

## Model Contract Documents

## Frequently Asked Questions

Note: This FAQ has been produced based upon the following National Highways Model Contract Documents

- ECC Contract Data – Issue 7
  - ECC Scope – Issue 7
- PSC Contract Data – Issue 6
  - PSC Scope – Issue 7

## Document history

Revision	Purpose description	Originated	Checked	Authorised	Date
P01	First Version	Mark Sheffield / Craig Turp	Craig Turp	Adam Parbutt	18/03/24

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# 1. Engineering and Construction Contract (ECC) – Contract Data

## 1.1. Clause X18.5

**Clause:** X18 Limitation of Liability: Delete the bullet points and insert in its place

“The excluded matters are amounts payable by the *Contractor*, or for which the *Contractor* is liable to the *Client*, as stated in the contract or in law for...loss or damage due to pollution.

**Question:** Can it be assumed that the loss due to pollution is only due to pollution caused by the Contractors actions?

**Answer:** This clause excludes liability for loss or damage due to pollution to the value stated in the contract for pollution insurance required to be provided by the *Contractor*. The specific pollution insurance requirements will be included in the contract specific Scope and could include actions not directly caused by the *Contractor*, for example caused by sub-contractors or suppliers.

## 1.2. Clause Z8.5

**Clause:** proposing a subcontractor

**Question:** Is there a limit to the size of subcontract this applies to. It may not be of value for subcontracts of low value.

**Answer:** This clause would apply to all subcontracts regardless of size/value.

## 1.3. Clause Z13

**Clause:** Z13 Intellectual Property Rights (IPR)

**Question:** All IPR transferred to the client may reduce the innovation developed by the *Contractor* IPR can be expensive to develop at times and the *Contractor* may wish to hold.

**Answer:** IPR requirements included in the *conditions of contract* are drafted based on Intellectual Property Rights Guidance Note (June 2023) The Scope IPR requirements may be vary depending on the work being procured and are reviewed by National Highways to ensure the most appropriate requirements are included for each contract.

## 1.4. Clause Z51.3

**Clause:** Z51 Changes to Prices

**Question:** Does this mean that at any point the *Client* can ask for a reduction in price and if not given may terminate. This doesn't sound commercially reasonable.

**Answer:** This clause is included to accommodate significant market fluctuations in materials costs, it is not used to renegotiate terms for budgetary reasons.

## 2. Engineering and Construction Contract (ECC) – Scope

### 2.1. Paragraph S214.3

**Paragraph:** S214 Discrimination, bullying, harassment and Modern Slavery:

The *Contractor* notifies the *Project Manager* as soon as it becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with the contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- attends (and permits a representative from the *Client* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- co-operates fully and promptly with the investigatory body, court or tribunal.

**Question:** This reads as though this only applies to interactions between *Contractor* and *Client*. I would have thought it implicit that the *Contractor* conforms in all cases.

**Answer:** The requirements are universal and apply when working on the *Client's* property or alongside the *Client's* staff (at any location).

### 2.2. Paragraph S214.4

**Paragraph:** S214 Discrimination, bullying, harassment and Modern Slavery:

The *Contractor* notifies the *Project Manager* as soon as it becomes aware of any investigation or proceedings brought against the *Contractor* under the Discrimination Acts in connection with the contract and

- provides any information requested by the investigating body, court or tribunal in the timescale allotted,
- attends (and permits a representative from the *Client* to attend) any associated meetings,
- promptly allows access to any relevant documents and information and
- co-operates fully and promptly with the investigatory body, court or tribunal.

**Question:** This refers to in connection with the contract. I would have thought it would be 'at all'

**Answer:** The Contractor notify National Highways of any discrimination investigation or proceedings under the Discrimination Act in connection with the contract as soon as they become aware.

### 2.3. Paragraph S240A.2.8

**Paragraph:** S240 Communications:

The *Contractor*

- [attends a [monthly] communications management meeting, set up by the *Client*, to discuss communications best practise, all known existing or potential risks and any other communications activities or issues relating to the *works* and
- provides a basic fact sheet and route map to be available for issue to the media as required.

