

Highways England Professional Services Short Contract

Contract Data and *Consultant's Offer*

Technical Consultancy for Operation Brock Stage 2

Contract Data - Professional Services Short Contract

The <i>Client</i> is	Highways England Company Limited a company incorporated in and in accordance with the laws of England and Wales having as its registered number 09346363 of Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ
Email address	██████████@highwaysengland.co.uk
The <i>services</i> are	As detailed in the document '(Sept 19) DTB Tech Scope v2 FINAL'
The <i>starting date</i> is	16 September 2019
The <i>completion date</i> is	30 May 2020
The <i>delay damages</i> for late Completion are	nil per day
The <i>law of the contract</i> is	law of England and Wales, subject to the jurisdiction of the Courts of England and Wales.
The <i>period for reply</i> is	one week.
The <i>defects date</i> is	26 weeks after Completion
The <i>assessment day</i> is the	Last working day of each month.
Work is to be carried out on a time charge basis	
The <i>period for payment</i> is	30 days.
The <i>interest rate on late payment</i> is	██

The *Consultant* provides the following insurance cover

Insurance against	Minimum amount of cover	Period following Completion or earlier termination
Failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	A limit of indemnity of not less than five million pounds (£5,000,000) in respect of any one claim without limit to the number of claims in any annual policy period, and in the annual aggregate in respect of pollution and contamination (to the extent insured by the relevant policy) and one million pounds (£1,000,000) any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant policy).	from the <i>starting date</i> until six (6) years following completion of the whole of the <i>services</i> or earlier termination
Death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from action or failure to take action by the <i>Consultant</i>	A limit of indemnity of not less than five million pounds (£5,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual policy period, (except for claims arising out of pollution, contamination and products liability, where the minimum amount of cover applies in the aggregate in any one annual period of insurance) In respect of use of motor vehicles a limit of indemnity as required by statute.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	<i>Employers</i> Liability Insurance with a limit of indemnity of five million pounds (£5,000,000) any one occurrence the number of occurrences being unlimited in any annual policy period or as required by statute whichever is the higher.	from the <i>starting date</i> until all notified Defects have been corrected or earlier termination

The *Client* does not provide any insurance cover.

<p>The <i>Consultant's</i> total liability to the <i>Client</i> for matters for which insurance is provided is limited to</p>	<p>Failure to use the skill and care normally used by professionals providing services similar to the <i>services</i>: £5,000,000 in respect of any one claim but in the aggregate in each year of insurance in respect of claims arising out of pollution or contamination and £1,000,000 in the aggregate in each year of insurance in respect of claims arising out of asbestos.</p> <p>Loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>: £10,000,000 for any one occurrence but in the aggregate in each year of insurance in respect of claims arising out of pollution or contamination.</p> <p>The <i>Consultant's</i> liability for death of or bodily injury to persons arising under or in connection with this contract is unlimited.</p>				
<p>The <i>Consultant's</i> total liability to the <i>Client</i> for other matters is limited to</p>	<p>£5,000,000</p>				
<p>The <i>tribunal</i> is</p>	<p>arbitration.</p>				
<p>If the <i>tribunal</i> is arbitration, the arbitration procedure is</p>	<p><i>Institution of Civil Engineers Arbitration Procedure (April 2012)</i></p>				
<p>The place where the arbitration is to be held is</p>	<p>London</p>				
<p>The person who will choose the arbitrator if the Parties cannot agree is</p>	<p><i>the President or Vice President of the Institution of Civil Engineers] Chartered Institute of Arbitrators</i></p>				
<p>If Clause Z20 applies</p>	<p>The <i>failure level</i> is below 6.0</p>				
<p>If Clause Z25 applies</p>	<p>The following persons or organisations may enforce the following terms of this contract</p> <table border="0"> <thead> <tr> <th data-bbox="496 1630 762 1662">term</th> <th data-bbox="767 1630 1394 1662">person or organisation</th> </tr> </thead> <tbody> <tr> <td data-bbox="496 1697 762 1729">Z16.2</td> <td data-bbox="767 1697 1394 1729">a Subconsultant</td> </tr> </tbody> </table>	term	person or organisation	Z16.2	a Subconsultant
term	person or organisation				
Z16.2	a Subconsultant				

The *conditions of contract* are the NEC3 Professional Services Short Contract (April 2013) and the additional Clauses Z1, Z2, Z3, Z4, Z5, Z6, Z7, Z8, Z9, Z10, Z11, Z13, Z16, Z17, Z18, Z19, Z20, Z21, Z22, Z23, Z25, Z26, Z29 and Z31.

