CONTRACT SCHEDULE B

**OPTION Z: ADDITIONAL *CONDITIONS OF CONTRACT***

The following provisions supplement, modify or replace the normal published provisions of the NEC3 Professional Services Contract (the “NEC3 PSC”).

Each Option Z provision will apply unless deleted below or in the list of Option Z provisions which appears in “CONTRACT DATA Part One – Data provided by the *Employer*, 1 General, Option Z: Additional *conditions of contract*”.

|  |  |  |
| --- | --- | --- |
| **SECTION 1 : RECOMMENDED FOR ALL APPOINTMENTS** | | |
| **Option Z 1** |  | **Freedom of information & transparency obligations** |
| Supplement to NEC3 PSC clause 13 | 13.9 | The *Consultant* acknowledges that unless the *Employer* has notified the *Consultant* that the *Employer* is exempt from the provisions of the FOIA, the *Employer* is subject to the requirements of the Code of Practice on Government Information, FOIA and the Environmental Information Regulations. The *Consultant* cooperates with and assists the *Employer* so as to enable the *Employer* to comply with its information disclosure obligations. |
|  | 13.10 | In this clause:  13.10.1 “Environmental Information Regulations” means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the information Commissioner in relation to such regulations;  13.10.2 “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 such legislation;  13.10.3 “Information” has the meaning given under section 84 of the Freedom of Information Act 2000; and  13.10.4 “Request for Information” means a request for information or an apparent request under the Code of Practice on Access to government Information, FOIA or the Environmental Information Regulations. |
|  | 13.11 | The Consultant:  13.11.1 transfers to the Employer all Requests for Information that it receives as soon as practicable and in any event within two working days of receiving a Request for Information;  13.11.2 provides the Employer with a copy of all Information in its possession, or power in the form that the Employer requires within five working days (or such other period as the Employer may specify) of the Employer’s request; and  13.11.3 provides all necessary assistance as reasonably requested by the Employer to enable the Employer to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations  and procures that its Subconsultants do likewise. |
|  | 13.12 | The *Employer* is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Government Information, FOIA or the Environmental Information Regulations. |
|  | 13.13 | The *Consultant* does not respond directly to a Request for Information unless authorised to do so by the *Employer*. |
|  | 13.14 | The Consultant acknowledges that the Employer may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of information Act 2000, be obliged to disclose Information without consulting or obtaining consent from the Consultant or despite the Consultant having expressed negative views when consulted. |
|  | 13.15 | The *Consultant* ensures that all Information is retained for disclosure throughout the *period for retention* and permits the *Employer* to inspect such records as and when reasonably requested from time to time. |
|  | 13.16 | The *Consultant* is made aware that if they are awarded a government order, the resulting contract between the *Consultant* and government *Employer* will be published in accordance with the government’s transparency obligations. In some circumstances, limited redactions will be made to some contracts before they are published in order to comply with existing law and for the protection of national security. |
| **Option Z 2** | | **Notices** |
| Supplement to NEC3 PSC clause 13 | 13.17 | All communications between the *Employer* and the *Consultant* required by or authorised under this contract must comply with NEC3 PSC clause 13 but is deemed to be duly given or made:  13.17.1 two working days after being sent by prepaid special delivery post; or  13.17.2 when delivered by hand if a signature acknowledging its receipt has been obtained; or  13.17.3 when received by facsimile if the relevant fax delivery confirmation is obtained. |
|  | 13.18 | In each case the notice must:-  13.18.1 refer to this contract, and  13.18.2 be marked for the attention of the appropriate officer, person or department as notified to the other party in writing. |
|  | 13.19 | Each Party notifies the other in writing within five working days of any change in its address for service. |
|  | 13.20 | Any notice served on a non working day or outside of normal working hours is deemed to be served on the following working day. |
|  | 13.21 | For the avoidance of doubt, electronic mail does not constitute a valid form of notice for the purpose of this contract unless specifically agreed between the Parties in writing for an express purpose set out in such agreement. |
| **Option Z 3** | | **Fair payment charter** |
| Additional clause 19 | 19.1 | The *Consultant* delivers to the *Employer* a signed copy of the current version of the Model Fair Payment Charter published by the OGC within 10 working days of the *Employer* providing to the *Consultant* a copy suitable for execution. |
|  | 19.2 | It is a condition of the *Employer*’s approval of any Subconsultant that the *Consultant* shall deliver to the *Employer* a signed copy of the current version of the Model Fair Payment Charter published by the OGC within 10 working days of the *Employer* providing to the *Consultant* a copy suitable for execution, or within twenty-eight days of the *Employer*’s approval of the relevant Subconsultant (whichever is the latest). If this condition is not fulfilled, the *Employer*’s approval of the relevant Subconsultant is null and void, and the *Consultant* ceases to employ that Subconsultant. |
| **Option Z 4** | | **Persons dealing with this contract** |
| Supplement to NEC3 PSC clause 22 | 22.3 | The *Consultant* appoints a partner or director of the *Consultant*, firm or company, to be the Contract Manager and to be duly authorised to receive instructions and to be the point of contact between the *Employer* and the *Consultant* throughout the course of this contract and, subject to reasonable notice, on behalf of the *Consultant* to attend all meetings with the *Employer* regarding this contract and to approve and sign all reports submitted to the *Employer* by the *Consultant*. No change in this named individual is made without the prior written approval of the *Employer*. |
| **Option Z 5** | | **Lead designer** |
| Supplement to NEC3 PSC clause 23 | 23.4 | If the *Consultant* is appointed as lead designer he is responsible for the co-ordination and integration of the services being provided by Others. |
| **Option Z 6** | | **Disputes with Others** |
| Supplement to NEC3 PSC clause 23 | 23.5 | If any difference arises between the *Consultant* and Others, the *Consultant* uses its best endeavours to achieve a reconciliation. If the reconciliation is not achieved and is not likely to be achieved before such difference becomes detrimental to the delivery of the *services*, the *Consultant* refers the matter or difference to the *Employer* for instructions. |
| **Option Z 7** | | **Conflicts of interest** |
| Supplement to NEC3 PSC clause 25 | 25.5 | The *Consultant* discloses to the *Employer* any actual or potential conflict of interest arising from the *Consultant*’s provision of the *services* as soon as practicable after becoming aware of such actual or potential conflict. |
|  | 25.6 | The *Consultant* immediately notifies the *Employer* of any circumstances giving rise to or potentially giving rise to conflicts of interest relating to the *Consultant* (including without limitation its reputation and standing) and/or the *Employer* of which it is aware or anticipates may justify the *Employer* taking action to protect its interests. |
|  | 25.7 | Should the Parties be unable to either remove the conflict of interest and/or to reduce its damaging effect to a reasonably acceptable level the *Employer* has the right to terminate this contract whereupon the provisions of NEC3 PSC clause 92.2 apply to the termination. |
| **Option Z 8** | | **Assignment** |
