

Appendix A – Principles of MUDFA Commercial Agreement

Section 1 Introduction

Following the Commercial Meeting held on the 15th & 28th March (City Point, Edinburgh), 15th and 26th June, together with the 29th August 2007 at the MUDFA offices at Western Harbour, Leith Docks, Edinburgh it was agreed a review and reappraisal of the Commercial Proposals prepared by tie Limited was appropriate.

As a result the parties wish to address three key issues;

- 1.1 Achieve a consensus on the value of the Contract and Work Sector Preliminaries for the period from April to commencement of Construction Services, as anticipated within the Contract. Thereafter the Contract and Work Sector Preliminaries from April to 28th September 2007 are to be agreed and certified by tie.
- 1.2 Establish a sustainable platform to determine the revised Contract Preliminaries and Work Sector Preliminaries for the remainder of the MUDFA Works based on Programme Revision 06. The Revision 06 Programme is to be based upon the best information and details available/current at the time of production. Subsequent changes will be dealt with in accordance with the MUDFA Agreement.
- 1.3 Propose an incentive mechanism based on the recast Preliminaries derived under item 1.2.

Section 2 Objectives

Both parties wish certainty of financial outturn, with the minimum of change, allowing both Project teams to focus on the proactive engineering led, solutions focussed delivery of the MUDFA Works.

Section 3 Calculation of Work Sector & General Preliminaries

The Work Sector and General Preliminaries will be resourced in accordance with the requirements, demands and constraints of the Revision 06 Programme.

In the period referred to item 1.1 actual resources deployed will be admeasured on the basis of the Schedule Four rates and prices, or appropriate Star Rates where agreed.

For the period detailed in item 1.2 above resources will be determined in accordance with the agreed programme, Revision 06.

The resources would be incorporated on Revision 06 of the Programme and valued at the Schedule 4 Rates and Prices, where applicable or appropriate Star Rates where agreed.

It is anticipated that the vast majority of costs will be those associated with Contract staff, with the Contract facilities and services measured and valued on an appropriate pro-rata basis against the existing Schedule Four provisions, in relation to items 1.1 and 1.2 above.

The resultant value of this process will be agreed between the parties as the target against which an Incentivisation mechanism will be calculated as set out in the document entitled MUDFA Contractor Incentivisation Proposal Revision 05.

Actual resources deployed by AMIS will be measured and valued as appropriate, using the corresponding rates, prices; substantiated by the appropriate level of substantiation. The impact of Clause 46 changes on the target will be valued accordingly on the basis of each programme iteration.

Furthermore the Intention of the parties is to agree the appropriate measurement and evaluation of the Final Account for both Pre-Construction Services and the period established under item 1.1 above within one month of the agreement of the new programme, i.e. 31st October 2007.

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Section 4 Calculation of Work Order Values & Confirmation Notices

Work Order values will be determined by adoption of the Schedule 4 rates and prices, as appropriate at the date of Work Order Confirmation Notices.

As contemplated under the MUDFA terms and conditions the works will be re-measured on the basis of the utility diversions and associated works carried out by AMIS, using the appropriate rates and prices, including Clause 46 Changes valued accordingly in accordance with the agreed Contract terms and conditions.

Section 5 Notes, Assumptions and Additional Considerations

Agreed Change associated with the General and Work Sector Preliminaries is measured under Clause 46, with the target moved by a corresponding value to ensure the Incentive is determined on a 'like for like' basis. This is considered reasonable given the control of the issues contributing to Change rests with others; i.e. not AMIS.

In addition to the above matters it was the intention of this agreement to explore incentive mechanisms to replace the Value Engineering Incentive contained in the MUDFA Contract.