

Agreement for the Supply, Installation, Operation, Maintenance, And Recovery of Managed Trackside Lighting

The Managed Trackside Lighting (as defined in this Agreement) will be supplied, installed, operated, maintained and recovered by Infra Safety Services Labour Limited, a company registered in England with number 6253082, whose registered office is 7 Bradford Business Park, Kingsgate, Bradford, BD1 4SJ (referred to in the remainder of this Agreement as "ISSL")

Form of Agreement

Agreement Date		Agreement Ref No.	
Client Details		Site Information	
Client Name		ISSL Job No.	
Client Address		Site Location	
Telephone		Access Points	
Fax		Survey Mileage (from)	
Email		Survey Mileage (to)	
Client Contact			
Contract Details			
Installation Start Date		Installation Completion Date	
Recovery Start Date		Recovery Completion Date	
Contract Duration (Weeks)			
Lighting Period	Midweek	Weekends	
No. of Shifts			
Contract Price (Excluding V.A.T.)		This price has been quoted based on the above information	

By signing this Agreement the Client confirms and agrees as follows:-

- ▶ The Client requests ISSL to supply and install the Managed Trackside Lighting, to operate it for the Lighting Period specified above and to recover it at the end of the Lighting Period.
- ▶ The Client will procure full and unrestricted access to the Site as identified above, including vehicular access for delivery of the ISSL Equipment (as defined in Condition 1 of the Conditions set out below), and to the extent required any Requisite Consents (also as defined in Condition 1), in order to procure such full and unrestricted access.
- ▶ The information which the Client has provided to ISSL in order for ISSL to supply, install, operate, maintain and recover the Managed Trackside Lighting is accurate in all respects. In the event that such information is shown to be inaccurate ISSL shall be entitled to charge the Client any additional costs and expenses which ISSL may suffer or incur as a result of such inaccuracy.
- ▶ This Agreement becomes binding only upon the receipt by ISSL of an unaltered Form of Agreement [or Purchase Order] signed by an authorised representative of the Client.
- ▶ The Client agrees to be bound by the attached ISSL Conditions for the Supply, Installation, Operation, Maintenance and Recovery of Managed Trackside Lighting, which Conditions form part of this Agreement.

Infra Safety Services Labour Limited Signature	Client Signature
Signed by a duly authorised signatory for and on behalf of Infra Safety Services Labour Limited	Signed by a duly authorised signatory for and on behalf of [Add full legal name of the Client]
Signature:	Signature:
Print Name:	Print Name:
Position:	Position:
Date:	Date:

ISSL Conditions for the Supply, Installation, Operation, Maintenance and Recovery of Managed Trackage Lighting

1. Definitions and Interpretation

1.1 In the Agreement (as defined below) the following terms shall have the meanings set against them:

“Additional Weekly Charges”	Means the additional weekly charges for the provision of the Services beyond the Lighting Period as set out in the Appendix
“Client Information”	Means the information that the Client must provide to ISSL in relation to the Services, as are more particularly described in Condition 4.1;
“Client Materials”	All materials or equipment provided by the Client to enable ISSL to perform the Services;
“Form of Agreement”	Means the Form of Agreement to which these Conditions are appended;
“Intellectual Property Rights”	Means all or any registered or unregistered intellectual property rights in any part of the world including patents, design rights, copyrights, trademarks, database rights, topography rights, know-how rights in inventions or ideas and rights to confidence, together with any rights to apply for any such intellectual property rights and the benefit of any applications for such intellectual rights;
“ISSL Equipment”	Means the equipment provided by ISSL and any ancillary equipment used by ISSL as part of or in connection with the performance of the Services;
“ISSL Supervisor”	Means the Managed Trackage Lighting Supervisor provided by ISSL to operate the Managed Trackage Lighting during the Lighting Period;
“Lighting Period”	Means the period during which ISSL is engaged by the Client to provide the Services in accordance with the terms of this Agreement as may be extended by the Client in accordance with the provisions of Condition 3.4;
“Managed Trackage Lighting”	Means the Managed Trackage Lighting more particularly described in the Form of Agreement.
“Price”	Means the price payable by the Client for the provision of the Services specified in the Form of Agreement.
“Requisite Consents”	Means those permissions, consents, approvals, permits including track possessions or track restrictions as maybe necessary for ISSL lawfully to commence and carry out the provision of the Services;
“Security Interest”	Any right of ownership, lien, mortgage, charge, pledge, hypothecation, attachment, assignment by way of security, right of possession, right of detention, right of set off, encumbrance or other security items;
“Services”	Means the supply, installation, operation, maintenance and recovery of the Managed Trackage Lighting;
“Shift”	Means a lighting shift to cover one single period of darkness in any 24 hour period, based on the specification provided by the Client;
“Site”	Means the site at which ISSL is to perform the Services as more particularly described in the Form of Agreement; and

