

- upon execution of a novation agreement pursuant to clause Z3, the *Employer*,
- any person or institution providing finance in connection with the *works and/or the project*,
- purchasers or tenants of the whole or any part of the *works and/or the project*,
- any other person having or acquiring an interest in the whole or any part of the *works*.

Z2.2 The *Contractor* procures that each Principal Subcontractor duly executes and delivers to the *Employer*, within 14 days of their appointment, deeds of warranty in the form attached at **Schedule 10** to the Framework Agreement in favour of the *Employer* and the parties listed in clause Z2.1.

For the purpose of this clause "Principal Subcontractors" means all Subcontractors with a design responsibility (including those responsible for the selection of goods and materials and the supply of proprietary products and systems) and such other Subcontractors as the *Employer* may from time to time by notice in writing to the *Contractor* specify as being Principal Subcontractors.

Z2.3 Without prejudice to the *Contractor's* obligations to the *Employer* and to the *Employer's* rights, the *Employer* is not obliged to make any payment to the *Contractor* if (and for so long as) the *Contractor* fails to deliver duly executed warranties pursuant to clauses Z2.1 and Z2.2 within the time limits specified above provided that the *Employer* notifies the *Contractor* of the identity of the relevant beneficiaries.

Z3 Assignment and Novation

Z3.1 The *Contractor* does not assign, transfer, novate, charge or otherwise deal with this contract (or any of his rights or obligations under it). The *Employer* may assign and/or charge in whole or in part any benefit or right under this contract at any time to any person.

Z3.2 If requested by the *Employer*, the *Contractor* enters into a novation agreement within the period for reply in the form of the novation agreement attached at **Schedule 11** to the Framework Agreement, or in such other form

as the *Employer* may reasonably require, in order to novate the benefit and burden of this contract to a member of the TfL Group or to another person who is or becomes responsible for delivering the whole or part of the *works and/or the project*. The *Employer* will take reasonable steps to ensure that the *Employer* following novation is of reasonable standing and can fulfil his contractual obligations.

Z4 Responsibility for Statutory Undertakers

Z4.1 The *Contractor* complies with the requirements of the Works Information concerning

- interface with, engagement of or management of Statutory Undertakers and
- the assets and infrastructure for which Statutory Undertakers are responsible.

Z4.2 The *Contractor* takes into account and allows in any programme required under this contract the requirements of this clause Z4.

Z4.3 If the *Project Manager* decides that the *Contractor* has not complied with the requirements of the Works Information referred to at clause Z4.1 and as a result the *Employer* incurs additional cost either

- in carrying out work or taking measures,
- in managing Statutory Undertakers or any interface with Statutory Undertakers or
- by paying an additional amount to Others (including for the avoidance of doubt but without limitation Statutory Undertakers) in carrying out work, taking measures or in managing Statutory Undertakers or any interface with Statutory Undertakers

on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost and deducts from sums otherwise due to the *Contractor* a sum equivalent to the *Project Manager's* assessment, or where no such sums are due the *Employer* recovers the *Project Manager's* assessment as a debt from

the *Contractor*.

Z5 Nuisance

Z5.1 The *Contractor* uses reasonable endeavours to prevent any public or private nuisance including nuisance caused by noxious fumes, noisy working operations or the deposit of materials or debris or other interference with the rights of adjoining or neighbouring landowners, tenants or occupiers or Statutory Undertakers arising out of the *works* and, if the *Employer* (acting reasonably) considers that the claim should be defended, defends or, if the *Employer* so elects, assists the *Employer* in defending any action or proceedings which may be instituted in relation thereto. The *Contractor* is responsible for and indemnifies the *Employer* from and against any and all expenses, liabilities, losses, claims and proceedings whatsoever resulting from any such nuisance or interference, except only where such nuisance or interference is the consequence of an instruction of the *Employer*.

Z5.2 Without prejudice to the *Contractor's* obligations under clause Z5.1 (above) if the carrying out of the *works* is likely to necessitate any interference (including the oversailing of tower crane jibs) with the rights of adjoining or neighbouring landowners, tenants or occupiers, the *Contractor* without cost to the *Employer* obtains the prior written agreement of such landowners, tenants or occupiers subject to the approval of the *Employer*. The *Contractor* complies (at his own cost) in every respect with the conditions contained in such agreements.

Z6 Not Used

Z7 Conflict of Interest

Z7.1 The *Contractor* acknowledges and agrees that he does not have any interest in any matter where there is or is reasonably likely to be a conflict of interest with Providing the Works or any member of the TfL Group, save to the extent fully disclosed to and approved in writing by the *Employer*.

Z7.2 The *Contractor* undertakes ongoing and regular conflict of interest checks throughout the duration of the contract and in any event not less than once in every six months and notifies the *Employer* in writing immediately on becoming aware of any actual or potential conflict of interest with Providing the Works or any member of the TfL Group and shall work with the *Employer* to do whatever is necessary (including the separation of staff working and/or

data relating to the *works* from the matter in question) to manage such conflict to the *Employer's* satisfaction and provided that, where the *Employer* is not so satisfied (in his absolute discretion), the *Employer* shall be entitled to terminate the contract.

Z8 Corrupt Gifts, Fraud and the Payment of Commission

The *Contractor* does not, and ensures that its employees, agents and Subcontractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the *Employer* or, where any member of the TfL Group is the *Employer*, any member of the TfL Group nor favour any employee, officer or agent of the *Employer* or, where any member of the TfL Group is the *Employer*, any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the *Employer* or, where any member of the TfL Group is the *Employer*, any member of the TfL Group other than as a representative of the *Employer*, without the *Employer's* prior written approval. Breach of clause Z8 shall entitle the *Employer* to terminate this contract and where any member of the TfL Group is the *Employer* any other contracts between the *Contractor* and the TfL Group immediately.

Z9 Quality Statement

Z9.1 The *Contractor* warrants that the representations contained in the *quality statement* are accurate in every respect and may be fully relied upon by the *Employer*, including where the standards represented exceed the minimum originally specified by the *Employer*.

Z9.2 Should any discrepancy arise between the *quality statement* and other contract documents the Works Information takes precedence except where the *quality statement* includes a standard which exceeds that specified in the other contract documents, in which case the *quality statement* shall take precedence over those other documents.

Z10 Ambush Marketing

The *Contractor* does not represent that any products or services provided under this contract have been endorsed or approved by the *Employer* or (where specified in the Works Information) other organisations or that the *Contractor* (including any of its products or services) are in any way associated with those organisations or (where applicable) the events

specified in the Works Information, including by publishing or issuing any statement (factual or otherwise) about the *Contractor's* provision of the *works* for the *Employer*.

Z11 Equality & Diversity Compliance

Z11.1 Without limiting the generality of any other provision of this contract, the *Contractor*, in relation to the *works*:

- does not unlawfully discriminate, and
- procures that its Subcontractors and any Indirect Subcontractors do not unlawfully discriminate,

within the meaning and scope of the Equality Act and any other relevant enactments in force from time to time relating to discrimination in employment.

Z11.2 The *Contractor* acknowledges that under Section 149 of the Equality Act the *Employer* is under a duty to have due regard to, amongst other things

- the need to eliminate unlawful racial discrimination, harassment and victimisation and other conduct prohibited by or under the Equality Act,
- advance equality of opportunity between people who share a Relevant Protected Characteristic and persons who do not share it and
- foster good relations between people who share a Relevant Protected Characteristic and persons who do not.

Z11.3 In the performance of this contract, the *Contractor* shall, and procure that its Subcontractors and Indirect Subcontractors shall, assist and co-operate with the *Employer* where possible to enable the *Employer* to satisfy its duty.

Z12 Sustainable Timber

Z12.1 The *Contractor* shall ensure that all Timber supplied or used in the performance of this contract shall be Sustainable Timber. If it is not practicable for the *Contractor* to meet this condition the *Contractor* must inform the *Employer* in writing prior to the supply of any Timber that is not Sustainable Timber, and stating the reason for the inability to comply with this condition. The *Employer* reserves the right, in its absolute discretion, to

approve the use of Timber that is not Sustainable Timber. Alternatively the *Employer* has the right to reject the proposed Timber. Where the *Employer* exercises its right to reject any Timber, the provisions of clause Z12.4 shall apply.

Z12.2 Without prejudice to clauses Z12.1 and Z12.8, all Virgin Timber procured by the *Contractor* for supply or use in performance of the contract shall be Legal Timber.

Z12.3 The *Contractor* shall ensure that Virgin Timber it procures for supply or use in performance of the contract shall not have derived from any species of tree that is protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) unless the supplier can prove, by producing official documentation, that he has complied with the CITES requirements that permit trading in the particular species of tree so listed under that Convention.