| Supplement to NEC3 PSC clause 25 | 25.8 | The *Consultant* does not, without the written consent of the *Employer*, assign or transfer this contract, or any part of, share of or interest in it. In the absence of the *Employer*’s written consent no sum of money becoming due under this contract is payable to any person other than the *Consultant*. |
|  | 25.9 | In this clause “Contracting Authority” means a contracting authority as defined in the current Public Contracts Regulations or relevant succeeding rules. |
|  | 25.10 | The *Employer* is entitled to:  25.10.1 assign or otherwise dispose of its rights under this contract or any part thereof to any Contracting Authority, or  25.10.2 assign or otherwise dispose of its rights under this contract or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*  provided always that where such assignment or other disposal increases the burden of the *Consultant*’s obligations pursuant to this contract, the *Consultant* is entitled to such additional payment as may be reasonable to compensate for such additional burden. |
| **Option Z 9** | | **Novation** |
|  | 25.11 | In this clause “Contracting Authority” means a contracting authority as defined in the current Public Contracts Regulations or relevant succeeding rules. |
| Supplement to NEC3 PSC clause 25 | 25.12 | The *Employer* is entitled, without the need to obtain the *Consultant*’s consent, to:  25.12.1 novate this contract or any part thereof to any Contracting Authority; or  25.12.2 novate its rights and obligations under this contract to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the *Employer*;  upon such terms as the *Employer* proposes, provided that where such novation increases the burden of the *Consultant*’s obligations pursuant to this contract, the *Consultant* is entitled to such additional payment as may be reasonable to compensate for such additional burden. |
|  | 25.13 | Any change in the legal status of the *Employer* such that it ceases to be a Contracting Authority does not affect the validity of this contract. In such circumstances, this contract binds and inures to the benefit of any successor body to the *Employer*. |
|  | 25.14 | If this contract is novated to a body which is not a Contracting Authority or if a successor body which is not a Contracting Authority becomes the *Employer* (both such bodies being referred to in the remainder of this clause as the “transferee”) the transferee is only able to assign, novate or otherwise dispose of its rights and obligations under this contract or any part thereof with the written consent of the *Consultant*. |
| **Option Z 10** | | **Payment forecast** |
| Supplement to NEC3 PSC clause 50 | 50.6 | Prior to the submission of the *Consultant*’s first invoice, the *Consultant* submits to the *Employer* a payment forecast based on the *Consultant*’s estimate of the interim payments (including fees, *expenses* and *disbursements*) which the *Consultant* anticipates will fall due at each interim application throughout the period of this contract up to the *Consultant*’s anticipated completion date for the *services*. |
|  | 50.7 | Each subsequent invoice from the *Consultant* is accompanied by an updated payment forecast, amended to show the effects of any changes in the Scope and Accepted Programme. |
| **Option Z 11** | | **Suspension for non-payment** |
| Supplement to NEC3 PSC clause 51 | 51.6 | Without prejudice to any other right or remedy of the *Consultant*, where a sum due under this contract is not paid in full by the final date for payment and no effective notice to withhold payment has been given under NEC3 PSC clause Y2.3 and such failure continues for 7 days after the *Consultant* has given to the *Employer* written notice of his intention to suspend the performance of his obligations under this contract and stating the ground or grounds on which it is intended to suspend performance, the *Consultant* may suspend performance of the *services* until full payment is made. |
|  | 51.7 | Any period during which performance is suspended in pursuance of the right conferred by this clause is dealt with as a compensation event in accordance with clause 6 of the NEC3 PSC. |
| **Option Z 12** | | **Responsibility for documents** |
| Supplement to NEC3 PSC clause 70 | 70.5 | The *Employer* may at any reasonable time examine schedules, calculations, surveys, reports, specifications, drawings and/or any other documents and information which are in the possession of the *Consultant* and which concern this contract, but no such examination relieves the *Consultant* of any responsibility for the *services* to be provided under this contract. |
| **Option Z 13** | | **Official secrets** |
| Additional clause 72 | 72.1 | The *Consultant* [takes all reasonable steps to] ensure[s] that all persons employed by the *Consultant* or Subconsultants in connection with this contract are aware:  72.1.1 of the provisions of the Official Secrets Act 1989, and  72.1.2 of the provisions of the Atomic Energy Act 1946 (where appropriate) and  72.1.3 that these Acts apply to them both throughout the duration and after the expiry or termination of this contract. |
| **Option Z 14** | | **Confidentiality** |
| Additional clause 73 | 73.1 | The *Consultant* ensures that neither he nor his employees do, without the written consent of the *Employer*, make use of, or disclose to any other person (other than in accordance with the provision of the *services* or as may be required by law) any documents or information provided by the *Employer* pursuant to this contract, or which may come into the possession or knowledge of the *Consultant* or of any of his employees by virtue of this contract. All of the above information is confidential to the *Employer*, and the *Consultant* and his employees are bound by this clause during the period of this contract and at all times thereafter. |
|  | 73.2 | The *Consultant* indemnifies and keeps indemnified the *Employer* against all actions, demands, proceedings, damages, costs, charges and *expenses* and *disbursements* whatsoever in respect of any breach by the *Consultant* of this clause. Such indemnity is without prejudice to any other rights of the *Employer*. |
|  | 73.3 | The *Consultant* maintains as confidential at all times and does not divulge by any means of communication (whether oral, written, digital or by some other means) any information supplied by the *Employer* or produced for the *Employer* by the *Consultant* in accordance with this contract. |
|  | 73.4 | The *Consultant* does not without the consent of the *Employer* publish, discuss or issue alone or in conjunction with any other person any articles, press releases, or other information relating to the provision of the *services*. |
|  | 73.5 | The provisions of this clause survive indefinitely following the expiry of this contract. |
|  | 73.6 | At the written request of the *Employer*, the *Consultant* shall ensure that those members of its staff and Sub-Consultant’s staff that are required to work for the *Consultant* in providing *services* to the *Employer* are required to sign a confidentiality undertaking (see Schedule 16) prior to commencing any work in accordance with this contract. |
|  | 73.7 | The *Consultant* will be required to complete and return to the *Employer*, the *Employer’s* security clearance forms for all persons working on this contract that have access to “secret matter”, “secret matter” meaning any matter connected with or arising out of the performance of this Contract which by a notice in writing given by the *Employer* to the *Consultant* is designated ‘top secret’, ‘secret’, ‘confidential’, ‘restricted’ or ‘protect’. All such persons must hold a British passport and have been resident in the UK for the last four years. Access to “secret matter” will not be permitted until their forms have been security cleared by the *Employer* and such clearance confirmed in writing by the *Employer*. Such security clearances shall be at the full discretion of the *Employer* and appeal against any security clearances not granted are not permitted. |
| **Option Z 15** | | **Insurance** |
| Supplement to NEC3 PSC clause 81 | 81.3 | All insurances required to be effected or maintained by the insuring party under NEC3 PSC clause 81 are placed with reputable insurers, to whom the other party has no reasonable objection, 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, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989. |