1.2 In this Agreement, unless otherwise stated references to:-

- (a) The “parties” are references to the parties in this Agreement;
- (b) “Persons” and “parties” include references to individuals, companies, corporations, partnerships and unincorporated associations;
- (c) A “Third party” is a reference to a person who is not a party to this Agreement;
- (d) The singular shall include the plural and vice versa;
- (e) A gender include a reference to every gender;
- (f) A “Condition” is a reference to a Condition of this Agreement;
- (g) An “Appendix” is a reference to an Appendix to this Agreement;
- (g) A statute, statutory instrument, regulation, order or licence is a reference to that statute, statutory instrument, regulation, order or licence as substituted, varied or re-enacted from time to time; and
- (h) Any document or agreement is to that document or agreement as substituted, varied or amended from time to time.

1.3 The headings in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement.

1.4 The Appendices form part of this Agreement.

1.5 The expressions “Include” and “Including”, where used in this Agreement, shall be construed as if immediately followed by the words “without limitation”.

2. Terms of the Agreement

Incorporation: These Conditions shall be incorporated into all quotations, offers, acceptances, agreements and contracts for the provision of the Services by ISSL to the Client. All terms and conditions of the Client are excluded, including any terms and conditions contained in or stated on the reverse of in any orders, offers, acknowledgements or acceptances tendered by or on behalf of the Client.

3. Engagement

- 3.1 Engagement of ISSL:** The Client engages ISSL to perform the Services for the Lighting Period and the Client agrees to pay for all Services in accordance with the terms of this Agreement.
- 3.2 Standard of Care:** ISSL will perform the Services with reasonable care and skill. Where in this Agreement an obligation or requirement is stated in such a manner as not to specify in complete detail what ISSL is required to do in order to fulfil that obligation or requirement, then ISSL shall be entitled to determine what it is required to do, in its reasonable professional opinion. ISSL shall not be obliged to do anything which would or is likely to cause ISSL to be in breach of any applicable law, regulation, order or other matter of any kind having the force of law, whether local, national or European.
- 3.3 Specification:** The Client acknowledges that the specification for the Managed Trackside Lighting, as set out in the Form of Agreement, is based upon the requirements provided by the Client to ISSL, and that ISSL accepts no responsibility or liability for the adequacy of such specification to meet the Client's actual requirements.
- 3.4 Extension of the Lighting Period:** In the event that the Client wishes to propose an extension of the Lighting Period the Client shall be required to notify ISSL no less than 3 days in advance of such proposed extension. In the event that ISSL accept such extension the Client shall pay to ISSL the Additional Weekly Charges or part thereof. No extension shall be deemed accepted unless and until expressly agreed in writing.
- 3.5 Maintenance and Repair Downtime:** The Client acknowledges that ISSL shall be entitled without liability to undertake maintenance and repair of the Managed Trackside Lighting at any time during the Lighting Period. ISSL shall undertake such maintenance and repair at its own cost, except to the extent that repair to the Managed Trackside Lighting is required as the result of any of the matters specified in Condition 5.3, in which event such repair shall be undertaken at the reasonable cost of the Client.
- 3.6 Failure to Provide Requisite Consents:** The Client acknowledges that ISSL shall have no liability to the Client, and the Client shall hold ISSL harmless, in respect of any inability of ISSL to provide the Services, to the extent that such inability arises as a result of the Client's failure to provide any Requisite Consents.
- 3.7 Installation and Recovery of the Managed Trackside Lighting:** Without limiting the generality of Condition 4.5 the Client shall provide ISSL with possessions that remain in force for a complete Shift on the Installation and Recovery Completion Dates (as specified in the Form of Agreement) and ISSL shall have no liability to the Client for any delay in the installation or recovery of the Managed Trackside Lighting due to any cancellation in whole or in part of possessions. The Client shall be liable for all and any costs, expenses, liability, suffered by ISSL as a result of such delay or cancellation of such possessions.

