FORM OF AGREEMENT

Incorporating the NEC4 Term Service Contract June 2017 (with amendments January 2019, October 2020 and January 2023)

Between

LINCOLNSHIRE COUNTY COUNCIL

And

SWARCO UK & Ireland Ltd

For the provision of

Traffic Signals Maintenance Services

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FORM OF AGREEMENT

THIS AGREEMENT is made the 23rd **day of** October **2025**

BETWEEN

(1) **LINCOLNSHIRE COUNTY COUNCIL** whose offices are located at County Offices, Newland, Lincoln LN1 1YL (the '***Client***'); and

(2) **SWARCO UK & Ireland Ltd** incorporated and registered in England and Wales with company number **01490333** and whose registered office address is at Hazelwood House, Lime Tree Way, Chineham Business Park, Basingstoke, RG24 8WZ (the '***Contractor***').

BACKGROUND

(A) To undertake Highways Traffic Signals Maintenance Services on behalf of Lincolnshire County Council

(B) The Contractor is willing and able to Provide the Service in accordance with this Agreement.

IT IS AGREED AS FOLLOWS:

1 Interpretation

In this Agreement (including the Background):

1.1 words and phrases in initial capitals not defined in this Form of Agreement are defined in clause 11.2 of the *conditions of contract* while those in italics are as identified in the Contract Data;

1.2 references to 'the contract' mean this Agreement.

2 *Contractor's* Responsibilities

The *Contractor* will Provide the Service in accordance with the terms of this Agreement and comply with its other obligations under this Agreement in accordance with its terms.

3 *Client's* Responsibilities

In consideration of the *Contractor* Providing the Service and remedying any Defects the *Client* will pay to the *Contractor* the amount due in accordance with this Agreement and comply with its other obligations under this Agreement in accordance with its terms.

4 Conditions of Contract

For the purposes of this Agreement the conditions of contract are the core clauses and the following Option clauses of the NEC4 Term Service Contract June 2017 (incorporating amendments January 2019, October 2020 and January 2023):

Main Option: A

Option for resolving and avoiding disputes: W2.

Secondary Options: X1, X2, X4, X9, X10, X11, X12, X15, X16, X17, X18, X21, X23, X24, Y(UK)2, Y(UK)3 and Z.

as varied by the *additional conditions of contract* specified in Option Z.

5 The Contract Documents

This Agreement consists of the documents listed below (the '**Contract Documents**'):

(1) This Form of Agreement executed by the parties as a Deed
(2) The *conditions of contract*
(3) Contract Data - Part One
(4) Contract Data - Part Two and Contractor's Response.
(5) Schedule A - Z clauses – the *additional conditions of contract* specified in Option Z.
(6) Schedule B – Scope
(7) Schedule C – Third Party Agreements (not used)
(8) Schedule D – Commercially Sensitive Information
(9) Schedule E – Pricing Documents

6 Priority

If there is any conflict or inconsistency between a term in a Contract Document and a term in any other Contract Document, then the conflict or inconsistency is resolved by the application of the following descending order or priority so that a term contained in a document higher in the order of priority prevails over a term in a document lower in the order:

1 This Form of Agreement
2 The completed Contract Data Part One.
3 Schedule A - Z clauses – the additional conditions of contract specified in Option Z;
4 The completed Contract Data Part Two
5 The *conditions of contract.*
6 The Scope.
7 The remaining Contract Documents which are of equal precedence and mutually explanative of one another.

7 Entire Agreement

7.1 The terms of this Agreement set out the entire and only legally binding agreement between the parties relating to its subject matter and it cancels extinguishes and replaces any previous arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating to that subject matter.

7.2 Neither party has been given, nor entered into this Agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this Agreement.

7.3 Nothing in clauses 7.1 or 7.2 excludes liability for misrepresentations made fraudulently.

This Form of Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

THE COMMON SEAL of **LINCOLNSHIRE COUNTY COUNCIL** was hereunto affixed)
In the presence of:)

[redacted]

Authorised Officer

No. in Seal Book E045331

KIM ROBERTSON

Print Name

EXECUTED as a **DEED** for and on behalf of **SWARCO UK & IRELAND LTD**)

Acting by:)

[redacted]

Director

JOHN PICKWORTH

Full name (BLOCK CAPITALS)

MANAGING DIRECTOR, SEUK1

Position/title

Director/ ~~Secretary~~/Witness

MICHELLE VULLO

Full name (BLOCK CAPITALS)

EXECUTIVE ASSISTANT

Position/title

Lincolnshire County Council

Traffic Signals

CONTRACT DATA PART 1

Lincolnshire COUNTY COUNCIL
Working for a better future

TERM SERVICE CONTRACT

CONTRACT DATA

Part one – Data provided by the *Client*

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

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract June 2017 with Amendments January 2019, October 2020 and January 2023.

Main Option	A	Option for resolving and avoiding disputes	W2

Secondary Options	X1, X2, X9, X10, X11, X12, X15, X16, X17, X18, X21, X23, X24, Y(UK)2, Y(UK)3, Z X9 and X15 have been taken from NEC4 ECC X16 has been taken, but modified, from NEC4 ECC
The *service* is	to provide a specialist service to Lincolnshire County Council for the installation, maintenance and operation of traffic signals, associated equipment and systems located on the highway network in the County of Lincolnshire and on sites under the control of Lincolnshire County Council.

The *Client* is

Name	Lincolnshire County Council
Address for communications	County Offices Newland Lincoln LN1 1YP
Address for electronic communications	ServiceManager@Lincolnshire.gov.uk

The *Service Manager* is

Name	Mr Jonathan Evans as representative for Lincolnshire County Council
Address for communications	Lincolnshire County Council Lancaster House 36 Orchard Street Lincoln LN1 1XX

Address for electronic communications	Jonathan.evans@lincolnshire.gov.uk
The *principal designer* appointed by the *Client* under the Construction (Design and Management) Regulations 2015 is	Lincolnshire County Council unless stated otherwise in the Scope or in a Task Order
The *principal contractor* appointed by the *Client* under the Construction (Design and Management) Regulations 2015 is	The *Contractor*
The Affected Property is	the highway, rights of way network and associated assets throughout the County of Lincolnshire and adjoining highway authorities, as further described in the documents attached to this contract and/or as stated in the Task Order for each Task
The Scope is in	Traffic Signals Scope
The shared services which may be carried out outside the Service Areas are	None
The *language of the contract* is	English
The *law of the contract* is the law of	England and Wales, subject to the jurisdiction of the Courts of England and Wales

The *period for reply* is	2 (two) weeks	except that	
• The *period for reply* for		is	
• The *period for reply* for		is	

The following matters will be included in the Early Warning Register

- Changes in government or LCC policies reflecting ongoing changes in both central and local government priorities
- Unforeseen changes in funding
- Loss of skilled and experienced staff
- IT systems not effectively providing for Partners' needs
- Effect of Climate Change on maintaining highway network
- TUPE

Early warning meetings are to be held at intervals no longer than 1 month

2 The *Contractor*'s main responsibilities

If Option C or E is used	The *Contractor* prepares forecasts of the total Defined Cost for the whole of the *service* at intervals no longer than	N/A

3 Time

The *starting date* is	1st April 2026
The *service period* is	Six years
The *Contractor* submits revised plans at intervals no longer than	Annually
The period within which the *Contractor* is to submit a Task Order programme for acceptance is	• within a period as stated in the Scope or • if no period is stated in the Scope, within 14 (fourteen) days of receiving the Task Order
If no plan is identified in part two of the Contract Data — The period after the Contract Date within which the *Contractor* is to submit a first plan for acceptance is	4 (four) weeks

4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is	12 (twelve) weeks
The period between Completion of the whole of the *service* and the *defects date* is	• for work instructed by Task Order, 52 (fifty-two) weeks after Task Completion, and • for any other services, 52 (fifty-two) weeks after the end of the service in question

5 Payment

The *currency of this contract* is the	GBP £ sterling
The *assessment interval* is	1 (one) month

The *interest rate* is 5 (five) % per annum (not less than 2) above the Base rate of the Bank of England bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used — ~~The period within which payments are made is~~	Not applicable

If the period for certifying a final assessment is not thirteen weeks

The period for certifying a final assessment is

4 (four) weeks after the end of the Option X16 retention duration – ie 4 weeks plus 12 (twelve) months after the end of the Service Period

If Option C is used

~~The *Contractor's* share percentages and the *share ranges* are~~

share range				*Contractor's* share percentage
less than		%		%
from		% to	%	%
greater than		%		%

The *Contractor's* share is assessed on (dates)

N/A

If Option C or E is used

~~The *exchange rates* are those published in~~

Not applicable

on (date)

6 Compensation events

If Option A is used

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is %

If there are additional compensation events

These are additional compensation events

(1) The *Service Manager* instructs the removal of a Subcontractor unless the instruction is because

- the Subcontractor is in material breach of the subcontract,
- the Subcontractor has failed to comply with the contract in providing the part of the *service* it is to provide,
- the Subcontractor has substantially failed to provide the part of the *service* it is to provide,
- there is a Conflict of Interest between the Subcontractor or any of its employees or workers and the *Client* and the *Client* is not satisfied that the Conflict of Interest can be dealt with by other measures,
- the Subcontractor has breached health and safety legislation or
- the Subcontractor, an employee of the Subcontractor engaged in Providing the Service or a director or senior manager of the Subcontractor is convicted of a criminal offence.