Z12.4 The *Employer* reserves the right to reject at any time any Timber that does not comply with the conditions of contract or the Works Information. Where the *Employer* exercises its right to reject any Timber, the *Contractor* shall supply contractually compliant alternative Timber, at no additional cost to the *Employer* and without causing delay to the performance of this contract.

Z12.5 The *Contractor* shall maintain records of all Timber supplied and used in the performance of the contract. Such information shall be made available to the *Employer* promptly if requested at any time.

Z12.6 Employer's Reporting Requirements

Z12.6.1 Unless the *Employer* has given its written approval in accordance with clause Z12.1 that Timber that is not Sustainable Timber may be used, then, if requested, the *Contractor* shall promptly provide evidence to the *Employer's* satisfaction that the Timber is Sustainable Timber.

Z12.6.2 Upon a request by the *Employer* referred to in clause Z12.6.1, in the event that the *Contractor* does not promptly provide such evidence, or the evidence provided does not satisfy the *Employer's* requirements, then (and without prejudice to clause Z12.7), the *Employer* reserves the right to retain 25% of any

monies payable to the *Contractor* under this contract until such date as the *Employer* is in receipt of such evidence and the *Employer* is satisfied that the evidence establishes that the Timber is Sustainable Timber.

Z12.6.3 The *Contractor* shall report quarterly on its use of Sustainable Timber in the performance of this contract.

Z12.6.4 The *Contractor* shall report on the amount of Timber that has been supplied to the *Employer* in accordance with clause Z12.1 which is not Sustainable Timber.

Z12.7 Evidence of Sustainable Timber

The *Employer* reserves the right to determine whether the evidence supplied by the *Contractor* is sufficient to satisfy it that the Works Information and the contract have been fully complied with. In the event that the *Employer* is not so satisfied, the *Contractor* shall, on written request by the *Employer*, commission and meet the costs of an Independent Report to verify the source of the Timber, and assess whether the forests of origin were managed in accordance with the specified local laws and regulations.

Z12.8 Evidence of Legal Timber

The *Contractor* shall, before delivering any Virgin Timber under this contract, obtain documentary evidence to the *Employer's* satisfaction that the Timber is both Legal and Sustainable Timber. If requested in writing by the *Employer*, the *Contractor* shall submit such documentary evidence to the *Employer* either prior to delivery or at such other times as the *Employer* may require. For the avoidance of doubt, the *Contractor* shall identify, as part of the evidence submitted, a chain of custody from the source of the Timber through to delivery of the final product.

Z12.9 The *Employer* reserves the right at any time during the execution of the contract and for a period of six years from final delivery of any Timber under this contract to require the *Contractor* to produce the evidence required for the *Employer's* inspection within 14 days of the *Employer's* written request.

Z13 London Living Wage

Z13.1 For the purposes of this clause the "London Living Wage" is the basic hourly

wage published on http://www.london.gov.uk/mayor/economic_unit/workstreams/living-wage.jsp (or any replacement web address) as may be updated from time to time.

Without prejudice to any other provision of this contract the *Contractor*

Z13.1.1 ensures that none of its employees, and uses reasonable endeavours to procure that none of the employees of its Subcontractors and Indirect Subcontractors engaged in the provision of the *works* is paid an hourly wage (or equivalent hourly wage) less than the London Living Wage,

Z13.1.2 ensures that none of its employees, and uses reasonable endeavours to procure that none of the employees of its Subcontractors and Indirect Subcontractors, engaged in the provision of the *works* is paid less than the amount to which they are entitled in their respective contracts of employment, and

Z13.1.3 disseminates on behalf of the *Employer* to those of its employees who are engaged in the provision of the *works* and were paid the London Living Wage and to its Subcontractors and Indirect Subcontractors such perception questionnaires as the *Employer* may reasonably require from time to time and promptly collates and returns to the *Employer* responses to such questionnaires.

Z13.2 Any breach by the *Contractor* of the provisions of clause Z13.1 is treated as a substantial failure by the *Contractor* to comply with an obligation under this contract for the purposes of clause 91.2.

Z14 Ethical Sourcing and Work Related Road Risk

The *Contractor* shall, and shall procure that his Subcontractors and Indirect Subcontractors shall, observe and comply with the ethical sourcing and work related road risk and fleet operator recognition scheme obligations and requirements set out in the Works Information.

Z15 Lane Rental

Z15.1 For the purpose of this clause the following terms have the following

meanings

- "TfL Lane Rental Scheme" means the lane rental scheme described in **Schedule 15** to the Framework Agreement,
- "Lane Rental Road Segment" is as identified in the TfL Lane Rental Scheme,
- "Pinchpoint" is as identified in the TfL Lane Rental Scheme,
- "Lane Rental Times" are the times identified in the TfL Lane Rental Scheme and
- "Charge Rates" are the rates identified in the TfL Lane Rental Scheme

Z15.2 The *Contractor* pays the Lane Rental Charges:

- as stated in the TfL Lane Rental Scheme and
- at the Charge Rates

for each Lane Rental Road Segment or Pinchpoint which he occupies during Lane Rental Times.

Lane Rental Charges will be recovered independently and will not affect other payments due under the contract, unless they are an element of the Defined Cost associated with a compensation event that occurs. Transport for London will send a Schedule of Lane Rental Charges due from the *Contractor* each 4-week period. If the *Contractor* disagrees with the Schedule he shall within 10 days respond providing details of the dispute as requested in the Schedule. Once 10 days have elapsed or after any dispute has been investigated and TfL have confirmed the Schedule as issued or amended an invoice will be issued by TfL. The invoice will incorporate payment details.

Z16 **Equality & Diversity Strategic Plan**

For the purpose of this clause Z16, "equality groups" comprise the following:

- **Age** (older people (aged 60 or over)), children and young people (under the age of 25),
- **Disability** (people with mobility and sensory impairments, mental health issues, learning difficulties or other hidden impairments),
- **Faith** (people with a distinct religious or philosophical belief),

- **Gender** (women and transgendered people),
- **Race** (people from black, Asian and/or minority ethnic communities),
- **Sexual orientation** (lesbians, gay men and bisexual people) and
- **Socio-economic** (people in or from deprived areas or socially excluded groups).

Z16.1 The *Contractor* shall:

- Z16.1.1** develop, implement and comply with a plan, which sets out the *Contractor's* equality and diversity objectives for the duration of this contract and the means by which such objectives shall be achieved (the "**Equality and Diversity Strategic Plan**"), and
- Z16.1.2** procure that its Subcontractors, and use reasonable endeavours to procure that its Indirect Subcontractors, implement and comply with the Equality and Diversity Strategic Plan.

Z16.2 The Equality and Diversity Strategic Plan shall demonstrate as a minimum:

- Z16.2.1** adoption of a comprehensive equality policy that is in line with applicable Statutory Requirements and codes of practice of the Equality and Human Rights Commission,
- Z16.2.2** implementation of recruitment policies and procedures that exclude practices that are discriminatory, create unfair conditions of employment or create unequal rates of pay (which shall be monitored by conducting reviews on a regular basis),
- Z16.2.3** active engagement and securing of long term relationships with the *Employer's* jobs and skills brokerage service, which will work with local employment agencies and unemployment programmes so that local people are made aware of employment opportunities to Provide the Works to ensure that the *Contractor's* workforce becomes increasingly reflective of the diverse communities to be served by the *Employer*,
- Z16.2.4** publicity for vacancies that encourages applicants from equality

groups and removal of potential barriers to recruitment from such groups,

Z16.2.5 well defined procedures to deal with harassment and grievances and details of staff assigned to deal with issues of this nature,

Z16.2.6 a robust mechanism for implementation and inclusion of equality objectives into staff appraisal mechanisms,

Z16.2.7 identification of the aims to be achieved in respect of equality and diversity and what actions will be taken to ensure that such aims are actively progressed and achieved,

Z16.2.8 how the plan will continue to be shaped by key stakeholders through ongoing dialogue with the *Employer* and the *Contractor's* employees,

Z16.2.9 availability of adequate numbers of suitably qualified personnel together with resources and allocation of time to deliver the Equality and Diversity Strategic Plan,

Z16.2.10 how the *Contractor* will ensure that each of its Subcontractors (and use reasonable endeavours to ensure that its Indirect Subcontractors) adopt and implement an equality and diversity policy in relation to their respective employees engaged to Provide the Works which is at least as extensive in scope as the Equality and Diversity Strategic Plan, and

Z16.2.11 the means by which Subcontractors and Indirect Subcontractors will provide supplier diversity data to the *Contractor*, how baseline evaluation will be undertaken and how individual members of the relevant workforce will be monitored.

