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Term Service Contract

OPTION A: PRICED CONTRACT WITH ACTIVITY SCHEDULE

Contract Data Forms

June 2017

(with amendments January 2023)

Contract Execution

This agreement is made between the *Client*, the *Contractor* and the Named Suppliers.

Terms in this agreement have the meanings given to them in the contract between the Environment Agency and Lowther Forestry Group Ltd for schedule of works (the *works*).

The *Contractor* offers to Provide the Works in accordance with these conditions of contract for an amount to be determined in accordance with these conditions of contract.







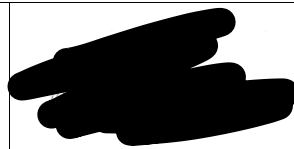

The *Contractor* was appointed to Asset Operation, Maintenance, Response framework and executed the framework agreement.

Executed under hand

by

The Environment Agency (*Client*)

Lowther Forestry Group Ltd (*Contractor*)

Signed on behalf of the <i>Contractor</i>	
Name	
Position	
Signature	
Date	
The <i>Client</i> accepts the <i>Contractor's</i> Offer to Provide the Works	
Signed on behalf of the <i>Client</i>	
Name	
Position	
Signature	
Date	

Contract Data

PART ONE – DATA PROVIDED BY THE *CLIENT*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term Service Contract June 2017 (with amendments January 2023)

Main Options Option for resolving and avoiding disputes

Secondary Options

X2 – Changes in law
X11- Termination by the *Client*
X17 – Low Service Damages
X18 – Limitation of Liability
X23 – Extending the Service Period
X24 – The Accounting Periods

Y(UK)1 Project Bank Account
Y(UK)2 - The Housing Grants, Construction and Regeneration Act 1996
Y(UK)3 The Contracts (Rights of Third Parties) Act 1999

Z Additional Client Clauses

The *service* is

The operation of works regarding the Asset Recovery and Maintenance of assets in Cumbria and Lancashire catchment as defined in the Scope.

The *Client* is

Name

Address for communications

Address for electronic communications

The *Framework Manager* is

Name

Address for communications

Address for electronic communications

The Affected Property is

The Scope is in

The *shared services* which may be carried out outside the Service Areas are

The *language of the contract* is

The *law of the contract* is the law of

The *period for reply* is except that

The following matters will be included in the Early Warning Register

Early warning meetings are to be held at intervals no longer than

2 The Contractor's main responsibilities

If Option C or E is used The Contractor prepares forecasts of the total Defined Cost
for the whole of the service at intervals no longer than

3 Time

The *starting date* is

The *service period* is

6 months

The *Contractor* submits revised plans at intervals no longer than

4 weeks

The period within which the *Contractor* is to submit a Task Order programme for acceptance is

4 weeks

If no plan is identified in part two of the Contract Data

The period after the Contract Date within which the *Contractor* is to submit a first plan for acceptance is

2 weeks

4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is

2 weeks

5 Payment

The *currency of the contract* is the

GBP Sterling

The *assessment interval* is

1 month

The *interest rate* is % per annum (not less than 2) above the

Base

rate of the

Bank of England

bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used

The period within which payments are made is

The *Client* will make payment within 14 days of the date of the invoice.

6 Compensation events

If Option A is used

The *value engineering percentage* is 50%, unless another percentage is stated here, in which case it is

%

If there are additional compensation events
These are additional compensation events

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8 Liabilities and insurance

If there are additional *Client's* liabilities These are additional *Client's* liabilities

- | | |
|-----|----------|
| (1) | Not used |
| (2) | Not used |
| (3) | Not used |

The minimum amount of cover for insurance against loss of or damage to property (except Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the Service for any one event is

The minimum amount of cover for insurance against death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is

required by law if that

If the *Client* is to provide
Plant and Materials

The insurance against loss of or damage to Plant and Materials and Equipment is to include cover for Plant and Materials provided by the *Client* for an amount of