**Question:** Is there a timeframe for the production of the fact sheet?

**Answer:** This will be dependant on the media request and agreed with the *Project Manager*.

## 2.4. Paragraph S277.3

**Paragraph:** S277 Scheme recovery services:

The *Contractor*

- complies with “National Highway Sector Scheme (NHSS) 17B certification”,
- complies with the requirements of “General Guidance 128 (GG128) - Requirements for reporting incidents, events and undesirable circumstances: health, safety, wellbeing, structural and environmental” as amended or replaced and
- completes a police check of all Staff before they are involved in Providing the Works. The *Contractor* uses the “Disclosure and Barring Service (DBS)” (see link in Annex 02) check or, when agreed with the *Client*, a non-police personnel vetting (NPPV).

**Question:** Police check and DBS called for. Is this correct as all staff have had security clearance

**Answer:** A DBS check for all staff working on the contract, the security checks (S 220.2.1) apply only to staff whose duties include those listed in S 220.2.1. i.e. not all staff would require this vetting.

## 2.5. Paragraph S505.5

**Paragraph:** S505 Programme Requirements:

The *Contractor* agrees the attendance at all meetings with the *Project Manager*. The *Contractor* does not attend meetings without *Client* representation, unless agreed with the *Project Manager*. This applies to meetings with both internal and external stakeholders. The *Contractor* establishes and documents the terms of reference for each meeting.

**Question:** Does this also include for *Contractor* internal meetings or is it just programme related?

If not just programme related this looks over the top.

**Answer:** Internal meetings refer to meetings with other internal departments of National Highways (such as Operations). It is not restricted to just programme meetings.

## 2.6. Paragraph S620.5

**Paragraph:** S620 Audit and Nonconformities:

Additional audits may be carried out when the number of Quality Management Points in effect exceeds the threshold level. The *Project Manager* decides the location, frequency and extent of additional audits having regard to the root causes for the accrual of Quality Management Points in effect.

**Question:** States additional audits if the quality threshold is reached, however I see nowhere stated the number or frequency of 'standard' audits

**Answer:** The *Contractor* is responsible for carrying out a programme of audits in accordance with ISO 9001. This requires audits to be undertaken annually or when new processes are introduced along with other requirements.

## 2.7. Paragraph S620.13

**Paragraph:** S620 Audit and Nonconformities:

Additional audits may be carried out when the number of Quality Management Points in effect exceeds the threshold level. The *Project Manager* decides the location, frequency and extent of additional audits having regard to the root causes for the accrual of Quality Management Points in effect.

**Question:** Makes note of 'defective' part of the works when I believe there may be nonconformances that are not determined as a contractual defect?

**Answer:** This is not a defined term in the contract. The definition of a non-conformity is included in Annex 01.

## 2.8. Paragraph S626.1

**Paragraph:** S626 Standards and procedures:

Except where otherwise directed, all materials, workmanship, designs and assessments are to comply with the *Client's* standards and procedures current at the Contract Date or, for *Contractor* designed elements, the time the relevant design certificate is signed. The current standards and procedures are identified in section S 2700 (*Client's* work specification).

**Question:** The issue with design certificate date in my experience can cause issues if the standards change once the design is significantly completed. Contract Date in my experience is far simpler to manage.

**Answer:** The applicable standards are stated in S2700 to be those current at the Contract Date and any change to this would require a Compensation Event to change the Works Information.

## 2.9. Paragraph S1117.1

**Paragraph:** S1117 Health and Safety Charity-based Incentive Schemes:

The *Contractor* adopts "charity-based incentive schemes" covering local and national charities if requested to do so by the *Client*.

**Question:** Adopting 'charity based incentive schemes....if requested to do so by the *Client*.' Could this be too open that the *Contractor* cannot allow for?

**Answer:** Requests of the *Contractor* would be considered a charitable donation of time and/or expertise and are not considered to be a priced element of the works.

## 3. Professional Service Contract (PSC) – Contract Data

### 3.1. Clause 5

**Clause:** 5. Payment

**Question:** What is the scope for other expenses incurred throughout the project i.e. small purchases etc.

**Answer:** Expenses incurred to deliver the service are deemed to be included in the *Consultants* fee if not identified in Contract Data paragraph 5. Work which is not covered by the requirements of the Scope will be addressed through the compensation event process including any associated expenses.

### 3.2. Clause Z100

**Clause:** Z100 Indexation

**Question:** Do we have any definitions as to what is approved experience wise for the National Highways' role types etc.