(2)

8 Liabilities and insurance

If there are additional *Client*'s liabilities

These are additional *Client*'s liabilities

(1) None

(2)

(3)

The minimum amount of cover for insurance against loss of or damage to property (except Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Service for any one event is

£10,000,000 (ten million pounds)

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

£10,000,000 (ten million pounds)

If the *Client* is to provide Plant and Materials

The insurance against loss of or damage to Plant and Materials and Equipment is to include cover for Plant and Materials provided by the *Client* for an amount of

£250,000 (two hundred and fifty thousand pounds)

If the *Client* is to provide any of the insurances stated in the Insurance Table

~~The *Client* provides these insurances from the Insurance Table~~

The *Client* is providing no insurance from the Insurance Table

~~(1) Insurance against~~
~~Minimum amount of cover is~~
~~The deductibles are~~

~~(2) Insurance against~~
~~Minimum amount of cover is~~
~~The deductibles are~~

~~(3) Insurance against~~
~~Minimum amount of cover is~~
~~The deductibles are~~

If additional insurances are to be provided

~~The *Client* provides these additional insurances~~

The *Client* is providing no additional insurances

~~(1) Insurance for~~
~~Minimum amount of cover is~~
~~The deductibles are~~

~~(2) Insurance for~~
~~Minimum amount of cover is~~
~~The deductibles are~~

~~(3) Insurance for~~	
~~Minimum amount of cover is~~	
~~The deductibles are~~	

~~The *Contractor* provides these additional insurances~~

The *Contractor* is providing no additional insurances

~~(1) Insurance for~~	
~~Minimum amount of cover is~~	
~~The deductibles are~~	

~~(2) Insurance for~~	
~~Minimum amount of cover is~~	
~~The deductibles are~~	

~~(3) Insurance for~~	
~~Minimum amount of cover is~~	
~~The deductibles are~~	

Resolving and avoiding disputes

The *tribunal* is: The Courts of England and Wales

If the *tribunal* is arbitration

~~The *arbitration procedure* is~~: Not applicable

~~The place where arbitration is to be held is~~: Not applicable

~~The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is~~

Not applicable

The *Senior Representatives* of the *Client* are

Name (1): Andy Gutherson

Address for communications:

Lincolnshire County Council
Lancaster House
36 Orchard Street
Lincoln
LN1 1XX

Address for electronic communications: Andy.Gutherson@Lincolnshire.gov.uk

Name (2): Karen Cassar

Address for communications	Lincolnshire County Council Lancaster House 36 Orchard Street Lincoln LN1 1XX
Address for electronic communications	Karen.Cassar@Lincolnshire.gov.uk

The *Adjudicator* is

Name	Appointed in accordance with Option W2
Address for communications	Not applicable
Address for electronic communications	Not applicable

The *Adjudicator nominating body* is	the President of the Institution of Civil Engineers.

X1: Price adjustment for inflation (used only with Options A and C)

If Option X1 is used	The proportions used to calculate the Price Adjustment Factor are	in Appendix 1 attached to this contract called "Price Adjustment Procedure".
	The *base date* for indices is	in Appendix 1 attached to this contract called "Price Adjustment Procedure".
	The *inflation adjustment dates* are	1st April 2026, and then each subsequent 1st April until the earlier of the end of the Service Period or termination
	These *indices* are	in Appendix 1 attached to this contract called "Price Adjustment Procedure".

X3: Multiple currencies (used only with Options A and B) – Not applicable

If Option X3 is used ~~The *Client* will pay for the items or activities listed below in the currencies stated~~

	~~items and activities~~	~~other currency~~	~~total maximum payment in the currency~~
Not applicable			

~~The *exchange rates* are those published in~~

~~on~~ ~~(date)~~

X8: Undertakings to the *Client* or Others – Not applicable

If Option X8 is used

Not applicable

~~The *undertakings to Others* are provided to~~

~~The *Subcontractor undertakings to Others* are~~

~~Works~~ ~~provided to~~

~~The *Subcontractor undertakings to the Client* are~~

~~works~~

X10: Information modelling

If Option X10 is used

If no *information execution plan* is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first Information Execution Plan for acceptance is	4 weeks
The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim	£5,000,000 (five million pounds)
The period following the end of the Service Period or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is	12 (twelve) years

X12: Multiparty collaboration

If Option X12 is used

The *Promoter* is

Lincolnshire County Council

The Schedule of Partners is in

the Scope (Schedule 8 D 1.1.5) and includes the incentive schedule.

The *Promoter's objective* is

defined in the Scope (Schedule 4)

The Partnering Information is in

the Scope (Schedule 8 D)

X13: Performance bond

If Option X13 is used	~~The amount of the performance bond is~~	

X14: Advanced payment to the *Contractor* – Not applicable

If Option X14 is used	~~The amount of the advanced payment is~~	
Not applicable	~~The period after the Contract Date from which the *Contractor* repays the instalments in assessments is~~	
	~~The instalments are (either an amount or a percentage of the payment otherwise due)~~	
	~~An advanced payment bond **is/is not** required (Delete as applicable)~~	

X15: The *Contractor*'s design

If Option X15 is used	The *period for retention* following the end of the Service Period or earlier termination is	12 twelve) years

The minimum amount of insurance cover for claims made against the *Contractor* arising out of its failure to use the skill and care normally used by professionals designing works similar to the *works* is, in respect of each claim	£5,000,000 (five million pounds)
The period following the end of the Service Period or earlier termination for which the *Contractor* maintains insurance for claims made against it arising out of its failure to use the skill and care is	12 (twelve) years

X16: Retention

If Option X16 is used

The *retention amount* is £30,000 (thirty thousand pounds)

The *retention percentage* is 5 (five) %

The *Contractor* ~~may/~~**may not** give the *Client* a retention bond (Delete as applicable)

X17: Low service damages

If Option X17 is used

The service level table is

Performance Measure	Low service Damages (per quarter)	Service level
PI 1	£5,000	Less than 4 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 2	£5,000	Less than 4 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 3	£8,000	Less than 6 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 4	£5,000	Less than 5 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 5	£5,000	Less than 5 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 6	£5,000	Less than 5 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 7	£5,000	Less than 4 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 8	£5,000	Less than 4 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 9	£5,000	Less than 4 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.
PI 10	£5,000	Less than 4 out of 10 following performance diagram "Figure 2.3.1" in Scope Schedule 8 D.

X18: Limitation of liability

If Option X18 is used	The *Contractor*'s liability to the *Client* for indirect or consequential loss is limited to	£500,000
	For any one event, the *Contractor*'s liability to the *Client* for loss of or damage to the *Client*'s property is limited to	£5,000,000
	The *Contractor*'s liability for Defects due to its design of an item of Equipment is limited to	£10,000,000
	The *Contractor*'s total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to	£10,500,000
	The *end of liability date* is	12 (twelve) years after the end of the Service Period

X19: Termination by either Party (not used with Option X11) – Not applicable

If Option X19 is used	~~The *minimum period of service* is~~		~~years after the *starting date*~~
Not applicable	~~The *notice period* is~~		

X20: Key Performance Indicators (not used with Option X12) – Not applicable

If Option X20 is used	~~The *incentive schedule* for Key Performance Indicators is in~~		
Not applicable	~~A report of performance against each Key Performance Indicator is provided at intervals of~~		~~months~~

X23: Extending the Service Period

If Option X23 is used	The *maximum service period* is	12 (twelve)	years after the *starting date*
	The *periods for extension* are	as stated in the Scope Schedule 8 D	

~~Order~~	~~*period for extension* (months)~~	~~*notice date*~~
~~First~~		
~~Second~~		
~~Third~~		

If there are *criteria for extension*

The *criteria for extension* for all extensions are

(1) as stated in the Scope Schedule 8 D

X24: The *accounting periods*

If Option X24 is used and Option C is not used

The *accounting periods* are

1st April to 31st March for each year of the contract from the *starting date*.