The Consultants Offer:

The *Consultant* is

Name DTBTECH LTD

Address Langdale, 88 Blackborough Road, Reigate, RH2 7DF

Telephone [REDACTED]

E-mail address INFO@DTBTECH.COM

The *Consultant* offers to Provide the Services in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.

The name, job qualifications and experience of the *Consultant's* key people are:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

• The *staff rates* are

person or job	unit of measurement	rate
[REDACTED]	[REDACTED]	[REDACTED]

People not stated here are at open market or competitively tendered rates

The offered total of the Prices is not applicable

Signed on behalf of the

Consultant

Name [REDACTED]

Position [REDACTED]

Signature [REDACTED]

Date

17th Sept 2019

The *Client's* acceptance

The *Client* accept the *Consultant's* Offer to Provide the Services

Name

Position

Signature

Date



17/9/2019

Professional Services Short Contract

Identified and defined terms A Subconsultant is a person or organisation who has a contract with the *Consultant* to provide part of the *services*.

The Time Charge is the sum of the products of each of the *staff rates* multiplied by the total staff time appropriate to that rate properly spent on work in this contract.

Clause Z1 Corrupt practices

Z1.1 The *Consultant* does not

- offer or give to any person in the service of the *Client* any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of this contract or any other contract with the *Client* or for showing favour or disfavour to any person in relation to this contract or any other contract with the *Client*, or
- enter into this contract or any other contract with the *Client* if, in connection with this contract or any such other contract, commission has been paid or an agreement for the payment of commission has been made by him or on his behalf or to his knowledge.

Z1.2 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z2 Euro functionality

Z2.1 The *Consultant* Provides the Services in such a way that the *services*

- would not be prejudiced by the implementation of the Euro
- comply with all legal requirements applicable to the Euro in the United Kingdom, including, but without limitation, the rules on conversion and rounding set out in the EC Regulation 1103/97,
- are capable of utilising all symbols and codes adopted by the EU Commission in relation to the Euro and
- are in accordance with the *Client's* requirements both for Sterling and for the Euro.

Clause Z3 Recovery of sums due from *Consultant*

Z3.2 Where under this contract or any other contract between the *Consultant* and the *Client* any sum of money is recoverable from or payable by the *Consultant*, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the *Consultant* under this contract or any other contract with the *Client* or any part of the Crown if the benefit and burden of the contract is novated to any Department of Her Majesty's Government.

Clause Z4 Assignment

- Z4.1 The *Consultant* does not assign, transfer or charge the benefit of this contract or any part of it or any benefit or interest under it without the prior agreement of the *Client*.
- Z4.2 The *Client's* ability to assign this contract or any part of it or any benefit or interest under it is unrestricted.

Clause Z5 Discrimination

- Z5.1 The *Consultant* does not discriminate directly or indirectly or by way of victimisation or harassment against any person contrary to the Equality Act 2010, any predecessor statute of it or any amendment or re-enactment of it from time to time (the "Discrimination Acts")
- Z5.2 In Providing the Services, the *Consultant* co-operates with and assists the *Client* to satisfy its duty under the Discrimination Acts to eliminate unlawful discrimination and to promote equality of opportunity between persons of different racial groups and between disabled people and other people.
- Z5.3 Where any employee or Subconsultant employed by the *Consultant* is required to carry out any activity alongside the *Client's* employees in any premises, the *Consultant* ensures that each such employee or Subconsultant complies with the *Client's* employment policies and codes of practice relating to discrimination and equal opportunities.
- Z5.4 The *Consultant* notifies the *Client* in writing as soon as he becomes aware of any investigation or proceedings brought against the *Consultant* under the Discrimination Acts in connection with this contract and
- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
 - attends (and permits a representative from the *Client* to attend) any associated meetings,
 - promptly allows access to any relevant documents and information and
 - cooperates fully and promptly with the investigatory body, court or tribunal.
- Z5.5 The *Consultant* indemnifies the *Client* against all costs, charges, expenses (including legal and administrative expenses) and payments made by the *Client* arising out of or in connection with any investigation or proceedings under the Discrimination Acts resulting from any act or omission of the *Consultant*.
- Z5.6 The *Consultant* includes in the conditions of contract for each Subconsultant obligations substantially similar to those set out above.