The *Contractor* provides these additional insurances

- | | |
|----------------------------|--------------------------------|
| (1) Insurance against | Contractors All Risk Insurance |
| Minimum amount of cover is | |
| The deductibles are | |
| (2) Insurance against | |
| Minimum amount of cover is | |
| The deductibles are | |
| (3) Insurance against | |
| Minimum amount of cover is | |
| The deductibles are | |

9 Resolving and avoiding disputes

The *tribunal* is

If the *tribunal* is arbitration The *arbitration procedure* is

The place where arbitration is to be held is

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is

The *Senior Representatives* of the *Client* are

Name (1)

Address for communications

Address for electronic communications

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

Address for communications

Address for electronic communications

The *Adjudicator nominating body* is

X17: Low service damages

If Option X17 is used

Service Credits will be used to maintain service delivery through the contract, based on the Key Performance Indicators set out below (monitored and recorded on a quarterly basis).

The Service Credits approach is set out below:

- Contractors are required to score **at least 80%** per quarter. If they achieve a score below this, they are required to submit a Performance Improvement Plan to the Service Manager to set out how they will improve their performance to the required levels.
- If a Contractor **scores below 70%**, service credits would apply on a sliding scale basis as seen below (the below numbers have been used as an example and will be calculated based on a quarterly price from the returned pricing schedule):

KPI Score	Percentage retained	Amount retained per quarter (based on £4,134 weekly fee; £53,742/quarter)	Equivalent amount retained per week
66-70	30	[REDACTED]	[REDACTED]
61-65	40	[REDACTED]	[REDACTED]
51-60	50	[REDACTED]	[REDACTED]
45-50	75	[REDACTED]	[REDACTED]
Below 45	100	[REDACTED]	[REDACTED]

- If in the **following quarter** the Contractor then scores **above 80**, any retained credits from the previous quarter would be repaid (this relates to the previous quarter only and not any previous quarters).
- Alternatively, if in the **following quarter** the Contractor **scores between 70 and 80**, half of the retained credits from the previous quarter only would be repaid. The other half of the retained credits are permanently lost.
- OR if the Contractor does not reach a score of 80 in the following quarter, all previous retained credits are permanently lost.

Examples are shown in the following table:

EXAMPLE: OUTCOMES BASED ON KPI's	SUPPLIER KPI SCORE FOR QUARTER					ACTION TAKEN
	Quarter 1	Q2	Q3	Q4	Q5	
Contractor KPI score above 80	82					No action taken
A score of less than 80 in any quarter requires the Contractor to provide an Improvement Plan		76				Contractor must provide an Improvement Plan
A score of less than 70 in any quarter results in service credits applying: every percentage below 70 results in the same reduction in % payments of the quarterly invoice amount (to a capped maximum reduction of 100% of management fee)			66			EA retains 30% of the management fee from the quarterly invoiced totals Contractor must provide an Improvement Plan
If following a Service Credit quarter, the Contractor KPI score exceeds 80 in the following quarter , any retained service credits from the previous quarter would be repaid				81		Service Credits from previous quarter (30% of management fee) are paid (along with regular quarterly payment).
OR If following a Service Credit quarter, in the next quarter the Contractor KPI score achieves a score of 70 but fails to achieve a score of 80 , half of the service credits retained in the previous quarter are paid; half are permanently lost. The Contractor is required to provide an Improvement Plan				72		Half of the previously retained 30% is repaid (15%) along with regular quarterly payment), (15% of previous quarters management fee) is permanently retained. Contractor must provide an Improvement Plan
OR If following a Service Credit quarter, in the next quarter the Contractor KPI score again fails to achieve a score of 70 , the same % is deducted from the quarterly invoice amount (to a capped maximum reduction of 100%)				50		EA retains 75% of management fee from the quarterly invoiced totals AND the previously retained 30% of management fee is permanently retained. Contractor must provide an Improvement Plan

