

Contract Title: Supply and installation of equipment to enhance electrical resilience

Supplier: Sudlows Ltd

Contract Start Date: 28<sup>th</sup> August 2024

Contract End Date: 9<sup>th</sup> March 2026

Contract Value: £2,657,986.00

This contract was awarded under the Terms and Conditions of NEC4 ECC Option A Contract version June 17 with Jan 23 Amendments, and utilised the copyrighted NEC Forms of Contract.

Additional Z Clauses added to the contract were as follows:

**Option Z102 Additional identified and defined terms**

Insert new clause 11.4:

11.4(1) Insert new definition

*“Client’s Security Procedures”* shall mean any security procedure specific to any *Client’s* premises or data.

11.4(2) Insert new definition

*“Information”* means information of any nature, and includes (but is not limited to) information in the form of data, databases, software (excluding third party software), designs, models, interventions, drawings, details, plans, reports, records, calculations, schedules, specifications, bills of quantities, levels and setting out details and other documents (whether or not in electronic format).

11.4(3) Insert new definition

*“Documents”* means all Information of any nature whatsoever provided by or used by or on behalf of the Consultant in the course of performing its obligations under this contract”.

11.4(4) Insert new definition

*“Foreground Information”* means all Information in Documents which is generated in the performance of the services under this contract.

11.4(5) Insert new definition

*“Background Information”* means all Information in Documents which is not Foreground Information.

11.4(6) Insert new definition

*“Transparency Information”* shall mean the content of this Contract in its entirety, including from time to time agreed changes to the Contract, and

details of any payments made by the *Client* to the *Consultant* under the Contract

11.4(7) Insert new definition

“*Client’s IT Systems*” means the computer hardware and software and networks used by the *Client* in the course of its business.

11.4(8) Insert new definition

“Employer” means *Client*.

**Option Z103 Working with the *Client* and Others**

Insert new clause 22.4:

The *Consultant* shall carry out the *services*, to the extent reasonably practical considering their nature, so as to cause minimum disruption to the *Client’s* activities on their premises and elsewhere. If the *Consultant* anticipates any such disruption, the *Consultant* will issue an early warning notice to enable the *Client* to plan in advance, if necessary, for such disruption.

Insert new clause 22.5:

The *Consultant* shall co-operate with the requirements of all *Client* boards of inquiry and shall use all reasonable endeavours to procure the attendance of such of its employees, agents or Sub consultants who may be invited by the *Client* to attend as witnesses at boards of inquiry or similar proceedings. This obligation shall survive the expiry or early termination of the *services*. The *Client* shall reimburse the *Consultant* their reasonable external costs of such attendance.

Insert new clause 22.6:

The *Consultant* acknowledges that it will not have exclusive rights to occupy any accommodation provided by the *Client* and that any such accommodation will only be used for the purpose of the *services*.

Insert new clause 22.7:

All fossils, antiquities, and other objects having antiquarian, artistic, historic, archaeological or monetary value, which may be found on, or at the *Client* premises shall remain the property of the *Client*.

**Option Z104 Disclosure**

Delete clause 26 and replace with:

26.1 Except with the written consent of the *Client*, the *Consultant* shall not disclose the *services* to any person other than a person employed by the *Consultant* or a Subconsultant. Disclosure shall be confined to those members of staff whose access to the information is essential for performance of the *services*.

26.2 Subject to clause 26.5, 26.6 and 26.7, each Party:

- a) shall treat in confidence all Information it shall receive from the other;
- b) shall not disclose any of that Information to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that the *Consultant* may disclose Information in confidence, without prior consent, to such persons as and to such extent as may be necessary for the performance of the services;
- c) shall not use any of that information otherwise than for the purpose of performing the services; and
- d) shall not copy any of that Information except to the extent necessary for the purpose of exercising its rights of use and disclosure under this agreement.

26.3 The *Consultant* shall take all reasonable precautions necessary to ensure that all the Information disclosed to the *Consultant* by or on behalf of the *Client* under or in connection with this agreement:

- a) is disclosed to its employees and Subconsultants only to the extent necessary for the performance of the services;
- b) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for performing work or having work performed for the *Client* under this agreement or any subconsultancy agreement.
- c) is returned to the *Client* by the *Consultant* on Completion of the whole of the Services

26.4 The *Consultant* shall ensure that its employees, and its Subconsultants and their employees, are aware of its arrangements for discharging the obligations under clause 26.1, 26.2 and 26.3 before they receive Information and take such steps as may be reasonably practical to enforce such arrangements.

26.5 Clause 26.2 and 26.3 shall not apply to the Information to the extent that either Party:

- a) exercises rights of use or disclosure granted otherwise than in consequence of, or, this agreement;
- b) has the right to use or disclose the Information in accordance with other conditions of this agreement
- c) can show:
  - i) that the Information was or has become published or publicly available for use otherwise than in breach of any provision of this agreement or any other agreement between the Parties;
  - ii) that the Information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with the services;

iii) that the Information was received without restriction on further disclosure from a third party who lawfully acquired it and who is itself under no obligation restricting its disclosure; or

iv) from its records that the same information was derived independently of that received under or in connection with the services; provided the relationship to any other Information is not revealed.