Clause Z6 Disclosure of information

- Z6.1 A Disclosure Request is a request for information relating to this contract received by the *Client* pursuant to the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or otherwise.
- Z6.2 The *Consultant* acknowledges that the *Client* may receive Disclosure Requests and that the *Client* may be obliged (subject to the application of any relevant exemption and, where applicable, the public interest test) to disclose information (including commercially sensitive information) pursuant to a Disclosure Request. Where practicable, the *Client* consults with the *Consultant* before doing so in accordance with the relevant Code of Practice. The *Consultant* uses his best endeavours to respond to any such consultation promptly and within any deadline set by the *Client* and acknowledges that it is for the *Client* to determine whether or not such information should be disclosed.
- Z6.3 When requested to do so by the *Client*, the *Consultant* promptly provides information in his possession relating to this contract and assists and co-operates with the *Client* to enable the *Client* to respond to a Disclosure Request within the time limit set out in the relevant legislation.
- Z6.4 The *Consultant* promptly passes any Disclosure Request which it receives to the *Client*. The *Consultant* does not respond directly to a Disclosure Request unless instructed to do so by the *Client*.
- Z6.5 The *Consultant* acknowledges that the *Client* is obliged to publish the provisions of this contract in accordance with the Cabinet Office Efficiency Reform Group Guidance Note entitled "Transparency – Publication of New Central Government Contracts" dated December 2010 (or any later revision) except to the extent that any information in it is exempt from disclosure pursuant to the Freedom of Information Act 2000. The *Client* consults with the *Consultant* before deciding whether information is exempt, but the *Consultant* acknowledges that the *Client* has the final decision. The *Consultant* co-operates with and assists the *Client* to publish this contract in accordance with the *Client's* obligation.

Clause Z7 Conflict of interest

- Z7.1 The *Consultant* does not take an action which would cause a conflict of interest to arise in connection with this contract. The *Consultant* notifies the *Client* if there is any uncertainty about whether a conflict of interest may exist or arise.

Clause Z8 Official Secrets Act

- Z8.1 The Official Secrets Act 1989 applies to this contract from the *starting date* until the *defects date* or earlier termination.
- Z8.2 The *Consultant* notifies his employees and Subconsultants of their duties under the Official Secrets Act 1989.
- Z8.3 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z9 Records and Audit Access

- Z9.1 The *Consultant* keeps documents and information obtained or prepared by the *Consultant* or any Subconsultant in connection with the contract for a period of 6 years after Completion.
- Z9.2 The *Consultant* permits the *Client*, Comptroller, Auditor General and any other auditor appointed by the *Client* to examine documents held or controlled by the *Consultant* or any Subconsultant.
- Z9.3 The *Consultant* provides such oral or written explanations as the *Client* or Comptroller and Auditor General considers necessary.
- Z9.4 The *Consultant* acknowledges that, for the purpose of examining and certifying the *Client's* accounts or any examination pursuant to Section 6(1) of the National Audit Act 1983, the Comptroller and Auditor General or any other auditor appointed by the *Client* may examine documents held or controlled by the *Consultant* or any Subconsultant and may require the *Consultant* to provide such oral or written explanations as he considers necessary. The *Consultant* promptly complies with any such requirements at his own cost. This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the *Consultant* and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the *Consultant* is not a function exercisable under this contract. The *Consultant* permits the Comptroller and Auditor General to examine documents held or controlled by the *Consultant* or any Subconsultant. The *Consultant* provides such oral or written explanations as the Comptroller and Auditor General considers necessary.

Clause Z10 Appointment of Adjudicator

- Z10.1 The *Adjudicator's* appointment under the NEC3 *Adjudicator's* Contract (April 2013) includes the following additional condition of contract
- "The *Adjudicator* complies, and takes all reasonable steps to ensure that any persons advising or aiding him comply, with the Official Secrets Act 1989. Any information concerning the Contract obtained either by the *Adjudicator* or any person advising or aiding him is confidential, and may not be used or disclosed by the *Adjudicator* or any such person except for the purposes of this Agreement."

