

Area 9 Asset Support Contract

Service Information

Annex 23 Third Party Claims

SERVICE INFORMATION FOR ASC
ANNEX 23
CONTENTS AMENDMENT SHEET

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23 THIRD PARTY CLAIMS

23.1 Definitions

- (1) Red Claims are claims by third parties against the *Employer* arising out of the condition of the Area Network or the performance of the Services.
- (2) Green Claims are claims by the *Employer* against third parties for damage to Crown property including the Area Network.
- (3) Red Claims Branch is Red Claims, The Cube, 199 Wharfside Street, Birmingham, B1 1RN
- (4) Green Claims Branch is Green Claims, The Cube, 199 Wharfside Street, Birmingham, B1 1RN

23.2 Red Claims

23.2.1 Where a Red Claim is received by the *Provider* (including any formal or informal notification of the commencement of legal proceedings), the *Provider* within 14 days informs the *Service Manager* of the same and sends the following to Red Claims Branch (with a copy to the *Service Manager*):

- (1) Copies of the particulars of the claim including any original claim correspondence with its original envelopes and packaging;
- (2) A completed Form TR137/HA2;
- (3) A copy of the police or Traffic Officer's accident report if available;
- (4) A report on relevant observations made at the site on the cause of the claim (for example dimensions, and a diagram or preferably a photograph, of the defect), including a view as to how the defect has been caused, whether it could have formed between inspections and an opinion as to whether the defect represents a hazard to the highway;
- (5) Particulars of the most recent inspections carried out prior to the incident giving rise to the claim, and
- (6) other such information as Red Claims Branch may request.

23.2.2 Where a Red Claim is received by the *Employer*, within 14 days of request the *Provider* submits to Red Claims Branch (a copy is also sent to the *Service Manager*) the information referred to in paragraphs 23.2.1 (2) to (6) in relation to the incident.

23.2.3 The *Provider* retains records of all of the information sent to Red Claims Branch together with correspondence with the public, records of work, maintenance carried out and any discussions of maintenance problems with the *Employer* and/or the police. Such records are to be held for a period of not less than six years from the date of issue. Where appropriate the

Provider passes the records to the Incoming *Provider* in a readily accessible format, including the relevant software licenses as appropriate.

23.2.4 Where the Red Claim is an Indemnified Claim the provisions of clause 83 of the Conditions of Contract apply.

23.2.5 Where the Red Claim is not an Indemnified Claim the following provisions apply:

- (1) Within 14 days of request the *Provider* submits to Red Claims Branch (a copy is also sent to the *Service Manager*) any of the information required above which it has not previously provided, set out in accordance with proformas to be obtained from Red Claims Branch.
- (2) The *Provider* does not acknowledge receipt of the claim nor enter into any correspondence with the claimant.
- (3) The *Provider* assists the *Employer* with any legal action or proceedings in respect of the claim as requested by the *Employer*.
- (4) The *Provider* assists the *Employer* where requested to take such steps as are required by the Civil Procedure Rules 1998.

23.3 Green Claims

23.3.1 Immediately on becoming aware of any incident which may give rise to a Green Claim, the *Provider* takes all necessary steps to record the incident circumstances, the name, address, vehicle particulars and insurance details of the driver responsible, the damage and the repair. When the *Provider* attends the incident, where possible it obtains the details of the responsible party directly from them. In all other cases the *Provider* obtains the details of the responsible party from the police or the Traffic Officer.

23.3.2 Where at the *Provider's* initial assessment of the forecast Defined Cost plus Fee including the cost of any Employer's Stocks (excluding costs payable to Statutory Bodies and value added tax) of the relevant repair does not exceed £10,000, the *Provider* takes the action set out in paragraph 23.4 unless either:

- paragraph 23.3.4 applies, or
- in the instance of circumstances set out in paragraph 23.3.5, unless the *Service Manager* instructs otherwise.

23.3.3 Where at the *Provider's* initial assessment of the forecast Defined Cost plus Fee plus the cost of any Employer's Stocks (excluding costs payable to Statutory Bodies and value added tax) of the relevant repair exceeds £10,000, the *Provider* does not take the actions set out in paragraph 23.4 but issues a completed form TR430 to the *Service Manager* within 28 days of the incident.

23.3.4 Where at the *Provider's* initial assessment of the forecast Defined Cost plus Fee plus the cost of any Employer's Stocks (excluding costs payable to Statutory Bodies and value added tax) of the relevant repair does not exceed £10,000 and the incident has resulted in a fatality, the *Provider* does not take the actions set out in paragraph 23.4 but issues a completed form TR430 to the *Service Manager* within 28 days of the incident..

23.3.5 Where at the *Provider's* initial assessment of the forecast Defined Cost plus Fee plus the cost of any Employer's Stocks (excluding costs payable to Statutory Bodies and value added tax) of the relevant repair does not exceed £10,000 and the *Provider* becomes aware that:

- following identification of the responsible party, that the responsible party is uninsured,
- the incident has or may have resulted in a serious injury,
- a counterclaim has been received,
- the property damaged includes property the repair of which is not the *Provider's* responsibility under this contract or
- the incident resulting in the claim involves, mining subsidence, or is caused by the negligence of the armed forces, NATO forces or another Government Department,

the *Provider* immediately ceases any action that it may have commenced pursuant to paragraph 23.4 and issues a completed form TR430 to the *Service Manager*.

