

Pavement Framework

Z clauses

**(Engineering and Construction
Subcontract)**

Z CLAUSES (Engineering and Construction Subcontract)

MANDATORY Z CLAUSES

Clause Z1E Changes to Core and Secondary Option Clauses

11 Identified and defined terms

11.2(25) Amend the definition of “Disallowed Cost” as follows

- before the third main bullet point insert an extra bullet point
 - was incurred in connection with additional audits of the *Subcontractor's* quality management system carried out by or on behalf of the *Contractor*,
- after the third main bullet point (before the first sub-bullet) insert an extra sub-bullet
 - follow a Process or Procedure stated in his Quality Plan,

[*Note: the above amendment applies to subcontracts let under main Options C, D and E only.*]

11.2 Add the following defined terms

(34) Procedure has the meaning given to it in ISO 9000.

(35) Process has the meaning given to it in ISO 9000.

(36) Quality Plan is the quality plan prepared by the *Subcontractor* for the framework contract in accordance with ISO 9001.

84 Insurance cover

Delete clause 84 of the *conditions of subcontract* and insert

84.1 The *Subcontractor* provides the insurances stated in, and to comply with the requirements set out in, Annex 10 to the Framework Information.

Option Y(UK)2

[*Highways England to consider payment period – see separate note.*]

Schedule of Cost Components

Delete the preamble and insert

This schedule is part of the *conditions of subcontract* only when Option C, D or E is used. In this schedule the *Subcontractor* means the *Subcontractor* and Associated Companies, but not his other Subsubcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Subcontract Works.

Shorter Schedule of Cost Components

Delete the preamble and insert

This schedule is part of the *conditions of subcontract* in all Options. When Option C, D or E is used, this schedule is used by agreement for assessing compensation events. When Option C, D or E is used, in this schedule the *Subcontractor* means the *Subcontractor* and Associated Companies, but not his other Subsubcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Subcontract Works.

Clause Z8E Conflict of interest

Z8E.1 Clause 60.1(4) is amended by adding the following words at the end (before the full stop):

“, unless the instruction relates to a notification from the *Subcontractor* that a conflict of interest may exist or arise”.

¹[Clause Z10E**Subcontracting**

Z10E.1 The *Subcontractor* assesses the amount due to a subsubcontractor without taking into account the amount assessed under this subcontract.

Z10E.2 If the *Subcontractor* subsubcontracts work to an Associated Company, the Defined Cost of the work subsubcontracted is assessed in accordance with the Schedule of Cost Components as if the work had not been subsubcontracted unless otherwise agreed by the *Contractor*.

Z10E.3 The *Contractor* may, having stated his reasons, instruct the *Subcontractor* to remove a subsubcontractor. The *Subcontractor* then arranges the removal of the subsubcontractor and the appointment of a replacement in accordance with this subcontract.

Z10E.4 Before

- appointing a proposed Subsubcontractor or
- allowing a Subsubcontractor to appoint a proposed subsubsubcontractor

the *Subcontractor* submits to the *Contractor* for acceptance

- either
 - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subsubcontractor or subsubsubcontractor or
 - other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) 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 Subsubcontractor or subsubsubcontractor and
- details of any RIDDOR Incident under any contract for which the proposed Subsubcontractor or subsubsubcontractor is responsible and of any Enforcement Action brought against the proposed Subsubcontractor or subsubsubcontractor.

¹ Consider whether (and if so to what extent) this clause applies at the subcontract level.

Z10E.5 The *Subcontractor* does not appoint the proposed Subsubcontractor (or allow the Subsubcontractor to appoint the proposed subsubsubcontractor) until the *Contractor* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed Subsubcontractor or subsubsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Contractor* is not satisfied that the proposed Subsubcontractor or subsubsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur.

Z10E.6 If requested by the *Contractor*, the *Subcontractor* provides further information to support, update or clarify a submission under clause Z10E.4.

Z10E.7 If, following the acceptance of a submission under clause Z10E.5, it is found that

- one of the grounds for excluding the Subsubcontractor or subsubsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or
- the Subsubcontractor or subsubsubcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

the *Contractor* may instruct the *Subcontractor* to

- replace the Subsubcontractor or
- require the Subsubcontractor to replace the subsubsubcontractor.]

Clause Z18E Quality Management Points²

Z18E.1 A failure by the *Subcontractor* to take the agreed actions to reduce the number of Quality Management Points in effect under this subcontract to 25 or less following the issue of a quality warning notice is treated as a substantial failure by the *Subcontractor* to comply with his obligations.

Clause Z27E Termination – PCRs, Regulation 73

Z27E.1 The *Contractor* may terminate if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the

² Highways England to confirm how Quality Management Points are to apply at subcontract level.

Subcontractor at the Contract Date. The procedure and amount due on termination are the same as for reason R11.