Clause Z11 Confidentiality

- Z11.1 Clause 70.3 is deleted and replaced by the following:
- "The *Consultant* keeps (and ensures that his employees and Subconsultants keep) confidential and does not:
- disclose to any person the terms of this contract nor
 - use (except for the purposes of this contract) or disclose to any person any confidential or proprietary information (including Personal Data) provided to or acquired by the *Consultant* in the course of Providing the Services
- except that the *Consultant* may disclose information
- to his legal or other professional advisers,

- to his employees and Subconsultants as needed to enable the *Consultant* to Provide the Services,
 - where required to do so by law or by any professional or regulatory obligation or by order of any court or governmental agency, provided that prior to disclosure the *Consultant* consults the *Client* and takes full account of the *Client's* views about whether (and if so to what extent) the information should be disclosed,
 - which it receives from a third party who lawfully acquired it and who is under no obligation restricting its disclosure,
 - which is in the public domain at the time of disclosure other than due to the fault of the *Consultant* or
 - with the consent of the *Client*."
- Z11.2 The *Consultant* may only disclose the *Client's* confidential information to its personnel who are directly involved in Providing the Services and who need to know the information, and shall ensure that such personnel are aware of and shall comply with these obligations as to confidentiality.
- Z11.3 The *Consultant* may only disclose the *Client's* confidential information to its personnel who need to know the information, and shall ensure that its personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any of the *Consultant's* personnel causes or contributes (or could cause or contribute) to the *Consultant* breaching its obligations as to confidentiality under or in connection with this contract, the *Consultant* shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any of the *Consultant's* personnel, the *Consultant* shall provide such evidence to the *Client* as the *Client* may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the *Consultant* is taking appropriate steps to comply with this clause, including copies of any written communications to and/or from the *Consultant's* personnel, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with the *Consultant's* personnel in connection with obligations as to confidentiality.
- Z11.4 At the written request of the *Client*, the *Consultant* shall procure that those members of the *Consultant's* personnel identified in the *Client's* notice signs a confidentiality undertaking prior to commencing any work in accordance with this contract.
- Z11.5 Where the *Client* supplies the *Consultant* with press cuttings provided to the *Client* under the terms of the *Client's* licence with the Newspaper Licensing Agency ("NLA"), the *Consultant* does not reproduce the cuttings or forward them to any third party unless the *Consultant* has first entered into an agreement with NLA authorising it to do so.

Clause Z13 The *Client's* liability

- Z13.1 The *Client's* total liability to the *Consultant* for all matters arising under

or in connection with this contract, other than the excluded matters, is limited to £5m, and applies in contract, tort or delict or otherwise to the extent allowed under the *law of the contract*.

Z13.2 The excluded matters are the amounts payable to the *Consultant* as stated in this contract for

- the Price for Work Done to Date.

Z13.3 The *Client's* liability to the *Consultant* is limited to that proportion of the *Consultant's* losses for which the *Client* is responsible under this contract.

Clause Z16 Fair payment

Z16.1 The *Consultant* assesses the amount due to a Subconsultant without taking into account the amount assessed under this contract.

Z16.2 The *Consultant* includes in the contract with each Subconsultant

- a provision requiring the *Consultant* to pay the Subconsultant within a specified period (not exceeding 19 days after the date on which payment becomes due under this contract) for work which the Subconsultant has completed from the previous assessment date up to the current assessment date in this contract,
- a provision requiring the Subconsultant to include in each Subsubcontract the same requirement, except that the period for payment is to be not greater than 23 days after the date on which payment becomes due under this contract
- a provision requiring the Subconsultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the *Consultant* and
- a provision requiring each further stage subcontract to contain provisions to the same effect as these requirements, with the intention that all Subconsultants (at any stage of remoteness from the *Client*) are to be paid within 30 days after the date on which payment becomes due under this contract.

Z16.3 The *Consultant* notifies non-compliance with the timescales for payment

- to the *Client* and
- through the Efficiency and Reform Group Supplier Feedback Service.

The *Consultant* includes this provision in each subcontract, and requires Subconsultants to include the same provision in each Subsubcontract.

Z16.4 A failure to comply with this condition is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z17 Reporting: Small and Medium Enterprises

Z17.1 In this clause Z17 SME is

- a Subconsultant or
- a subconsultant to a Subconsultant
- and
- is autonomous,
- is a European Union enterprise not owned or controlled by a non-European Union parent company,
- for a medium sized enterprise (medium class) employs fewer than 250 staff, has turnover no greater than 50 million Euros and does not have a balance sheet greater than 43 million Euros,
- for a small sized enterprise (small class) employs fewer than 50 staff, has turnover no greater than 10 million Euros and does not have a balance sheet greater than 10 million Euros and
- for a micro sized enterprise (micro class) employs fewer than 10 staff, has turnover no greater than 2 million Euros and does not have a balance sheet greater than 2 million Euros.

