



Highways England Company Limited

Archaeology Framework

NEC4 Term Service Contract

(June 2017 with amendments January 2019)

Z Clauses

in relation to a *service* for

[insert contract name here and date]

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1	0	Tender release.	RE	07/07/2020

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MANDATORY Z CLAUSES

Clause Z1L Changes to Core and Secondary Options Clauses

11 Identified and defined terms

11.2 (24) 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 *Contractor’s* quality management system carried out by or on behalf of the *Service Manager*,”
- after the third main bullet point (before the first sub-bullet) insert and extra sub-bullet
 - “follow a Process or Procedure stated in its Quality Plan,”
- after “and the cost of” insert two extra bullet points before the first bullet point
 - “replacing a *key person* (and any associated costs),
 - costs arising as a result of complying with requirements set out in
 - Scope Annex 9, section 2.4 and
 - Scope Annex 15, section 1.22,”

19 Task Orders

19.1 In clause 19.1 of the *conditions of contract*

- after the first bullet point, insert two new bullet points
 - “a description of the Task Order Area,
 - a description of the Task Sections,”
- delete the last bullet point and replace it with
 - “the amount of delay damages for the late completion of each of the Task Sections and the Task.”

22 People

22.3 In the *conditions of contract*, insert new clause 22.3

“22.3 The *Contractor* ensures that each person named in the *key persons schedule* devotes a sufficient amount of time and effort to the provision of the *service*. The *Contractor* retains the services of each *key person* and does not remove or change the *key persons* unless

- any of the *key persons* are on long-term sickness leave, maternity leave (or equivalent) or leave the *Contractor’s* employment; or
- the *Client* gives its prior written agreement for the replacement.”

22.4 In the *conditions of contract*, insert new clause 22.4

"22.4 The *Contractor* bears the cost and any delay caused as a result of replacing a *key person*."

24 Subcontracting

24.3 In clause 24.3 of the *conditions of contract* insert an additional bullet point after "A reason for not accepting the subcontract documents is that"

“• they do not include all the provisions specified in the Scope,”

26 Assignment

Delete clause 26 of the *conditions of contract*.

27 Disclosure

Delete clause 27 of the *conditions of contract*.

30 Starting and the Service Period

30.1 Delete clause 30.1 of the *conditions of contract* and replace it with

"30.1 The *Contractor* does not start work until

- the *starting date* and
- for a Task Section until the starting date stated in the Task Order

and Provides the Service until the latter of the end of the Service Period and the latest Task Completion Date."

60 Compensation events

60.1(1) In clause 60.1(1) of the *conditions of contract*, delete "or" at the end of the first bullet point and insert a comma. At the end of the clause delete the full stop and insert

"or

- a change to the Information Systems or the introduction of a new Information System,
- a change to the method of or requirements for performance measurement or
- stated elsewhere in the *conditions of contract* not to be a compensation event."

60.1(5) Insert at the end of clause 60.1(5) of the *conditions of contract* (before the full stop)

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

83 Insurance cover

83.2 Delete clause 83.2 of the *conditions of contract* and insert

“83.2 The *Contractor* provides the insurances stated in, and to comply with the requirements set out in the Scope.”

83.3 Add a fourth type of insurance to the Insurance Table

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER
Claims made against it arising out of the <i>Contractor's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i> .	The amount stated in the Contract Data for any one claim and in the annual aggregate.

90 Termination and reasons for termination

90.1 Where two or more Consortium Members comprise the *Contractor*, clause 90.1 of the *conditions of contract* is amended by inserting after “the other Party” the words “(or, in the case of the *Contractor*, any Consortium Member)”.

90.2 Where two or more Consortium Members comprise the *Contractor*, clause 90.2 of the *conditions of contract* is amended by inserting after “the other Party” the words “(or, in the case of the *Contractor*, any Consortium Member)”.

93 Payment on termination

93.2 Item A4 in clause 93.2 of the *conditions of contract* is deleted and replaced with the following:

“substantiated quotation for the Works Contract costs up to a maximum of £50,000.”