Z17 Monitoring And Reporting

Z17.1 Subject to clause Z17.2, the *Contractor* shall provide the following information to the *Employer* on the Contract Date and every six (6) months thereafter (or at such lesser or greater intervals as determined by the *Employer* acting reasonably and notified to the *Contractor*):

Z17.1.1 the proportion of *Contractor* employees, agents and consultants

and, to the extent reasonably possible, the employees of its Subcontractors and Indirect Subcontractors, who are:

- female,
- of non-white British origin or who classify themselves as being non-white British,
- from the local community, and/or
- disabled, and

Z17.1.2 the proportion of its Subcontractors and Indirect Subcontractors that are small or medium enterprises and/or black and minority ethnic businesses.

Z17.2 The *Contractor* shall ensure at all times that it complies, and that its Subcontractors and its Indirect Subcontractors comply, with the requirements of the Data Protection Act 1998 in the collection and reporting of the information to the *Employer* pursuant to clause Z20.1.

Z18 Diversity Infractions

Z18.1 If the *Contractor* or any of its Subcontractors commits a Diversity Infraction, the *Employer* shall be entitled (but not obliged) to:

Z18.1.1 serve written notice upon the *Contractor* identifying in reasonable detail the nature of the Diversity Infraction and the *Contractor* shall cease committing and remedy such Diversity Infraction within 30 days of receipt of such notice (or such longer period as may be specified in the notice), or

Z18.1.2 where the Diversity Infraction is committed by a Subcontractor, serve written notice upon the *Contractor* identifying in reasonable detail the nature of the Diversity Infraction, and the *Contractor* shall procure that the relevant Subcontractor ceases committing and remedies the Diversity Infraction within 30 days of receipt by the *Contractor* of such notice (or such longer period as may be specified in the notice). If the *Contractor* fails to procure the remedy of the Diversity Infraction, the *Employer* may (in its sole discretion) serve a further written notice upon the *Contractor* and

within 30 days of receipt of such further notice (or such longer period as may be specified in the notice) the *Contractor* shall terminate the appointment of its Subcontractor under the relevant subcontract and procure performance of the affected works or services by another subcontractor and the *Employer* may, in its sole discretion, require that the *Contractor* provides evidence to substantiate such subcontractor's compliance with the obligations specified in clauses Z11, Z16 and Z27.

Z18.2 Where following receipt of a notice given pursuant to clauses Z18.1.1 or Z18.1.2, the *Contractor* fails to remedy a Diversity Infraction to the satisfaction of the *Employer* or, in the case of clause Z18.1.2, fails to terminate the subcontract with a defaulting Subcontractor and procure performance by another subcontractor, which also complies with the obligations specified in clauses Z11, Z16 and Z17, the *Contractor* will be treated as having substantially failed to comply with his obligations under this contract and the *Employer* shall be entitled (but not obliged) to terminate this contract, without further notice to the *Contractor*, pursuant to clause 91.2.

Z19 Equality and Diversity Audit

Z19.1 The *Employer* or its nominee may undertake an audit of any and/or all information relating to the *Contractor's* compliance with clauses Z17 and Z18. The *Employer's* rights pursuant to this clause shall include any and all documents and records of the *Contractor* and its Subcontractors and, where applicable, Indirect Subcontractors and shall include the Minimum Records.

Z19.2 The *Contractor* shall, and shall procure that each of its Subcontractors and Indirect Subcontractors shall, maintain and retain the Minimum Records for a minimum of six (6) years from the expiry or termination of this contract with respect to all matters relating to the performance of clause Z16. The *Contractor* shall procure that each subcontract between it and its Subcontractors and, each sub-contract between its Subcontractor and any Indirect Subcontractor shall contain rights of audit in favour of and enforceable by the *Employer* substantially equivalent to those granted by the *Contractor* pursuant to clause Z19.1.

Z19.3 The *Contractor* shall, and shall procure that its Subcontractors and Indirect Subcontractors shall, promptly provide all reasonable co-operation to the *Employer* or its nominee in relation to any audit including, to the extent

reasonably possible in each particular circumstance:

- granting or procuring the grant of access to any premises used in the performance of this contract or in the relevant Subcontractor's or Indirect Subcontractor's performance of its subcontract, whether on the *Contractor's* own premises or otherwise;
- granting or procuring the grant of access to any equipment (including all computer hardware and software and databases) used (whether exclusively or non-exclusively) in the performance of the *Contractor's* or relevant Subcontractor's or Indirect Subcontractor's obligations specified in clause Z16, wherever situated and whether the *Contractor* owns the equipment or otherwise; and
- complying with the *Employer's* (or its nominee's) reasonable requests for access to the *Contractor's* senior personnel (including key persons) engaged in the performance of this contract or the relevant Subcontractor's or Indirect Subcontractor's performance of its subcontract.



SECTION 5 COLLATERAL WARRANTY

Contract Reference: LTC17-435

Collateral Warranty

Contractor Warranty

between

Morgan Sindall Construction & Infrastructure Ltd

And

The Mayor and Burgesses of the London Borough of Croydon

And

Tramtrack Croydon Limited T/a London Trams

relating to

Blackhorse Road Bridge North and Highway Works

Version 2.0

THIS DEED is made on 12th day of March 2018

BETWEEN:

- (1) **Morgan Sindall Construction & Infrastructure Ltd**, (registered number [REDACTED]) whose registered office is [REDACTED] ("the Contractor"); and
- (2) **The Mayor and Burgesses of the London Borough of Croydon**, of Bernard Weatherill House, 8 Mint Walk, Croydon, CR0 1EA ("the Beneficiary" which expression includes its permitted successors in title and assigns); and
- (3) **Tramtrack Croydon Limited T/a London Trams**, a statutory corporation of 42-50 Victoria Street, London SW1H 0TL (and its statutory successors assigns and transferees) ("the Employer").

BACKGROUND:

- (A) By a contract dated [23/02/2018] ("the Contract") the Employer Transport for London has appointed the Contractor for the provision of works as defined in the Contract reference LTC17-435 ("the Works").
- (B) The Beneficiary is the owner of the site in connection with the works on of Blackhorse Road Bridge North & Highway (as defined in the Contract).
- (C) The Contractor is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

1. CONSIDERATION

This Deed is made in consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor receipt of which the Contractor acknowledges.

2. CONTRACTOR'S WARRANTIES

- 2.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its obligations under the Contract in accordance with the Contract.
- 2.2 The Contractor further warrants that it has exercised and will continue to exercise reasonable skill and care (save where the Contract imposes a higher

standard in which case such higher standard will apply) in relation to the following (so far as the Contractor is responsible for them):

2.2.1 the design of the Works;

2.2.2 the selection of goods, materials, equipment or plant for the Works;
and

2.2.3 the satisfaction of any performance requirement or Works Information for the Works.

3 INTELLECTUAL PROPERTY RIGHTS

- 3.1 Subject to the following provisions of this Deed, all Intellectual Property in the drawings, designs, charts, Works Information, plans, software and any other documents or materials in any medium which have been created and/or developed by the Contractor in the course of performing its obligations under the Contract ("the Documents") will remain vested in the Employer. For the purposes of this clause 3, "Intellectual Property" shall mean all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
- 3.2 To the extent that it is able to do so, the Employer grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary, with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Works including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 3.3 The Employer will not be liable for any use the Beneficiary may make of the Documents.

4. PROFESSIONAL INDEMNITY INSURANCE

4.1 The Contractor by this Deed covenants with the Beneficiary that it has at its own cost taken out and will maintain professional indemnity insurance with reputable insurers carrying on business in the European Union with a limit of indemnity of not less than **£10,000,000** for any one occurrence or series of occurrences arising out of any one event, in relation to the Works provided always that:

4.1.1 such insurance shall be in place from the date of commencement of the Works until no less than 12 years after the completion of the Works; and

4.1.2 if such insurance is not available to the Contractor (and/or design and build contractors engaged in works of a similar, size nature and complexity as the Works) at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Contractor), the Contractor and the Beneficiary will meet and the Contractor will outline the steps he intends to take to manage such risks. If the steps proposed by the Contractor are not reasonably acceptable to the Beneficiary, the parties shall agree an alternative method of managing such risk.

4.2 The Contractor will provide the Beneficiary with reasonable evidence that the policies referred to in this clause 4 are in full force and effect together with a summary of the policy terms and conditions.

5. NOTICES

Any notice to be given by either party under this Deed will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45p.m. on any day it will be deemed to be served on the next working day. Any notice sent by post will be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45p.m. on a working day and otherwise on the next working day.

6. ASSIGNMENT

The benefit of and the rights on the part of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two occasions only. The

Beneficiary will give the Contractor written notice following any such assignment specifying the name and address of the assignee and the date of the assignment. The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary under this Deed or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original beneficiary or any intermediate beneficiary has not suffered any or as much loss.

7. OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including, without limitation, any remedies in negligence.

8. NO APPROVAL

The Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for the Beneficiary's benefit or on its behalf.

9. LIMITATION

9.1 The Contractor has no liability under this Deed which is greater or of longer duration than it would have had if in lieu of this Deed the Beneficiary had been a party to the Contract as joint employer provided that the Contractor shall not be entitled to set-off or deduct from any sums payable to the Beneficiary under this Deed any sums payable to the Beneficiary under this Deed any sums due or claimed as due by the Contractor from the Employer.

9.2 The Contractor shall be entitled in any action or proceedings brought by the Beneficiary under this Deed to rely on any limitation in the Contract and to raise equivalent rights in defence of liability (but excluding set-offs and counterclaims) as it would have against the Beneficiary if, in lieu of this Deed, the Beneficiary had been a party to the Contract as joint employer.

9.3 The parties agree that no action or proceedings may be brought or commenced under this Deed at any time after the date being twelve years after the date of completion of the Works.

9.4 The Contractor shall not by reason of this Deed have any liability to the Beneficiary for delay in completion of the Works or any part of them.

10. **GOVERNING LAW AND JURISDICTION**

This Deed will be construed in accordance with English law and be in all respects subject to the non-exclusive jurisdiction of the English courts.

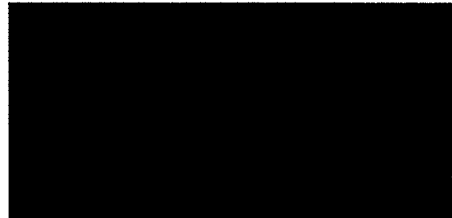
11. **THIRD PARTY RIGHTS**

The parties to this Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

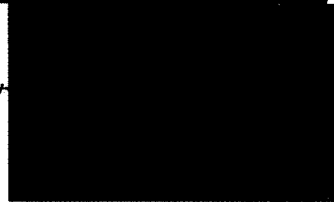
THIS DOCUMENT is executed as a deed and delivered on the date stated at the beginning of this Deed.

Executed as a Deed by the
Contractor
acting by a Director and its
Company
Secretary or two Directors:

Director



Director/Secretary



The Common Seal/Corporate Seal of
[TfL Company] was affixed to this
Deed in the presence of:

[Redacted]
Name and description of authorised signatory

The Common Seal of
THE MAYOR AND BURGESSES OF THE
LONDON BOROUGH OF CROYDON
was hereunto affixed in the presence of:

Authorised Signatory



Seal Number

244483.....

SECTION 6



SECTION 6

NEC 3 CONDITIONS OF CONTRACT OPTION E



Engineering and Construction Contract

This contract should be used for the appointment of a contractor for engineering and construction work, including any level of design responsibility

Option E: Cost reimbursable contract

An NEC document

April 2013

Construction Clients' Board endorsement of NEC3

The Construction Clients' Board recommends that public sector organisations use the NEC3 contracts when procuring construction. Standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of *Achieving Excellence in Construction*.

Cabinet Office UK

NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a family of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document –using language and a structure which are straightforward and easily understood.

NEC3 Engineering and Construction Contract is one of the NEC family and is consistent with all other NEC3 documents. Also available are the Engineering and Construction Contract Guidance Notes, Flow Charts and Options A, B, C, D, E and F.

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FOREWORD

I was delighted to be asked to write the Foreword for the NEC3 Contracts.

I have followed the outstanding rise and success of NEC contracts for a number of years now, in particular during my tenure as the 146th President of the Institution of Civil Engineers, 2010/11.

In my position as UK Government's Chief Construction Adviser, I am working with Government and industry to ensure Britain's construction sector is equipped with the knowledge, skills and best practice it needs in its transition to a low carbon economy. I am promoting innovation in the sector, including in particular the use of Building Information Modelling (BIM) in public sector construction procurement; and the synergy and fit with the collaborative nature of NEC contracts is obvious. The Government's construction strategy is a very significant investment and NEC contracts will play an important role in setting high standards of contract preparation, management and the desirable behaviour of our industry.

In the UK, we are faced with having to deliver a 15–20 per cent reduction in the cost to the public sector of construction during the lifetime of this Parliament. Shifting mind-set, attitude and behaviour into best practice NEC processes will go a considerable way to achieving this.

Of course, NEC contracts are used successfully around the world in both public and private sector projects; this trend seems set to continue at an increasing pace. NEC contracts are, according to my good friend and NEC's creator Dr Martin Barnes CBE, about better management of projects. This is quite achievable and I encourage you to understand NEC contracts to the best you can and exploit the potential this offers us all.

Peter Hansford

UK Government's Chief Construction Adviser
Cabinet Office

PREFACE

The NEC contracts are the only suite of standard contracts designed to facilitate and encourage good management of the projects on which they are used. The experience of using NEC contracts around the world is that they really make a difference. Previously, standard contracts were written mainly as legal documents best left in the desk drawer until costly and delaying problems had occurred and there were lengthy arguments about who was to blame.

The language of NEC contracts is clear and simple, and the procedures set out are all designed to stimulate good management. Foresighted collaboration between all the contributors to the project is the aim. The contracts set out how the interfaces between all the organisations involved will be managed –from the client through the designers and main contractors to all the many subcontractors and suppliers.

Versions of the NEC contract are specific to the work of professional service providers such as project managers and designers, to main contractors, to subcontractors and to suppliers. The wide range of situations covered by the contracts means that they do not need to be altered to suit any particular situation.

The NEC contracts are the first to deal specifically and effectively with management of the inevitable risks and uncertainties which are encountered to some extent on all projects. Management of the expected is easy, effective management of the unexpected draws fully on the collaborative approach inherent in the NEC contracts.

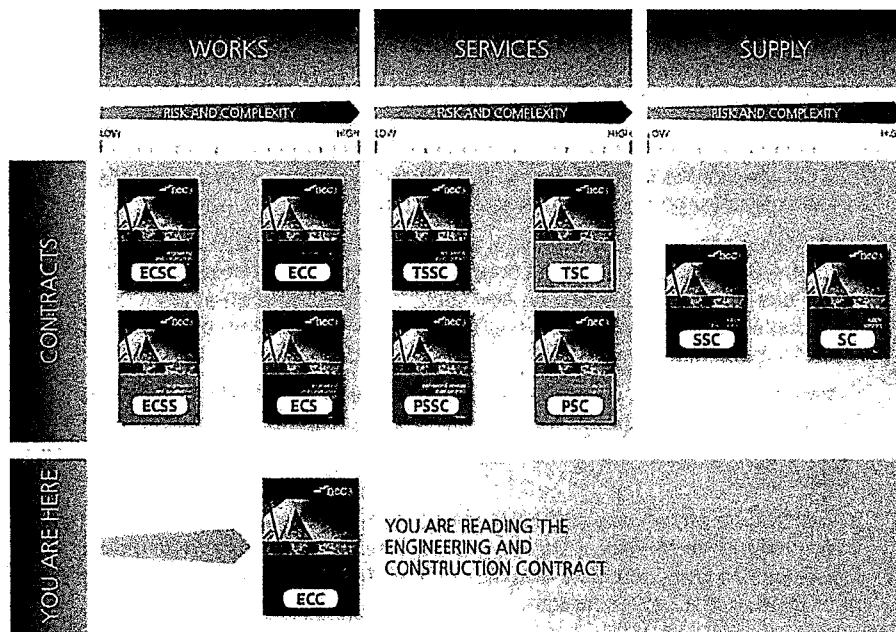
Most people working on projects using the NEC contracts for the first time are hugely impressed by the difference between the confrontational characteristics of traditional contracts and the teamwork engendered by the NEC. The NEC does not include specific provisions for dispute avoidance. They are not necessary. Collaborative management itself is designed to avoid disputes and it really works.

It is common for the final account for the work on a project to be settled at the time when the work is finished. The traditional long period of expensive professional work after completion to settle final payments just is not needed.

The NEC contracts are truly a massive change for the better for the industries in which they are used.

Dr Martin Barnes CBE

Originator of the NEC contracts



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The NEC first edition was produced by the Institution of Civil Engineers through its NEC Working Group.

The original NEC was designed and drafted by Dr Martin Barnes then of Coopers and Lybrand with the assistance of Professor J. G. Perry then of the University of Birmingham, T. W. Weddell then of Travers Morgan Management, T. H. Nicholson, Consultant to the Institution of Civil Engineers, A. Norman then of the University of Manchester Institute of Science and Technology and P. A. Baird, then Corporate Contracts Consultant, Eskom, South Africa.

