



**Highways England Company Limited**

## **Archaeology Framework**

### **NEC4 Professional Service Short Contract**

(June 2017 with amendments January 2019)

### **Z Clauses**

(To be used with Works Contracts only)

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 Z1J Changes to Core Clauses

#### 11 Identified and defined terms

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

- (12) Client's Premises is any premise provided by the *Client* and used by the *Consultant* to Provide the Service.
- (13) Consultant Overhead is the amount calculated by applying the *Consultant's office overhead percentage* to the sum of time expended on work which has been completed multiplied by the appropriate People Rates.
- (14) Consultant's Premises is any premise (that is not a domestic property) leased, rented or owned by the *Consultant* or a Subcontractor and used to Provide the Service.

#### 21 Subcontracting and people

21.1 In clause 21.1 of the *conditions of contract* add new second sentence  
"The contract applies as if the subcontractor's Staff (at any stage of remoteness from the *Client*) were the *Consultants*."

21.4 Insert the following new clause

"21.4 The *Consultant* 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 *Consultant* 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 *Consultant's* employment; or
- the *Client* gives its prior written agreement for the replacement.

21.5 Add new clause 21.5

"21.5 The *Consultant* 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 *Consultant* 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 *Consultant* has completed,

- where a quantity is stated for an item in the Price List, an amount calculated by multiplying the quantity which the *Consultant* has completed by the rate,
- the amount of the expenses stated in the Price List properly spent by the *Consultant*,
- 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 Consultant's Premises, the sum of time expended on work which has been completed multiplied by the appropriate People Rates and Consultant Overhead plus the Fee,
- for work carried out on a time charge basis in the Client's Premises or a domestic property, the time expended on work which has been completed,
- plus other amounts to be paid to the *Consultant*,
- less amounts to be paid by or retained from the *Consultant*."

## 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) Clause 60.1(1) of the *conditions of contract* is amended as follows

"The *Client* 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) Clause 60.1(3) of the *conditions of contract* 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”.

## 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*.

#### **84 Limitation of Liability**

- 84.1 Delete clause 84.1 of the *conditions of contract* and replace it with  
“The *Consultant*’s total liability to the *Client* for all matters arising under or in connection with the contract, 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 *Consultant*, clause 90.1 of the *conditions of contract* is amended by inserting after “the other Party” the words “(or, in the case of the *Consultant*, any Consortium Member)”.
- 90.2 Where two or more Consortium Members comprise the *Consultant*, clause 90.2 of the *conditions of contract* is amended by inserting after “the other Party” the words “(or, in the case of the *Consultant*, 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”.

<b>Clause Z10J</b>	<b>Subcontracting</b>
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- Z10J.1 The *Consultant* assesses the amount due to a Subcontractor without taking into account the amount assessed under the contract.
- Z10J.2 If the *Consultant* 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*.
- Z10J.3 The *Client* may, having stated the reasons, instruct the *Consultant* to remove a Subcontractor. The *Consultant* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with the contract.
- Z10J.4 Before
- appointing a proposed Subcontractor or

- allowing a Subcontractor to appoint a proposed subsubcontractor

the *Consultant* submits to the *Client* 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 (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 Subcontractor or subsubcontractor and
- 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.

Z10J.5 The *Consultant* does not appoint the proposed Subcontractor (or allow the Subcontractor to appoint the proposed subsubcontractor) 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 Subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or
- the *Client* 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.

Z10J.6 If requested by the *Client*, the *Consultant* provides further information to support, update or clarify a submission under clause Z10J.4.

Z10J.7 If, following the acceptance of a submission under clause Z10J.5, 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 *Client* may instruct the *Consultant* to

- replace the Subcontractor or

- require the Subcontractor to replace the subsubcontractor.

#### **Clause Z18J Quality Management Points**

- Z18J.1 A failure by the *Consultant* 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 *Consultant* to comply with its obligations.

#### **Clause Z27J Termination – PCRs, Regulation 73**

- Z27J.1 The *Client* may terminate the *Consultant'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 *Consultant* at the *starting date*. This is treated as termination for a default by the *Consultant*.
- Z27J.2 The *Client* may terminate the *Consultant's* obligation to Provide the Service if
- this contract 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 Z28J Termination and removal of service**

- Z28J.1 The following are treated as a substantial failure by the *Consultant* to comply with his obligations
- the *Consultant* substantially or repeatedly breaks a requirement of environmental legislation,
  - the *Consultant* 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 *Consultant* to Provide the Service is no longer available and the *Consultant* does not propose an alternative resource acceptable to the *Client*.