¹Option X10 Information modelling

X10.7(3) Delete this clause in the *conditions of contract*.

Option X11 Termination by the *Client*

X11.2 In line 2 of clause X11.2 of the *conditions of contract*, delete “A1, A2 and A4” and insert “A1 and A2”.

Option X18 Limitation of liability

¹ Include this clause only if Option X10 is used.
AF - Issue 1, Revision 0

X18.5 In clause X18.5 of the *conditions of contract*, delete the bullet points and insert in their place

- loss of or damage to the *Client's* property,
- delay damages,
- *Contractor's* share,
- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Contractor* to insure (but only up to the required level for each type of insurance stated in the Scope),
- 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 and
- losses caused by the *Contractor's* illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

²**Schedule of Cost Components**

Delete and replace with the document entitled "Template Schedule of Cost Components" in Annex COC 1.

Option Y(UK)1 Project Bank Account

Y1.2 In Y1.2 of the *conditions of contract*, in line 1 delete "three" and insert "six".

Y1.6 In clause Y1.6 of the *conditions of contract*, insert the following after the second sentence.

"The *Client* may propose that a Supplier is added to the Named Suppliers. The *Contractor* accepts the proposal if the addition of the Supplier to the Named Suppliers is practicable."

Y1.9 In clause Y1.9 of the *conditions of contract*, delete the final sentence and replace it with

"The *Service Manager* confirms its acceptance of the Authorisation no later than one day before the final date for payment and the *Contractor* submits it to the *project bank*. A reason for not accepting the Authorisation

² [Note to Highways England: In other recent contracts the SOCC has been amended in accordance with the commercial team's requirements. Highways England to confirm whether any such amendments are required here.]

is that it does not match the application for payment or it does not comply with the requirements of the contract.”

Clause Z10L	Subcontracting
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- Z10L.1 The *Contractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under the contract.
- Z10L.2 If the *Contractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Client*.
- Z10L.3 The *Client* may, having stated the reasons, instruct the *Contractor* to remove a Subcontractor. The *Contractor* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with the contract.
- Z10L.4 Not used.
- Z10L.5 Before
- appointing a proposed Subcontractor or
 - allowing a Subcontractor to appoint a proposed subsubcontractor
- the *Contractor* submits to the *Service Manager* for acceptance
- either
 - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed Subcontractor or subsubcontractor or
 - other means of proof 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 Subcontractor or subsubcontractor
 - details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed Subcontractor or subsubcontractor.
- Z10L.6 The *Contractor* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) until the *Service Manager* has accepted the submission. A reason for not accepting the submission is that

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

Z10L.7 If requested by the *Service Manager*, the *Contractor* provides further information to support, update or clarify a submission under clause Z10L.5.

Z10L.8 If, following the acceptance of a submission under clause Z10L.6, it is found that

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

the *Service Manager* may instruct the *Contractor* to

- replace the Subcontractor or
- require the Subcontractor to replace the subsubcontractor.

Clause Z18L Quality Management Points

Z18L.1 A failure by the *Contractor* to take the agreed actions to reduce the number of Quality Management Points in effect under the contract to 25 or less following the issue of a quality warning notice is treated as a substantial failure by the *Contractor* to comply with its obligations.

Clause Z27L Termination – PCRs 2015, Regulation 73

Z27L.1 The *Client* may terminate the *Contractor's* obligation to Provide the 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 *Contractor* at the *starting date*. This is treated as termination for a default by the *Contractor*.

Z27L.2 The *Client* may terminate the *Contractor's* obligation to Provide the Service if

- the contract has been subject to a substantial modification which would have 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.

- Z27L.3 The procedure and amount due on termination are the same as for
- R18 if the modification or infringement was due to a default by the *Contractor*,
 - R19 if the modification or infringement was due to a default by the *Client* and
 - R20 if the modification or infringement was due to any other reason.