The second edition of the NEC documents for engineering and construction contracts was produced by the Institution of Civil Engineers through its NEC Panel.

The third edition of the NEC Engineering and Construction Contract was produced by the Institution of Civil Engineers through its NEC Panel. The Flow Charts were produced by John S. Gillespie with assistance from Tom Nicholson.

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AMENDMENTS JUNE 2006

The following amendments have been made to the June 2005 edition.

Page	Clause	Line
11	32.1	4 deleted: 'and of notified early warning matters'
45	Contract Data Part one, 1.	3 added, '(with amendments June 2006)'
48	Contract Data Part one, 1.	23 deleted: 'If there are additional compensation events' and following 4 lines

AMENDMENTS APRIL 2013

The following amendments have been made to the June 2005 edition. Full details of all amendments are available on www.neccontract.com.

Page	Clause	Line
12	40.1	1 replace: 'The subclauses in this clause only apply' with 'This clause only applies'
18	61.1 61.3	1 text replaced 1 text replaced
18	61.4	1 text replaced
19	62.6 63.1	2 'to this effect' replaced by 'of his failure' 1 text replaced delete final sentence: 'In all other . . . the event.' replace with 'In all other cases, the date is the date of the notification of the compensation event.'
20	63.14 64.4	1 new clause 2 'to this effect' replaced by 'of his failure'
26	91.4	1 text replaced
32	W2.3(7) W2.3(8) W2.3(12)	added at end: new sentence added at end: new sentence text replaced
39	Y(UK)1	1 insert new clause: 'Project Bank Account'
41	Y(UK)1	1 insert new clause: 'Trust Deed'
42	Y(UK)1	1 insert new clause: 'Joining Deed'
43	Y2.1 (1) Y2.2 Y2.3	1 text replaced 1 paragraph 3, text replaced 1 text replaced
48	41	3rd bullet: text replaced
49	Contract Data Part one, 1.	4 date replaced with: 'April 2013'
56	Y(UK)3 Y(UK)1 and Y(UK)3	1 text inserted 1 text inserted
60	Y(UK)1	1 text inserted

SCHEDULE OF OPTIONS

One of the following dispute resolution Options must be selected to complete the chosen main Option.

Option W1

Dispute resolution procedure (used unless the United Kingdom Housing Grants, Construction and Regeneration Act 1996 applies).

Option W2

Dispute resolution procedure (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies).

The following secondary Options should then be considered. It is not necessary to use any of them. Any combination other than those stated may be used.

Option X2

Changes in the law

Option X4

Parent company guarantee

Option X5

Sectional Completion

Option X6

Bonus for early Completion

Option X7

Delay damages

Option X12

Partnering

Option X13

Performance bond

Option X14

Advanced payment to the *Contractor*

Option X15

Limitation of the *Contractor's* liability for his design to reasonable skill and care

Option X16

Retention

Option X17

Low performance damages

Option X18

Limitation of liability

Option X20

Key Performance Indicators (not used with Option X12)

The following Options dealing with national legislation should be included if required.

Option Y(UK)1

Project Bank Account

Option Y(UK)2

The Housing Grants, Construction and Regeneration Act 1996

Option Y(UK)3

The Contracts (Rights of Third Parties) Act 1999

Option Z

Additional conditions of contract

Note

Options X1, X3, X8 to X11 and X19 are not used.

CORE CLAUSES

1 General

- | | | |
|------------------------------|------|---|
| Actions | 10 | |
| | 10.1 | The <i>Employer</i> , the <i>Contractor</i> , the <i>Project Manager</i> and the <i>Supervisor</i> shall act as stated in this contract and in a spirit of mutual trust and co-operation. |
| Identified and defined terms | 11 | |
| | 11.1 | In these conditions of contract, terms identified in the Contract Data are in italics and defined terms have capital initials. |
| | 11.2 | <p>(1) The Accepted Programme is the programme identified in the Contract Data or is the latest programme accepted by the <i>Project Manager</i>. The latest programme accepted by the <i>Project Manager</i> supersedes previous Accepted Programmes.</p> <p>(2) Completion is when the <i>Contractor</i> has</p> <ul style="list-style-type: none">• done all the work which the Works Information states he is to do by the Completion Date and• corrected notified Defects which would have prevented the <i>Employer</i> from using the works and Others from doing their work. <p>If the work which the <i>Contractor</i> is to do by the Completion Date is not stated in the Works Information, Completion is when the <i>Contractor</i> has done all the work necessary for the <i>Employer</i> to use the works and for Others to do their work.</p> <p>(3) The Completion Date is the <i>completion date</i> unless later changed in accordance with this contract.</p> <p>(4) The Contract Date is the date when this contract came into existence.</p> <p>(5) A Defect is</p> <ul style="list-style-type: none">• a part of the works which is not in accordance with the Works Information or• a part of the works designed by the <i>Contractor</i> which is not in accordance with the applicable law or the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted. <p>(6) The Defects Certificate is either a list of Defects that the <i>Supervisor</i> has notified before the <i>defects date</i> which the <i>Contractor</i> has not corrected or, if there are no such Defects, a statement that there are none.</p> <p>(7) Equipment is items provided by the <i>Contractor</i> and used by him to Provide the Works and which the Works Information does not require him to include in the works.</p> <p>(8) The Fee is the sum of the amounts calculated by applying the <i>subcontracted fee percentage</i> to the Defined Cost of subcontracted work and the <i>direct fee percentage</i> to the Defined Cost of other work.</p> <p>(9) A Key Date is the date by which work is to meet the Condition stated. The Key Date is the <i>key date</i> stated in the Contract Data and the Condition is the <i>condition</i> stated in the Contract Data unless later changed in accordance with this contract.</p> <p>(10) Others are people or organisations who are not the <i>Employer</i>, the <i>Project Manager</i>, the <i>Supervisor</i>, the <i>Adjudicator</i>, the <i>Contractor</i> or any employee, Subcontractor or supplier of the <i>Contractor</i>.</p> <p>(11) The Parties are the <i>Employer</i> and the <i>Contractor</i>.</p> <p>(12) Plant and Materials are items intended to be included in the works.</p> <p>(13) To Provide the Works means to do the work necessary to complete the works in accordance with this contract and all incidental work, services and actions which this</p> |

contract requires.

(14) The Risk Register is a register of the risks which are listed in the Contract Data and the risks which the *Project Manager* or the *Contractor* has notified as an early warning matter. It includes a description of the risk and a description of the actions which are to be taken to avoid or reduce the risk.

(15) The Site is the area within the *boundaries of the site* and the volumes above and below it which are affected by work included in this contract.

(16) Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.

(17) A Subcontractor is a person or organisation who has a contract with the *Contractor* to

- construct or install part of the *works*,
- provide a service necessary to Provide the Works or
- supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the *works*.

(18) The Working Areas are those parts of the *working areas* which are

- necessary for Providing the Works and
- used only for work in this contract

unless later changed in accordance with this contract.

(19) Works Information is information which either

- specifies and describes the *works* or
- states any constraints on how the *Contractor* Provides the Works

and is either

- in the documents which the Contract Data states it is in or
- in an instruction given in accordance with this contract.

(23) Defined Cost is

- the amount of payments due to Subcontractors for work which is subcontracted without taking account of amounts deducted for
 - retention,
 - payment to the *Employer* as a result of the Subcontractor failing to meet a Key Date,
 - the correction of Defects after Completion,
 - payments to Others and
 - the supply of equipment, supplies and services included in the charge for overhead cost within the Working Areas in this contract

and

- the cost of components in the Schedule of Cost Components for other work less Disallowed Cost.

(25) Disallowed Cost is cost which the *Project Manager* decides

- is not justified by the *Contractor's* accounts and records,
- should not have been paid to a Subcontractor or supplier in accordance with his contract,
- was incurred only because the *Contractor* did not
 - follow an acceptance or procurement procedure stated in the Works Information or
 - give an early warning which this contract required him to give

and the cost of

- correcting Defects after Completion,
- correcting Defects caused by the *Contractor* not complying with a constraint on how he is to Provide the Works stated in the Works Information,

- Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information,
- resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the *Project Manager* requested and
- preparation for and conduct of an adjudication or proceedings of the *tribunal*.

(29) The Price for Work Done to Date is the total Defined Cost which the *Project Manager* forecasts will have been paid by the *Contractor* before the next assessment date plus the Fee.

(32) The Prices are the Defined Cost plus the Fee.

Interpretation and the law 12

- 12.1 In this contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round and words in the masculine also mean in the feminine and neuter.
- 12.2 This contract is governed by the *law of the contract*.
- 12.3 No change to this contract, unless provided for by the *conditions of contract*, has effect unless it has been agreed, confirmed in writing and signed by the Parties.
- 12.4 This contract is the entire agreement between the Parties.