23.3.6 The *Service Manager* replies to the *Provider* within 21 days of receipt of a completed form TR430 under paragraph 23.3.5. His reply is either:

- an instruction to continue to pursue the claim in accordance with paragraph 23.4, or
- an instruction to cease to pursue the claim.

If the *Service Manager* does not reply within 21 days, it is treated as having instructed the *Provider* to cease to pursue the claim.

23.3.7 Each completed form TR430 issued by the *Provider* must be accompanied by a copy of the police or Traffic Officer's report on the accident and an estimate of the cost of relevant repair which must include the cost of any Employer's Stocks. The *Provider* provides such breakdowns and supporting information, in accordance with the Evidence Checklist, to justify the cost of repair, including the cost of any Employer's Stocks, as the *Service Manager* may reasonably require. Should the *Provider* be unable to complete all the details in form TR430 at the time required the *Provider* completes such details as he is able. The *Provider* submits any outstanding information

within 30 days of completing the repair to the Green Claims Branch in order to update the TR430 form.

23.4 Green Claims where the claim is the responsibility of the *Provider* - Action by *Provider*

23.4.1 The *Provider* issues a letter of intent to claim to the responsible third party (or their insurers).

23.4.2 The *Provider* conducts such further correspondence with the third party (or his insurers) in pursuit of the claim as is required.

23.4.3 When requested by the responsible third party (or their insurers as the case may be) or instructed by the *Service Manager*, the *Provider* provides the responsible third party (or their insurers as the case may be) with a calculation of Third Party Claims Defined Costs and resulting Third Party Claims Overhead.

23.4.4 The *Provider* does not seek to claim more than the amount calculated in accordance with the principles set out in Appendix A to this Annex.

23.4.5 The *Provider* keeps records and submits statements in accordance with clauses 87.4 and 87.5 of the *conditions of contract*.

23.5 Green Claims where claims have been transferred to the Employer – Continued action by the *Provider*

23.5.1 The *Provider* continues to support recovery of claims passed to the *Employer*. This includes as soon as the incident occurs, collation and preservation of all records and documents relating to the incident and its repair until the resolution of the claim (as required by the *Service Manager* and indicated by the Checklist).

23.5.2 Costs must relate to the specific damage caused by the third party and each damage event must be treated as a separate claim.

23.6 General

23.6.1 Where cases proceed to litigation the *Provider* may be instructed to undertake additional work including providing a contemporaneous record of the claim and the repair, demonstrating how the costs arise from the third party damage, providing technical information to support claim recovery, responding in sufficient detail to questions, giving evidence, and attending case discussions.

23.6.2 The following forms are to be obtained in connection with the duties set out in this Annex:-

- Form TR430 (to be obtained from Green Claims Branch),

- Evidence Checklist (to be obtained from Green Claims Branch),
- Form TR137/HA2 (to be obtained from Red Claims Branch) and
- HA1/Q proformas as appropriate (to be obtained from Red Claims Branch).

23.6.3 The *Provider* retains records of all of the information sent to the *Service Manager* and/or Green Claims Branch together with correspondence with the public, records of work, maintenance carried out and any discussions of maintenance problems with the *Employer* and/or the police. Such records are to be held for a period of not less than six years from the date of issue. Where appropriate the *Provider* passes the records to the Incoming *Provider* in a readily accessible format, including the relevant software licenses as appropriate.

APPENDIX A – AMOUNTS CLAIMED FROM THIRD PARTIES

1. This Appendix sets out the principles to be followed when calculating the maximum amount to be claimed for damage to Crown Property when the *Provider* is pursuing a claim against any third party to recover the costs involved in the name of the *Employer*.
2. The Table below lists those heads of cost that can be considered for recovery as part of the cost of the damage.

Item		Method of assessing cost	Credit to be allocated to
(a)	Repair of damage including supervision and management	Defined Cost	Item A.406
(b)	Traffic management during repair	Defined Cost	Item A.420
(c)	Initial response to incident, clear up and make safe	Defined Cost	Item A.405
(d)	Planning repair of damage	Third Party Claims Overhead	Item A.406
(e)	Additional costs of depot space required for storage of any material over and above normal routine maintenance requirements		
(f)	Additional finance charges not recovered under fixed overheads, for delay in recovery from third party/insurers		
(g)	An allowance for fixed overheads		

3. The Third Party Claims Overhead is the amount calculated by applying the *third party claims overhead percentage* to the total Defined Cost for items (a), (b) and (c).
4. The *third party claims overhead percentage* is the forecast cost for the contract period of items (d) to (g) divided by the forecast cost for the contract period of items (a) to (c) expressed as a percentage.
5. The allowance for fixed overheads is calculated by applying a percentage to the total for items (a), (b) and (c) which is the same percentage that the tendered lump sum fixed overheads for the contract period (items A.101 to A.102 in Appendix A to the Pricing Schedule); bear to the tendered total of the payments for the contract period for Lump Sum Duties in Section A of the pricing Schedule (excluding the lump sum fixed overheads and any tendered credit for third party claim recovery).
6. The costs for item (e) shall not include any costs associated with Employer's Premises.
7. The claim must include the cost of any Employer's Stocks used in the repair.

8. The amount to be claimed is no more than:
Total Defined Cost for Items (a), (b) and (c) + Third Party Claims Overhead.