



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 maintenance works thought the Yorkshire area (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

Environment Agency (*Client*)

Name: [REDACTED]

Position: [REDACTED]

Signature: [REDACTED]

Date: 25/09/2024

(*Contractor*)

Name: [REDACTED]

Position: [REDACTED]

Signature: [REDACTED]

Date: 04.09.24

Lowther Forestry Group

(Named Suppliers)

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

A

Option for resolving and avoiding disputes

W2

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)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 Maintenance of assets in Yorkshire Area as defined in the Scope

The *Client* is

Name

Environment Agency

Address for communications

Horizon House
Deanery Road
Bristol
BS1 5AH

Address for electronic communications

The *Service Manager* is

Name

[REDACTED]

Address for communications

Environment Agency
Lateral
City Walk
Leeds
LS11 9AT

Address for electronic communications

[REDACTED]
[REDACTED]

The Affected Property is

Affected Property is all Assets in asset tool for the Yorkshire area and those assets listed in site specific scopes;
Appendices 1 – Slittingmills farm, 2 – Kilamarsh, 3 – Chesterfield seasonal, 4 – Doe Lea, 5 – River Whitting, 6 – LD 651 2nd cut

The Scope is in

To carry out maintenance activities throughout the Yorkshire area in accordance with schedule of work documents provided in Appendices 1 – Slittingmills farm, 2 – Kilamarsh, 3 – Chesterfield seasonal, 4 – Doe Lea, 5 – River Whitting, 6 – LD 651 2nd cut

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

Not applicable

The *language of the contract* is

English

The *law of the contract* is the law of

the law of England and Wales, subject to the jurisdiction of the courts of England and Wales

The *period for reply* is

2 weeks

except that

The following matters will be included in the Early Warning Register

[REDACTED]

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

4 weeks

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

[REDACTED]

3 Time

	The <i>starting date</i> is	30/09/2024
	6 months (with 6-month extension via an instruction)	6 months (with 6-month extension via an instruction)
	The <i>Contractor</i> submits revised plans at intervals no longer than	4 weeks
	The period within which the <i>Contractor</i> 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 <i>Contractor</i> is to submit a first plan for acceptance is	2 weeks

4 Quality management

The period after the Contract Date within which the <i>Contractor</i> is to submit a quality policy statement and quality plan is	2 weeks
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5 Payment

	The <i>currency of the contract</i> is the	GBP Sterling
	The <i>assessment interval</i> is	1 month
	The <i>interest rate</i> is	<div> </div> % per annum (not less than 2) above the
	<div>Base</div> rate of the	<div>Bank of England</div> 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 <i>Client</i> will make payment within 14 days of the date of the invoice.

6 Compensation events

If Option A is used	The <i>value engineering percentage</i> is 50%, unless another percentage is stated here, in which case it is	<div> </div> %
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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

£5,000,000

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

£5,000,000 of the minimum amount required by law if that is greater

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

Nil

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

Litigation in the courts

If the *tribunal* is arbitration

The *arbitration procedure* is

TBC

The place where arbitrations to be held is

TBC

The person or organization 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

Victoria McCausland

The *Senior Representatives* of the *Client* are

Name (1)

[REDACTED]

Address for communications

Environment Agency
Kings Pool
1-2 Peasholme Green
York
North Yorkshire YO1 7PX

Address for electronic communications

[REDACTED]
[REDACTED]

Name (2)

Address for communications

Address for electronic communications

The *Adjudicator* is

Name

To be confirmed

Address for communications

To be confirmed

Address for electronic communications

To be confirmed

The *Adjudicator nominating body* is

Institution of Civil Engineers

X17: Low service damages

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 [REDACTED])	Equivalent amount retained per week
66-70	30	[REDACTED]	[REDACTED]
61-65	40	[REDACTED]	[REDACTED]
51-60	50	[REDACTED]	[REDACTED] 067
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.

X18: Limitation of liability

If Option X18 is used

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

£1,000,000

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

£5,000,000

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

£1,000,000

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 greater of £5m or the total of the Prices plus 20%

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 Years after the starting date

The *periods* for extension are

Order

Period for extension (months)

notice date

First

6 Months

31/03/2025

Second

Third

Fourth

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
accountin
g periods
are

01/04/2024-- 31/03/2025

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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	<p>Z1 Environment Agency as regulatory authority</p> <p>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.</p> <p>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.</p> <p>Z1.3 An action by the Environment Agency as regulatory authority is the action of Other.</p>
Z2	<p>Z2 Framework Agreement</p> <p>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.</p>
Z3	<p>Z3 Data Protection</p> <p>Z3.1 The requirements of the Data Protection Schedule shall be incorporated into this contract</p>
Z4	<p>Z4 Liabilities and insurance</p> <p>Z4.1 Civil data protection claims and regulatory fines for breaches of Data Protection Legislation are excluded from any limit of liability stated.</p>
Z5	<p>Z5 Risks and insurance</p> <p>Z5.1 Replace clause 84.1 with the following</p> <p>Insurance certificates are to be submitted to the <i>Service Manager</i> on an annual basis.</p>
Z6	<p>Z6 Resolving Disputes</p> <p>Z6.1 Delete clause W2.1</p>
Z31	<p>Z31 Price Adjustment for Inflation TSC</p> <p>The Client recognises the ongoing pricing uncertainty with regards to inflation. The Client will mitigate this uncertainty through this clause.</p> <p>Z31.1 Defined terms:</p> <ol style="list-style-type: none"> The index is Office for National Statistics (ONS) CPI (UK, 2015=100). The Base Date Index (B) is the latest available index published by ONS prior to the Contract Date. The Latest Index (L) is the latest available index published by ONS before the date of assessment of an amount due. The Price Adjustment Factor (PAF) at each date of assessment of an amount due is $0.9((L-B)/B)$. <p>Z31.2 Application rules.</p> <p>The provisions of this clause [Z31] shall apply provided that:</p> <ol style="list-style-type: none"> The Price for Service Provided to Date is less than or equal to the total of the Prices and Inflation remains positive ie L is greater than B. <p>Z31.3 Price Adjustment Factor.</p> <p>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.</p> <p>Z31.4 Price adjustment Options A and B.</p> <p>Each amount due includes an amount for price adjustment which is the sum of</p> <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 and The 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

[REDACTED]
[REDACTED]

Address for electronic communications

[REDACTED]

The *fee percentage* is

[REDACTED] %

The *service areas* are

The operation of works regarding the Maintenance of assets in Yorkshire Area as defined in the Scope

The *key persons* are

Name (1)

[REDACTED]

Job

[REDACTED]

Responsibilities

Overall management of framework contract

Qualifications

[REDACTED]
[REDACTED]

Experience

[REDACTED]

Name (2)

[REDACTED]

Job

[REDACTED]

Responsibilities

Site management

Qualifications

[REDACTED]
[REDACTED]

Experience

[REDACTED]

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

CPP and RAMS

3 Time

If a plan is to be identified in the Contract Data

The plan identified in the Contract Data is

Work Programme/ Plan

5 Payment

If Option A, C or E is used

The price list is

The Framework Price Schedule 24/25 and the Framework Schedules

If Option A or C is used

The tendered total of the Prices is

9 Resolving and avoiding disputes

The Senior Representatives of the Contractor are

Name(1)

Address for electronic communications

Name(2)

Address for communications

Address for electronic communications

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
The Framework Price Schedule 24/25 and the Framework Schedules		

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

 % (state plus or minus)

The rates for other Equipment are

Equipment	rate

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