Communications 13

- 13.1 Each instruction, certificate, submission, proposal, record, acceptance, notification, reply and other communication which this contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of this contract*.
- 13.2 A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
- 13.3 If this contract requires the *Project Manager*, the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in this contract, he replies within the *period for reply*.
- 13.4 The *Project Manager* replies to a communication submitted or resubmitted to him by the *Contractor* for acceptance. If his reply is not acceptance, the *Project Manager* states his reasons and the *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully.
- 13.5 The *Project Manager* may extend the *period for reply* to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* notifies the *Contractor* of the extension which has been agreed.
- 13.6 The *Project Manager* issues his certificates to the *Employer* and the *Contractor*. The *Supervisor* issues his certificates to the *Project Manager* and the *Contractor*.
- 13.7 A notification which this contract requires is communicated separately from other communications.
- 13.8 The *Project Manager* may withhold acceptance of a submission by the *Contractor*. Withholding acceptance for a reason stated in this contract is not a compensation event.

The Project Manager and the Supervisor 14

- 14.1 The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or of his work does not change the *Contractor's* responsibility to Provide the Works or his liability for his design.
- 14.2 The *Project Manager* and the *Supervisor*, after notifying the *Contractor*, may delegate any of their actions and may cancel any delegation. A reference to an action of the *Project Manager* or the *Supervisor* in this contract includes an action by his delegate.
- 14.3 The *Project Manager* may give an instruction to the *Contractor* which changes the Works Information or a Key Date.

	14.4	The <i>Employer</i> may replace the <i>Project Manager</i> or the <i>Supervisor</i> after he has notified the <i>Contractor</i> of the name of the replacement.
Adding to the Working Areas	15	
	15.1	The <i>Contractor</i> may submit a proposal for adding an area to the Working Areas to the <i>Project Manager</i> for acceptance. A reason for not accepting is that the proposed area is either not necessary for Providing the Works or used for work not in this contract.
Early warning	16	
	16.1	<p>The <i>Contractor</i> and the <i>Project Manager</i> give an early warning by notifying the other as soon as either becomes aware of any matter which could</p> <ul style="list-style-type: none"> • increase the total of the Prices, • delay Completion, • delay meeting a Key Date or • impair the performance of the works in use. <p>The <i>Contractor</i> may give an early warning by notifying the <i>Project Manager</i> of any other matter which could increase his total cost. The <i>Project Manager</i> enters early warning matters in the Risk Register. Early warning of a matter for which a compensation event has previously been notified is not required.</p>
	16.2	Either the <i>Project Manager</i> or the <i>Contractor</i> may instruct the other to attend a risk reduction meeting. Each may instruct other people to attend if the other agrees.
	16.3	At a risk reduction meeting, those who attend co-operate in
		<ul style="list-style-type: none"> • making and considering proposals for how the effect of the registered risks can be avoided or reduced, • seeking solutions that will bring advantage to all those who will be affected, • deciding on the actions which will be taken and who, in accordance with this contract, will take them and • deciding which risks have now been avoided or have passed and can be removed from the Risk Register.
	16.4	The <i>Project Manager</i> revises the Risk Register to record the decisions made at each risk reduction meeting and issues the revised Risk Register to the <i>Contractor</i> . If a decision needs a change to the Works Information, the <i>Project Manager</i> instructs the change at the same time as he issues the revised Risk Register.
Ambiguities and inconsistencies	17	
	17.1	The <i>Project Manager</i> or the <i>Contractor</i> notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of this contract. The <i>Project Manager</i> gives an instruction resolving the ambiguity or inconsistency.
Illegal and impossible requirements	18	
	18.1	The <i>Contractor</i> notifies the <i>Project Manager</i> as soon as he considers that the Works Information requires him to do anything which is illegal or impossible. If the <i>Project Manager</i> agrees, he gives an instruction to change the Works Information appropriately.
Prevention	19	
	19.1	<p>If an event occurs which</p> <ul style="list-style-type: none"> • stops the <i>Contractor</i> completing the works or • stops the <i>Contractor</i> completing the works by the date shown on the Accepted Programme, <p>and which</p> <ul style="list-style-type: none"> • neither Party could prevent and • an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it,

the *Project Manager* gives an instruction to the *Contractor* stating how he is to deal with the event.

2 The Contractor's main responsibilities

Providing the Works	20	
	20.1	The <i>Contractor</i> Provides the Works in accordance with the Works Information.
	20.3	The <i>Contractor</i> advises the <i>Project Manager</i> on the practical implications of the design of the works and on subcontracting arrangements.
	20.4	The <i>Contractor</i> prepares forecasts of the total Defined Cost for the whole of the works in consultation with the <i>Project Manager</i> and submits them to the <i>Project Manager</i> . Forecasts are prepared at the intervals stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the works. An explanation of the changes made since the previous forecast is submitted with each forecast.
The Contractor's design	21	
	21.1	The <i>Contractor</i> designs the parts of the works which the Works Information states he is to design.
	21.2	The <i>Contractor</i> submits the particulars of his design as the Works Information requires to the <i>Project Manager</i> for acceptance. A reason for not accepting the <i>Contractor's</i> design is that it does not comply with either the Works Information or the applicable law. The <i>Contractor</i> does not proceed with the relevant work until the <i>Project Manager</i> has accepted his design.
	21.3	The <i>Contractor</i> may submit his design for acceptance in parts if the design of each part can be assessed fully.
Using the Contractor's design	22	
	22.1	The <i>Employer</i> may use and copy the <i>Contractor's</i> design for any purpose connected with construction, use, alteration or demolition of the works unless otherwise stated in the Works Information and for other purposes as stated in the Works Information.
Design of Equipment	23	
	23.1	The <i>Contractor</i> submits particulars of the design of an item of Equipment to the <i>Project Manager</i> for acceptance if the <i>Project Manager</i> instructs him to. A reason for not accepting is that the design of the item will not allow the <i>Contractor</i> to Provide the Works in accordance with <ul style="list-style-type: none">• the Works Information,• the <i>Contractor's</i> design which the <i>Project Manager</i> has accepted or• the applicable law.
People	24	
	24.1	The <i>Contractor</i> either employs each key person named to do the job stated in the Contract Data or employs a replacement person who has been accepted by the <i>Project Manager</i> . The <i>Contractor</i> submits the name, relevant qualifications and experience of a proposed replacement person to the <i>Project Manager</i> for acceptance. A reason for not accepting the person is that his relevant qualifications and experience are not as good as those of the person who is to be replaced.
	24.2	The <i>Project Manager</i> may, having stated his reasons, instruct the <i>Contractor</i> to remove an employee. The <i>Contractor</i> then arranges that, after one day, the employee has no further connection with the work included in this contract.
Working with the Employer and Others	25	
	25.1	The <i>Contractor</i> co-operates with Others in obtaining and providing information which they need in connection with the works. He co-operates with Others and shares the Working Areas with them as stated in the Works Information.
	25.2	The <i>Employer</i> and the <i>Contractor</i> provide services and other things as stated in the Works Information. Any cost incurred by the <i>Employer</i> as a result of the <i>Contractor</i> not providing the services and other things which he is to provide is assessed by the

Project Manager and paid by the *Contractor*.

25.3 If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost either

- in carrying out work or
- by paying an additional amount to Others in carrying out work

on the same project, the additional cost which the *Employer* has paid or will incur is paid by the *Contractor*. The *Project Manager* assesses the additional cost within four weeks of the date when the Condition for the Key Date is met. The *Employer's* right to recover the additional cost is his only right in these circumstances.

Subcontracting 26

26.1 If the *Contractor* subcontracts work, he is responsible for Providing the Works as if he had not subcontracted. This contract applies as if a Subcontractor's employees and equipment were the *Contractor's*.

26.2 The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that his appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has accepted him.

26.3 The *Contractor* submits the proposed conditions of contract for each subcontract to the *Project Manager* for acceptance unless

- an NEC contract is proposed or
- the *Project Manager* has agreed that no submission is required.

The *Contractor* does not appoint a Subcontractor on the proposed subcontract conditions submitted until the *Project Manager* has accepted them. A reason for not accepting them is that

- they will not allow the *Contractor* to Provide the Works or
- they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

26.4 The *Contractor* submits the proposed contract data for each subcontract for acceptance to the *Project Manager* if

- an NEC contract is proposed and
- the *Project Manager* instructs the *Contractor* to make the submission.

A reason for not accepting the proposed contract data is that its use will not allow the *Contractor* to Provide the Works.