If Option X24 is used with Option C

~~The accounting periods are the dates stated in the Contract Data of assessment of the *Contractor's* share~~

Y(UK)1: Project Bank Account – Not applicable

Not applicable

~~The *Client* **is/is not** to pay any charges made and to be paid any interest paid by the *project bank* (Delete as applicable)~~

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Y(UK)2 is used and the date on which payment is due is not fourteen weeks after the end of the *accounting period* or Service Period

The period is 27 (twenty-seven) weeks

If Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

The period for payment is 21 (twenty-one) days after the date on which payment becomes due

Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

If Option Y(UK)3 is used

term	*beneficiary*

If Y(UK)3 is used with Y(UK)1 the following entry is added to the table for Y(UK)3)

~~term~~	~~*beneficiary*~~
~~The provisions of Option Y(UK)1~~ Not applicable	~~Named Suppliers~~

Z: Additional conditions of contract

If Option Z is used

The *additional conditions of contract* are

in the document "Additional conditions of contract" attached to this contract.

CONTRACT DATA PART 2 AND CONTRACTOR'S RESPONSE

Lincolnshire County Council

Traffic Signals

CONTRACT DATA PART 2

Lincolnshire
COUNTY COUNCIL
Working for a better future

Lincolnshire COUNTY COUNCIL
Working for a better future

TERM SERVICE CONTRACT

CONTRACT DATA

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.

1 General

The *Contractor* is

Name	SWARCO UK & Ireland Ltd
Address for communications	Hazelwood House Lime Tree Way Chineham Business Park Basingstoke, RG24 8WZ
Address for electronic communications	uk.info@swarco.com

The *fee percentage* is [redacted]

The *service areas* are	The Affected Property Client Provided facilities, including but not restricted to depots, offices and the like. Contractor provided facilities used to provide the service, including but not limited to sites operated by supply chain partners.

The *key persons* are

Name (1)	Darren Mancey
Job	Regional Operations Director
Responsibilities	Ultimate responsibility for managing the mobilisation and delivery of the Lincolnshire contract.
Qualifications	[redacted]
Experience	
Name (2)	Boyd Brimsted
Job	Regional Operations Manager
Responsibilities	Overall responsibility for ensuring the contract key performance indicators are met.

Qualifications	[redacted]
Experience	

Name (3)	Pete Gallagher
Job	Senior Test & Configuration Engineer
Responsibilities	Configuration and building of traffic signal controllers to the Council's specification.
Qualifications	[redacted]
Experience	

Name (4)	
Job	
Responsibilities	
Qualifications	
Experience	

Name (5)	
Job	
Responsibilities	
Qualifications	
Experience	

Name (6)	
Job	
Responsibilities	
Qualifications	
Experience	

Name (7)	
Job	
Responsibilities	
Qualifications	
Experience	

The following matters will be included in the Early Warning Register

2 The *Contractor*'s main responsibilities

If the *Contractor* is to provide Scope for its plan	The Scope provided by the *Contractor* for its plan is in	Scope Schedule 13 - The *Contractor*'s Scope is the response from tendered quality questions

3 Time

If a plan is to be identified in the Contract Data	The plan identified in the Contract Data is	SWARCO's plan is the response from tendered quality questions

5 Payment

If Option A, C or E is used	The *price list* is	Document 4 Contractor's Price Submission V5
If Option A or C is used	The tendered total of the Prices is	£2,231,612.13 (Model Cost Total)

Resolving and avoiding disputes

The *Senior Representatives* of the *Contractor* are

Name (1)	Darren Mancey
Address for communications	Hazelwood House Lime Tree Way Chineham Business Park Basingstoke, RG24 8WZ
Address for electronic communications	Darren.mancey@swarco.com
Name (2)	Boyd Brimsted
Address for communications	Hazelwood House Lime Tree Way Chineham Business Park Basingstoke, RG24 8WZ
Address for electronic communications	boyd.brimsted@swarco.com

X10: Information modelling

If Option X10 is used If an *information execution plan* is to be identified in the Contract Data	The *information execution plan* identified in the Contract Data is	SWARCO's plan is the response from tendered quality questions

Y(UK)1: Project Bank Account – Not applicable

If Option Y(UK)1 is used

Not applicable

~~The *project bank* is~~

~~*named suppliers* are~~

Data for the Schedule of Cost Components (only used with Options C or E)

The listed items of Equipment purchased for work on this contract, with an on cost charge, are

Equipment	time-related on cost charge	per time period
Contained within SOR		

The rates for special Equipment are

Equipment	rate
Contained within SOR	

The rates for Defined Cost of manufacture and fabrication outside the Workings Areas by the *Contractor* are

category of person	rate
Contained within SOR	

The rates for Defined Cost of design outside the Service Areas are

category of person	rate
Contained within SOR	

The rate for people providing *shared services* outside the Service Areas are

shared service	category of person	rate
Contained within SOR		

Data for the Short Schedule of Cost Components (only used with Option A)

Not applicable

The *people rates* are

category of person	unit	rate

Contained within SOR		

The published list of Equipment is the edition current at the Contract Date 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	rate
Contained within SOR	

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the *Contractor* are

category of person	rate
Contained within SOR	

The rate for people providing *shared services* outside the Service Areas are

category of person	unit	rate
Contained within SOR		

SCHEDULE A – ADDITIONAL CONDITIONS OF CONTRACT (OPTION Z)

Lincolnshire County Council

Traffic Signals

ADDITIONAL CONDITIONS OF CONTRACT

Lincolnshire
COUNTY COUNCIL
Working for a better future

NEC4 Term Service Contract

Traffic Signals

Additional conditions of contract

The Z clauses as referenced in the Contract Data Part 1

Note:

For the purposes of tendering, if there are any contradictions between the terms of the contract (including these amendments) and the payment procedures set out in the Invitation to Tender and the appendices attached to that Invitation, the *Contractor* should adopt the payment procedures required in the Invitation to Tender and appendices.

ADDITIONAL CONDITIONS OF CONTRACT

Z CLAUSES

Contents

Clauses changed, added or deleted through Z1 & Z2 where they differ from the standard TSC.

Standard NEC TSC clause	Extra NEC TSC clause	Amended	Deleted	Deleted and replaced	New
11.2(4)		**Z1**			
11.2(5)		**Z1**			
11.2(8)		**Z1**			
11.2(16)		**Z1**			
	11.2(23-55)				**Z1**
	12.1				
	12.5				**Z1**
	12.6				**Z1**
	12.7				**Z1**
	12.8				**Z1**
	12.9				**Z1**
18.3				**Z1**	
	18.4				**Z1**
19				**Z1**	
	19A			**Z1**	
24.2				**Z1**	
24.3				**Z1**	
	24.4				**Z1**
	24.5				**Z1**
	24.6				**Z1**
	24.7				**Z1**
	24.8				**Z1**
26				**Z1**	
27.1				**Z1**	
27.2				**Z1**	
	27.3				**Z1**
	27.4				**Z1**
	27.5				**Z1**
	28.1				**Z1**
	28.2				**Z1**
	28.3				**Z1**
	28.4				**Z1**
	28.5				**Z1**
	28.6				**Z1**
	29.1				**Z1**
43.3		**Z1**			
50.1		**Z1**			
90.2		**Z1**			
91.1		**Z1**			
	91.8				**Z1**
	91.9				**Z1**
	91.10				**Z1**
	91.11				**Z1**
	91.12				**Z1**
	92.3				**Z1**
	92.4				**Z1**
93.2		**Z1**			**Z1**
93.5					**Z1**
	W2.1(5)				**Z2**
X12.4(1)				**Z2**	

Standard NEC TSC clause	Extra NEC TSC clause	Amended	Deleted	Deleted and replaced	New
X12.4(2)				**Z2**	
	X12.4(3)				**Z2**
	X12.4(4)				**Z2**
	X12.4(5)				**Z2**
	X15.1 to 15.5				**Z2**
	X16.1 to 16.2				**Z2**
X24.1		**Z2**			

Amendments to Core and Main Option clauses **Z1**

Z1.1 The following amendments and additions are made to the Core and Main Option clauses:

Clause 11.2

11.2(4) Delete existing clause 11.2(4)

Replace with

Enhanced definition

"A Corrupt Act is

- the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust,
- abusing any entrusted power for private gain or
- the commission of any offence under the Bribery Act 2010 or under legislation creating offences in respect of fraudulent acts."