26.6 Neither Party shall be in breach of this Clause 26 where it can show that any disclosure of Information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation. Where such a disclosure is made, the Party making the disclosure shall ensure that the recipient of the Information is made aware of and asked to respect its confidentiality. Such disclosures shall in no way diminish the obligations of the Parties under this Clause.

26.7 The *Client* shall not be in breach of this Clause 26 where it can show that any disclosure of Information is made solely and to the extent necessary to comply with the Freedom of Information Act 2000 ("the Act") or the Environmental Information Regulations 2004 ("the Regulations"). To the extent permitted by the time for compliance with the Act or the Regulations, the *Client* shall consult the *Consultant* where the *Client* is considering the disclosure of Information under the Act or the Regulations and, in any event, shall provide prior notification to the *Consultant* of any decision to disclose the Information. The *Consultant* acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the Act or the Regulations is a matter in which the *Client* shall exercise its own discretion, subject always to the provisions of the Act or the Regulations. For the avoidance of doubt, nothing in this condition shall affect the *Consultant's* rights at law.

26.8 Nothing in this Clause shall affect the Parties' obligations of confidentiality where information is disclosed orally in confidence.

#### **Option Z105 Rights to Material**

Delete clause 70 and replace with:

70.1 All Foreground Information and intellectual property rights therein shall vest in and be the property of the *Client* on their creation.

70.2 To the extent that any intellectual property rights in any of the Foreground Information does not automatically vest in the *Client*, the *Consultant* shall with full title guarantee, assign or procure the assignment to the *Client* of all intellectual property rights in such Foreground Information free from lien, charge or encumbrance.

70.3 The *Client* hereby grants to the *Consultant* for the contract period and free of charge a non-exclusive royalty free licence, together with a sub-licence to Subconsultants, to use such of the Foreground Information as the *Consultant* reasonably requires for the purposes of performing the services.

70.4 The *Consultant* hereby grants to the *Client*, subject to the rights of third parties, a perpetual, irrevocable and royalty free licence to use the Background Information and any intellectual property rights therein as required to use the Foreground Information and/or the Documents for any purpose.

70.5 The *Consultant* shall highlight to the *Client* any third party intellectual property rights which appear to be relevant to the *Clients* use of the Foreground Information and/or the Documents, and following consultation with the *Client* and insofar as reasonably practicable the *Consultant* shall secure a licence on behalf of the *Client* to use the third party intellectual property rights.

70.6 The *Consultant* shall, following consultation with the *Client* and insofar as reasonably practicable, secure a licence on behalf of the *Client* to use any third party software (except for commonly used and commercially available software) used by the *Consultant* and its Subconsultants in performing the services,

70.7 All licences shall be purchased in consultation with the *Client* so that licence terms appropriate to the intended use of such intellectual property rights or software are obtained.

70.8 The *Consultant* shall indemnify the *Client* and keep the *Client* fully indemnified against all losses which the *Client* may sustain or incur that arise out of allegations that the *Client* has infringed the intellectual property rights of any third party in using the Documents in accordance with this Clause.

70.9 The *Consultant* shall mark any copyright works comprising Foreground Information with the legend © Crown Copyright (insert year of generation of the works)

#### **Option Z105 DEFCONs**

Insert new clause 102:

This clause is to incorporate MoD special terms and conditions in the form of DEFCONs and DEFORMs as detailed at <https://www.gov.uk/guidance/knowledge-in-defence-kid>:

- DEFCON 76 (Edn. 11/22) – Contractor's Personnel at Government Establishments
- DEFCON 501 (Edn. 10/21) - Definitions and Interpretations
- DEFCON 503 (Edn 06/22) – Formal Amendments to the Contract
- DEFCON 514 (Edn 08/15) – Material Breach
- DEFCON 516 (Edn 04/12) – Equality
- DEFCON 515 (Edn 06/21) - Bankruptcy and Insolvency
- DEFCON 518 (Edn 02/17) - Transfer
- DEFCON 520 (Edn 08/21) - Corrupt Gifts and Payments of Commission

- DEFCON 526 (Edn 08/02) - Notices
- DEFCON 531 (Edn. 09/21) - Disclosure of Information
- DEFCON 532B (Edn. 12/22) - Protection Of Personal Data (Where Personal Data is being
- processed on behalf of the Authority)
- DEFCON 534 (Edn 06/21) – Subcontracting and Prompt Payment
- DEFCON 537 (Edn 12/21) - Rights of Third Parties
- DEFCON 539 (Edn 01/22) – Transparency
- DEFCON 538 (Edn 06/02) - Severability
- DEFCON 566 (Edn 10/20) - Change of Control of Contractor
- DEFCON 632 (Edn 11/21) - Third Party Intellectual Property - Rights and Restrictions
- DEFCON 658 (Edn 10/22) – Cyber
- DEFCON 659A (Edn 09/21) - Security Measures

**Option Z106 Official Secrets Act**

Insert new clause 103:

The *Consultant* warrants that they have not done and will not do anything that would result in a breach of the *Client's* Security Procedures or the Official Secrets Act.