|  | 81.4 | If, without the approval of the *Employer*, the *Consultant* fails to effect and maintain any insurance that it is required to effect and maintain under NEC3 PSC clause 81 or obtains a different policy of insurance or fails to provide a copy of insurances or certificates when required to do so, the *Employer* may, but is not required to, effect and maintain appropriate insurance cover and deduct the cost of doing so from any payment due to the *Consultant* under this contract, or recover such sum from the *Consultant* as a debt. |
|  | 81.5 | For the avoidance of doubt, it is agreed that nothing in this clause relieves the *Consultant* from any of its obligations and liabilities under this contract. |
| **Option Z 16** | | **Professional indemnity insurance** |
| Supplement to NEC3 PSC clause 81 | 81.6 | Unless stated in the Order, the *Consultant* maintains the professional indemnity insurance upon customary and usual terms and *conditions* prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom on the basis and in an amount not less than that stated in the Contract Data, provided always that such insurance is available at commercially reasonable rates. The said terms and *conditions* do not include any term or condition to the effect that the *Consultant* must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930 or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930 as amended by the Insolvency (Northern Ireland) Order 1989. |
|  | 81.7 | The *Consultant* does not without the prior written approval of the *Employer* settle or compromise with the insurers any claim which the *Consultant* may have against the insurers and which relates to a claim by the *Employer* against the *Consultant*, nor by any act or omission lose or prejudice the *Consultant*’s right to make or proceed with such a claim against the insurers. |
|  | 81.8 | The *Consultant* immediately informs the *Employer* if the professional indemnity insurance ceases to be available at rates and on terms that the *Consultant* considers to be commercially reasonable. Any increased or additional premium required by insurers by reason of the *Consultant*’s own claims record or other acts, omissions, matters or things particular to the *Consultant*’s is deemed to be within commercially reasonable rates. |
|  | 81.9 | The *Consultant* co-operates fully with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above commercially reasonable rates or, if the *Employer* effects such insurance at rates at or above commercially reasonable rates, reimbursing the *Employer* in respect of what the net cost of such insurance to the *Employer* would have been at commercially reasonable rates. |
|  | 81.10 | The above obligation in respect of professional indemnity insurance continues notwithstanding termination of the *Consultant*’s employment under this contract for any reason whatsoever, including (without limitation) breach by the *Employer*. |
| **Option Z 17** | | **Public liability insurance** |
| Supplement to NEC3 PSC clause 81 | 81.11 | The public liability insurance required by NEC3 PSC clause 81 to be effected or maintained is obtained in the joint names of the *Employer* and such other person as the *Employer* may reasonably require including, without limitation, the *Employer*’s consultants, the *Consultant* and all Subconsultants provided that, where the terms of the relevant insurance policy are such that the SERVICE PROVIDER is unable to effect insurance jointly, the SERVICE PROVIDER ensures that the policy includes an “Indemnity to Principal” provision in standard insurance industry terms |
| **Option Z 18** | | **Termination Events** |
| Supplement to NEC3 PSC clause 90 | 90.5 | The *Employer* may at any time by notice in writing terminate the *Consultant*’s obligation to Provide the Services as from the date of service of such notice, or a later date specified in such notice, if any of the events specified below occur (the “Termination Events”); namely, if the *Consultant*:  90.5.1 is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession; or  90.5.2 commits or is found to have committed an act of grave misconduct in the course of its business or profession; or  90.5.3 fails or has failed to comply with any obligations relating to the payment of any taxes or social security contributions; or  90.5.4 has made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or  90.5.5 fails to obtain any necessary licences or to obtain or maintain membership of any relevant body; or  90.5.6 demerges into two or more firms, merges with another firm, incorporates or otherwise changes its legal form or there is a change of control as defined by section 416 of the Income and Corporation taxes Act 1988 (any such case being a “Change of Control”) and, in any such Change of Control, there are reasonable grounds for the *Employer* to withhold its consent relating to the financial standing of the new entity through which it is proposed that the *services* will be delivered or there are security concerns arising from the provision of the *services* by the new entity; or  90.5.7 fails to comply with the following security requirements:   * allowing personnel with inadequate security clearance access to secure areas; or * allowing personnel with inadequate security clearance access to classified information; or * protection of classified information; * and/or other security requirements specified in the project brief;   any such termination being deemed for the purposes of NEC3 PSC clause 92.2 to have been caused by a substantial failure of the *Consultant* to comply with his obligations. |
|  | 90.6 | The *Consultant* promptly notifies the *Employer* in writing on each occasion of the occurrence of any Change of Control. The *Employer* is permitted to exercise its rights pursuant to this clause for only six months after service of each and any notice by the *Consultant* pursuant to this clause and is not permitted to exercise such rights where the *Employer* has agreed in advance in writing to the particular Change of Control provided such Change of Control takes place as agreed. |
| **Option Z 19** | | **(Not Used)** |
| **Option Z 20** | | **Security concern** |
| Supplement to NEC3 PSC clause 90 | 90.8 | The *Employer* may terminate the *Consultant*’s obligation to Provide the Services if the *Employer* has any reasonable security concern in respect of the *Consultant*, any such termination being deemed to have been caused by a substantial failure of the *Consultant* to comply with his obligations for the purposes of NEC3 PSC clause 92.2. |
| **Option Z 21** | | **Corrupt gifts and payment of commission** |
| Supplement to NEC3 PSC clause 90 | 90.9 | The *Employer* may terminate the *Consultant*’s obligation to Provide the Services if the *Consultant* or anyone employed by him:  90.9.1 offers to give or agrees to give any person any gift or consideration of any kind as an inducement or reward for doing, forbearing to do, or for having done or forborne to do any act in relation to the obtaining or execution of this contract or any other contract for the *Employer* or Her Majesty’s Service or for showing favour or disfavour to any person in relation to this or any other contract for the *Employer* or Her Majesty’s Services; or  90.9.2 enters into this contract or any other contract with the *Employer* or with a person or body employed by the *Employer* or acting on its behalf or with Her Majesty’s Service in connection with which commission has been paid or agreed to be paid by him or on his behalf, or to his knowledge, unless before this contract is made particulars of any such commission and of the terms and *conditions* of any agreement for the payment thereof have been disclosed in writing to the *Employer*; or  90.9.3 commits an offence under the Prevention of Corruption Acts 1889 to 1916 in relation to this contract or any other contract with the *Employer* or Her Majesty’s Service. |