11.2(5) Amend clause 11.2(5)

First bullet – replace "or" with ","

This amendment includes the *Contractor's* design responsibilities with the definition of Defect

Second bullet – replace "." with "or"

Add new third bullet

"a part of the *service* designed by the *Contractor* which is not in accordance with the applicable law or the *Contractor's* design which the *Service Manager* has accepted."

11.2(19) Delete existing clause 11.2(19)

Replace with

"Task Completion is when the *Contractor* has done all the work in the Task and corrected Defects in the Task."

11.2(23) Add new clause 11.2(23)

"Best Value means the functions of a best value authority in Part I of the Local Government Act 1999."

11.2(24) Add new clause 11.2(24)

"CDM Regulations are the Construction (Design and Management) Regulations 2015."

11.2(25) Add new clause 11.2(25)

"Client Data is the data, text, drawings, diagrams, images, sounds or Material (together with any database made up of any of these) which are held or stored in the *Contractor*'s ICT systems or stored or embodied in any other electronic, magnetic, optical, tangible or portable media or any other format or media of any kind, and in each case

- are supplied, or in respect of which access is given, to the *Contractor* by or on behalf of the *Client*,
- the Contractor is required to generate, process, store or transmit under the contract,
- are any Personal Data for which the *Client* is the Controller to the extent that such Personal Data is held or processed by the Contractor; or
- are any other data, information or Material which comes into the possession of the *Contractor* in connection with or as a result of the Provision of the Service."

11.2(26) Add new clause 11.2(26)

"Codes of Practice are all relevant codes of practice, statutory guidance, directions and determinations including those issued by

- the Information Commission or Ministry of Justice in relation to Data Protection Legislation or FOIA including any Codes of Practice on the discharge of the functions of Public Authorities under Part 1 of the FOIA,
- the Equality and Human Rights Commission and its predecessors and
- the Health and Safety Executive"

11.2(27) Add new clause 11.2(27)

"Confidential Information is any information (however it is communicated or on whatever media it is stored)

- which has been notified as confidential by either Party to the other,
- which ought to be considered as confidential including information relating to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, patents or copyright or other intellectual property rights, know-how, personnel, customers and suppliers of either Party and
- all Personal Data and Sensitive Personal Data."

11.2(28) Add new clause 11.2(28)

"A Conflict of Interest is any commercial, financial, economic or personal interest which might be perceived to compromise the impartiality or independence of the *Contractor*, a Subcontractor or any of their employees or workers in relation to Providing the Service."

11.2(29) Add new clause 11.2(29):

Data Protection Legislation is: (i) the UK GDPR; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of personal data and privacy and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2003 (SI 2003/2426); and (iii) all Acts of Parliament and subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978 relating to the processing of personal data and privacy; and (iv) all guidance or codes of practice issued by the ICO (and any other Regulatory Body that may have jurisdiction) as amended, updated or substituted from time to time.

11.2(30) Add new clause 11.2(31)

"EIR means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the ICO (and any other Regulatory Body that may have jurisdiction) as amended, updated or substituted from time to time in relation to those Regulations."

11.2(31) Add new clause 11.2(32)

"The End Date is the earlier of the end of the Service Period or the termination date."

11.2(32) Add new clause 11.2(33)

"Equality and Diversity Law is all law preventing discrimination including discrimination on the basis of colour, nationality, ethnic or national origins, gender, marital or civil partnership status, maternity and pregnancy, sexual orientation, gender reassignment, religion or belief, age, disability, part time, fixed term or agency worker status, or any other protected characteristic."

11.2(33) Add new clause 11.2(34)

"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 this legislation."

11.2(34) Add new clause 11.2(35)

"Health and Safety Law is all law related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents."

11.2(35) Add new clause 11.2(36)

"**ICO** is the United Kingdom Information Commissioner's Office and any successor body or agency from time to time carrying out the same or similar functions in whole or in part."

11.2(36) Add new clause 11.2(37)

"Information is

- in relation to the FOIA, has the meaning given to that expression by section 84 of the FOIA; and
- in relation to the EIRs, has the meaning given in the definition of "environmental information" in section 2 of the EIRs."

11.2(37) Add new clause 11.2(38)

"Incumbent Contractor means any supplier providing any service that constitutes or that shall constitute part of the *service* immediately before the Transfer Date and *starting date* of the contract."

11.2(38) Add new clause 11.2(39)

"Losses means all demands, losses, charges, damages, costs and expenses and other liabilities (including any professional and/or legal costs and disbursements)."

11.2(39) Add new clause 11.2(40)

"Open-book is the declaration of all price components including profit, central office overheads, site overheads and with all and any relevant books of account, correspondence, agreements, orders, invoices, receipts and other relevant documents available for inspection."

11.2(40) Add new clause 11.2(41)

"Pensions Direction means the Best Value Authorities Staff Transfers (Pensions) Direction 2007."

11.2(41) Add new clause 11.2(42)

"Personal Data is personal data, within the meaning given by Data Protection Legislation, concerning identified or identifiable natural persons, including employees or workers of the *Contractor* or any Subcontractor and which is obtained or Processed in connection with the *service* or the contract."

11.2(42) Add new clause 11.2(43)

"Processing has the meaning given under Data Protection Legislation and "Process" and "Processed" shall be construed accordingly."

11.2(43) Add new clause 11.2(44)

"Relevant Employees means the employees of the *Contractor* (including Transferring Employees) who are wholly or mainly assigned to work in Providing the Service and who are/shall be subject to a Relevant Transfer by virtue of the application of the TUPE Regulations."

11.2(44) Add new clause 11.2(45)

"Relevant Transfer means a transfer of employment to which the TUPE Regulations apply."

11.2(45) Add new clause 11.2(46)

"Replacement Contractor means any third party service provider appointed by the *Client* to supply any service which is substantially similar to any of the *service* and which the *Client* receives in substitution for any of the *service* following the expiry, termination or partial termination of the contract."

11.2(46) Add new clause 11.2(47)

"Request for Information has the meaning set out in FOIA and includes any apparent request for information under the FOIA or the EIR."

11.2(47) Add new clause 11.2(48)

"Sensitive Personal Data is

- "sensitive personal data" within the meaning given under Data Protection Legislation or
- Personal Data within one of the special categories of data as defined under Data Protection Legislation."

11.2(48) Add new clause 11.2(49)

"Staff means all persons employed by the *Contractor* to perform its obligations under the contract together with the *Contractor*'s servants, agents, suppliers and Subcontractors used in the performance of its obligations under the contract."

11.2(49) Add new clause 11.2(50)

"Third Party Agreement means the agreements provided by the *Client* to the *Contractor*, from time to time, together with such variations to those documents that the *Client* provides to the *Contractor* prior to the *Contractor* performing the relevant part of the *service*. Provided that these are provided to the *Contractor* prior to entering this contract, and where provided after, may be assessed as a compensation event."

11.2(50) Add new clause 11.2(51)

"Transfer Date means the date the Transferring Employee is transferred to the employment of the *Contractor* from the Incumbent Contractor."

11.2(51) Add new clause 11.2(52)

"Transferring Employees means employees of the Incumbent Contractor who are subject of a Relevant Transfer to the *Contractor* by virtue of the application of the TUPE Regulations."

11.2(52) Add new clause 11.2(53)

"Transferring Original Employee means a former employee of the *Client* whose contract of employment, by virtue of the application of the TUPE Regulations, becomes a contract of employment with the *Contractor* and who meets the definition of a Transferring Original Employee under the Pensions Direction."

11.2(53) Add new clause 11.2(54)

TUPE Regulations means the Transfer of Undertakings (Protection of Employment) Regulations 2006."

11.2(54) Add new clause 11.2(55)

"Whistle Blowing is the exposure of negligence, abuses or dangers, such as illegality, professional misconduct or incompetence, which exists in the organisation in which the whistle blower works."

