2015.

110.5 The *Contractor* agrees that any financial burden associated with the completion and submission of this report and associated assistance at any time, shall be at the *Contractor's* cost to do so and will not be reimbursable.

111 **Cyber Essential Questionnaire**

Insert clause 111.1

111.1 The *Contractor* completes and returns the questionnaire below to the *Project Manager* on the anniversary of the commencement of this contract or at any other frequencies, as it deems necessary to secure assurance in order to comply with Government advice and direction .

111.2 In addition, the *Contractor* provides such interim assurances as the *Employer* reasonably requires to ensure that the *Contractor* is still compliant with the security needs of this contract.

111.3 The *Contractor* agrees that any financial burden associated with the completion and submission of this questionnaire at any time, shall be at the *Contractor's* cost to do so and will not be reimbursable.



Copy of Statement
of Assurance Questio