| Supplement to NEC3 PSC clause 92 | 92.3 | If the *Employer* terminates under clause 90.9 (Corrupt gifts and payment of commission) the amount due on termination includes a deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *services* and the *Employer* recovers from the *Consultant* the amount or value of any such gift, consideration or commission. |
| **Option Z 22 W3** | | **Negotiation – NOT USED** |
| Additional NEC3 PSC option W3 | W3.1 | Without prejudice to either party’s right to refer a dispute to the *Adjudicator* at any time, any dispute or difference between the Parties arising out of or relating to this contract is referred by either Party initially to representatives of the *Employer* and *Consultant* for negotiation and resolution. |
|  | W3.2 | If any dispute is not resolved within 10 working days after it has been referred to the Parties’ representatives (or such longer period as the Parties may agree), it is referred to an authorised senior officer of the *Employer* and an authorised senior officer of the *Consultant* for negotiation and resolution. |
|  | W3.3 | If any dispute cannot be resolved within 10 working days after it has been referred to the authorised senior officers of the *Employer* and *Consultant* (or such longer period as the Parties may agree) either Party may decline to continue to participate in the negotiation. |
| **Option Z 23** | | **(Not Used)** |
| **SECTION 2 : RECOMMENDED FOR APPROPRIATE APPOINTMENTS ONLY** | | |
| **Option Z 24** | | **Responsibility for work by Others – NOT USED** |
| Supplement to NEC3 PSC clause 16 | 16.2 | Where the *Consultant* is required to incorporate work provided by others, the *Consultant*’s responsibility in respect of such work is limited to reviewing it to the extent required to ensure the satisfactory performance of the *services*. |
|  | 16.3 | Notwithstanding NEC3 PSC clause 16.1, if the *Consultant* finds any discrepancy in or divergence between any documents and/or information, including any found in documents and/or information provided by others, the *Consultant* immediately notifies the *Employer* of the discrepancy or divergence. |
| **Option Z 25** | | ***Consultant*’s obligation to ensure – NOT USED** |
| Supplement to NEC3 PSC clause 23 | 23.6 | Where in this contract the *Consultant* is under an obligation to ensure that events occur which are under the direct control of Others and, due to Others, the *Consultant* is unable to comply with that obligation, the *Consultant* is liable to the *Employer* only in the event that the *Consultant* has failed to use reasonable endeavours to ensure the occurrence of the event. |
|  | 23.7 | The *Consultant* does not warrant the work of others (save that nothing in this clause shall affect the *Consultant*’s responsibility for Subconsultants) but the *Consultant* is nevertheless required to inform the *Employer* in writing of the action taken by the *Consultant* in seeking to ensure that the event occurred and recommend to the *Employer* a further course or courses of action to ensure the occurrence of the event. |
| **Option Z 26** | | **Direct appointment of Others – NOT USED** |
| Supplement to NEC3 PSC clause 23 | 23.8 | Where Others are appointed by the *Employer*, the *Consultant* co-operates fully with those Others in order to ensure that production of the *Consultant*’s drawings, design information or other relevant documents or information is fully co-ordinated with the work of the Others. |
| **Option Z 27** | | **Approval of Subconsultants** |
| Supplement to NEC3 PSC clause 24 | 24.5 | Notwithstanding the provisions of clause 24 of the NEC3 PSC, the *Consultant* may, upon prior written notice to the *Employer*, subcontract work to any of the approved Subconsultants listed in the Schedule of sub-contractors appended to the Framework Agreement (Schedule 9) provided the Subconsultant satisfies the requirements of this clause. |
|  | 24.6 | Reasons for not accepting a Subconsultant may include:  24.6.1 the *Consultant* failing to submit for the approval of the *Employer*, a Certificate of Professional Indemnity Insurance (if the relevant Subconsultant is required to have Professional Indemnity Insurance) and a Certificate of Employer’s and Public Liability Insurance, all duly completed on behalf of each of the proposed Subconsultants, or  24.6.2 the Subconsultant not agreeing to enter into *collateral warranty agreements* in the form specified by the *Employer* in this contract or in such other form as the *Employer* may agree. |
|  | 24.7 | It is a condition of the *Employer*’s approval of the Subconsultant that the *Consultant* delivers to the *Employer* any *collateral warranty agreements* required from the Subconsultant, duly executed, within twenty-eight days of the *Employer*’s approval of the relevant Subconsultant. If this condition is not fulfilled, the *Employer*’s approval of the relevant Subconsultant is null and void and the *Consultant* ceases to employ that Subconsultant. |
| **Option Z 28** | | **Environmental requirements** |
| Supplement to NEC3 PSC clause 25 | 25.15 | The *Consultant* complies with all applicable environmental laws and regulations in force from time to time in relation to the *services* and promptly provides evidence of compliance when reasonably requested by the *Employer*. |
|  | 25.16 | The *Consultant* satisfies all reasonable requests by the *Employer* for information regarding the environmental impact of the *services*. |
| **Option Z 29** | | **Access to property** |
| Supplement to NEC3 PSC clause 25 | 25.17 | If in the course of undertaking the *services* the *Consultant* is required to enter any premises not owned or occupied by the *Consultant*, the *Consultant* complies with the requirements of the *Employer* and with the occupier’s rules and regulations regarding admission and only visits the premises at times suitable to the *Employer* or the occupier. |
|  | 25.18 | The *Consultant* complies with any changes to the above requirements, rules or regulations notified to him as an *Employer*’s instruction requiring a change in the Scope in accordance with NEC3 PSC clause 20.2. |
|  | 25.19 | The names and addresses of all the *Consultant*’s or Subconsultants’ staff to be employed in connection with this contract and requiring access to such premises are submitted to the *Employer* or the occupier concerned to enable the necessary clearances to be obtained. |
| 25.20 | | The *Employer* may issue passes for those representatives of the *Consultant* or Subconsultants’ staff who are approved for admission to the *Employer*’s site and a representative is not admitted unless in possession of such a pass. Passes remain the property of the *Employer* and are surrendered on demand or on completion of the *services*. |
| **Option Z 30** | | **Presentations** |
| Supplement to NEC3 PSC clause 25 | 25.21 | If in the course of providing the *services* the *Consultant* is required to report to the *Employer* with recommendations, the *Consultant* if so requested makes a formal presentation to the *Employer*, without additional charge, of matters relevant to those recommendations. |
| **Option Z 31** | | **Tender documents and contracts** |
| Supplement to NEC3 PSC clause 25 | 25.22 | The *Consultant* has due regard to all statutory requirements when conducting a procurement exercise and obtains written instructions from the *Employer* regarding the *Employer*’s procedures for obtaining tenders, the forms of contract to be used and any specification requirements or other matters relevant to the type of work to be addressed by the *Consultant*. |
|  | 25.23 | In the event that the *Consultant* is required as part of the *services* to produce tender documents, the *Consultant* submits to the *Employer* and to other advisers, if so directed by the *Employer*, drafts of the proposed tender documents and obtains the *Employer*’s approval of the drafts prior to finalising and issuing the finished documents to tenderers. |
| **Option Z 32** | | **Recovery of VAT** |
| Additional clause 52 | 52.3 | The *Consultant* pays to the *Employer* within 7 days of a written demand by the *Employer* any VAT or amount in respect of VAT incurred by the *Employer* as a result of the *Consultant*’s failure to carry out his obligations under this contract where the failure results in the *Employer* engaging another person to fulfil the *Consultant*’s obligations and incurring expenditure on which the *Employer* is unable to recover the VAT from HM Customs & Excise or VAT (or similar taxes and charges) amounts due in other jurisdictions. |