Clause 12.1 Delete clause 12.1 and replace with:

"In this contract, except where the context shows otherwise

- words in the singular also mean in the plural and the other way round,
- references to a document include any revision made to it in accordance with this contract,
- references to a statute or statutory instrument include any amendment or re-enactment of it from time to time and any subordinate legislation or code of practice made under it and
- references to a standard include any current relevant standard that replaces it."

Clause 12.5 Add new clause 12.5

This avoids the need to use "including without limitation" throughout

"The term "including" does not limit the breadth of the words which precede it and the ejusdem generis rule of legal construction does not apply to the contract."

Clause 12.6 Add new clause 12.6

This clarifies the responsibility for any implications of changes in the law

"The applicable law includes any statute, subordinate legislation, enforceable European community right (while still applicable in England and Wales) and any Codes of Practice together with any amendments or modifications to them."

Clause 12.7 Add new clause 12.7

This type of waiver clause is common in contracts

"If a Party

- fails to exercise or delays in exercising any right, power or remedy, this is not a waiver of that right, power or remedy, or
- exercises or partially exercises a right, power or remedy, this does not prevent a further exercise of that right, power or remedy."

Clause 12.8 Add new clause 12.8

This is a standard local authority clause.

"Nothing in this contract

- requires the *Client* to do anything that is inconsistent with his statutory duties or obligations as a local authority or
- fetters the *Client* in discharging its statutory functions."

Clause 12.9 Add new clause 12.9

"This contract does not

- create a legal partnership or joint venture between the Parties or
- make either Party the agent of the other or give either Party any authority or power to contract in the name of or create a liability against the other Party except where stated in the contract."

Clause 18.3 Delete existing clause 18.3

Replace with

"The *Contractor* includes equivalent provisions to these in subcontracts and contracts for the supply of Plant and Materials and Equipment.

If a Subcontractor or supplier breaches those obligations and the *Service Manager* so instructs, the *Contractor*

- terminates the subcontract and
- pays to the *Client* an amount equal to the value of any corrupt gift or consideration paid by the Subcontractor to the *Contractor*."

An instruction to terminate the subcontract and pay the *Client* for a breach of these obligations is not a compensation event."

Clause 18.4 Add new clause 18.4

"18.4.1 The Contractor represents and warrants that neither it, nor to the best of its knowledge any of its people, have at any time prior to the Contract Date:

- committed a Corrupt Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Corrupt Act or

- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Corrupt Act."

Clause 19.1 Delete existing clause 19.1

Replace with

This clause is amended (1) to allow a choice of whether or not to include delay damages with a Task and (2) to remove constraint on amount.

"The *Service Manager* may issue a Task Order to the *Contractor*. Before issuing a Task Order, the *Service Manager* instructs the *Contractor* to submit a quotation for the Task. The instruction includes

- a detailed description of the work in the Task and
- the Task starting date and Task Completion Date.

The instruction may also include the amount of delay damages for the late completion of the Task."

Clause 24.2

Delete existing clause 24.2

Replace with

This adds the extra reason anticipating more open-book contracts. It also adds the advance notice that this contract may be novated at the end of the contract.

"The *Contractor* submits the name of each proposed Subcontractor to the *Service Manager* for acceptance. A reason for not accepting the Subcontractor is that

- the appointment will not allow the *Contractor* to Provide the Service or
- the appointment is not on an Open-book basis.

The *Contractor* does not appoint a proposed Subcontractor until the *Service Manager* has

- accepted the Subcontractor and, to the extent these *conditions of contract* require,
- accepted the subcontract documents.

If the *Client* may require a subcontract to be novated to the *Client* or Replacement Contractor at the End Date, the *Service Manager* notifies the *Contractor* of this when it accepts a Subcontractor. If the *Service Manager* notifies the *Contractor* of this, the *Contractor* includes in its subcontract documents for the Subcontractor an obligation on the Subcontractor (and enforceable by the *Client*) to enter into a novation agreement in such form as the *Client* requires.

Clause 24.3

Delete existing clause 24.3

Replace with

Automatic approval of NEC contracts removed because more checking on contracts required.

"The *Contractor* submits the proposed subcontract documents, except any pricing information, for each subcontract to the *Service Manager* for acceptance unless the *Service Manager* has agreed that no submission is required.

The reasons have been substantially increased.
- First two bullets are standard TSC reasons.
- The next two are extra to strengthen the *Client's* position with respect to open-book accounting and warranties.
- The remainder relate to special Z clauses and ensure the SM can check that these clauses are being complied with.

A reason for not accepting the subcontract documents is that

- their use will not allow the *Contractor* to Provide the Service,
- they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation,
- if the Subcontractor is to be appointed on an Open-book basis, they do not allow the *Contractor* to inspect the accounts and records of the Subcontractor at any time within working hours,
- they do not provide for any required undertakings,
- they include unacceptable termination provisions,
- they do not provide for novation of the subcontract to the *Client* on termination where the *Client* has notified the *Contractor* of the need for this,
- they do not include the obligations on the Subcontractor that the contract requires are imposed on the Subcontractor,
- they do not secure similar rights of access for the *Client,* the *Client's* auditors or anyone with a statutory or other legal right to inspect or audit the *Client* for the purpose of conducting any audit investigation of the contract similar to those applying to the *Contractor,*
- they do not include a warranty relating to slavery or human trafficking or
- they do not include provisions having substantially the same effect as those applying to the *Contractor* under the contract."

Clause 24.4

This clause is a requirement of above threshold public contracts under the Procurement Act

Add new clause 24.4

"The *Contractor* does not appoint a Subcontractor or supplier if there are compulsory grounds for excluding the Subcontractor or supplier under section 57 of the Procurement Act 2023."

Clause 24.5

Add new clause 24.5

The *Contractor* takes appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this the *Contractor*

This clause adds requirements to comply with anti slavery procedures in the Contractor's supply chain

- implements due diligence procedures for its Subcontractors,
- requires all Subcontractors to warrant that neither the Subcontractors nor any of their employees
    - have been convicted of any offence involving slavery or human trafficking or
    - have, to the best of their knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking and
- requires all Subcontractors to include provisions having the same effect as this modern slavery clause in all subcontracts (at any stage of remoteness in the supply chain) relating to Providing the Service.

Clause 24.6

Add new clause 24.6

"The *Contractor* includes in any subcontract documents provisions requiring that

This clause is a requirement of public contracts under the Procurement Act 2023

- payment due to the Subcontractor or supplier under the subcontract is made no later than 30 days after receipt of a valid and undisputed invoice, unless the contract requires the *Contractor* to make earlier payment to the Subcontractor or supplier,
- invoices for payment submitted by the Subcontractor or supplier are considered and verified by the *Contractor* in a timely fashion,
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed and
- any contract awarded by the Subcontractor or supplier for work included in the contract includes provisions to the same effect as these provisions.
-

Clause 24.7

This clause is a requirement of above threshold public contracts under the Procurement Act 2023cts

Add new clause 24.7

"In addition to the name, the *Contractor* submits to the *Service Manager* the contact details and the legal representatives of each Subcontractor when the *Contractor* appoints it. The *Contractor* notifies the *Service Manager* of any changes to this information as soon as the *Contractor* becomes aware of them."

Clause 24.8

This clause is limited by a new compensation event in Contract Data

Add new clause 24.8

"The *Service Manager* may, having stated its reasons, instruct the *Contractor* to remove a Subcontractor."

Clause 26

Delete existing clause 26

Replace with

Assignment requirements

"The *Client* may assign any benefit or right under this contract on two occasions only without the *Contractor's* consent. The *Client* notifies the *Contractor* of any such assignment as soon as reasonably practicable but the validity of an assignment shall not be affected by whether such notification has been given or otherwise."

The *Contractor* does not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it, without the consent of the *Client* which shall not be unreasonably withheld." .

Clause 27.1

Delete existing clause 27.1

Replace with

These clauses expand the requirements on disclosure and confidentiality

"Each Party

- keeps confidential all Confidential Information belonging to the other Party and in doing so uses the same degree of care that it uses for its own confidential information,
- does not, without the other Party's written consent, disclose that Party's Confidential Information other than to its employees, agents, suppliers and Subcontractors involved in Providing the Service and who need to know the Confidential Information in order to do so and
- uses the other Party's Confidential Information solely in connection with Providing the Service and not for its own benefit or the benefit of any third party."