Z28J.2 The *Client* may instruct the *Consultant* that

- part of the *service* is to be permanently removed from the contract or
- for urgent reasons of health and safety, part of the *service* is to be temporarily removed from the contract.

In either case the *Consultant* acknowledges that the *Client* may itself, or may appoint another supplier in place of the *Consultant* to provide services similar to the removed *service* (or part of it).

Z28J.3 An instruction given under clause Z28J.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 *Client* of completing the removed *service*.

Z28J.4 If the *Consultant's* obligation to Provide the Service is terminated for any reason, the *Consultant* if instructed by the *Client*

- completes the performance of any part of the *service* started prior to the date of termination and
- co-operates with the *Client* or any Incoming Contractor so as to ensure a smooth transfer of functions.

Z28J.5 The *Consultant* agrees that it is not entitled to any loss of profit or any other form of compensation including if the *Client* appoints another contractor to complete the *service* or any part of them.

<b>Clause Z32J</b>	<b>Project Bank Account</b>
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Z32J.1 If so stated in the Contract Data, Option Y(UK)1 of the NEC4 Professional Services Contract (June 2017 with amendments January 2019) applies to the contract, with appropriate changes and as amended below.

Z32J.2 In clause Y1.2, in line 1 delete “three” and insert “six”.

Z32J.3 Clause Y1.6 is amended by inserting the following after the second sentence

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

Z32J.4 In clause Y1.9, delete the final sentence and replace it with

“The *Client* confirms its acceptance of the Authorisation no later than one day before the final date for payment and the *Consultant* submits it to the project bank. A reason for not accepting the Authorisation is that it does not match the application for payment or it does not comply with the requirements of the contract.”

- Z32J.5 The *Client* may at any time notify the *Consultant* 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 *Consultant* 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 Z33J Joint Ventures**

- Z33J.1 Where two or more Consortium Members comprise the *Consultant*, 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 *Consultant*, any Consortium Member)”.

#### **Clause Z60J Recovery of sums due from the *Consultant***

- Z60J.1 Where, under the contract or any other contract between the Parties, a 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 the contract or any other contract with the *Client*.

#### **Clause Z66J Limitation of Liability**

- Z66J.1 The *Consultant's* liability to the *Client* for the *Client's* indirect or consequential loss is limited to the amount stated in the Contract Data.
- Z66J.2 For any one event, the liability of the *Consultant* to the *Client* for loss of or damage to the *Client's* property within the Affected Property is limited to the amount stated in the Contract Data.
- Z66J.3 Not Used
- Z66J.4 The excluded matters are amounts payable by the *Consultant* as stated in the contract for
- loss of or damage to the *Client's* property,
  - delay damages,

- fraud or fraudulent misrepresentation,
- events for which the contract requires the *Consultant* 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 *Consultant's* wilful misconduct, illegal acts, deliberate default, deliberate abandonment or reckless misconduct.

#### **Clause Z67J    Corruption or loss of data**

Z67J.1    If any data of the *Client* is corrupted, lost, stolen or sufficiently degraded as a result of the *Consultant's* default so as to be unusable, the *Consultant* immediately reports this to the *Client* and

- the *Client* may instruct the *Consultant* to restore the data in accordance with the *Client's* requirements (and any cost incurred by the *Consultant* in so doing is at the *Consultant's* cost not charged to the *Client*) or
- the *Client* may itself restore the data (and the *Consultant* pays to the *Client* any reasonable expenses which the *Client* incurs in so doing).

#### **Clause Z68J    Changes to Prices**

Z68J.1    The Parties may at any time agree a reduction to the Prices.

Z68J.2    The reduced Prices apply to any service performed after the reduction is agreed.

Z68J.3    If the *Consultant* does not agree a reduction requested by the *Client*, the *Client* may terminate the *Consultant's* obligation to Provide the Service by notifying the *Consultant*.

#### **Clause Z69J    Infrastructure Act 2015**

- Z69J.1 The *Consultant* 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 *Client* to the *Consultant*).
- Z69J.2 The *Client* notifies the *Consultant* 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 *Consultant* 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.