|  | 52.4 | Not used. |
|  | 52.5 | Where either party is liable to reimburse or indemnify the other party for costs incurred by that other party, the amount to be paid does not include any VAT charged on such costs, save where the payee is unable to recover such VAT from HM Customs & Excise as input tax or similar taxes and charges due in other jurisdictions |
| **Option Z 33** | | **Recovery of other sums** |
| Additional clause 53 | 53.4 | In this Clause:  53.4.1 “Contracting Authority” means a contracting authority as defined in the current Public Contracts Regulations or relevant succeeding rules;  53.4.2 “Private Authority” means a commercial organisation to whom service provision has been outsourced by a Contracting Authority, which assumes the role and responsibilities of the *Employer* under this contract. |
|  | 53.5 | The *Employer* is permitted to deduct and withhold from any sums otherwise due to the *Consultant* under this contract any sum of money due from the *Consultant* to the *Employer* under any one or more of:  53.5.1 this contract; or  53.5.2 any other agreement between the *Consultant* and the *Employer*; or  53.5.3 any other agreement between the *Consultant* and the AUTHORITY; or  53.5.4 (except where the *Employer* is a Private Authority) any other agreement between the *Consultant* and another department, office or agency of the Crown,  provided that the terms of such other agreement provide for sums of money due from the *Consultant* under that agreement to be recovered by way of a deduction from sums of money due to the *Consultant* under this contract or any other contracts. |
| **Option Z 34** | | **Subconsultants’ *collateral warranty agreements*** |
| Supplement to NEC3 PSC option X8 | X8.2 | The *Consultant* procures from every Subconsultant *collateral warranty agreements* in the format stipulated in the Contract Data. |
| **Option Z 35** | | **Performance bond – NOT USED** |
| Supplement to NEC3 PSC option X13 | X13.2 | If the form of the performance bond is not set out in the Scope, the form of the performance bond is that appended in Contract Schedule G. |
| **Option Z 36** | | **The Housing Grants, Construction and Regeneration Act 1996** |
| Supplement to NEC3 PSC option Y(UK)2 | Y2.5 | If Option Y(UK)2 is said to apply then notwithstanding that this contract relates to the carrying out of construction operations other than in England or Wales or Scotland, the Act is deemed to apply to this contract. |
| **SECTION 3 : RECOMMENDED FOR LIMITED USE ONLY** | | |
| **Option Z 37** | | ***Consultant*’s records – NOT USED** |
| Supplement to NEC3 PSC clause 13 | 13.22 | The *Consultant* and any Subconsultant maintain, for the *period for retention*, detailed records of all time spent on *services* charged on a Time Charge basis and when requested make those records available to the *Employer*. |
| **Option Z 38** | | **Contract Standard – NOT USED** |
| Modification of NEC3 PSC clause 21 | 21.3 | Notwithstanding the requirements of NEC3 PSC clause 21.2, the *Consultant*’s obligation is to use:  21.3.1 the reasonable skill, care and diligence as would be expected of a competent and appropriately qualified consultant or other appropriately qualified professional carrying out services of a similar nature, scope, size and complexity as the *services*, and  21.3.2 to the extent that the *services* include design, the skill, care and diligence in the design services as would be expected of an appropriately qualified and competent professional designer holding himself out as experienced in carrying out design activities of a similar nature, scope, size and complexity to those entailed in the *services*;  herein referred to as the “Contract Standard”. |
| Consequential modification of NEC3 PSC clause 81.1 | 81.12 | In the Insurance Table provided in NEC3 PSC clause 81.1, the first paragraph under the heading of “Insurance against” is deemed to be amended to read:  “Liability of the *Consultant* for claims made against him arising out of his failure to use the skill, care and diligence required by the Contract Standard”. |
| Consequential modification of Contract Data Part One section 8 | 81.13 | In the insurance table appearing in the Contract Data Part One in respect of section 8, “Indemnity, insurance and liability”, the first paragraph under the heading of “event” is deemed to be amended to read:  “failure of the *Consultant* to use the skill, care and diligence required by the Contract Standard.” |
| **Option Z 39** | | **Copyright – NOT USED** |
| Supplement to NEC3 PSC clause 70 | 70.6 | In this contract:  70.6.1 “Intellectual Property Rights” means any and all patents, trade marks, service marks, copyright, moral rights, rights in a design, know-how, Confidential Information and all or any other intellectual or industrial property rights whether or not registered or capable of registration and whether subsisting in the United Kingdom or any other part of the world together with all or any goodwill relating or attached thereto;  70.6.2 “Confidential Information” means any information designated as such by the party disclosing that information; and  70.6.3 “Document” means all designs, drawings, specifications, photographs, plans, surveys, reports, and all other documents and/or information prepared by or on behalf of the Consultant in relation to this contract. |
|  | 70.7 | The copyright and all other Intellectual Property Rights in all Documents prepared by or on behalf of the Consultant in relation to this contract and the work executed from them is the property of and vested in the Employer. The Employer reserves the right to reproduce such Documents or to execute, or to have executed, such work or services in accordance therewith as may be required by the Employer. |
|  | 70.8 | In the event that the *Consultant* does not own the copyright or any Intellectual Property Right in any Document the *Consultant* uses all reasonable endeavours to procure the right to grant such rights to the *Employer* 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 *Consultant* is unable to procure the right to grant to the *Employer* in accordance with the foregoing the *Consultant* procures that the third party grants a direct licence to the *Employer* on industry acceptable terms. |
|  | 70.9 | The *Consultant* 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 *Employer* or any licensee or assignee of the *Employer*. |
|  | 70.10 | In the event that any act unauthorised by the *Employer* infringes a moral right of the *Consultant* in relation to the Documents the *Consultant* undertakes, if the *Employer* so requests and at the *Employer*’s expense, to institute proceedings for infringement of the moral rights. |
|  | 70.11 | The *Consultant* warrants to the *Employer* that he has not granted and shall not (unless authorised by the *Employer*) grant any rights to any third party to use or otherwise exploit the Documents. |
|  | 70.12 | The *Consultant* warrants that the use of the Documents for the purposes of this contract will not infringe the rights of any third party. |
|  | 70.13 | The *Consultant* supplies copies of the Documents to the *Employer* and to the *Employer*’s other 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. |
|  | 70.14 | After the termination or conclusion of the *Consultant*’s employment hereunder, the *Consultant* supplies the *Employer* with copies and/or computer discs of such of the Documents as the *Employer* may from time to time request and the *Employer* pays the *Consultant*’s reasonable costs for producing such copies or discs. |
|  | 70.15 | Priced documents prepared by the *Consultant* may be used by the *Employer* for the purposes of indexing and analysis without prior approval by the *Consultant* and the *Consultant* shall ensure that a similar clause is inserted in all agreements with its Subconsultants. |
| **Option Z 40** | | **Termination following prolonged suspension – NOT USED** |