Clause Z28E Termination and removal of work

Z28E.1 The following are treated as a substantial failure by the *Subcontractor* to comply with his obligations

- the *Subcontractor* substantially or repeatedly breaks a requirement of environmental legislation,
- the *Subcontractor* 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 *Subcontractor* to Provide the Subcontract Works is no longer available and the *Subcontractor* does not propose an alternative resource acceptable to the *Contractor*.

Z28E.2 The *Contractor* may instruct the *Subcontractor* that

- part of the Site or part of the *subcontract works* is to be permanently removed from this subcontract or
- for urgent reasons of health and safety, part of the *subcontract works* is to be temporarily removed from this subcontract.

In either case the *Subcontractor* acknowledges that the *Employer* or the *Contractor* may himself, or appoint another supplier in place of the *Subcontractor* to

- undertake works similar to the *subcontract works* (or part of them) in relation to that part of the Site or
- undertake works similar to the removed *subcontract works* (or part of them).

Z28E.3 An instruction given under clause Z28E.2 is assessed as a compensation event, except that if the instruction is given for one of the reasons R1-R15 or R18, the assessment includes a deduction of the forecast of the additional cost to the *Contractor* of completing the removed *subcontract works*.

Clause Z30E Compensation events

Z30E.1 The following bullet points are added before the first bullet point of clause 60.1(1) of the *conditions of subcontract*

- a change to the method of or requirements for performance measurement,
- a change which is stated elsewhere in the *conditions of subcontract* not to be a compensation event,

Clause Z33E Joint ventures

Z33E.1 Where two or more Consortium Members comprise the *Subcontractor*, clause 91.1 of the *conditions of subcontract* is amended by inserting after “the other Party” wherever it appears (three places) the words “(or, in the case of the *Subcontractor*, any Consortium Member)”.

Clause Z36E Construction Industry Scheme

Z36E.1 In this clause Z36E (but not otherwise)

- the Act is the Finance Act 2004 and
- the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

Z36E.2 This subcontract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.

Z36E.3 The *Subcontractor* provides the information required by the Regulations to enable the *Contractor* to verify (in accordance with paragraph 6 of the Regulations) whether the *Subcontractor* under the Act

- is registered for gross payment,
- is registered for payment under deduction,
- is exempt from registration as a local authority or other public body or
- is neither registered nor exempt from registration.

Z36E.4 If the *Subcontractor* is registered for payment under deduction or is neither registered nor exempt from registration

- the *Subcontractor* submits an application for payment which separately identifies the cost of labour and
- the *Contractor* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

Clause Z58E Assessing Defined Cost

Z58E.1 If the *quotation information* includes an applicable rate for the supply or delivery of materials, that rate is used to assess the Defined Cost instead of the Schedule of Cost Components or the Shorter Schedule of Cost Components.

Clause Z59E Payment of the *Contractor's* share

Z59E.1 If, prior to Completion of the whole of the *subcontract works*, the Price for Work Done to Date exceeds the total of the Prices, the *Contractor* makes an assessment of the *Subcontractor's* share of the difference between the total of the Prices and the Price for Work Done to Date at each assessment date. The total of the Prices includes the *Contractor's* interim assessment of the

changes to the Prices for a compensation event which has not been implemented at the assessment date.

This share is included in the amount due to the *Subcontractor*.

Z59E.2 The following sentence is added at the end of clause 53.2 of the *conditions of subcontract*

The *Subcontractor* is not paid his share of any saving if there has been a fatality resulting from how the *Subcontractor* Provides the Subcontract Works.

Clause Z60E Value engineering

Z60E.1 The *Subcontractor* may submit to the *Contractor* for acceptance written proposals to change the Subcontract Works Information which if implemented would

- enhance the quality or durability of the *subcontract works*,
- improve the efficiency of carrying out the *subcontract works* or
- reduce the cost to the *Employer* of maintaining the *subcontract works*.

Z60E.2 The *Subcontractor* submits with his proposal a quotation for the proposed change setting out details of

- how any cost savings resulting from the implementation of the change are to be shared,
- how any risks associated with the implementation of the change are to be allocated,
- how any costs associated with the development of the change are to be funded and
- any consequential changes to the remainder of the Subcontract Works Information.

Z60E.3 If the *Subcontractor's* proposal and quotation are accepted, the *Contractor* instructs the change to the Subcontract Works Information. This instruction is not a compensation event.

OPTIONAL Z CLAUSES

Clause Z62E Building Information Modelling (BIM)

Z62E.1 Definitions

In this subcontract

- (1) **BIM Execution Plan** is the document of that name identified in the Contract Data that describes how the *Subcontractor* will produce the Specified Models and meet the requirements in the Employer's Information Requirements.