Z17.2 For each SME employed on the *services*, the *Consultant* reports to the *Client* each quarter from the *starting date* until Completion and at the *defects date*

- the name of the SME,
- the class of SME (medium, small or micro),
- the value of the contract undertaken by the SME,
- the monthly amounts paid to the SME in the quarter and
- the aggregated value paid to the SME since the *starting date*.

Z17.3 The *Consultant* acknowledges that the *Client* may

- publish the information supplied under clause Z17.2, along with the *Consultant's* name and this contract name and
- pass the information supplied under this clause Z17 to any Government Department who may then publish it along with the names of the SMEs, the *Consultant's* name and this contract name.

Z17.4 The *Consultant* ensures that the conditions of contract for each Subconsultant who is an SME include

- a term allowing the *Client* to publish the information supplied under Z17.2 and
- obligations substantially similar to those set out in this clause Z17.

Z17.5 The *Consultant* further ensures that the conditions of contract for each Subconsultant include a requirement that the conditions of contract for any Subconsultant engaged by the Subconsultant who is an SME include obligations substantially similar to those set out in Z17.4.

Z17.6 The *Consultant* keeps accounts and records of his charges and

expenses and allows the *Client* to inspect them at any time within working hours.

Clause Z18 *Client's Codes of Conduct*

Z18.1 The *Consultant* complies (and ensures that any person employed by him or acting on his behalf complies) with the *Client's* Anti Bribery Code of Conduct and Anti-Fraud Code of Conduct, collectively 'the Codes'. The *Consultant* complies with the Codes until Completion and with

- paragraph 4 of the *Client's* Anti Bribery Code of Conduct and
 - paragraph 3 of the *Client's* Anti-Fraud Code of Conduct
- for a period of 6 years after Completion.

Z18.2 A failure to comply with this clause is treated as a substantial failure by the *Consultant* to comply with his obligations.

Clause Z19 *Prevention of fraud and bribery*

Z19.1 The *Consultant* represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time prior to the *starting date*:

- committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

Z19.2 In this clause Z19, Prohibited Act means any of the following:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the *Client* a financial or other advantage to:
 - induce that person to perform improperly a relevant function or activity; or
 - reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this contract;
- (c) committing any offence:
 - under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - under legislation creating offences concerning fraud; or
 - at common law concerning fraud; or

- committing (or attempting or conspiring to commit) fraud.

Clause Z20 Termination and omission of work

Z20.1 If the *Client* instructs a change to the Scope which involves the omission of part of the *services*, the *Client* may engage other people to carry out the part omitted. The instruction is assessed as a compensation event, except that if the instruction is given for insolvency or a default by the *Consultant*, the assessment includes a deduction of the forecast additional cost to the *Client* of completing the services.

Z20.2 The following is added at the end of the second sentence in clause 91.1 of the *conditions of contract*:

“unless instructed otherwise by the *Client*”.

Z20.3 The following are treated as a substantial failure by the *Consultant* to comply with his obligations

- a key resource needed by the *Consultant* to Provide the Services is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Client*, or
- the *Consultant's* performance as measured in accordance with the current edition of the Highways England's Collaborative Performance Framework (or any replacement for it) is below the *failure level*.

Clause Z21 Termination - PCRs, Regulation 73

Z21.1 The *Client* may terminate the *Consultant's* obligation to Provide the Services if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Consultant* at the *starting date*. This is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Z21.2 The *Client* may terminate the *Consultant's* obligation to Provide the Services if

- this contract has been subject to substantial modification which would have required a new procurement procedure pursuant to regulation 72 of the Public Contracts Regulations 2015 or
- the Court of Justice of the European Union declares, in a procedure under Article 258 of the Treaty on the Functioning of the European Union, that a serious infringement of the obligations under the European Union Treaties and the Public Contracts Directive has occurred.

If the modification or infringement was due to a default by the *Consultant*, this is treated as a termination because of a substantial failure of the *Consultant* to comply with his obligations.

Clause Z22 Value Added Tax (VAT) Recovery

Z22.1 Where under this contract any amount is calculated by reference to any sum which has been or may be incurred by any person, the amount shall include any VAT in respect of that amount only to the extent that such VAT is not recoverable as input tax by that person (or a member of the same VAT group) whether by set off or repayment.