| Supplement to NEC3 PSC clause 90 | 90.10 | The *Consultant* may terminate his obligation to Provide the Services by notifying the *Employer* if:  90.10.1 the whole of the *services* has been stopped under NEC3 PSC clause 33 for a period in excess of six months, and  90.10.2 the *Consultant* has not been given instructions to resume the *services* within a period of 30 days after the *Employer* receives from the *Consultant* a request for an instruction that the *services* be resumed. |
| **Option Z 41** | | ***Employer*’s Property – NOT USED** |
| Additional clause 26 | 26.1 | If the *Consultant* is permitted to use any tools, plant, equipment, or other such property belonging to the *Employer* (the “*Employer*’s Property “) in the performance of the *services*, the following provisions apply. |
|  |  | 26.1.1 All *Employer*’s Property remains the property of the *Employer* and where such *Employer*’s Property is equipment, such equipment is used in the performance of the *services* and for no other purpose without the *Employer*’s prior approval. |
| Delete options B and C if using this option |  | 26.1.2 **Option A**  The *Employer* is responsible for the repair or replacement of *Employer*’s Property unless the need for repair or replacement is caused by the *Consultant*’s failure to comply with the requirements of this contract in respect of *Employer*’s Property, or by the negligence or default of the *Consultant* |
| Insert the value and delete options A and C if using this option |  | **Option B**  The *Consultant* is responsible for the repair and/or replacement of *Employer*’s Property save where the cost of such repair and/or replacement exceeds £………………………...... in which case the *Employer* is responsible unless the repair and/or replacement is caused by the *Consultant*’s failure to comply with the requirements of this contract in respect of *Employer*’s Property, or by the negligence and default of the *Consultant*. |
| Delete options A and B if using this option |  | **Option C**  The *Consultant* is responsible for the repair and/or replacement of the *Employer*’s Property unless the need for such repair or replacement is caused by the negligence or default of the *Employer* after the *starting date*. |
|  |  | 26.1.3 The *Consultant* is responsible for his own costs resulting from any failure of *Employer*’s Property, unless he can demonstrate that the *Employer* was responsible for repair and replacement of the *Employer*’s Property and caused undue delay in its repair or replacement. |
|  |  | 26.1.4 The *Consultant* maintains all items of *Employer*’s Property in good and serviceable condition and in accordance with the manufacturer’s recommendations. |
|  |  | 26.1.5 The *Consultant* is liable for any loss of or damage to any *Employer*’s Property save to the extent that the *Consultant* is able to demonstrate that such loss or damage was caused or contributed to by the negligence or default of the *Employer*. |
|  |  | 26.1.6 The *Consultant* does not in any circumstances have a lien on any *Employer*’s Property. The *Consultant* takes all steps necessary to ensure that the title of the *Employer* and the exclusion of any lien are brought to the attention of any third party dealing with any *Employer*’s Property. |
| **Option Z 42** | | **Security Measures – NOT USED** |
| Additional clause 27 | 27.1 | In this clause:  27.1.1 “secret matter” means any matter connected with or arising out of the performance of this contract which by a notice in writing given by the *Employer* to the *Consultant* is designated ‘top secret’, ‘secret’, ‘confidential’, ‘restricted’ or ‘protect’;  27.1.2 “document” includes specifications, plans, drawings, photographs and books;  27.1.3 references to a person employed by the *Consultant* is construed as references to any person employed or engaged by the *Consultant* to do anything in connection with this contract, whether under a contract of service with the *Consultant* or under any other contract or arrangement whatsoever; and  27.1.4 “servant” where the *Consultant* is a body corporate includes a director of that body and any person occupying in relation to that body the position of director by whatever name called. |
|  | 27.2 | The *Consultant* does not, either before or after the completion or termination of this contract, do or permit to be done anything which it knows or ought reasonably to know may result in information about a secret matter being:  27.2.1 without the prior consent in writing of the *Employer*, disclosed to or acquired by a person who is not a British passport holder who has been resident in the UK for the last four years;  27.2.2 disclosed to or acquired by a person with respect to whom the *Employer* has given to the *Consultant* a notice in writing which has not been cancelled stating that the *Employer* requires that secret matters shall not be disclosed to that person;  27.2.3 without the prior consent in writing of the *Employer*, disclosed to or acquired by any person who is not a servant of the *Consultant*; or  27.2.4 disclosed to or acquired by a person who is an employee of the *Consultant* except in a case where it is necessary for the proper performance of this contract that such person shall have the information. |
|  | 27.3 | Without prejudice to the provisions of clause 27.2, the *Consultant*, both before and after the completion or termination of this contract, takes all reasonable steps to ensure:  27.3.1 that no such person as is mentioned in clauses 27.2.1, 27.2.2 or 27.2.3 hereof shall have access to any item or document under the control of the *Consultant* containing information about a secret matter except with the prior consent in writing of the *Employer*;  27.3.2 that no visitor to any premises in which there is any item to be supplied under this contract or where the *services* are being provided sees or discusses with the *Consultant* or any person employed by him any secret matter unless the visitor is authorised in writing by the *Employer* so to do;  27.3.3 that no photograph of any item to be supplied under this contract or any portions of the *services* is taken except insofar as may be necessary for the proper performance of this contract or with the prior consent in writing of the *Employer* and that no such photograph is, without such consent, published or otherwise circulated;  27.3.4 that all information about any secret matter and every document model or other item which contains or may reveal any such information is at all times strictly safeguarded and that, except insofar as may be necessary for the proper performance of this contract or with the prior consent in writing of the *Employer*, no copies of or extracts from any such document, model or item is made or used and no designation of description which may reveal information about the nature or contents of any such document, model or item is placed thereon; and  27.3.5 that if the *Employer* gives notice in writing to the *Consultant* at any time requiring the delivery to the *Employer* of any such document, model or item as is mentioned in clause 27.3.4, that document, model or item (including all copies of or extracts therefrom) is forthwith delivered to the *Employer* who is thereafter deemed to be the owner thereof and accordingly entitled to retain the same.  27.3.6 The decision of the *Employer* on the question of whether the *Consultant* has taken or is taking all reasonable steps as required by the foregoing provisions of this clause is final and conclusive. |
|  | 27.4 | If and when directed by the *Employer*, the *Consultant* furnishes full particulars of all people who are at any time concerned with any secret matter. |
|  | 27.5 | If and when directed by the *Employer*, the *Consultant* secures that any person employed by it who is specified in the direction, or is one of a class of people who may be so specified, signs a statement confirming that he understands that the Official Secrets Act, 1911 to1989 and, where applicable, the Atomic Energy Act, 1946, applies to the person signing the statement both during the carrying out and after expiry or termination of this contract. |
