



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 Works Contracts only)

in relation to a *subcontract service* for

[insert contract name here and date]

CONTENTS AMENDMENT SHEET

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

Z CLAUSES (NEC4 Professional Service Short Contract modified for subcontract – for Works Contracts)

Z Clause Contents	
Number	Title
MANDATORY CLAUSES	
Z1	See Framework Contract Z Clauses
Z1K	Changes to Core clauses
Z2	See Framework Contract Z Clauses
Z3 – 4	Not used
Z5 – 6	See Framework Contract Z Clauses
Z7 - 9	Not used
Z10K	Subcontracting
Z11	Not used
Z12 – 13	See Framework Contract Z Clauses
Z14	Not used
Z15 - 18	See Framework Contract Z Clauses
Z18K	Quality Management Points
Z19	See Framework Contract Z Clauses
Z20 – 21	Not used
Z22	See Framework Contract Z Clauses
Z23	Not used
Z24 – 25	See Framework Contract Z Clauses
Z26	Not used
Z27	See Framework Contract Z Clauses
Z27K	Termination – PCRs, Regulation 73
Z28K	Termination and removal of <i>service</i>
Z29 – 32	Not used
Z33	See Framework Contract Z Clauses
Z33K	Joint ventures
Z34	See Framework Contract Z Clauses
Z35 - 59	Not used
Z60K	Recovery of sums due from the <i>Consultant</i>
Z61 – 65	Not used
Z66K	Limitation of Liability
Z67K	Corruption or loss of data
Z68K	Changes to Prices
Z69K	Infrastructure Act 2015
Z70 – 71	Not used
Z72	See Framework Contract Z Clauses
Z73	Not used

MANDATORY Z CLAUSES

Clause Z1K 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 contract*, 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.

21 Subsubcontracting and people

21.1 In clause 21.1 of the *conditions of contract* add new second sentence

"The subcontract applies as if the subsubcontractor's Staff (at any stage of remoteness from the *Client*) were the *Subconsultants*."

21.4 Insert the following new clause to the *conditions of contract*

21.4 "The *Subconsultant* ensures that each person named in the *key persons schedule* devotes a sufficient amount of time and effort to the provision of the *subcontract service*. The *Subconsultant* 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 *Subconsultant's* employment or
- the *Consultant* gives its prior agreement for the replacement."

21.5 Insert the following new sub clause 21.5 to the *conditions of contract*
21.5 "The *Subconsultant* bears the cost and any delay caused as a result of replacing a *key person*."

50 Assessing the amount due

50.3 Delete clause 50.3 of the *conditions of contract* 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*."

51 Payment

51.1 In clause 51.1 of the *conditions of contract*, delete "three weeks" and insert "14 days".

60 Compensation events

- 60.1(1) In clause 60.1(1) of the *conditions of contract*, delete and replace with
- (1) "The *Consultant* gives an instruction changing the Scope unless the change is
- a change to the Information Systems or the introduction of a new Information System,
 - to the method of or requirements for performance measurement,
 - stated elsewhere in the *conditions of contract* not to be a compensation event or
 - in order to make a Defect acceptable."
- 60.1(3) In 60.1 (3) of the *conditions of contract* is amended by adding the following words at the end (before full stop)
- " , unless the instruction relates to a notification from the *Subconsultant* that a conflict of interest may exist or arise".
- 81 Subconsultant's liability**
- In clause name add "*Client's* and" before "*Consultant*".
- 81.1 In clause 81.1 of the *conditions of contract*
- before "*Consultant's*" add "*Client's* or",
 - in first bullet point before "the *Consultant*" add "the *Client* or" and
 - add new bullet point
 - "Loss of or damage to the *Client's* or the *Consultant's* property, which arises from or in connection with the Subconsultant Providing the Subcontract Service."
- 82 Recovery of costs**
- 82.1 In clause 82.1 of the *conditions of contract* add before "the *Consultant*" add "the *Client* or".
- 82.2 In clause 82.2 of the *conditions of contract* add before "the *Consultant* is liable" add "the *Client's* or".
- 82.4 Add new clause 82.4 to the *conditions of contract*
- "For any one event, the liability of the *Subconsultant* to the *Consultant* for loss of or damage to the *Client's* or *Consultant's* property is limited to the amount stated in the Subcontract Data."
- 83 Insurance Cover**
- 83.1 Delete clause 83.1 of the *conditions of contract* and replace it with
- 83.1 The *Consultant* and the *Subconsultant* 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*.

84 Limitation of Liability

84.1 Delete clause 84.1 of the *conditions of contract* and replace it with

“The *Subconsultant*’s total liability to the *Consultant* and the *Client* for all matters arising under or in connection with the subcontract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the contract.”

90 Termination and reasons for termination

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

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

92 Payment on termination

92.3 In clause 92.3 of the *conditions of contract* delete “or if the *Client* terminates for Reason 8”.

Clause Z10K Subcontracting	
-----------------------------------	--

Z10K.1	The <i>Subconsultant</i> assesses the amount due to a subsubcontractor without taking into account the amount assessed under the subcontract.
--------	-----------------------------------------------------------------------------------------------------------------------------------------------

Z10K.2	If the <i>Subconsultant</i> 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 <i>Consultant</i> .
--------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Z10K.3	The <i>Consultant</i> may, having stated the reasons, instruct the <i>Subconsultant</i> to remove a subsubcontractor. The <i>Subconsultant</i> then arranges the removal of the subsubcontractor and the appointment of a replacement in accordance with the subcontract.
--------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Z10K.4	Before
--------	--------

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

the *Subconsultant* submits to the *Consultant* 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 Regulation 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.