Clause 27.2

Delete existing clause 27.2

Replace with

"A Party may disclose Confidential Information if and to the extent that the disclosure is lawful, not otherwise in breach of the contract and

- the information is already in the public domain through no fault of that Party,
- the Party making the disclosure receives the information from a third party who lawfully acquires it and who is under no obligation restricting its disclosure,
- the Party making the disclosure independently develops the information without access to any Confidential Information belonging to the other,
- the Party making the disclosure is required to do so by law or any court order or regulatory or governmental body to which it is subject,
- the information is disclosed to its professional advisers or to the *Adjudicator*,
- the Party to whom the information is Confidential Information has given written consent,
- the disclosure is to enable that Party's accounts to be audited or
- the disclosure is made by the *Client* to an actual or potential Replacement Contractor."

Clause 27.3 Add new clause 27.3

"Each Party

- makes all persons to whom it discloses Confidential Information as permitted by the contract aware of the confidentiality of that Confidential Information,
- when disclosing Confidential Information as permitted by the contract, to the extent legally possible, imposes the same duty of confidentiality on the person to whom the disclosure is made to that in the contract and
- takes all steps necessary to ensure those persons keep such Confidential Information confidential."

Clause 27.4 Add new clause 27.4

"Each Party may use data processing techniques, ideas or know-how gained in Providing the Service to further its normal business, to the extent that this does not involve disclosing the other Party's Confidential Information or infringing the other Party's Intellectual Property Rights."

Clause 27.5 Add new clause 27.5

This clause is the same as the previous clause 27.2

"The *Contractor* may publicise the *service* only with the *Client's* agreement."

Clause 28 Add new clause heading 28

The *Contractor's* design

Clause 28.1 Add new clause 28.1

This clause 28 adds the *Client's* use of design into the TSC – taken from the ECC

"The *Contractor* designs the parts of the *service* which the *Scope* states the *Contractor* is to design."

Clause 28.2 Add new clause 28.2

"The *Contractor* submits the particulars of its design as the *Scope* requires to the *Service Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with either the *Scope* or the applicable law.

The *Contractor* does not proceed with the relevant work until the *Service Manager* has accepted its design."

Clause 28 Add new clause 28.3

"The *Contractor* may submit its design for acceptance in parts if the design of each part can be assessed fully.

Clause 28.4 Add new clause 28.4

"The *Contractor* accepts entire responsibility for the design contained within the *Scope* for the *Contractor*'s design and for any mistake, inaccuracy, discrepancy or omission contained in the same. Nothing contained in the *Scope* for the *Contractor*'s design shall affect in any way the obligations of the Contractor under the contract.

Clause 28.5 Add new clause 28.5

"Where there is an ambiguity or inconsistency in the *Contractor*'s design accepted by the *Service Manager* or between the *Contractor*'s design and the *Scope*, the *Contractor* provides the Service *Manager* with proposals to remove the same which are acceptable to the *Service Manager* acting reasonably. Such acceptance shall not be treated as an instruction changing the *Scope*.

Clause 28.6 Add new clause 28.6

"In the event of any discrepancies being discovered in the documents comprising the contract, the *Contractor* shall at once notify the *Service Manager* in writing. If amendments to the design or methods of work are required as a result of discrepancies in the documents, such amendments shall not be regarded as a compensation event. The *Contractor* shall pay all fees and costs in connection therewith.

Clause 29 Add a new clause heading 29

Using the *Contractor's* design

Clause 29.1 Add new clause 29.1

This change is to allow *Client* to use *Contractor's* and Subcontractors' design.

"The *Client* may use and copy the *Contractor's* design for any purpose connected with the *service* unless otherwise stated in the *Scope* and for other purposes as stated in the contract. The *Contractor* obtains from a Subcontractor equivalent rights for the *Client* to use material prepared by the Subcontractor."

Clause 43.3 Delete first sentence

This incorporates the defects correction period as stated in the Scope into the process

Replace with

"The *Contractor* corrects a notified Defect

- within a time which minimises the adverse effect on the *Client* and Others and
- within any defects correction period stated in the Scope."

Clause 50.1

This continues assessments through the *defects date* after the end of the Service Period.

Delete the first bullet in clause 50.1

Replace with

"until twelve months after the end of the Service Period or"

Clause 84.3

Supplemental to clause 84:

"All insurances required to be effected or maintained by the insuring party under this contract are placed with reputable insurers, lawfully carrying on such insurance business in the United Kingdom, and upon customary and usual terms prevailing for the time being in the insurance market. The said terms and conditions do not include any term or condition to the effect that any insured must discharge any liability before being entitled to recover from the insurers."

Clause 85.2

Supplemental to clause 85:

"The *Contractor* immediately informs the *Client* if the professional indemnity insurance it is required to maintain under this contract ceases to be available at commercially reasonable terms and rates, in which case clause 85.1 applies and the *Contractor* co-operates fully with any measures reasonably required by the *Client*. Any increased or additional premium required by insurers as a result of the *Contractor*'s own claims record or other acts, omissions, matters or things particular to the *Contractor* is deemed to be within commercially reasonably rates."

Clause 90.2

Delete existing Termination Table

Replace with

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
The *Client*	R1-R15, R18, R22 or R23	P1, P2 and P3	A1 and A3
	R17, R20 or R24	P1 and P4	A1 and A2
	R21	P1, P2 and P3	A1, A3 and A5
The *Contractor*	R1-R10, R10A, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

Clause 91.1

Delete existing reason 8, bullet 4 of second list

Replace with

Legal detail to avoid problems

"given notice of its intention to enter into administration, had an administration order made against it or had an administrator appointed over it (R8),"

Clause 91.1

Add new reason 10A, bullet 7 of second list, moving "or" from the end of reason 9 to the end of reason 10

"become subject to any other insolvency related procedure similar or equivalent to reasons R5 to R10 (R10A)."

Clause 91.8

Minimum levels and escalation procedure must be stated in Incentive Schedule element of the Schedule of Partners

Add new clause 91.8

"The *Client* may terminate for failing to meet minimum performance levels as set out in the Partnering Information and Scope Schedule 8D Contract Performance Management (R22)."

Clause 91.9

This allows termination for blacklisting activity

Add new clause 91.9

"The *Client* may terminate if

- the *Contractor* or anyone the *Contractor* employs or a Subcontractor or anyone acting on the *Contractor's* or Subcontractor's behalf (whether without or with the knowledge of the *Contractor* or the Subcontractor) commits or is found to have committed any offence under the Employment Relations 1999 Act (Blacklists) Regulations or section 137 of the Trade Union and Labour Relations (Consolidation) Act 1992 or
- the *Contractor* or anyone the *Contractor* employs or a Subcontractor or anyone acting on the *Contractor's* or Subcontractor's behalf (whether without or with the knowledge of the *Contractor* or the Subcontractor) commits or is found to have committed any breach of the Data Protection Legislation by unlawfully processing Personal Data in connection with any blacklisting activities.

(R23)."

Clause 91.10

Termination events for above threshold contracts under the Procurement Act 2023

Add new clause 91.10

"The *Client* may terminate the *Contractor's* obligation to Provide the Service if any of the provisions of section 78 of the Procurement Act 2023apply.

If the *Client* terminates under the provisions of section 78 of the Procurement Act 2023 as a result of information not disclosed by the *Contractor* at the Contract Date, the procedures and amounts due on termination are the same as if the *Contractor* has substantially failed to comply with its obligations (R11).

If the *Client* otherwise terminates under the provisions of section 78 of the Procurement Act 2023, the procedures and amounts due on termination are the same as if the Parties had been released under the law from further performance of the whole of the contract (R17)."

Clause 91.11

Add new clause 91.11

"The *Client* may terminate if there is a Conflict of Interest between the *Contractor* and the *Client* and the *Client* is not satisfied that the Conflict of Interest can be dealt with by other measures (R24)."

Clause 92.3

A legal clarification.

Add new clause 92.3

"Termination of the contract is without prejudice to

- the rights and duties of each Party up to the date of termination,
- any rights accrued to either Party at the date of termination and
- any terms of the contract that are intended to survive its termination."

Clause 92.4

Add new clause 92.4

"On request by the *Client* the *Contractor* shall assign the benefit of any subcontract or other contract related to performance of this contract to the *Client* or shall obtain from any Subcontractor a collateral warranty in favour of the *Client* in respect of its service."

Clause 93.2

Delete A4

Replace with

"A4 Nil."