|  | 27.6 | If at any time either before or after the expiry or termination of this contract it comes to the notice of the *Consultant* that any person acting without lawful authority is seeking or has sought to obtain information concerning this contract or any thing done or to be done in pursuance thereof, the matter is forthwith reported by the *Consultant* to the *Employer* and the report is in each case accompanied by a statement of the facts including, if possible, the name, address and occupation of that person, and the *Consultant* is responsible for making all such arrangements as it may consider appropriate to ensure that if any such occurrence comes to the knowledge of any person employed by it, that person forthwith reports the matter to the *Consultant* with a statement of the facts as aforesaid. |
|  | 27.7 | The *Consultant* places every person employed by it, other than any Sub‑Contractor who in its opinion has or will have such knowledge of any secret matter as to appreciate its significance, under a duty to the *Consultant* to observe the same obligations in relation to that matter as are imposed on the *Consultant* by clauses 27.2 and 27.3 and, if directed by the *Employer*, places every person who is specified in the direction or is one of a class of people so specified, under the like duty in relation to any secret matter which may be specified in the direction and at all times uses its best endeavours to ensure that every person upon whom obligations are imposed by virtue of this clause 22.10 observes the said obligations, and the *Consultant* gives such instructions and information to every such person as may be necessary for that purpose, and immediately upon becoming aware of any act or omission which is or would be a breach of the said obligations, reports the facts to the *Employer* with all necessary particulars. |
|  | 27.8 | The *Consultant*, if directed by the *Employer*, includes in its Subconsultants’ conditions of contract such provisions as the *Employer* considers appropriate for placing the Subconsultants under obligations in relation to secrecy and security corresponding to those placed on the *Consultant* by this clause 27 but with such variations (if any) as the *Employer* may consider necessary. Furthermore the *Consultant*:  27.8.1 gives such notices, directions, requirements and decisions to its Subconsultants as may be necessary to bring the provisions relating to secrecy and security which are included in its Subconsultants’ contracts under this clause 27 into operation in such cases and to such extent as the *Employer* may direct;  27.8.2 if there comes to its notice any breach by any of the Subconsultants of the obligations of secrecy and security included in the Subconsultant’s conditions of contract in pursuance of this clause 27, notifies such breach forthwith to the *Employer*; and  27.8.3 if and when so required by the *Employer*, exercises its power to determine the Subconsultant’s appointment under the provision in that Subconsultant’s conditions of contract that correspond to clause 27.11 |
|  | 27.9 | The *Consultant* gives the *Employer* such information and particulars as the *Employer* may from time to time require for the purposes of satisfying the *Employer* that the obligations imposed by or under the foregoing provisions of this clause 27 have been and are being observed and as to what the *Consultant* has done or is doing or proposes to do to secure the observance of those obligations and to prevent any breach thereof, and the *Consultant* secures that a representative of the *Employer* duly authorised in writing is entitled at reasonable times to enter and inspect any premises in which any thing is being done or is to be done under this contract or in which there is or will be any item to be supplied under this contract, and also to inspect any document or item in any such premises or which is being made or used for the purposes of this contract and that any such representative is given all such information as he may require on the occasion of, or arising out of, any such inspection. |
|  | 27.10 | Nothing in this clause prevents any person from giving any information or doing any thing on any occasion when it is, by virtue of any enactment, the duty of that person to give that information or do that thing. |
|  | 27.11 | If the *Employer* considers that:  27.11.1 the *Consultant* has committed a breach of, or failed to comply with any of, the foregoing provisions of this clause 27; or  27.11.2 the *Consultant* has committed a breach of any obligations in relation to secrecy or security imposed upon it by any other contract with the *Employer*, or with any department or person acting on behalf of the Crown; or  27.11.3 by reason of an act or omission on the part of the *Consultant*, or of a person employed by the *Consultant*, which does not constitute such a breach or failure as is mentioned in clause 27.11.1, information about a secret matter has been or is likely to be acquired by a person who, in the opinion of the *Employer* ought not to have such information,  and the *Employer* decides that the interests of the State require the termination of this contract, the *Employer* may by notice in writing terminate this contract forthwith. |
|  | 27.12 | If this contract is terminated in accordance with the provisions of clause 27.11:  27.12.1 such termination is without prejudice to any rights of either party which shall have accrued before the date of such termination;  27.12.2 the decision of the *Employer* to terminate this contract in accordance with the provisions of clause 27.11 is final and conclusive and it is not necessary for any notice of such termination to specify or refer in any way to the event or considerations upon which the *Employer*’s decision is based;  27.12.3 the *Consultant* may within five Working Days of the termination give to the *Employer* notice in writing requesting that the *Employer* state whether the event upon which the *Employer*’s decision to terminate is based is an event mentioned in clauses 27.11.1, 27.11.2 or 27.11.3 and to give particulars of that event and, if the *Consultant* does so request, the *Employer* must within ten Working Days of receipt of such a request give notice in writing to the *Consultant* containing such a statement and particulars as are required by the request;  27.12.4 the *Consultant* is entitled to be paid for any work or thing done under this contract and accepted but not paid for by the *Employer* at the date of such termination either at the price which would have been payable under this contract if the contract had not been terminated, or at a reasonable price;  27.12.5 the *Employer* may decide to take over any work or thing done or made under this contract (whether completed or not) and not accepted at the date of such termination. In this event:  (a) the *Employer* gives notice in writing to the *Consultant* within thirty days from the time when the provisions of this clause 27 have effect, electing to take over; and  (b) the *Consultant* is entitled to be paid for any work or thing so taken over a price which, having regard to the stage which that work or thing has reached and its condition at the time it is taken over, is reasonable; and  (c) the *Consultant* in accordance with directions given by the *Employer*, delivers any work or thing taken over under this clause 27.14.3 and takes all such other steps as may be reasonably necessary to enable the *Employer* to have the full benefit of any work or thing taken over; and  27.12.6 save as above, the *Consultant* is not entitled to any other payment from the *Employer*. |