Other responsibilities 27

27.1 The *Contractor* obtains approval of his design from Others where necessary.

27.2 The *Contractor* provides access to work being done and to Plant and Materials being stored for this contract for

- the *Project Manager*,
- the *Supervisor* and
- Others notified to him by the *Project Manager*.

27.3 The *Contractor* obeys an instruction which is in accordance with this contract and is given to him by the *Project Manager* or the *Supervisor*.

27.4 The *Contractor* acts in accordance with the health and safety requirements stated in the Works Information.

3 Time

Starting, Completion and Key Dates	30	
	30.1	The <i>Contractor</i> does not start work on the Site until the first <i>access date</i> and does the work so that Completion is on or before the Completion Date.
	30.2	The <i>Project Manager</i> decides the date of Completion. The <i>Project Manager</i> certifies Completion within one week of Completion.
	30.3	The <i>Contractor</i> does the work so that the Condition stated for each Key Date is met by the Key Date.
The programme	31	
	31.1	If a programme is not identified in the Contract Data, the <i>Contractor</i> submits a first programme to the <i>Project Manager</i> for acceptance within the period stated in the Contract Data.
	31.2	<p>The <i>Contractor</i> shows on each programme which he submits for acceptance</p> <ul style="list-style-type: none">• the <i>starting date</i>, <i>access dates</i>, Key Dates and Completion Date,• planned Completion,• the order and timing of the operations which the <i>Contractor</i> plans to do in order to Provide the Works,• the order and timing of the work of the <i>Employer</i> and Others as last agreed with them by the <i>Contractor</i> or, if not so agreed, as stated in the Works Information,• the dates when the <i>Contractor</i> plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the <i>Employer</i> and Others to do their work,• provisions for<ul style="list-style-type: none">• float,• time risk allowances,• health and safety requirements and• the procedures set out in this contract,• the dates when, in order to Provide the Works in accordance with his programme, the <i>Contractor</i> will need<ul style="list-style-type: none">• access to a part of the Site if later than its <i>access date</i>,• acceptances,• Plant and Materials and other things to be provided by the <i>Employer</i> and• information from Others,• for each operation, a statement of how the <i>Contractor</i> plans to do the work identifying the principal Equipment and other resources which he plans to use and• other information which the Works Information requires the <i>Contractor</i> to show on a programme submitted for acceptance.
	31.3	<p>Within two weeks of the <i>Contractor</i> submitting a programme to him for acceptance, the <i>Project Manager</i> either accepts the programme or notifies the <i>Contractor</i> of his reasons for not accepting it. A reason for not accepting a programme is that</p> <ul style="list-style-type: none">• the <i>Contractor's</i> plans which it shows are not practicable,• it does not show the information which this contract requires,• it does not represent the <i>Contractor's</i> plans realistically or• it does not comply with the Works Information.
Revising the programme	32	
	32.1	The <i>Contractor</i> shows on each revised programme

			<ul style="list-style-type: none"> • the actual progress achieved on each operation and its effect upon the timing of the remaining work, • the effects of implemented compensation events, • how the <i>Contractor</i> plans to deal with any delays and to correct notified Defects and • any other changes which the <i>Contractor</i> proposes to make to the Accepted Programme.
	32.2	The <i>Contractor</i> submits a revised programme to the <i>Project Manager</i> for acceptance	<ul style="list-style-type: none"> • within the <i>period for reply</i> after the <i>Project Manager</i> has instructed him to, • when the <i>Contractor</i> chooses to and, in any case, • at no longer interval than the interval stated in the Contract Data from the <i>starting date</i> until Completion of the whole of the works.
Access to and use of the Site	33		
	33.1	The <i>Employer</i> allows access to and use of each part of the Site to the <i>Contractor</i> which is necessary for the work included in this contract. Access and use is allowed on or before the later of its <i>access date</i> and the date for access shown on the Accepted Programme.	
Instructions to stop or not to start work	34		
	34.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work and may later instruct him that he may re-start or start it.	
Take over	35		
	35.1	The <i>Employer</i> need not take over the works before the Completion Date if it is stated in the Contract Data that he is not willing to do so. Otherwise the <i>Employer</i> takes over the works not later than two weeks after Completion.	
	35.2	The <i>Employer</i> may use any part of the works before Completion has been certified. If he does so, he takes over the part of the works when he begins to use it except if the use is <ul style="list-style-type: none"> • for a reason stated in the Works Information or • to suit the <i>Contractor's</i> method of working. 	
	35.3	The <i>Project Manager</i> certifies the date upon which the <i>Employer</i> takes over any part of the works and its extent within one week of the date.	
Acceleration	36		
	36.1	The <i>Project Manager</i> may instruct the <i>Contractor</i> to submit a quotation for an acceleration to achieve Completion before the Completion Date. The <i>Project Manager</i> states changes to the Key Dates to be included in the quotation. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The <i>Contractor</i> submits details of his assessment with each quotation.	
	36.2	The <i>Contractor</i> submits a quotation or gives his reasons for not doing so within the <i>period for reply</i> .	
	36.4	When the <i>Project Manager</i> accepts a quotation for an acceleration, he changes the Completion Date, the Key Dates and the forecast of the total Defined Cost of the whole of the works accordingly and accepts the revised programme.	

4 Testing and Defects

Tests and inspections	40	
	40.1	This clause only applies to tests and inspections required by the Works Information or the applicable law.
	40.2	The <i>Contractor</i> and the <i>Employer</i> provide materials, facilities and samples for tests and inspections as stated in the Works Information.
	40.3	The <i>Contractor</i> and the <i>Supervisor</i> each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The <i>Contractor</i> notifies the <i>Supervisor</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Supervisor</i> may watch any test done by the <i>Contractor</i> .
	40.4	If a test or inspection shows that any work has a Defect, the <i>Contractor</i> corrects the Defect and the test or inspection is repeated.
	40.5	The <i>Supervisor</i> does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a <i>Supervisor's</i> test or inspection being successful becomes due at the later of the <i>defects date</i> and the end of the last defect correction period if <ul style="list-style-type: none">• the <i>Supervisor</i> has not done the test or inspection and• the delay to the test or inspection is not the <i>Contractor's</i> fault.
	40.6	The <i>Project Manager</i> assesses the cost incurred by the <i>Employer</i> in repeating a test or inspection after a Defect is found. The <i>Contractor</i> pays the amount assessed.
	40.7	When the <i>Project Manager</i> assesses the cost incurred by the <i>Employer</i> in repeating a test or inspection after a Defect is found, the <i>Project Manager</i> does not include the <i>Contractor's</i> cost of carrying out the repeat test or inspection.
Testing and inspection before delivery	41	
	41.1	The <i>Contractor</i> does not bring to the Working Areas those Plant and Materials which the Works Information states are to be tested or inspected before delivery until the <i>Supervisor</i> has notified the <i>Contractor</i> that they have passed the test or inspection.
Searching for and notifying Defects	42	
	42.1	Until the <i>defects date</i> , the <i>Supervisor</i> may instruct the <i>Contractor</i> to search for a Defect. He gives his reason for the search with his instruction. Searching may include <ul style="list-style-type: none">• uncovering, dismantling, re-covering and re-erecting work,• providing facilities, materials and samples for tests and inspections done by the <i>Supervisor</i> and• doing tests and inspections which the Works Information does not require.
	42.2	Until the <i>defects date</i> , the <i>Supervisor</i> notifies the <i>Contractor</i> of each Defect as soon as he finds it and the <i>Contractor</i> notifies the <i>Supervisor</i> of each Defect as soon as he finds it.
Correcting Defects	43	
	43.1	The <i>Contractor</i> corrects a Defect whether or not the <i>Supervisor</i> notifies him of it.
	43.2	The <i>Contractor</i> corrects a notified Defect before the end of the <i>defect correction period</i> . The <i>defect correction period</i> begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects.
	43.3	The <i>Supervisor</i> issues the Defects Certificate at the later of the <i>defects date</i> and the end of the last defect correction period. The <i>Employer's</i> rights in respect of a Defect which the <i>Supervisor</i> has not found or notified are not affected by the issue of the Defects Certificate.
	43.4	The <i>Project Manager</i> arranges for the <i>Employer</i> to allow the <i>Contractor</i> access to

and use of a part of the works which he has taken over if they are needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided.

Accepting Defects 44

44.1

The *Contractor* and the *Project Manager* may each propose to the other that the Works Information should be changed so that a Defect does not have to be corrected.

44.2

If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the *Project Manager* accepts the quotation, he gives an instruction to change the Works Information, the Prices and the Completion Date accordingly.

Uncorrected Defects 45

45.1

If the *Contractor* is given access in order to correct a notified Defect but he has not corrected it within its *defect correction period*, the *Project Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

45.2

If the *Contractor* is not given access in order to correct a notified Defect before the *defects date*, the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Works Information is treated as having been changed to accept the Defect.

