

Area 3 Asset Support Contract

Service Information

Annex 23 Third Party Claims

SERVICE INFORMATION FOR AREA 3 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 immediately issues a completed form TR430 to the *Service Manager*.

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 immediately issues a completed form TR430 to the *Service Manager*.

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 to justify the cost of repair, including the cost of any Employer's Stocks, as the *Service Manager* or the insurers of the third party responsible 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. Upon receipt of outstanding information the *Provider* submits this to Green Claims Branch in order to update the TR430 form.

23.4 Green Claims - Action by *Provider*

23.4.1 The *Provider* issues a letter of intent to claim in accordance with the sample letter (to be obtained from the *Service Manager*) to the responsible third party.

23.4.2 The *Provider* conducts such further correspondence with the third party (or his insurers) in pursuit of the claim as is required. The *Provider* makes such correspondence available to the *Service Manager* upon request.

23.4.3 The claim must include the cost of any Employer's Stocks used in the repair.

23.5 General

23.5.1 Where cases proceed to litigation the *Provider* may be instructed to undertake additional work including giving evidence, making statements on technical information relating to the highway and attending case discussions.

23.5.2 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),
- Form TR137/HA2 (to be obtained from Red Claims Branch) and
- HA1/Q proformas as appropriate (to be obtained from Red Claims Branch).