Clause Z28L Termination and removal of service

- Z28L.1 The *Client* may terminate the *Contractor's* obligation to Provide the Service for a reason not stated in this contract by notifying the *Contractor*.
- Z28L.2 The following are treated as a substantial failure by the *Contractor* to comply with its obligations
- the *Contractor* substantially or repeatedly breaks a requirement of environmental legislation,
 - the *Contractor* persistently or materially fails to comply with the Quality Statement or to meet any of
 - the Performance Requirements or
 - the Performance Levels or
 - a key resource needed by the *Contractor* to Provide the Service is no longer available and the *Contractor* does not propose an alternative resource acceptable to the *Service Manager*.

Clause Z32L Project Bank Account

- Z32L.1 The *Client* may at any time notify the *Contractor* that payments under the contract will no longer be made using the Project Bank Account. This notice is a compensation event. Within one week of the *Client's* notice, the *Contractor* notifies the Named Suppliers that the Project Bank Account is no longer to be used and proposes an alternative method to

ensure that the Named Suppliers receive payments in accordance with their contracts.

Clause Z33L Joint ventures

- Z33L.1 Where two or more Consortium Members comprise the *Contractor*, clause 91.1 of the *conditions of contract* is amended by inserting after “the other Party” wherever it appears (three places) the words “(or, in the case of the *Contractor*, any Consortium Member)”.

Clause Z36L Construction Industry Scheme

- Z36L.1 In this clause (but not otherwise)
- the “Act” is the Finance Act 2004 and
 - the “Regulations” are the Income Tax (Construction Industry Scheme) Regulations 2005.
- Z36L.2 The contract falls within the scope of the Construction Industry Scheme provided for by Chapter 3, Part 3 of the Act.
- Z36L.3 The *Contractor* provides the information required by the Regulations to enable the *Client* to verify (in accordance with paragraph 6 of the Regulations) whether the *Contractor* 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.
- Z36L.4 If the *Contractor* is registered for payment under deduction or is neither registered nor exempt from registration
- the *Contractor* submits an application for payment which separately identifies the cost of labour and
 - the *Client* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

Clause Z59L Payment of the *Contractor's* share

- Z59L.1
[Note to compiler:
This is mandatory if] If, prior to end of the Service Period of the whole of the *service*, the Price for Service Provided to Date exceeds the total of the Prices, the *Service Manager* makes an assessment of the *Contractor's* share of the difference between the total of the Prices and the Price for Service Done to Date at

using main Option C. Optional if using main Option E only.] each assessment date. The total of the Prices includes the *Service Manager'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 *Contractor*.

Clause Z60L Recovery of sums due from the *Contractor*

Z60L.1 Where, under the contract or any other contract between the Parties, a sum of money is recoverable from or payable by the *Contractor*, 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 *Contractor* under the contract or any other contract with the *Client*.

Clause Z67L Corruption or loss of data

Z67L.1 If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Contractor's* default so as to be unusable, the *Contractor* immediately reports this to the *Service Manager* and

- the *Service Manager* may instruct the *Contractor* to restore the data in accordance with the *Service Manager's* requirements (and any cost incurred by the *Contractor* in so doing is Disallowed Cost) or
- the *Client* may itself restore the data (and the *Contractor* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

Clause Z69L Infrastructure Act 2015

Z69L.1 The *Contractor* Provides the Service in compliance with, and so as not to put the *Client* in breach of

- the Licence and
- any other directions and guidance issued by The Secretary of State to the *Client* under section 6 of the Infrastructure Act 2015 (and notified by the *Service Manager* to the *Contractor*).

Z69L.2 The *Service Manager* notifies the *Contractor* of any notice issued by the Office of Rail and Road to the *Client* under section 11(2)(a) of the Infrastructure Act 2015 that relates to the service. The *Contractor* complies with the terms of any such notice and indemnifies the *Client* against any associated fine imposed on the *Client* under section 11(2)(b) of that Act.