Clause Z23 Subconsulting

Z23.1 Before

appointing a proposed Subconsultant or

allowing a Subconsultant to appoint a proposed subsubconsultant

the *Consultant* submits to the *Client* for acceptance

- a self-declaration from the Subconsultant that that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed Subconsultant or subsubconsultant.

Z23.2 The *Consultant* does not appoint the proposed Subconsultant (or allow the Subconsultant to appoint the proposed subsubconsultant) until the *Client* has accepted the submission. A reason for not accepting the submission is that it shows that there are grounds for excluding the proposed Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015.

Z23.3 If requested by the *Client*, the *Consultant* provides further information to support, update or clarify a submission under clause Z23.1.

Z23.4 If, following the acceptance of a submission under clause Z23.2, it is found that one of the grounds for excluding the Subconsultant or subsubconsultant under regulation 57 of the Public Contracts Regulations 2015 applies, the *Client* may instruct the *Consultant* to

- replace the Subconsultant or
- require the Subconsultant to replace the subsubconsultant.

Clause Z25 Contracts (Rights of Third Parties) Act 1999

Z25.1 A person or organisation who is not a party to this contract may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the term and the person or organisation are stated in the Contract Data.

Clause Z26 Intellectual Property Rights

Z26.1 **Intellectual Property Rights or IPRs** are copyright and related rights, database rights, design rights, patents, inventions, trade marks (and goodwill attaching to those trade marks), domain names, applications for and the right to apply for any of the foregoing, moral rights, confidential information and any other intellectual or industrial property rights, whether or not registered or capable of registration, whether subsisting now or in future in any part of the world.

Z26.2 All Intellectual Property Rights in documents and other materials created by or on behalf of the *Client* in connection with the contract are the property of the *Client* or the Crown.

Z26.3. The *Consultant* hereby assigns to the *Client* all present and future Intellectual Property Rights in all documents and other materials created by or on behalf of the *Consultant* or Subconsultant in

performing its obligations under the contract. The *Consultant* obtains from Subconsultant equivalent rights over the documents and other materials prepared by the Subconsultants. This assignment takes effect either on the *starting date* or as a present assignment of future rights that will take effect immediately on the coming into existence of the relevant Intellectual Property Rights as appropriate.

Z26.4 *Consultant's Background IPR* means IPR is owned by the *Consultant* or a third party before the *starting date* or created by the *Consultant* or a third party independently of this contract, which in each case is or will be used before the Completion for designing, testing, implementing, correcting defects or Providing the Services. In respect of the *Consultant's Background IPR*, the *Consultant* grants a non-exclusive, world-wide, perpetual, irrevocable, royalty free license (including the right to sub-license) to the *Client* to use the *Consultant's Background IPR* for all purposes of the *Client*. Each license granted under this clause Z26.4 by the *Consultant* survives the termination or expiry of this contract and cannot be terminated by the *Consultant* or its assignees. The *Consultant* obtains from the Subconsultants or third parties equivalent rights over *Consultant's Background IPR* owned by the Subconsultants or third parties.

Z26.5 The *Client* grants to the *Consultant*, or procures the direct grant to the *Consultant* of, a non-exclusive, non-transferable, revocable license to use all Intellectual Property Rights and Background IPR owned (or capable of being licensed or procured without cost) by the *Client* and reasonably required by the *Consultant* in order to Provide the Services. Any such license is granted for the duration of this contract solely to enable the *Consultant* to comply with its obligations under this contract.

Clause Z29 Payments upon Insolvency

Z29. 1 Nothing in this contract requires the *Employer* to pay the *Consultant* any sum due where the *Consultant* becomes insolvent after the last date upon which the *Employer* was entitled to issue a pay less notice in respect of the relevant sum.

Clause Z31 *Consultant's* premises and Access and Storage to *Client's* Data

Z31.1 In this contract

Risk Assessment is a full risk assessment and security review carried out by the *Client* in accordance with this contract

Offshore is a location outside the United Kingdom of Great Britain and Northern Ireland

Z31.2 Any failure of the *Client* to gain approval for storing information Offshore or allowing access to information from an Offshore location in accordance with this contract

- is not a compensation event and
- does not relieve the *Consultant* from his obligation to Provide the Services.

Z31.3 A failure of a premise to pass the Risk Assessment

- is not a compensation event and
- does not relieve the *Consultant* from his obligation to Provide the Services.

Z31.4 The *Consultant* pays the *Client's* costs associated with undertaking any Risk Assessment.