4. Client Obligation

- 4.1 Client Information:** The Client shall provide all information and data necessary for the performance of the Services by ISSL including without limitation the following:-
- Details of the location of the Site;
 - Details of the exact mileage to be covered by the Managed Trackside Lighting;
 - The position of all lighting;
 - Complete and accurate Site access information;
 - Details of any Requisite Consents required together with confirmation that all such Requisite Consents have been obtained so as to enable ISSL to perform the Services; and
 - Shift dates and times for the installation, operation and recovery of the Managed Trackside Lighting.
- 4.2 Client Warranty:** The Client warrants that the Client Information is complete, accurate and up-to-date in all material respects and free from errors. ISSL shall have no liability to the Client, and the Client shall hold ISSL harmless, in respect of ISSL's inability to provide the Services or for the incomplete or incorrect performance of any Services, to the extent that such inability, incompleteness or incorrectness arises as the result of any breach of the warranty contained in the previous sentence.
- 4.3 Variation:** ISSL shall be entitled to alter its terms for the provision of the Services (including without limitation increasing the Price) on the occurrence of any of the following:
- The Client Information is subsequently found to be inaccurate, incomplete or not up to date;
 - The Client has not obtained the Requisite Consents either at all or with sufficient time for the commencement of the Services; or
 - The Requisite Consents are cancelled in whole or in part prior to the completion of the Services
- 4.4 Required Consents:** The Client shall ensure that ISSL has all the Requisite Consents required to bring onto the Site, install, operate, maintain and de-install the Managed Trackside Lighting during the Lighting Period. If there are any delays in the possessions or cancellations of any possessions required for the installation or recovery of the Managed Trackside Lighting, ISSL shall be entitled to charge the Client the Additional Weekly Charges pro-rata for the period commencing from the Recovery Completion Date specified in the Form of Agreement until the time that the recovery of the Managed Trackside Lighting has been completed. Following any failure by the Client to obtain the Requisite Consents at all or in sufficient time to enable ISSL to provide the Services.
- 4.5 Security of ISSL Equipment:** The Client shall ensure that the ISSL Equipment is kept safe and secure and free from damage during the Lighting Period, and, subject to the following provisions of this Condition 4.6, risk of loss of or damage to the ISSL Equipment shall rest with the Client at all times. The Client shall indemnify ISSL and keep ISSL fully indemnified against any damage or loss to the ISSL Equipment sustained or incurred at any time when such ISSL Equipment is at the Site, save to the extent that such loss or damage arises as the result of any wrongful act or omission on the part of ISSL. ISSL shall notify the Client of any loss of or damage to the ISSL Equipment within five days of first becoming aware of the same.

4.6 No Ownership: The Client acknowledges and agrees that:

- (a) It has no property, right or interest in or lien of any kind in the ISSL Equipment, title to which is, as between ISSL and the Client, vested in ISSL absolutely;
- (b) It has no right to, and shall not, assign, sub-lease, sub-contract or otherwise in any manner whatsoever to deal in or dispose of, the ISSL Equipment or any part thereof; and
- (c) It shall not execute or permit to exist any Security Interest over the ISSL Equipment or any part thereof.

5. Price

5.1 Price: In consideration for the performance of the Services, the Client shall pay to ISSL the Price specified in the Form of Agreement. The Client shall be obliged to pay the Price notwithstanding that ISSL may not have operated the Managed Trackside Lighting for a planned Shift where such failure to operate was a result of an event beyond ISSL's reasonable control.