**Option Z107 Prohibited Acts**

Insert new clause 104:

The *Consultant* warrants that it has not done and will not do any of the following (hereafter referred to as "Prohibited Acts"):

- a) offered, given or agreed to give to any Crown servant any gift or consideration of any kind as an inducement or reward;
- i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or execution of this or any other contract with the Crown; or
- ii) for showing or not showing favour or disfavour to any person in relation to this or any other contract with the Crown;
- b) entered into this or any other contract with the Crown in connection with which commission has been paid or has been agreed to be paid by it or on its behalf, or to its knowledge, unless before the contract is made particulars of such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the *Client*, and in respect of any breach of any of the above warranties and undertakings the *Consultant* acknowledges that the *Client* will be entitled to claim damages against the *Consultant*.

#### **Option Z108 Fraud**

Insert new clause 105:

At all stages of its involvement under and in connection with the services, the *Consultant* shall take all practicable steps to prevent fraud and/or the risk of fraud arising. If in the reasonable opinion of the *Client* the *Consultant* commits any fraud (as defined by the Law of the Contract) in relation to the services or any contract with the *Client* or any other public body then the *Client* may terminate the services for the *Consultant's* default by giving 10 Working Days' notice to the *Consultant*. The *Consultant* shall keep and maintain all relevant records, invoices, approvals, notes; minutes of meetings and all such other original documents as may be required to verify the services carried out by the *Consultant* and its Subconsultants so that they may be provided upon request by the *Client*. The *Consultant* shall immediately report to the *Client* any circumstances giving rise to fraud within its own organisation, that of its Subconsultants, the *Client* or otherwise in relation to the services and shall provide all such relevant information which may assist the *Client* in dealing with such report efficiently and effectively. The *Client* shall be entitled to set-off, deduct, abate or recover as a debt against the *Consultant* all losses howsoever arising in connection with or sustained as a consequence of fraud including all associated investigation costs.

#### **Option Z108 Use of *Client's* IT Systems**

Insert new clause 106:

The *Consultant* and its Subconsultants may use any of the *Client's* IT Systems including connections to the internet or intranet services, with express permission from the *Client*, and appropriate security clearance and only for the performance of the services. Use of a third party's computer equipment and software, including any connections to the internet or intranet services, on the *Client's* premises, is subject to the approval of the *Client* and said third party. The *Consultant* shall procure that its employees, and its Subconsultants and their employees, comply with the *Client's* policies, procedures and instructions in respect of computer hardware and software, including any connections to the internet or intranet services. The *Client* may on reasonable notice from time to time make reasonable or necessary amendments to such policies, procedures and instructions. The *Consultant* shall take all reasonably practicable precautions to ensure that its employees, and its Subconsultants and their employees, do not use computer hardware or software, including any connections to the internet or intranet services, unlawfully or for unlawful purposes. The *Consultant* shall not cause or allow any of its employees, or its Subconsultants and their employees, to bring the reputation of the *Client* into disrepute by any action, activity or behaviour in connection with computer hardware or software. Failure by the *Consultant* to comply with this Clause shall constitute a material breach of this agreement which may lead to termination.

## Option Z109 Russian & Belarussian Products/Services

Insert new clause 108:

108.1 The *Consultant* shall, and shall procure that their Subconsultants shall, notify the Authority in writing as soon as they become aware that:

- a. the *service* contains any Russian/Belarussian products and/or services; or
- b. that the *Consultant* or any part of the *Consultant's* supply chain is linked to entities who are constituted or organised under the law of Russia or Belarus, or under the control (full or partial) of a Russian/Belarusian person or entity. Please note that this does not include companies:
  - (1) registered in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement; and/or
  - (2) which have significant business operations in the UK or in a country with which the UK has a relevant international agreement providing reciprocal rights of access in the relevant field of public procurement.

108.2 The *Consultant* shall, and shall procure that their Subconsultants shall, include in such notification (or as soon as reasonably practicable following the notification) full details of the Russian products, services and/or entities and shall provide all reasonable assistance to the *Client* to understand the nature, scope and impact of any such products, services and/or entities on the provision of the *service*.

108.3 The *Client* shall consider the notification and information provided by the *Consultant* and advise the *Consultant* in writing of any concerns the *Client* may have and/or any action which the *Client* will require the *Consultant* to take. The *Consultant* shall be required to submit a response to the concerns raised by the *Client*, including any plans to mitigate those concerns, within 14 business days of receipt of the *Client's* written concerns, for the *Client's* consideration.

108.4 The *Consultant* shall include provisions equivalent to those set out in this clause in all relevant Sub-contracts.