Clause 93.2

This A5 clause added to recover against breaches of corrupt gifts and payments of commission

Add new A5

"A5 A deduction of an amount equal to the amount or value of any bribes, gifts, considerations, financial advantages or payments of undisclosed commission received by the *Contractor*."

Clause 93.4

Add new clause 93.4

"If the contract is terminated, the *Contractor* is not entitled (under the contract, common law or otherwise) to any amount for anticipated profit, loss of contracts, consequential or economic losses or any other losses other than any amounts due under A1 and A2."

Amendments to Main Option and Secondary Option clauses **Z2**

Z2.1 The following amendments are made to the Main Option W clauses, Secondary Option X clauses and *additional conditions of contract* clauses are added. (Option Z):

Option W2
Clause W2.1(5)

Add new clause W2.1(5)

This clause added to resolve possibility that a properly negotiated settlement is then overturned

"(5) If solicitors advising the *Client* certify in writing that a settlement of a dispute is based on a permissible interpretation of the Parties' rights and obligations under the contract, that settlement is to be treated as derived from its terms, rather than being a variation to those terms."

Option X9

Add new Option heading

"Option X9 Transfer of rights"

Clause X9.1
Transfer of rights

Add new clause X9.1

This transfers IPR rights to the *Client*

"The *Client* owns the *Contractor's* rights over material prepared for the design of the service except as stated otherwise in the Scope. The *Contractor* obtains other rights for the *Client* as stated in the Scope and obtains from a Subcontractor equivalent rights for the *Client* over the material prepared by the Subcontractor. The *Contractor* provides to the *Client* the documents which transfer those rights to the *Client*."

Option X12
Clause X12.4

Delete clauses X12.4(1)

Replace with

"From the *starting date* until the end of their Own Contract, each Partner reports to its *Service Manager* its performance against each of the Key Performance Indicators and the relevant Performance Indicators. Reports are provided at the intervals stated in the Own Contract contract data and include the forecast final measurement against each indicator."

Delete clause X12.4(2)

Replace with

"If a Partner's performance against a Key Performance Indicator or a relevant Performance Indicator does not achieve the target stated in the Schedule of Partners, the Partner submits to its *Service Manager* its proposals for improving performance."

Add new clause X12.4(3)

"A Partner receives a benefit stated in the Schedule of Partners if the target stated for a Key Performance Indicator or a relevant Performance Indicator is improved upon or achieved. The benefit is due as stated in Schedule of Partners, and is made as part of the Partner's Own Contract."

Add new clause X12.4(4)

"The *Promoter* may not add, delete or change a Key Performance Indicator or associated benefit except with the agreement of the Partners."

Add new clause X12.4(5)

"The *Promoter* may not add, delete or change a Performance Indicator or associated benefit except with the agreement of the *Contractor*."

Option X15 Add new Option heading

"Option X15 The *Contractor's* design"

Clause X15.1 Add new clause X15.1

This reduces the *Contractor's* design liability

"The *Contractor* is not liable for a Defect which arose from its design unless it failed to carry out that design using all reasonable skill and care normally used by professionals providing services similar to the *service*."

Clause X15.2 Add new clause X15.2

"If the *Contractor* corrects a Defect for which it is not liable under the contract it is a compensation event."

Clause X15.3 Add new clause X15.3

"The *Contractor* may use the material provided by it under the contract for other work unless

- the ownership of the material has been given to the *Client* or
- it is stated otherwise in the Scope."

Clause X15.4 Add new clause X15.4

"The *Contractor* retains copies of drawings, specifications, reports and other documents which record the *Contractor's* design for the *period for retention*. The copies are retained in the form stated in the Scope."

Clause X15.5 Add new clause X15.5

"The *Contractor* provides insurance for claims made against it arising out of its failure to use the skill and care normally use by professionals providing services similar to the *service*. The minimum amount of this insurance is stated in the Contract Data. This insurance provides cover from the *starting date* until the end of the period stated in the Contract Data."

Option X16 Add new clause heading

Option X16 Retention

Clause X16.1 Add new clause X16.1

Retention is not standard in the TSC. This retains an amount near the end of the contract. *Retention percentage* and *retention amount* are stated in the Contract Data.

"During the final six months of the Service Period an amount is retained in each amount due. Until the end of the Service Period the amount retained at each assessment date is the *retention percentage* applied to the change in the Price for Services Provided to Date since the last assessment date."

Clause X16.2 Add new clause X16.2

"The amount retained is adjusted in the assessment made at the end of the Service Period so that it equals the *retention amount*.

The amount retained remains at this amount until twelve months after the end of the Service Period. No amount is retained after twenty-four months after the end of the Service Period."

Clause X24.1 Amend clause X24.1

This recognises the Service Manager needs a longer period to make assessment

In first line, replace "thirteen" with "twenty-six".

Z3 Add the following clause 73 for **Intellectual Property Rights**

Add the following clause 73.1:

"In the event that the *Contractor* does not own the copyright, or any Intellectual Property Rights in any Document the *Contractor* uses all reasonable endeavours to procure the right to grant such rights to the Client to use any such copyright or Intellectual Property Rights from any third party owner of the copyright or Intellectual Property Rights. In the event that the *Contractor* is unable to procure the right to grant to the *Client* in accordance with the foregoing the *Contractor* procures that the third party grants a direct licence to the *Client* on industry acceptable terms."

Add the following clause 73.2:

"The *Contractor* waives any moral right to be identified as author of the Documents in accordance with section 77, Copyright Designs and Patents Acts 1988 and any right not to have the Documents subjected to derogatory treatment in accordance with section 8 of that Act as against the *Client* or any licensee or assignee of the *Client.*"

Add the following clause 73.3:

"In the event that any act unauthorised by the *Client* infringes a moral right of the *Contractor* in relation to the Documents the *Contractor* undertakes, if the *Client* so requests and at the *Client*'s expense, to institute proceedings for infringement of the moral rights."

Add the following clause 73.4:

"The *Contractor* warrants to the *Client* that it has not granted and shall not (unless authorised by the *Client*) grant any rights to any third party to use or otherwise exploit the Documents.

Add the following clause 73.5:

"The *Contractor* supplies copies of the Documents to the *Service Manager* and to the *Client*'s other contractors and consultants for no additional fee to the extent necessary to enable them to discharge their respective functions in relation to this contract or related works.

Add the following clause 73.6:

"After the termination or conclusion of the *Contractor*'s employment hereunder, the *Contractor* supplies the *Service Manager* with copies and/or computer discs of such of the Documents as the *Service Manager* may from time to time request and the *Client* pays the *Contractor*'s reasonable costs for producing such copies or discs.

Add the following new clause 73.7:

"In carrying out the works the *Contractor* does not infringe any Intellectual Property Rights of any third party. The *Contractor* indemnifies the *Client* against claims, proceedings compensation and costs arising from an infringement or alleged infringement of the Intellectual Property Rights of any third party."

Add the following new clause 73.8:

"All intellectual property rights in any equipment, software or any other item supplied by the Contractor shall remain vested in Contractor or its licensor(s). The Contractor grants the Client a non-exclusive licence to use (but not to adapt, amend, alter, develop or modify) supplied software or programs solely in conjunction with contract but not for any other purpose except as required to be permitted by law. Only intellectual property exclusively created for and paid for by the Client as a direct consequence of the services being provided under the contract, shall vest in the Client."

Other special Clauses

Exclusivity and work content **Z4**

Z4.1 This contract does not prevent the *Client* doing or contracting for similar work with its own labour or Others within the Affected Property. The *Contractor* has no claim for additional costs where the *Client* does or contracts for similar work.

Z4.2 The *Client* does not use this clause as an alternative to termination.

Z4.3 The *Client* gives no representations or warranties to the *Contractor* about the amount or value of work it will instruct the *Contractor* to do under the contract. Any indications of these amounts or values in the *Scope* or other documentation about the *service* are estimates only.

Z4.4 The *Contractor* has no claim for loss of profit or loss of business or otherwise if the *service* or any part of the *service* is less in amount or value or scope than anticipated.

Client Data **Z5**

Z5.1 The *Contractor* is entrusted with Client Data only for the purposes of the contract. The *Contractor* stores it safely and separately from any data not relating to the *service* and in a manner which makes it readily identifiable as Client Data.

Z5.2 The *Contractor* acknowledges that the Client Data belongs solely to the *Client*. The *Contractor* does not delete or remove any copyright notices contained in or relating to the Client Data.