**Answer:** Job descriptions are provided for specific contracts.

### 3.3. Clause Z13.1

**Clause:** Z13 Intellectual Property Rights (IPRs):

The *Client* owns (or will own) all IPRs in material prepared in connection with the contract, except as stated otherwise in the Scope. To the extent that these IPRs do not automatically belong to the *Client*, the *Consultant* enters into such documents and does such acts as the *Client* requests to transfer the IPRs to the *Client* and procures that its subcontractors (at any stage of remoteness from the *Client*) do the same. The *Consultant* provides to the *Client*, the documents which transfer these IPRs to the *Client*.

**Question:** Is the *Client* open to alternate clauses for IPR created under the contract.

The clause as it stands may hold back development of innovation.

**Answer:** The clause is required to ensure that National Highways can access all material prepared in connection with the contract. The contract IPR requirements are reviewed with each contract to ensure they are appropriate for the works/services being procured and the Scope will be amended by National Highways if required.



## 4. Professional Service Contract (PSC) – Scope

### 4.1. Clause S245.1

**Clause:** S245 Condition survey:

The *Consultant* carries out a risk assessment of the effect the service may have on the structural integrity of adjacent roads, railways, buildings, structures and fields. The *Consultant's* risk assessment includes

- details of any proposed survey works to inform design development, which has the potential to affect any Others assets, land and access roads,
- details of trigger levels and
- proposed actions when a trigger is breached.

**Question:** It is very difficult to assess potential problems without specific site information or understanding of potential construction methodologies.

**Answer:** This information can only be published when the contract is prepared for tender.

### 4.2. Clause S506.5

**Clause:** S506.5 Employment and Skills Plan (ESP)

**Question:** Apprenticeships, can these be linked with the consultants own timelines for annual recruitment purposes.

It may not be practical to employ apprentices in contract set timelines.

**Answer:** Linked to the start date for the contract but may subject to negotiation with National Highways on a case-by-case basis.

### 4.3. Clause S506.9

**Clause:** S506.9 Roads Academy

**Question:** What are the time commitments for attendance at the 'Roads Academy' for the different levels

**Answer:** the roads academy is a self-led training and development programme and as such time commitments are not stated

### 4.4. Clause S511.6.1

**Clause:** S511.6 Publicity and public relations:

The *Consultant* informs the *Service Manager* as soon as reasonably practical of any community issues and any public meetings being held in relation to the service.

**Question:** Assume the responsibility to report is only when should reasonably be aware.

**Answer:** This assumption is correct

## 4.5. Clause S517.8

**Clause:** S517 Environmental and Sustainability requirements:

The *Consultant* assesses carbon emissions generated in the delivery of the service during the period, as agreed with the *Service Manager*, using the *Client's* "Carbon Emissions Calculation Tool and guidance ("Carbon Tool")" (see link in Annex 02) and divides the total carbon emissions by the contract spend in the period, to calculate the tonnes of carbon/£m spend.

**Question:** Carbon emissions are tricky to accurately calculate for consultant services.

Understand the idea but would find it difficult to ascertain.

**Answer:** The National Highways Carbon Tool requires reporting based on predefined criteria. S517.8 requires reporting based on the delivery of the service and not on the outputs as such the Carbon Tool reporting system is used to record *Consultants* activities such as travel and energy consumption.

## 4.6. Clause S545.17.1

**Clause:** S545.17 Health and Safety Charity-based Incentive Schemes:

The *Consultant* adopts charity-based incentive schemes covering local and national charities if requested to do so by the *Client*.

**Question:** What does this mean in effect to the *Consultant*?

**Answer:** Requests of the *Consultant* would be considered a charitable donation of time and/or expertise and are not considered to be a priced element of the works.

## 4.7. Clause S1310.5

**Clause:** S1310 Other rights to be obtained by the *Consultant*:

All Intellectual Property Rights in

- Client Background IPR and
- Client Software

are and remain the property of the *Client* or the Crown, and the *Consultant* does not acquire any right, title or interest therein or thereto.

**Question:** Passing IPR of third-party software would be difficult and may lead to the 'non-use' of optimal software in the market if could not be given.

**Answer:** The clause is required to ensure that National Highways can access all material prepared in connection with the contract. The contract IPR requirements are reviewed with each contract to ensure they are appropriate for the works/services being procured.

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