

NEC4

Term Maintenance Contract

Annex 01 – Claims Handling Protocol DN581359

Commercial and Procurement Team

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Annex 01 - Claims Handling Protocol

The requirements of this section are without prejudice to the obligations contained within the Contract, including, and not limited to those set out in clauses 80 to 83 (inclusive) which effectively require the *Contractor* to indemnify the *Client* against inter alia claims and losses incurred because of something other than: -

- the unavoidable result of the service or of Providing the *Service*,
- negligence/breach of statutory duty by the *Client* or
- a fault of the *Client*/their design.

Key staff dependent on severity of claim and publicity:

- Service Manager - Insurance
- Service Manager – Risk Management (Highways)
- Service Manager – Area Highways
- Service Manager – Highways Contract Management
- Strategic Manager – Highways
- Director of Economic and Community Infrastructure Operations

Introduction

The *Client* staff listed above have the final decision regarding cases and their direction in where it is perceived the *Contractor* is at fault. No other staff are authorised to be involved unless they are providing guidance based upon their knowledge of the scheme or works in question and are asked to assist and provide relevant documentation.

The following narrative is designed to reflect the emerging risks from Third Party partnerships and safeguard the position of the *Client*.

First notification of claim

In most situations, a claim can be received via 3 routes, via the claimant/their representatives, directly to one of the following: -

- Insurance Section,
- The Area Highways Office,
- The contractor directly.

Each claim received by the Insurance Team will be investigated using the agreed protocol for Highways claims. In such instances where it appears the *Contractor* is liable in claims received directly by Insurance or Highways or throughout the

investigation process, the same must be checked with the Service Manager – Risk Management (Highways) to confirm if this is correct.

In the event the *Contractor* is identified as a potential liable party by the *Client*, via the non-exhaustive indemnity triggers list below, a letter of claim that requires their Insurers to be notified as well as an Early Warning Notice will be served upon the *Contractor*.

Claim scenarios

Any claims in which *Client* believes the *Contractor* to be liable fully or partially, will be as defined on the indemnity trigger list (non-exhaustive) defined as *Contractor* failure, and allow the following options for the Authority:

- Full redirection of the claim to the *Contractor*
- The *Contractor* refuses to grant an indemnity the *Client* seeks an application to include the *Contractor* in proceedings
- Possible split liability between the *Client* and *Contractor* – Client will determine who administers the claim and seeks recovery.
- The *Client* handles claim but seeks full recovery from *Contractor* without issue

Contractor Obligations

The *Contractor* must confirm an indemnity for all cases where they are at fault, no discrepancy in the event a claim may have personal Injury or not unless valid reason for them to not grant an indemnity.

Insurer details and contact details must be provided immediately upon receipt of a claim.

Any claim settlements by the *Contractor*, the terms of which must be disclosed to the *Client* in their course of duties for the *Client*.

The *Contractor* deals with all linked claims to a particular failure which they have settled a property damage claim, inclusive of any linked Personal Injury claims.

Records of defects repaired, Jobs and schemes managed by the *Contractor* need to be retained in accordance with the *Client's* file retention procedures and the Limitation Act 1980.

A monthly bordereau detailing all claims they are aware of, handling and update the *Client* accordingly. Larger value cases will require ad hoc updates as and when they arise.

Unfettered access and assistance regarding enquiries, statements, documentation, and data which the *Client* may rely upon to assist their position.

Access to and assistance from *Contractors* staff and its sub-contractors for the provision of appropriate witness statements and attendance at court.

A full indemnity to the *Client* for any of their sub-contractor failures that create or cause an incident.

The *Contractor* must notify the Insurance Officer and Contracts team of all claims they receive directly and are dealing with during the Contract with the *Client*.

Even though the *Client* is not an involved party it must be aware of any risks or shared claims that may arise to reduce the risk of fraudulent claims/overpayment.

The *Client's* Obligations

The *Client* is obliged to provide a clear and transparent approach to claims in which the *Contractor* is perceived to be liable.

Notify the *Contractor* at the earliest opportunity they are in scope.

Update the *Contractor* regarding cases with a shared interest in the event and maintain an open dialogue regarding ongoing claims.

Joint Obligations

In the interest of a collaborative approach and to ensure there are no breaches of either of the interested parties' notification requirements under their Insurance, a tracking spreadsheet/database of all claims will be maintained. This is for claims for which the Authority considers the *Contractor* to hold a liability, and all claims undertaken by the *Contractor* in the course of their duties for the authority is required consisting of relevant claims data; to be defined in accordance with relevant Insurance Notification criteria. This will also negate fraud risk from spurious claimants approaching both *Contractor* and *Client* for outlay with neither being aware of any settlement. The collected data will be agreed but the records held will follow the Data Protection Act 1998 DPA, and both parties adhere to the DPA clause inserted within the Contract.

