



Highways England Company Limited

Archaeology Framework

NEC4 Professional Service

Short Contract

modified for subcontract

(June 2017 with amendments January 2019)

Z Clauses

(To be used with Time Charge Orders only)

in relation to a *subcontract service* for

[insert contract name here and date]

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Issue	Revision	Amendment	Initials	Date
1	0	Tender release.	RE	07/07/2020

Z CLAUSES (NEC4 PSSC modified for subcontract – for TCOs)

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MANDATORY CLAUSES	
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MANDATORY Z CLAUSES

Clause Z11 Changes to Core Clauses

In the *conditions of contract* replace

- *Client* with *Consultant*
- *completion date* with *subcontract completion date*
- Completion Date with Subcontract Completion Date
- *conditions of contract* with *conditions of subcontract*
- *Consultant* with *Subconsultant*
- *contract* with *subcontract*
- Contract Data with Subcontract Data
- *law of the contract* with *law of the subcontract*
- *service* with *subcontract service*
- *starting date* with *subcontract starting date*
- subcontract with subsubcontract
- Provide the Service with Provide the Subcontract Service

11 Identified and defined terms

11.2 In clause 11.2 of the *conditions of subcontract*, insert new defined terms

(12) Consultant's Premises is any premise provided by the *Consultant* or the *Client* and used by the *Subconsultant* to Provide the Subcontract Service.

(13) Subconsultant Overhead is the amount calculated by applying the *subconsultant's office overhead percentage* to the sum of time expended on work which has been completed multiplied by the appropriate People Rates.

(14) Subconsultant's Premises is any premise (that is not a domestic property) leased, rented or owned by the *Subconsultant* or a *Subsubconsultant* and used to Provide the Subcontract Service.

50 Assessing the amount due

50.3 Delete clause 50.3 of the *conditions of subcontract* and replace it with

"50.3 If the *Subconsultant* submits an invoice for payment before the *assessment day*, the amount due at the *assessment day* is

- the Price for each lump sum item in the Price List which the *Subconsultant* has completed,

- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Subconsultant* has completed by the rate,
- the amount of the expenses stated in the Price List properly spent by the *Subconsultant*,
- but excluding any cost incurred in complying with
 - Scope Annex 9, section 2.4 and
 - Scope Annex 15, section 1.22,
- for work carried out on a time charge basis in the Subconsultant's Premises, the sum of time expended on work which has been completed multiplied by the appropriate People Rates and Subconsultant Overhead plus the Fee,
- for work carried out on a time charge basis in the Consultant's Premises or a domestic property, the time expended on work which has been completed,
- plus other amounts to be paid to the *Subconsultant*,
- less amounts to be paid by or retained from the *Subconsultant*."

83 Insurance cover

83.1 Delete clause 83.1 of the *conditions of contract* and replace it with
"The *Client* and the *Consultant* provide the insurances stated in, and to comply with the requirements set out in, the Scope."

83.2 Delete clause 83.2 of the *conditions of contract*.

Clause Z8I	Conflict of interest
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- Z8I.1 Clause 60.1(3) is amended by adding the following words at the end (before the full stop):
", unless the instruction relates to a notification from the *Consultant* that a conflict of interest may exist or arise".

Clause Z27I	Termination – PCRs, Regulation 73
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- Z27I.1 The *Consultant* may terminate the *Subconsultant's* obligation to Provide the Subcontract Service if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Subconsultant* at the

starting date. This is treated as termination for a default by the *Subconsultant*.

Z27l.2 The *Consultant* may terminate the *Subconsultant's* obligation to Provide the Subcontract Service if

- the subcontract has been subject to a substantial modification which would have been required a new procurement procedure pursuant to regulation 72 of the Public Contract 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.

Clause Z28l	Termination and removal of <i>subcontract service</i>
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Z28l.1 The *Consultant* may terminate the *Subconsultant's* obligation to Provide the Subcontract Service for a reason not stated in the subcontract by notifying the *Subconsultant*.

Z28l.2 The following are treated as a substantial failure by the *Subconsultant* to comply with its obligations

- the *Subconsultant* substantially or repeatedly breaks a requirement of environmental legislation,
- the *Subconsultant* persistently or materially fails to comply with the Quality Statement or to meet any of the Performance Requirements or
- a key resource needed by the *Subconsultant* to Provide the Subcontract Service is no longer available and the *Subconsultant* does not propose an alternative resource acceptable to the *Consultant*.

Clause Z33l	Joint Ventures
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Z33l.1 Where two or more Consortium Members comprise the *Subconsultant*, clauses 90.1 and 90.2 of the *conditions of contract* are amended by inserting after “the other Party” in the second place where it appears the words “(or, in the case of the *Consultant*, any Consortium Member)”.