OPTIONAL Z CLAUSES (for lots 2 and 3 only)

Clause Z26L Indemnified Claims

- Z27L.1 The *Client* notifies the *Contractor* as soon as practicable of any notice or demand which it receives in respect of a matter for which the *Contractor* is liable under the contract (an Indemnified Claim).
- Z27L.2 The *Contractor* may elect to conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the *Client*. The *Client* co-operates with and gives reasonable assistance to the *Contractor* in defending the Indemnified Claim.
- Z27L.3 The *Contractor* keeps the *Client* fully and regularly informed and consults with the *Client* as appropriate in relation to the conduct of any Indemnified Claim.
- Z27L.4 Where the *Contractor* is diligently conducting the defence of an Indemnified Claim, the *Client* does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the *Contractor*.
- Z27L.5 The *Contractor* bears the costs which it incurs in defending an Indemnified Claim. The *Contractor* indemnifies the *Client* against any costs incurred by the *Client* arising out of the *Contractor's* defence of the Indemnified Claim.
- Z27L.6 The *Client* may, at any time prior to the settlement of an Indemnified Claim, give the *Contractor* notice that it is taking over the conduct of an Indemnified Claim. On receipt of the *Client's* notice the *Contractor*
- takes all the steps necessary to transfer the conduct of the Indemnified Claim to the *Client* and
 - co-operates with and gives reasonable assistance to the *Client* in defending the Indemnified Claim.
- Z27L.7 Where the reason for the *Client's* notice is not due to the fault of the *Contractor* in conducting the Indemnified Claim, the *Contractor* is released from its indemnity to the *Client* in respect of it.

Clause Z70L Sectional completion

- Z70L.1 In these *conditions of contract*, unless stated as the whole of the Task, each reference and clause relevant to
- the Task,
 - Task Order,
 - Task Order Completion Date,

-
- starting date for Task
 - delay damages and
 - *service period*

applies, as the case may be, to either the whole of the Task, Task Order or any Task Section of the Task.

Clause Z71L Network Rail or other rail operator's possessions

- Z71L.1 The *Contractor* pays the *Client* the relevant *Network Rail possession charge* for each additional possession required over and above the number of *Network Rail possessions* stated in the Contract Data. The number of *Network Rail possessions* is adjusted if additional possessions are required as a result of a compensation event.

Clause Z73L Innovation – Title to Equipment

- Z73L.1 At Completion or (if earlier) when an Innovation is removed from the Affected Property, the *Service Manager* may instruct the *Contractor* to transfer to the *Client* the title in any Equipment used in the development of the Innovation. The *Contractor* ensures that the legal and beneficial title in the relevant Equipment transfers from the *Contractor* or a subcontractor to the *Client* free of all liens, charges, options, encumbrances, rights, claims and other interests of any third party.

Annex COC 1: Template Schedule of Cost Components

This schedule is part of these *conditions of contract* when Option C or E is used. An amount is included

- only in one cost component and
- only if it is incurred in order to Provide the Service.

		In this schedule the <i>Contractor</i> means the <i>Contractor</i> and Associated Companies, but not its Subcontractors.
People	1	<p>The following components of</p> <ul style="list-style-type: none"> • the cost of people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Service Areas and • the cost of people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Service Areas but who are working in the Service Areas, proportionate to the time they spend working in the Service Areas.
	11	Wages, salaries and amounts paid by the <i>Contractor</i> for people paid according to the time worked on the contract.
	12	<p>Payments related to work on the contract and made to people for</p> <ul style="list-style-type: none"> (a) overtime (b) working in special circumstances (c) special allowances (d) absence due to sickness and holidays (e) statutory redundancy and notice severance on a pro rata basis for the period engaged in order to Provide the Service where redundancy arises because the person is no longer required to be employed to Provide the Service and that person cannot be deployed elsewhere. The amount of the statutory redundancy and notice severance will relate only to the length of service of that person in order to Provide the Service.
	13	<p>Payments made in relation to people in accordance with their employment contract for</p> <ul style="list-style-type: none"> (a) travel subsistence and lodging in accordance with the <i>Client's</i> travel and subsistence policy (b) relocation (c) medical examinations (d) passports and visas (e) travel insurance (f) items (a) to (e) for dependants (g) protective clothing (h) contributions, levies or taxes imposed by law

