

**Area 4**

**Asset Support Contract**

**Service Information**

**Annex 23**

**Third Party Claims**

**SERVICE INFORMATION FOR ASC****ANNEX 23****CONTENTS AMENDMENT SHEET**

<b>Amend. No.</b>	<b>Revision No.</b>	<b>Amendments</b>	<b>Initials</b>	<b>Date</b>
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## **23 THIRD PARTY CLAIMS**

### **23.1 General**

#### **23.1.1 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

23.1.2 The *Provider* supports resolution of claims, including providing a contemporaneous record of the claim and the repair, demonstrating how the costs arise from third party damage, providing technical information to support claim recovery, responding in sufficient detail to questions giving evidence and attending case discussions. The *Provider* assembles a sequence of records to support any litigation or proceedings relating to the claim.

23.1.3 Where cases proceed to litigation the *Provider* may be instructed to undertake additional work by the *Service Manager*.

23.1.4 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).

### **23.2 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 fully 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 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 an immediate or imminent hazard to the highway user,
- (5) particulars of the 3 most recent inspections carried out prior to and 1 post incident date giving rise to the claim and
- (6) for personal injury claims all documents to comply with Personal Injury Protocol Guidelines as specified in the Tr137/HA2
- (7) other such information as Red Claims Branch may request.

23.2.2 Where a Red Claim is received by the *Employer*, 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. For personal injury claims the *Provider* submits this information within 7 days of the instruction for the information, and within 14 days of the instruction for all other claims.

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, any discussions of maintenance problems with the *Employer* and/or the police and other information or documentation prepared by the *Provider* under this Annex relating to Red Claims. Such records are to be held for a period of not less than six years from the date of issue. Unless instructed otherwise by the *Service Manager*, the *Provider* passes a copy of the records to the Incoming Provider in a readily accessible format, including the relevant software licenses. In accordance with paragraph 23.6, claims received after the *access date*, irrespective of the incident date, need to be investigated in the above terms by the *Provider*. That may mean liaison with the Outgoing Provider or analysis of their records, but the onus is still on the *Provider* under this contract to produce the said documentation in the time limits stated.

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* continues to pursue all details and submits them to the Green Claims Branch as they become available. 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.

- 23.3.8 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, any discussions of maintenance problems with the *Employer* and/or the police and other information or documentation prepared by the *Provider* under this Annex relating to Green Claims. Such records are to be held for a period of not less than six years from the date of issue. Unless instructed otherwise by the *Service Manager*, the *Provider* passes a copy of the records to the Incoming Provider in a readily accessible format, including the relevant software licenses.

#### **23.4 Green Claims where the claim is the responsibility of the *Provider* – Action by the *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 their 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 Cost 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 detailed records of Third Party Claims Defined Cost, third party claims that have not been resolved and the amounts of agreed recoveries third parties have yet to pay in respect of resolved claims. Such records are to be held for a period of not less than six years from the date of submission of the final statement the *Provider* is to submit under clause 87.4 of the Conditions of Contract.
- 23.4.6 For each claim the *Provider* reports to the *Service Manager*, the amount claimed from third parties, a calculation of Defined Cost and resulting Third Party Claims Overhead, the amount recovered, an explanation of any differences between any of these amounts, and explanation of why any loss



greater than Defined Cost has been claimed as required by the *Employer*.

**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.

23.5.3 When instructed by the *Service Manager*, the *Provider* provides a sufficient response within 21 days. This reply is issued by the *Provider* back to the *Employer* and must be in suitable format for Green Claims to send out to the relevant third parties.

23.5.4 Where insurance queries are repetitive and about general rather than specific matters the *Provider* should recognise opportunities to provide standard responses to the Green Claims team to use in response to insurers. However, where questions are more specific about a particular cost issue or justification of a repair decision then 23.5.3 applies.

**23.6 Matters relating to a change in *Provider***

23.6.1 The *Provider* takes over commencing on the *access date* the performance of the Outgoing Provider's duties relating to Green Claims and Red Claims as the Outgoing Provider ceases to perform those duties. The *Provider* performs the duties it takes over in accordance with this Annex.

23.6.2 After the expiry of the Contract Period, the *Provider* ceases to perform its duties under this Annex relating to:

- Green Claims and
  - Red Claims,
- other than:
- in respect of any item of work commenced and not completed by the *Provider* prior to the expiry of the Contract Period which the *Service Manager* instructs the *Provider* to complete after the expiry of the Contract Period,
  - those duties which the *Provider* is to perform under paragraph 23.4,
  - those duties requiring the *Provider* to retain records and pass copies of records to an Incoming Provider, and
  - continuing to make its employees who are witnesses of fact in relation

to any Green Claim or Red Claim available to the *Employer* to enable the *Employer* to dispose of the claim whether by legal action or proceedings or otherwise.

- 23.6.3 The *Provider* continues to comply with its obligations under clauses 83 and 87 of the Conditions of Contract after expiry of the Contract Period.

**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
(a)	Repair of damage including supervision and management	Defined Cost
(b)	Traffic management during repair	Defined Cost
(c)	Initial response to incident, clear up and make safe	Defined Cost
(d)	Planning repair of damage	Third Party Claims Overhead
(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 claim must include the cost of any Employer's Stocks used in the repair.
4. The amount to be claimed is no more than:  
Third Party Claims Defined Cost + Third Party Claims Overhead.