5.2 VAT: The price of the Services is exclusive of VAT.

5.3 Additional Charges: ISSL shall be entitled to make an additional charge, where appropriate, in respect of any fault, malfunction or damage resulting or arising from:-

- (a) Abnormal wear and tear to the ISSL Equipment;
- (b) The Client's failure to perform any of its obligations under this Agreement; or
- (c) Any neglect, misuse, or moving, interference or tampering with the Managed Trackside Lighting by the Client, its employees, officers, agents, contractors or representatives, or any other third party;

5.4 Variation of Price: ISSL reserves the right to vary the Price of the Services without notice if ISSL incurs any additional costs as a result of the Client Information not being complete, accurate and up to date in every respect, or any failure to obtain the Requisite Consents, or access to the Site being restricted for any reason.

5.5 Payment of Additional Price: The allocation and timing or any alteration or addition to the Price made pursuant to the Agreement shall be at the sole discretion of ISSL, and ISSL shall be entitled to invoice the Client for the additional amount at any time.

6. Engagement

6.1 Time for Payment: The time stipulated for payment of the Price and of all other sums due from the Client to ISSL shall be of the essence of the Agreement. The Client shall pay the Price and all such other sums at the times specified in the Form of Agreement. Where no time is specified the Client shall pay ISSL within 30 days of the date of the relevant invoice.

6.2 Interest: Without prejudice to any other remedy which may be available to ISSL, if the Client fails to pay the any sum due to ISSL by the due payment date as determined in accordance with Condition 6.1, ISSL shall be entitled to charge the Client interest at the rate in force on the due date for payment pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 in the total amount outstanding. The period for which interest is due shall run from but excluding the due payment date until and including the date payment of any overdue amounts is received in full, after as well as before any judgment.

6.3 No set off: All payments by the Client to ISSL under this Agreement shall be made free of any restriction or condition and without deduction or withholding (except to the extent required by law) on account of any other amount whether by way of set off or otherwise.

6.4 Suspension: In the event that the Client fails to make any payment to ISSL when due, ISSL shall have the right to suspend the operation of the Services without liability. The Client shall be liable to pay for the Shifts which would otherwise have been operated during the suspension period as if such Shift had been performed. In the event that following the expiry of the period of suspension additional Shifts are required then the Client shall be liable to pay the Additional Weekly Charge or part thereof in respect of such additional Shifts.

7. Liability

7.1 Limit of Liability: The maximum amount of ISSL's liability to the Client for claims for direct loss or damage made by the Client against ISSL whether in contract or in tort (including negligence on the part of ISSL, its servants or agents), arising out of or in connection with any defect in the Services, or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the Agreement) on the part of ISSL, its employees, officers, agents, contractors or representatives in the performance of this Agreement (including without limiting the generality of the foregoing, breach of any condition or warranty whether expressed or implied by statute, common law or otherwise howsoever) or any other cause of action of any kind, shall be limited to ten percent of the Price.

7.2 Excluded Types of Loss: ISSL shall not be liable to the Client for any economic loss, loss of production, loss or profit, loss of opportunity, loss of bargain or any indirect or consequential injury, loss or damage, or any liability of the Client to any third party whether in contract or tort (including negligence on the part of ISSL, of its servants, agents or sub-contractors) arising out of or in connection with any defect in the Services or the performance of the Agreement, or any act, omission, neglect or default of ISSL, its employees, officers, agents, contractors or representatives.

7.3 Non-Excluded Types of Loss: Nothing in this Agreement shall limit or exclude the liability of ISSL in respect of:-

- (a) Death or personal injury resulting from the negligence of ISSL, its employees or agents; or
- (b) Fraud or fraudulent misrepresentation.

7.4 Force Majeure: ISSL shall not be liable to the Client in any way if it is unable to perform the Services due to any event beyond its reasonable control.

7.5 Indemnity: The Client shall fully indemnify ISSL and keep ISSL fully indemnified against any claim, demand or liability and any loss which arises as a result of any claim made by any third party in connection with the Services.