Z10K.5 The *Subconsultant* does not appoint the proposed subsubcontractor (or allow the subsubcontractor to appoint the proposed subsubsubcontractor) until the *Consultant* 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 *Consultant* is not satisfied that the proposed subsubcontractor or subsubsubsubcontractor has put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur.

Z10K.6 If requested by the *Consultant*, the *Subconsultant* provides further information to support, update or clarify a submission under clause Z10K.5.

Z10K.7 If, following the acceptance of a submission under clause Z10K.6, 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 *Consultant* may instruct the *Subconsultant* to

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

Clause Z18K Quality Management Points

Z18K.1 A failure by the *Subconsultant* 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 *Subconsultant* to comply with its obligations.

Clause Z27K Termination – PCRs, Regulation 73

Z27K.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*.

Z27K.2 The *Consultant* may terminate the *Subconsultant's* obligation to Provide the Subcontract Service if

- this 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 Z28K Termination and removal of *subcontract service*

- Z28K.1 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
 - the Performance Levels 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*.
- Z28K.2 The *Consultant* may instruct the *Subconsultant* that
- part of the *subcontract service* is to be permanently removed from the subcontract or
 - for urgent reasons of health and safety, part of the *subcontract service* is to be temporarily removed from the contract.
- In either case the *Subconsultant* acknowledges that the *Consultant* may itself, or may appoint another supplier in place of the *Subconsultant* to provide services similar to the removed *subcontract service* (or part of it).
- Z28K.3 An instruction given under clause Z28K.2 is assessed as a compensation event, except that if the instruction is given for one of the Reasons 1 to 4 or 7, the assessment includes a deduction of the forecast of the additional cost to the *Consultant* of completing the removed *subcontract service*.
- Z28K.4 If the *Subconsultant's* obligation to Provide the Subcontract Service is terminated for any reason, the *Subconsultant* if instructed by the *Consultant*
- completes the performance of any part of the *subcontract service* started prior to the date of termination and
 - co-operates with the *Consultant* or any Incoming Contractor so as to ensure a smooth transfer of functions.
- Z28K.5 The *Subconsultant* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Consultant* appoints another contractor to complete the *subcontract service* or any part of them.

Clause Z33K Joint ventures

- Z33K.1 Where two or more Consortium Members comprise the *Subconsultant*, 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 *Subconsultant*, any Consortium Member)”.

Clause Z60K Recovery of sums due from the *Subconsultant*

- Z60K.1 Where, under the subcontract a sum of money is recoverable from or payable by the *Subconsultant*, 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 *Subconsultant* under the subcontract or any other contract with the *Consultant*.

Clause Z66K Limitation of Liability

- Z66K.1 The *Subconsultant's* liability to the *Consultant* for the *Consultant's* indirect or consequential loss is limited to the amount stated in the Subcontract Data.
- Z66K.2 For any one event, the liability of the *Subconsultant* to the *Consultant* for loss of or damage to the *Client's* or the *Consultant's* property is limited to the amount stated in the Subcontract Data.
- Z66K.3 Not Used.
- Z66K.4 The excluded matters are amounts payable by the *Subconsultant* as stated in the subcontract for
- loss of or damage to the *Client's* or *Consultant's* property,
 - *delay damages*,
 - fraud or fraudulent misrepresentation,
 - events for which the subcontract requires the *Subconsultant* to insure (but only up to the required level for each type of insurance stated in the Scope),
 - infringement of an intellectual property right,
 - 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 *Subconsultant's* willful misconduct illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

Clause Z67K Corruption or loss of data

- Z67K.1 If any data of the *Client* or the *Consultant* is corrupted, lost, stolen or sufficiently degraded as a result of the *Subconsultant's* default so as to be unusable, the *Subconsultant* immediately reports this to the *Consultant* and
- the *Consultant* may instruct the *Subconsultant* to restore the data in accordance with the *Client's* or the *Consultant's* requirements (and any cost incurred by the *Subconsultant* in so doing is the *Subconsultant's* cost not charged to the *Consultant*) or
 - the *Consultant* may itself restore the data (and the *Subconsultant* pays to the *Consultant* any reasonable expenses which the *Consultant* incurs in so doing).

Clause Z68K Changes to Prices

- Z68K.1 The Parties may at any time agree a reduction to the Prices.
- Z68K.2 The reduced Prices apply to any service performed after the reduction is agreed.
- Z68K.3 If the *Subconsultant* does not agree a reduction requested by the *Consultant*, the *Consultant* may terminate the *Subconsultant's* obligation to Provide the Subcontract Service by notifying the *Subconsultant*.

Clause Z69K Infrastructure Act 2015

- Z69K.1 The *Subconsultant* Provides the Subcontract 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 *Consultant* to the *Subconsultant*).

- Z69K.2 The *Consultant* notifies the *Subconsultant* 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 *Subconsultant* 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.