- (2) **Employer Owned Materials** are
- the Specified Models,
 - any information in any electronic medium comprised in a Specified Model, whether prepared by or on behalf of the *Subcontractor* or provided to the *Subcontractor* by or on behalf of the *Contractor* or the *Employer*,
 - any Model (or any part of a Model) produced and delivered by another Project Team Member as specified in the Model Production and Delivery Table,
 - any Federated Model (and any part of it) and
 - any proprietary work contained in, and any rights subsisting in, any of the above.
- (3) **Employer's Information Requirements** is the document of that name identified in the Contract Data that describes how Models and associated information are produced, delivered and used, including any processes, protocols and procedures referred to in it.
- (4) **Federated Model** is a Model consisting of connected but distinct individual Models.
- (5) **Level of Definition** is the graphical and non-graphical content required for a Model at each Stage as specified in the Employer's Information Requirements.
- (6) **Model** is a digital representation of part of the physical or functional characteristics of the *works*.
- (7) **Model Production and Delivery Table** is the table of that name included in the Employer's Information Requirements that sets out
- the subject matter of each Model,
 - the person who is to produce and deliver each Model at each Stage and
 - the proposed Level of Definition for each Model at each Stage.
- (8) **Permitted Purpose** is a purpose related to the *works* (including the construction, operation and maintenance of the *works*) which is consistent with the applicable Level of Definition of the relevant Model and the purpose for which it was prepared.
- (9) **Project Agreement** is an agreement entered into between the *Employer* or the *Contractor* and a Project Team Member in relation to the *works*.

- (10) **Project Team Member** is any person appointed by the *Employer* or the *Contractor* in relation to the *works* with responsibility for the production, delivery or use of Models.
- (11) **Specified Model** is a Model to be produced and delivered by the *Subcontractor* as specified in the Model Production and Delivery Table.
- (12) **Stage** is a stage of the *works* specified in the Employer's Information Requirements.

Z62E.2 **Priority of Documents**

Z62E.2.1 This clause prevails over any conflicting provisions of this subcontract.

Z62E.2.2 Unless the Employer's Information Requirements state otherwise, any Model prepared and delivered in accordance with this clause prevails over any conflicting document or information extracted from the Model.

Z62E.3 **The Information Manager**

Z62E.3.1 The *Information Manager* establishes and manages the processes, protocols and procedures set out in the Employer's Information Requirements.

Z62E.3.2 If the *Employer* replaces the *Information Manager*, the *Contractor* notifies the *Subcontractor* of the name of the replacement.

Z62E.3.3 The *Information Manager* may delegate any of his functions to an employee of

- the *Contractor* or
- another supplier of works or services to the *Employer*.

The *Contractor* notifies the *Subcontractor* of any delegation to an employee of another supplier. A reference to an action of the *Information Manager* in this contract includes an action by his delegate.

Z62E.4 **Electronic Data Exchange**

Z62E.4.1 The *Subcontractor* does not warrant the integrity of any electronic data delivered in accordance with this clause.

Z62E.4.2 The *Subcontractor* is not liable to the *Contractor* for any corruption or unintended modification of the electronic data in a Specified Model which occurs after it has been transmitted by the *Subcontractor*, unless the corruption or modification is due to the *Subcontractor's* failure to comply with this clause.

Z62E.5 **Use of Models**

Z62E.5.1 The *Contractor* grants to the *Subcontractor* a non-exclusive licence (including the right to grant sub-licences to

Subsubcontractors) to transmit, copy and use the Employer Owned Materials for the Permitted Purpose.

Z62E.5.2 The licence in Z62E.5.1 does not include the right to

- modify a Model without the agreement of the *Employer* or the Project Team Member who produced the Model (or the relevant part of it), unless such modification is provided for in the Employer's Information Requirements or is made for the Permitted Purpose following termination of the Project Team Member's engagement or
- reproduce, for an extension of the *works*, any proprietary work contained in a Model.

Z62E.5.3 The *Contractor* is not liable to the *Subcontractor* for the consequences of any modification, transmission, copying or use by the *Subcontractor* of any of the Employer Owned Materials that is not permitted by this clause.

Z62E.6 **Termination**

The provisions of this clause continue to apply after termination of the *Subcontractor's* obligation to Provide the Subcontract Works.

Z62E.7 **Subsubcontracting**

If the *Subcontractor* subsubcontracts any work involved in producing information for inclusion in a Specified Model, the *Subcontractor* includes in the subsubcontract provisions equivalent to those set out in

- this clause and
- the section headed "Building Information Modelling" in the Subcontract Works Information.

Z62E.8 **Compensation event**

The following is a compensation event.

- An event outside the *Subcontractor's* control prevents him from delivering the Specified Models at the Level of Definition specified in the Model Production and Delivery Table for a Stage in accordance with the Employer's Information Requirements.

Z63E Amendments to the Schedule of Cost Components

Z63E.1 In the Schedule of Cost Components delete existing item 44.

Clause Z65E Limitation of Liability

Z65E.1 In clause X18.4, second paragraph, insert a new bullet points as follows:

- fraud or fraudulent misrepresentation,

- events for which this contract requires the *Subcontractor* to insure,
- infringement of the rights of Others,
- loss or damage
 - to third party property or
 - due to pollution,
- loss arising from breach of
 - confidentiality or data protection obligations or
 - anti-bribery or anti-corruption obligations
- interest on debt,
- losses caused by the *Subcontractor's* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.