7.6 Implied Warranty Exclusion: Except as expressly stated in this Agreement, ISSL makes no warranty whatsoever regarding the Services.

All warranties, conditions or terms implied by statute, common law, custom, trade or otherwise with respect to the condition, quality, performance, operation, fitness or suitability of the Services, are hereby excluded to the fullest extent permitted by Law.

8. Intellectual Property Rights

- 8.1 Acknowledgement:** The Client acknowledges that all copyright and other intellectual property rights in and to the Managed Trackside Lighting or ISSL Equipment are and shall remain the sole and absolute property of ISSL and that no right, licence or permission is granted or right, title or interest transferred in respect of them, save for any licence expressly granted in this Agreement.
- 8.2 Non Exclusive Licence:** The Client grants to ISSL a non-exclusive licence and right, without charge and without limit of time, to copy, reproduce, edit, adapt, modify, merge, use and do anything else with the Client Materials for the purpose of performing its obligations under this Agreement, together with a right to sub-licence those rights. The Client warrants that it has the right to grant the licence and rights set out above and the exercise by ISSL of such licence, and rights will not (to the best of its knowledge) infringe the Intellectual Property Rights of a third party. The Client shall fully indemnify ISSL, its employees, officers, agents, contractors or representatives (together, "the indemnified parties") and keep the indemnified parties fully indemnified, from and against any and all actions, claims, demands, costs (including reasonable legal costs, expenses, loss, damage or liability suffered or incurred by any of them to the extent that the same arise as the result of any breach of any of the warranties given by the Client in this Condition 8.2.

9. Confidentiality

- 9.1 Confidential Information:** All information, of whatever kind and in whatever form, made available to or disclosed by one party to the other party for the purposes of or in connection with the Agreement or the Services, including information concerning its present activities or future plans or actual or potential business dealings or products, and the terms of the Agreement ("Confidential Information") shall be regarded as and maintained confidential by the other party.
- 9.2 Permitted Uses:** ISSL shall be entitled to use Confidential Information of the Client to the extent required to perform the Services and its obligations under this Agreement generally but for no other purpose. The Client shall be entitled to use Confidential Information of ISSL for the purposes of performing its obligations under this Agreement but for no other purpose.
- 9.3 Security:** Each party agrees to take all reasonable steps to keep the Confidential Information of the other party safe and secure and to prevent any unauthorised access, taking, using or copying of that Confidential Information.
- 9.4 Disclosure:** Each party agrees on behalf of itself and its staff not to disclose Confidential Information of the other party to any person, except that a party may disclose Confidential Information of the other party to the following types of person and subject to the terms of Condition 9.5:-
- To any sub-contractor, sub-licensee or employee who reasonably needs to use that Confidential Information for the purposes permitted under Condition 9.2;
 - To that party's shareholders, or any consultants or other professional advisers of that party, any insurer of that party, or any lender, security trustee, bank or other financial institution from whom that party is seeking or obtaining or has obtained finance, in each case to the extent that such persons need to see the same for the purposes of management of that party's business;
 - To any person to whom disclosure is required by any applicable law, or the rules of any recognised stock exchange or regulatory body, or any written request of any taxation authority; and
 - To any person where this is required in connection with a sale or other disposition of shares in that party or the whole or substantially the whole of the business and assets of that party.
- 9.5 Conditions of Disclosure:** A party proposing to disclose any Confidential Information shall only make such disclosure in good faith and in confidence, shall only disclose as much of the Confidential Information as is strictly necessary or is legally required, and shall use reasonable endeavours to ensure that the person to whom any Confidential Information is disclosed shall undertake to hold confidential that Confidential Information.
- 9.6 Excluded Information:** This Condition 9 shall not apply to Confidential Information of a party which:-
- Is or falls into the public domain otherwise than as a result of a breach of the Agreement by the other party; or
 - With the exception of any Records, the other party can show was in its possession or known to it prior to that Confidential Information being made available or disclosed to it, or was acquired from a source other than the disclosing party, and was not to the best of its knowledge previously acquired in confidence from the disclosing party or a third party who was under an obligation of confidentiality to the disclosing party; or
 - Was developed by the other party independently of the Confidential Information and not in performance of the Agreement.