5 Payment

Assessing the amount due 50

50.1

The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment Interval* after the *starting date*. Later assessment dates occur

- at the end of each *assessment Interval* until four weeks after the *Supervisor* issues the Defects Certificate and
- at Completion of the whole of the works.

50.2

The amount due is

- the Price for Work Done to Date,
- plus other amounts to be paid to the *Contractor*,
- less amounts to be paid by or retained from the *Contractor*.

Any tax which the law requires the *Employer* to pay to the *Contractor* is included in the amount due.

50.3

If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which this contract requires.

50.4

In assessing the amount due, the *Project Manager* considers any application for payment the *Contractor* has submitted on or before the assessment date. The *Project Manager* gives the *Contractor* details of how the amount due has been assessed.

50.5

The *Project Manager* corrects any wrongly assessed amount due in a later payment certificate.

50.7

Payments of Defined Cost made by the *Contractor* in a currency other than the *currency of this contract* are included in the amount due as payments to be made to him in the same currency. Such payments are converted to the *currency of this contract* in order to calculate the Fee using the *exchange rates*.

Payment 51

51.1

The *Project Manager* certifies a payment within one week of each assessment date. The first payment is the amount due. Other payments are the change in the amount due since the last payment certificate. A payment is made by the *Contractor* to the *Employer* if the change reduces the amount due. Other payments are made by the *Employer* to the *Contractor*. Payments are in the *currency of this contract* unless otherwise stated in this contract.

51.2

Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* does not issue a certificate which he should issue, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.

51.3

If an amount due is corrected in a later certificate either

- by the *Project Manager* in relation to a mistake or a compensation event or
- following a decision of the *Adjudicator* or the *tribunal*,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the correcting amount is certified and is included in the assessment which includes the correcting amount.

51.4

Interest is calculated on a daily basis at the *interest rate* and is compounded annually.

Defined Cost 52

52.1

All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

52.2

The *Contractor* keeps these records

- accounts of payments of Defined Cost,
- proof that the payments have been made,
- communications about and assessments of compensation events for Subcontractors and
- other records as stated in the Works Information.

52.3

The *Contractor* allows the *Project Manager* to inspect at any time within working hours the accounts and records which he is required to keep.

6 Compensation events

Compensation events 60
60.1

The following are compensation events.

(1) The *Project Manager* gives an instruction changing the Works Information except

- a change made in order to accept a Defect or
- a change to the Works Information provided by the *Contractor* for his design which is made either at his request or to comply with other Works Information provided by the *Employer*.

(2) The *Employer* does not allow access to and use of a part of the Site by the later of its access date and the date shown on the Accepted Programme.

(3) The *Employer* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.

(4) The *Project Manager* gives an instruction to stop or not to start any work or to change a Key Date.

(5) The *Employer* or Others

- do not work within the times shown on the Accepted Programme,
- do not work within the conditions stated in the Works Information or
- carry out work on the Site that is not stated in the Works Information.

(6) The *Project Manager* or the *Supervisor* does not reply to a communication from the *Contractor* within the period required by this contract.

(7) The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.

(8) The *Project Manager* or the *Supervisor* changes a decision which he has previously communicated to the *Contractor*.

(9) The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in this contract.

(10) The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection.

(11) A test or inspection done by the *Supervisor* causes unnecessary delay.

(12) The *Contractor* encounters physical conditions which

- are within the Site,
- are not weather conditions and
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

(13) A *weather measurement* is recorded

- within a calendar month,
- before the Completion Date for the whole of the works and
- at the place stated in the Contract Data

the value of which, by comparison with the *weather data*, is shown to occur on average less frequently than once in ten years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.

(14) An event which is an *Employer's* risk stated in this contract.

(15) The *Project Manager* certifies take over of a part of the *works* before both Completion and the Completion Date.

(16) The *Employer* does not provide materials, facilities and samples for tests and inspections as stated in the Works Information.

(17) The *Project Manager* notifies a correction to an assumption which he has stated about a compensation event.

(18) A breach of contract by the *Employer* which is not one of the other compensation events in this contract.

(19) An event which

- stops the *Contractor* completing the *works* or
- stops the *Contractor* completing the *works* by the date shown on the Accepted Programme,

and which

- neither Party could prevent,
- an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
- is not one of the other compensation events stated in this contract.

60.2 In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account

- the Site Information,
- publicly available information referred to in the Site Information,
- information obtainable from a visual inspection of the Site and
- other information which an experienced contractor could reasonably be expected to have or to obtain.

60.3 If there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

Notifying compensation events 61

61.1 For compensation events which arise from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the *Project Manager* notifies the *Contractor* of the compensation event at the time of that communication. He also instructs the *Contractor* to submit quotations, unless the event arises from a fault of the *Contractor* or quotations have already been submitted. The *Contractor* puts the instruction or changed decision into effect.

61.2 The *Project Manager* may instruct the *Contractor* to submit quotations for a proposed instruction or a proposed changed decision. The *Contractor* does not put a proposed instruction or a proposed changed decision into effect.

61.3 The *Contractor* notifies the *Project Manager* of an event which has happened or which he expects to happen as a compensation event if

- the *Contractor* believes that the event is a compensation event and
- the *Project Manager* has not notified the event to the *Contractor*.

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.

61.4 If the *Project Manager* decides that an event notified by the *Contractor*

- arises from a fault of the *Contractor*,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting a Key Date or
- is not one of the compensation events stated in this contract

he notifies the *Contractor* of his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the *Project Manager* decides otherwise, he notifies the *Contractor* accordingly and instructs him to submit quotations.

The *Project Manager* notifies his decision to the *Contractor* and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs him to submit quotations before the end of either

- one week after the *Contractor's* notification or
- a longer period to which the *Contractor* has agreed.

If the *Project Manager* does not notify his decision, the *Contractor* may notify the *Project Manager* of his failure. A failure by the *Project Manager* to reply within two weeks of this notification is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

61.5 If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, he notifies this decision to the *Contractor* when he instructs him to submit quotations.

61.6 If the *Project Manager* decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.

61.7 A compensation event is not notified after the *defects date*.

Quotations for compensation events

62

62.1

After discussing with the *Contractor* different ways of dealing with the compensation event which are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which he considers practicable.

62.2

Quotations for compensation events comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor*. The *Contractor* submits details of his assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in his quotation.

62.3

The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager*. The *Project Manager* replies within two weeks of the submission. His reply is

- an instruction to submit a revised quotation,
- an acceptance of a quotation,
- a notification that a proposed instruction will not be given or a proposed changed decision will not be made or
- a notification that he will be making his own assessment.

62.4

The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining his reasons for doing so to the *Contractor*. The *Contractor* submits the revised quotation within three weeks of being instructed to do so.

62.5

The *Project Manager* extends the time allowed for

- the *Contractor* to submit quotations for a compensation event and
- the *Project Manager* to reply to a quotation

if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*.

62.6

If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* of his failure. If the *Contractor* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Project Manager* does not reply to the notification within two weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Contractor's* notification is treated

as acceptance of the quotation by the *Project Manager*.

Assessing compensation events 63

- 63.1 The changes to the Prices are assessed as the effect of the compensation event upon
- the actual Defined Cost of the work already done,
 - the forecast Defined Cost of the work not yet done and
 - the resulting Fee.
- If the compensation event arose from the *Project Manager* or the *Supervisor* giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.
- 63.2 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this contract.
- 63.3 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme. A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme.
- 63.4 The rights of the *Employer* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.
- 63.5 If the *Project Manager* has notified the *Contractor* of his decision that the *Contractor* did not give an early warning of a compensation event which an experienced contractor could have given, the event is assessed as if the *Contractor* had given early warning.
- 63.6 Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are at the *Contractor's* risk under this contract.
- 63.7 Assessments are based upon the assumptions that the *Contractor* reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the Accepted Programme can be changed.
- 63.8 A compensation event which is an instruction to change the Works Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Works Information.
- 63.9 If a change to the Works Information makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Works Information.
- 63.14 If the *Project Manager* and the *Contractor* agree, rates and lump sums may be used to assess a compensation event.
- 63.15 If the *Project Manager* and the *Contractor* agree, the *Contractor* assesses a compensation event using the Shorter Schedule of Cost Components. The *Project Manager* may make his own assessments using the Shorter Schedule of Cost Components.

The *Project Manager's* assessments 64

- 64.1 The *Project Manager* assesses a compensation event
- if the *Contractor* has not submitted a quotation and details of his assessment within the time allowed,
 - if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in a quotation and he does not instruct the *Contractor* to submit a revised quotation,