If following two Service Credit quarters, the Contractor KPI score exceeds 80 in the following quarter , any retained service credits from the previous quarter only would be repaid					81	Service Credits from previous quarter (100% of management fee) are paid, along with regular quarterly payment. Note that any previously retained Service Credits are not repaid.
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X18: Limitation of liability

If Option X18 is used

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to

The *Contractor's* liability for Defects due to its design of an item of Equipment is limited to

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluded matters, is limited to

The *end of liability date* is years after the end of the Service Period

X 23

If Option X23 is used

The maximum service period is months after the starting date

The *periods* for extension are

Order	Period for extension (months)	notice date
First	<input type="text" value="2 months"/>	<input type="text" value="13<sup>th</sup> January 2025"/>
Second	<input type="text"/>	<input type="text"/>
Third	<input type="text"/>	<input type="text"/>
Fourth	<input type="text"/>	<input type="text"/>

If there are *criteria for extension*
The *criteria for extension* are

- (1)
- (2)
- (3)

X24: The accounting periods

If Option X24 is used and Option C is not used

The *accounting periods* are

1 st April 2024 to 31 st March 2025

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

If Y(UK)2 is used and the date on which a payment is due is not fourteen weeks after the end of the *accounting period* or Service Period

The period is weeks

If Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due

The period for payment is days after the date on which payment becomes due

Z: Additional conditions of contract

If Option Z is used

The additional conditions of contract are

Z Clauses

Clause No.	Clause
Z1	Z1 Environment Agency as regulatory authority Z1.1 The Environment Agency's role as a regulatory authority and as Client under the contract is separate and distinct. Actions taken in one capacity are deemed not to be taken in the other. Z1.2 Where statutory consents must be obtained from the Environment Agency in its capacity as a regulatory authority, the Contractor is responsible for obtaining these and paying fees. The Client's acceptance of a tender and the Client's instruction or variation of the works does not constitute statutory approval or consent. Z1.3 An action by the Environment Agency as regulatory authority is the action of Other.
Z2	Z2 Framework Agreement Z2.1 The Contractor shall ensure at all times during this contract it complies with all the obligations and conditions of the Asset Operations Operation, Maintenance, Response Framework Agreement made with the Client.
Z3	Z3 Data Protection Z3.1 The requirements of the Data Protection Schedule shall be incorporated into this contract
Z4	Z4 Liabilities and insurance Z4.1 Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.
Z5	Z5 Risks and insurance Z5.1 Replace clause 84.1 with the following Insurance certificates are to be submitted to the <i>Service Manager</i> on an annual basis.
Z6	Z6 Resolving Disputes Z6.1 Delete clause W2.1
Z31	Z31 Price Adjustment for Inflation TSC The Client recognises the ongoing pricing uncertainty with regards to inflation. The Client will mitigate this uncertainty through this clause. Z31.1 Defined terms: a) The index is Office for National Statistics (ONS) CPI (UK, 2015=100). b) The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date. c) The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due. d) The Price Adjustment Factor (PAF) at each date of assessment of an amount due is $0.9((L-B)/B)$. Z31.2 Application rules. The provisions of this clause [Z31] shall apply provided that: a) The Price for Service Provided to Date is less than or equal to the total of the Prices and b) Inflation remains positive ie L is greater than B. Z31.3 Price Adjustment Factor. If an index is changed after it has been used in calculating a PAF, the calculation is not changed. The PAF calculated at the last assessment date before the Completion Date for the whole of the works is used for calculating an amount for price adjustment after that date. Z31.4 Price adjustment Options A and B. Each amount due includes an amount for price adjustment which is the sum of <ul style="list-style-type: none">The change in the Price for Service Provided to Date since the last assessment of the amount due multiplied by the PAF andThe amount for price adjustment included in the previous amount due

PART TWO – DATA PROVIDED BY THE CONTRACTOR

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

1 General

The *Contractor* is

Name

Lowther Forestry Group Ltd

Address for communications

Address for electronic communications

The *fee percentage* is

The *service areas* are

The *key persons* are

Name (1)

Job

Responsibilities

Delivery Co-ordination, Planning, and Management of the Works. Carry out site assurance audits and inspections pre, during and post works. Client liaison, production of RAMS/CPP. Management of contracts and work orders through Fast draft and AIMS:OM.