10. Non Solicitation

The Client agrees not to employ any personnel employed by ISSL nor to enter into negotiations with any such personnel with the intentions of employing them until a period of 12 months has elapsed since the expiry of the Services or any other services provided by ISSL to the Client.

11. Variation

Subject to the right of ISSL to implement price variations under Conditions 4 and 5 no variation of this Agreement shall be valid unless in writing and signed by an authorised representative of each of the parties.

12. Termination

- 12.1 ISSL Termination Rights:** ISSL shall be entitled to terminate this Agreement with immediate effect by giving notice to the Client in the event that:-
- The Client failed to make any payment when due and fails to make such payment within 14 days of the date of any notice from ISSL to the Client specifying such failure;
 - The Client enters into any composition or arrangement for the benefit of its creditors appears to be unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986); or on the presentation of a petition for the appointment of a receiver, administrative receiver or administrator, or the giving of any notice of a resolution for the winding-up of the Client (other than for a members' voluntary winding-up of a solvent company for the purpose of a bona fide reconstruction); or on the appointment of an administrative receiver or administrator in respect of the whole or any part of the Client's undertaking or assets.

12.2 Reciprocal Termination Rights: Either party shall be entitled to terminate this Agreement with immediate effect by giving notice to the other in the event that the other commits a material breach of any of its obligations under this Agreement (including persistent failure to comply with any obligation under this Agreement) which (if the breach is capable of remedy) the other party has failed to remedy within 14 days after receipt of notice in writing giving particulars of the breach and requiring the other party to do so. Notice of termination pursuant to this Condition 12.2 shall be given within 30 days of the breach in question or, if the breach is capable of remedy, within 30 days of the expiry of the above mentioned period of 14 days, as to which time shall be of the essence.

12.3 The termination of this Agreement is without prejudice to the rights, duties and liabilities of the parties accrued prior to termination.

12.4 Without prejudice to Condition 12.3, the Client shall be liable to pay ISSL all sums due to ISSL under this Agreement which remain unpaid as at the effective date of termination.

13. General

13.1 Entire Agreement: This Agreement is the entire agreement between the parties and it replaces all other agreements between the parties relating to the supply of the Services. The Client acknowledges that, in entering into this Agreement, it does not rely on any promise, statement or representation of any kind made by ISSL which has not been incorporated into this Agreement by way of express provision. Nothing in this Agreement shall exclude ISSL's liability for fraudulent misrepresentation.

13.2 Transfer: The Client may not assign or transfer the whole or any part of its rights or remedies under this Agreement to anyone else.

13.3 Third Party Rights: Save as otherwise expressly provided herein, no term of this Agreement is intended to confer a benefit on, or be enforceable by, any person who is not a Party (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).

13.4 Notices: Any notice or other formal communication required to be given by one party to the other under this Agreement must be in writing and delivered by hand, or sent recorded delivery or first class post to the address of the other party set out in the Form of Agreement. Each such notice or communication shall be deemed to have been given on the second working day after the date of delivery or posting (as the case may be), for which purpose the expression "working day" means any day except Saturday, Sunday or any bank, customary, public or statutory holiday in England and Wales.

13.5 Waiver: The failure by any party to exercise, or the delay by any party in exercising any right, power, privilege or remedy provided by this Agreement or by law shall not constitute a waiver thereof, nor of any other right, power, privilege or remedy. No single or partial exercise of any such right, power, privilege or remedy shall preclude any further exercise thereof or the exercise of any other right, power, privilege or remedy.

13.6 Invalid Terms: Each of the terms of this Agreement is separate and severable. If any term is held to be void or invalid by any court, it shall be severed from this Agreement and the remaining terms shall have full force and effect.

13.7 Governing Law and Jurisdiction: This Agreement shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction and procedure of the English Courts.

Appendix - Additional Weekly Charges