|  | 27.13 | If after notice of termination of this contract pursuant to the provisions of clause 27.11:  27.13.1 the *Employer* does not within ten Working Days of the receipt of a request from the *Consultant* respond with the statement and particulars detailed in clause 27.12.3; or  27.13.2 the *Employer* states in the statement and particulars detailed in clause 27.12.3 that the event upon which the *Employer*’s decision to terminate this contract was based is an event mentioned in clause 27.11.3  the respective rights and obligations of the *Consultant* and the *Employer* terminate in accordance with the following provisions:  27.13.3 the *Employer* takes over from the *Consultant* at a fair and reasonable price all unused and undamaged materials, bought-out parts and components and articles in course of manufacture in the possession of the *Consultant* upon the termination of this contract under the provisions of clause 27.11 and properly provided by or supplied to the *Consultant* for the performance of this Contract, except such materials, bought-out parts and components and articles in course of manufacture as the *Consultant*, with the concurrence of the *Employer*, elects to retain;  27.13.4 the *Consultant* prepares and delivers to the *Employer* within an agreed period or in default of agreement within such period as the *Employer* specifies, a list of all such unused and undamaged materials, bought-out parts and components and articles in course of manufacture liable to be taken over by or previously belonging to the *Employer* and delivers such materials and items in accordance with the directions of the *Employer* who pays to the *Consultant* fair and reasonable handling and delivery charges incurred in complying with such directions;  27.13.5 the *Employer* indemnifies the *Consultant* against any commitments, liabilities or expenditure which are reasonably and properly chargeable by the *Consultant* in connection with this contract to the extent to which the said commitments, liabilities or expenditure would otherwise represent an unavoidable loss by the *Consultant* by reason of the termination of this contract;  27.13.6 if hardship to the *Consultant* should arise from the operation of this clause 27.13 it is open to the *Consultant* to refer the circumstances to the *Employer* who, on being satisfied that such hardship exists makes such allowance, if any, as in its opinion is reasonable and the decision of the *Employer* on any matter arising out of this clause 27.13.6 shall be final and conclusive; and  27.13.7 subject to the operation of clauses 27.13.3, 27.13.4, 27.13.5 and 27.13.6, termination of this contract is without prejudice to any rights of either party that may have accrued before the date of such termination. |
| 27.14 | | The *Consultant* will be required to complete and return to the *Employer*, the *Employer*’s security clearance forms for all persons working on this contract that have access to “secret matter” as defined in clause 27.1.1 above. All such persons must hold a British passport and have been resident in the UK for the last four years. Access to “secret matter” will not be permitted until their forms have been security cleared by the *Employer* and such clearance confirmed in writing by the *Employer*. Such security clearances shall be at the full discretion of the *Employer* and appeal against any security clearances not granted are not permitted. |
| **Option Z 43** | | **Access to MOD Sites** |
| Additional clause 28 | 28.1 | In this clause:  28.1.1 “Site” includes any of Her Majesty’s Ships or Vessels and Service Stations; and  28.1.2 “Officer in charge” includes Officers Commanding Service Stations, Ships’ Masters or Senior Officers, and Officers superintending Government Establishments. |
|  | 28.2 | The *Employer* issues passes for those representatives of the *Consultant* who are approved for admission to the Site and a representative is not admitted unless in possession of such a pass. Passes remain the property of the *Employer* and are surrendered on demand or on completion of the *services*. |
|  | 28.3 | The *Consultant*‘s representatives when employed within the boundaries of a Site comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance is with the Ship’s Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements are provided on request by the Officer in charge. |
|  | 28.4 | The *Consultant* is responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the *Employer* wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. At Sites overseas, accommodation and messing facilities, if required, are provided wherever possible. The status accorded to the *Consultant* ‘s personnel for messing purposes is at the discretion of the Officer in charge who, wherever possible, gives his decision before the commencement of this contract where so asked by the *Consultant*. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the *Employer* and is obtained by the *Consultant* from the Officer in charge. Such certificate is presented to the *Employer* with other evidence relating to the costs of this contract. |
|  | 28.5 | Where the *Consultant*’s representatives are required by this contract to join or visit a Site overseas, transport between the United Kingdom and the place of duty (but excluding transport within the United Kingdom) is provided for them free of charge by the Ministry of Defence whenever possible, normally by Royal Air Force or by MOD chartered aircraft. The *Consultant* makes such arrangements through the Technical Branch named for this purpose in this Contract. When such transport is not available within a reasonable time, or in circumstances where the *Consultant* wishes its representatives to accompany material for installation which it is to arrange to be delivered, the *Consultant* makes its own transport arrangements. The *Employer* reimburses the *Consultant*’s reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the *Consultant*’s representatives locally overseas which is necessary for the purpose of this Contract is provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, is free of charge. |
|  | 28.6 | Out-patient medical treatment given to the *Consultant*’s representatives by a Service Medical Officer or other Government Medical Officer at a Site overseas is free of charge. Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the *Consultant*’s representatives back to the United Kingdom, or elsewhere, for medical reasons, is charged to the *Consultant* at rates fixed in accordance with current Ministry of Defence regulations. |
|  | 28.7 | Accidents to the *Consultant*’s representatives which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, are reported to the Officer in charge so that the Inspector of Factories may be informed. |
|  | 28.8 | No assistance from public funds, and no messing facilities, accommodation or transport overseas is provided for dependants or members of the families of the *Consultant*’s representatives. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates. |
|  | 28.9 | The *Consultant*, wherever possible, arranges for funds to be provided to its representatives overseas through normal banking channels (e.g. by travellers’ cheques). If banking or other suitable facilities are not available, the *Employer*, upon request by the *Consultant* and subject to any limitation required by the *Consultant*, makes arrangements for payments, converted at the prevailing rate of exchange (where applicable), to be made at the Site to which the *Consultant*’s representatives are attached. All such advances made by the *Employer* are recovered from the *Consultant*. |
| **Option Z 44** | | **Criminal Records Bureau – NOT USED** |
| Additional clause 29 | 29.1 | The *Consultant* procures that in respect of all potential staff or persons performing any of the *services* (each an “Identified Employee”) before an Identified Employee attends any site or premises at which the *services* are to be performed:  29.1.1 each Identified Employee is questioned as to whether he or she has any convictions; and  29.1.2 the results are obtained of a check of the most extensive available kind made with the Criminal Records Bureau in respect of each Identified Employee; and  the results of such check are promptly notified in writing to the Authority and *Employer*. |
|  | 29.2 | The *Consultant* procures that no person to whom the Authority or *Employer* reasonably objects as a consequence of information obtained under this clause is employed in the provision of the *services*. |
| **Option Z 45** | | **Contractors on Deployed Operations (CONDO) – NOT USED** |
| Additional clause 30 | 30 | The operation of this contract shall be subject to DEFCON 697, Contractors on Deployed Operations, for the purposes of which references therein to “the Authority” shall mean “the Employer” as defined in the Contract Data. Where it is deemed that CONDO shall apply Contractors are required to contact DIO Commercial in the first instance for further guidance and information. |