Regular attendance at audit events and insurance/risk meetings.

Claims Handling

- Claim received by the *Client*.
- Claim referred to nominated staff above for consideration of potential *Contractor* fault: -
 - If confirmed as the *Client* to hold potential liability the normal *Client* claims process shall be maintained.
 - If *Contractor* identified as a relevant defendant to claim
 - Early Warning Notice along with letter of claim sent by *Client* with key staff copied in above.

- *Contractor* acknowledges receipt within 3 working days of letter.
- *Contractor* confirms in writing within 10 working days if accepted and deal with claim. Alternatively valid reasons for dispute are provided.
- In the event of a contest in liability all relevant documents as per both parties' disclosure requirements are provided and an early conference to resolve issue is undertaken. If possible, this must be undertaken pre-Action. Any associated costs will be recoverable from the defaulting party.
- The *Client* reserves its position to include *Contractor* in part 20 proceedings if it feels that an indemnity is still owed or if the same aids the *Client's* defence.

Part 20/Contribution Proceedings

In the event a clear dispute regarding claim ownership arises, which leads to litigation or a refusal to refund any outlay incurred by the *Client*, the route of proceedings above is reserved by the *Client* and will be included in any notification to the *Contractor* on all cases that are redirected.

Timeframes following notification

Once a notification of claim is sent, the *Contractor* must respond within the timeframes set out in the letter of claim. A confirmation of receipt must be returned no later than 3 working days whilst investigations commence.

An Early Warning Notice is also forwarded by the *Client*. The claim does not preclude any additional application the *Client* may pursue for breach of contract.

Correspondence between both the *Client* and the *Contractor* must be actioned within 3 working days of receipt of the initial notification.

Once indemnity is confirmed, the *Contractor* confirms in writing to the claimant or their representatives and the *Client* of this within 1 working day of confirmation, this includes all claims that may arise from this incident.

Timeframes for contested claims

Letter of claim sent to contractor and the *Client* to confirm Insurer involvement.

Acknowledged within 3 working days

Investigations and response due within 10 working days

If a contested issue by *Contractor*, where appropriate, a site meeting must be called within 2 working days of the notice, with parties from the list above present.

Recovery Events

In the event the *Client* is forced to handle a claim it considers the *Contractor* liable but ultimately settles and the *Contractor* subsequently admits liability, and where invitations for the *Contractor* to take on the matter have been declined. Where their liability is later confirmed, there will be no contest as to the amount claimed in recovery. This may be via invoice, a granting of indemnity post action and/or set off as defined within the Contract.

This amount is not limited to the compensation events defined as penalty payments.

Contractor Limitation

The Limitation Act 1980 applies to this Contract.

Approaches will be made for an indemnity on all cases regarding a minor in which Limitation could potentially be 21 years, this is also not limited to instances of nuisance that arise from an act or omission on the part of the *Contractor*, continuing after the cessation of the relevant contract in force.

Demobilisation Requirements

Dialogue will be maintained for ongoing cases after cessation of contract.

Tracking spreadsheet/database maintained until cessation of *Contractor* liability period expires.

Types of Claims

Contractor failure including but not limited to the scenarios below: -

- Inadequate repair – Defect not repaired, incorrect materials, incorrect defect repaired.
- Failed repairs – whilst there is no contractual guarantee period for safety defect repairs, good industry practice still applies. A failed repair due to poor materials, poor workmanship etc. could be challenged.
- Failure to repair within defined response time – The *Client's* repair response for safety defects is defined as 1 ½ hours, 24 hours, 7 calendar days and 28 calendar days. The response time to repair a defect is risk assessed by the *Client* in accordance with the Highway Safety Inspection Manual.
- Failure to maintain temporary repairs – the *Contractor* can undertake a temporary repair ("make safe") for CAT1 defects (1 ½ hour and 24hr). All liability for the temporary repair up to permanent repair is *Contractor's* responsibility.

It is recommended that the *Contractor* maintains records of any make safe arrangements.

- Failure to provide adequate records for sites that have been made safe by the *Client*, which the *Contractor* has been instructed to check and maintain.
- Failure to update and maintain electronic records relating to highway maintenance activities.
- Task Order failure - works not completed or maintained in accordance with the *Client's* Task Orders.
- Subcontractor failure.