Qualifications

Experience

Name (2)

Job

Responsibilities

Delivery Co-ordination, Planning, and Management of the Works. Carry out site assurance audits and inspections pre, during and post works. Client liaison, production of RAMS/CPP. Management of contracts and work orders through Fast draft and AIMS:OM

Qualifications

Experience

The following matters will be included in the Early Warning Register

2 The Contractor’s main responsibilities

If the Contractor is to provide Scope for its plan
The Scope provided by the Contractor for its plan is in

3 Time

If a plan is to be identified in the Contract Data
The plan identified in the Contract Data is

5 Payment

If Option A, C or E is used The price list is

If Option A or C is used The tendered total of the Prices is

£ 261,445.91

9 Resolving and avoiding disputes

Commented [AH1]: Contract manager to populate

The Senior Representatives of the Contractor are

Name(1)

Address for communications

Address for electronic communications

Name(2)

Address for communications

Address for electronic communication

X10: Information modelling

If Option X10 is used

If an information execution plan is to be identified in the Contract Data

The information execution plan identified in the Contract Data is

Data for the Short Schedule of Cost Components (used only with Option A)

The people rates are

category of person	unit	rate
As defined in the CLA Lowther Schedule of Work 2024-25 and the Framework Deed of Agreement		
Tree Surgeon	Hr	
Herbicide Operatives	Hr	
Aerial Treework Operative	Hr	
Winch/Chipper Operatives	Hr	
Streetworks Operatives	Hr	
Machine Operator/Driver	Hr	
General Labourer	Hr	
Tree Surveyor	Hr	
Qualified Arboculturist	Hr	
Chainsaw Operatives (bankside work)	Hr	
Chainsaw Operatives (in channel work)	Hr	
Slinger/Signaller	Hr	

The work activities rates are

Description	unit	rate
Wrack Removal (rates to include all costs except waste removal off site. Please state any assumptions made)		
By hand	Per person/day	
By machine	Per person/day	
Maintenance Checks: OB_WM1 (Please state any assumptions made. Definitions of OB_WM1 and OB_WM1_TB2 can be found in FCRM Asset Maintenance Standards).		
Channel Length <500m	Per m	
Channel length 501-1000m	Per m	
Channel Length 1001to 10000m	Per m	
Channel Length 10000m+	Per m	
Maintenance Checks:		

OB_WM1_TB2		
Channel Length <500m	Per m	
Channel length 501-1000m	Per m	
Channel Length 1001to 10000m	Per m	
Channel Length 10000m+	Per m	
Annual Tree PSRA for Environment Agency sites	No	

The published list of Equipment is the edition current at the Contract Date of the list published by

The percentage for adjustment for Equipment in the published list is

The rates for other Equipment are		
Equipment	unit	
Chippers (up to 6")	Day	
Tipplers	Each	
Stump Grinders	Each	
Tree snips	Each	
Mobile Elevated Work Platforms	Each	
Excavators (3 tonne)	Each	
Excavators (8 tonne)	Each	
Excavators (15 tonne)	Each	
Tracked Dumper (12 tonne)	Each	
Wheeled Dumper (9 tonne)	Each	
Tractors (including winch)	Each	
Mulching unit	Each	
Winches	Each	
Flat Bed	Each	
Crane (70 tonne)	Each	
HIAB	Each	

The rates for Defined Cost of manufacture and fabrication outside the Service Areas by the Contractor are

Description	unit	rate