- (i) pensions and life assurance but excluding payments made in relation to any pensions deficits
 - (j) death benefit
 - (k) occupational accident benefits
 - (l) medical aid and health insurance
 - (m) a vehicle
 - (n) safety training specific to Providing the Service.
- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by the *Contractor* according to the time worked while they are within the Service Areas. Amounts paid by the *Contractor*.

Equipment	2 The following components of the cost of Equipment which is used within the Service Areas.
	<p>21 Payments for the hire or rent of Equipment not owned by</p> <ul style="list-style-type: none"> • the <i>Contractor</i>, • the <i>Contractor's</i> ultimate holding company or • a company with the same ultimate holding company <p>at the hire or rental rate multiplied by the time for which the Equipment is required.</p>
	<p>22 Payments for Equipment which is not listed in the Contract Data but is</p> <ul style="list-style-type: none"> • owned by the <i>Contractor</i>, • purchased by the <i>Contractor</i> under a hire purchase or lease agreement or • hired by the <i>Contractor</i> from the <i>Contractor's</i> ultimate holding company or from a company with the same ultimate holding company <p>at open market rates, multiplied by the time for which the Equipment is required.</p>
	<p>23 Payments for Equipment purchased for work included in the contract listed with a time- related on cost charge, in the Contract Data, of</p> <ul style="list-style-type: none"> • the change in value over the period for which the Equipment is required and • the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required. <p>The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.</p> <p>If the <i>Service Manager</i> agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.</p>

	24	Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required. If the <i>Service Manager</i> agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.
	25	Payments for the purchase price of Equipment which is consumed.
	26	Unless included in the hire or rental rates, payments for <ul style="list-style-type: none"> • transporting Equipment to and from the Service Areas other than for repair and maintenance, • erecting and dismantling Equipment and • constructing, fabricating or modifying Equipment as a result of a compensation event.
	27	Payments for purchase of materials used to construct or fabricate Equipment.
	28	Unless included in the hire rates, the cost of operatives is included in the cost of people.
Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Service Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Subcontractors	4	The following components of the cost of Subcontractors.
	41	Payments to Subcontractors for work which is subcontracted without taking into account any amounts paid to or retained from the Subcontractor by the <i>Contractor</i> , which would result in the <i>Client</i> paying or retaining the amount twice.
Charges	5	The following components of the cost of charges paid by the <i>Contractor</i> .
	51	Payments for provision and use in the Service Areas of <ul style="list-style-type: none"> • water, • gas, • electricity, • telephone and • internet.
	52	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>service</i> .
	53	Payments for

- (a) cancellation charges arising from a compensation event
- (b) buying or leasing land or buildings within the Service Areas
- (c) compensation for loss of crops or buildings
- (d) royalties
- (e) inspection certificates
- (f) charges for access to the Service Areas
- (g) facilities for visits to the Service Areas by Others
- (h) consumables and equipment provided by the *Contractor* for the *Service Manager's* offices.

Manufacture and fabrication	6	The following components of the cost of manufacture and fabrication of Plant and Materials which are manufactured or fabricated by the <i>Contractor</i> outside the Service Areas.
	61	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on manufacture and fabrication of Plant and Materials outside the Service Areas.
Shared services outside the Service Areas	7	The following component of the cost of people who are providing a <i>shared service</i> outside the Service Areas.
	71	Amounts calculated by multiplying each of the rates for people in the Contract Data by the total time appropriate to that rate spent on providing a <i>shared service</i> outside the Service Areas.
Insurance	8	<p>The following are deducted from cost</p> <ul style="list-style-type: none"> • the cost of events for which the contract requires the <i>Contractor</i> to insure and • other costs paid to the <i>Contractor</i> by insurers.