Z5.3 The *Contractor* takes all steps necessary to ensure that it can restore or procure the restoration of the Client Data if it is lost or corrupted. If the Client Data is lost or corrupted and the *Client* so requests the *Contractor* restores or procures the restoration of the Client Data to its state immediately before the corruption or loss.

Z5.4 Subject to the Intellectual Property Rights, ownership in all Client Data including existing documents and the physical embodiments of designs relating to the contract, transfers from the *Contractor* to the *Client* on the End Date. Following the End Date, the *Contractor* hands over all such Client Data to the *Client* immediately upon request.

Z5.5 The *Contractor* ensures that the *Client* is able to use any software necessary to access and use the Client Data after the End Date. If the *Service Manager* so requires the *Contractor* enters into an escrow agreement in the standard form of National Computer Centre Limited (or such other industry standard body the *Service Manager* approves) to protect the *Client's* access to any software in which the *Contractor* owns the Intellectual Property Rights.

Change of Control **Z6** Change of Control

Insert new clauses:

"Z6.1

Notwithstanding any other provision of the contract, the *Contractor* notifies the *Client* and the Service Manager immediately in writing and as soon as the *Contractor* is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law. The *Contractor* ensures that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

Z6.2

The *Client* may terminate the *Contractor's* obligation to Provide the Service (which shall take effect as termination under reason R11) within six months from

- being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- where no notification has been made, the date that the *Client* becomes aware that a Change of Control is anticipated or is in contemplation or has occurred but shall not be permitted to terminate where an approval was granted prior to the Change of Control."

Conflicts of Interest and Whistle Blowing **Z7**

Z7.1 The *Contractor* notifies the *Client* immediately the *Contractor* becomes aware of any Conflict of Interest. The *Contractor* co-operates with any steps the *Client* requires the *Contractor* takes in order to minimise the impact of the Conflict of Interest on the provision of the services.

Z7.2 The *Contractor* either

- has a Whistle Blowing policy equivalent to the *Client's* Whistle Blowing policy and which enables the *Contractor's* or Subcontractor's employees to make protected disclosures to the *Client* or
- enables the *Contractor's* or Subcontractor's employees to make protected disclosures to the *Client* under the *Client's* Whistle Blowing policy.

Health and safety **Z8**

Z8.1 The *Contractor* complies with all Health and Safety Law and Codes of Practice and his own safety policy in Providing the Service.

Z8.2 Before the *starting date* the *Contractor* notifies the *Client* of the name of the person responsible for health and safety. When on premises owned or occupied by the *Client*, the *Contractor* ensures that its and its Subcontractor's employees comply with the *Client's* general health and safety policy and with the lawful requirements of the *Service Manager*.

Z8.3 The *Service Manager* may suspend the Providing of the Service or any part of the *service* if the *Contractor*

- does not comply with Health and Safety Law,
- has not provided his health and safety policy to the *Client* or
- has not notified the *Client* of the person responsible for health and safety.

Z8.4 Following such suspension the *Contractor* does not Provide the Service or any part of the *service* until the *Service Manager* is satisfied that the *Contractor* has remedied the failure. An assessment of a compensation event does not include cost and time for the period of the suspension.

Z8.5 In Providing the Service the *Contractor* adopts safe methods of work to protect the health, safety and welfare of

- the *Contractor's* employees, agents, suppliers and Subcontractors,
- its Subcontractor's employees and agents,
- employees and agents of the *Client* and
- all other persons, including members of the public.

Z8.6 The *Contractor* provides the information and documents the *Client* requires as evidence of compliance with Health and Safety Law, applicable safety Codes of Practice and its own safety policy. The *Contractor* maintains copies of all applicable Health and Safety Law, Codes of Practice and working rules applicable to Providing the Services and permits its employees to use and refer to them.

Z8.7 The *Contractor* informs the *Service Manager* as soon as it becomes aware of any prosecution, pending or likely prosecution or conviction of the *Contractor,* any of its employees, any Subcontractor or agent or any of the Subcontractor's employees or agents for any offence under Health and Safety Law. Following this notification the *Contractor* provides the *Service Manager* with whatever further information and documents the *Service Manager* requires.

Z8.8 The *Contractor* permits the *Service Manager* without earlier notification and at any reasonable time

- to enter and inspect any premises of the *Contractor,* its agents or Subcontractors used or to be used in Providing the Service and
- to inspect any Equipment or Plant and Materials.

Equality and diversity **Z9**

Z9.1 The *Contractor* does not discriminate directly, indirectly, or by way of victimisation or harassment, or failure to make reasonable adjustments, against any person on grounds of colour, nationality, ethnic or national origins, gender, marital or civil partnership status, maternity, pregnancy, sexual orientation, gender reassignment, religion or belief, age, disability, part time, fixed term or agency worker status, or any other protected characteristic.

Z9.2 The *Contractor* recruits for each vacancy by a process that accords with good equality and diversity procedures and Equality and Diversity Law.

Z9.3 The *Contractor* establishes a procedure for recording and responding to incidents of discrimination and abuse on the basis of colour, nationality, ethnic or national origins, gender, marital or civil partnership status, maternity and pregnancy, sexual orientation, gender reassignment, religion or belief, age, disability, part time, fixed term or agency worker status, or any other protected characteristic.

Z9.4 In Providing the Service the *Contractor* observes Equality and Diversity Law and follows all relevant Codes of Practice.

Z9.5 Where the *Contractor*, its Subcontractors, or any of its or their employees are required to Provide the Service on the *Client's* premises or alongside the *Client's* employees on any other premises, the *Contractor* complies with the *Client's* employment policy and codes of practice relating to equality and diversity, copies of which are available from the *Client* on request.

Z9.6 The *Contractor* monitors its workforce on the basis of ethnicity (which means groups of people classified as 'ethnic groups' in the most recent official census by the Office of National Statistics) gender, age, disability and/or such other bases as the *Client* requires.

Z9.7 Where it appears to the *Contractor* in relation to particular work, that people of one social group or gender or disabilities are under-represented amongst the *Contractor's* or a Subcontractor's workforce compared to their representation in the *Contractor's* or Subcontractor's workforce generally or in the population as a whole or in the areas from which its or its Subcontractor's employees are normally recruited, the *Contractor* does the following to the extent appropriate and reasonably practicable

- places and uses job advertisements to reach people of those social groups, of that gender or with disabilities and to encourage their applications,
- uses employment agencies and careers offices in areas where members of those social groups, of that gender or with disabilities live and work,
- promotes recruitment and training schemes for school-leavers and/or unemployed people intended to reach members of those social groups, of that gender or with disabilities and

- provides appropriate training and encouragement of employees from those social groups, of that gender or with disabilities to apply for promotion or transfer to do work in which people from those social groups, men, women or people with disabilities (as applicable) are under-represented.

Z9.8 The *Contractor* submits a report to the *Client* demonstrating its compliance with the equality and diversity requirements of the contract at least two weeks before the *starting date* and on each anniversary of the *starting date*. The *Contractor* also provides any additional information as the *Client* reasonably requires to assess the *Contractor's* compliance with the equality and diversity requirements of the contract.

Z9.9 The *Contractor* notifies the *Service Manager* as soon as it becomes aware of any investigation of or proceedings brought against the *Contractor* or any Subcontractor under Equality and Diversity Law.

Z9.10 Where there is a finding against the *Contractor* or a Subcontractor in any investigation conducted or proceedings brought under Equality and Diversity Law as a direct or indirect result of any act or omission of the *Contractor*, a Subcontractor, or any of its or their employees, any costs incurred by the *Client* (including any payment the *Client* is ordered or required to pay to a third party) are at the *Contractor's* risk.

Z9.11 Where any investigation is undertaken by a person or proceedings are instituted under Equality and Diversity Law relating to the *Contractor* or a Subcontractor Providing the Service, the *Contractor*

- provides any information the *Client* requests in the timescale specified in the request,
- attends any meetings the *Service Manager* requires and ensures that it and any Subcontractor's employees involved in the investigation or proceedings also do so,
- promptly gives the *Service Manager* access to and allows it to investigate any documents or data the *Service Manager* deems relevant,
- allows any of its employees to appear as witness in any ensuing proceedings and ensures that Subcontractors allow their employees to do so and
- co-operates fully and promptly with the person or body conducting the investigation.

Compliance with legislation **Z10**

Z10.1 The *Contractor* Provides the Service:

- 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.