

- if, when the *Contractor* submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or
- if, when the *Contractor* submits quotations for a compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in this contract.

64.2 The *Project Manager* assesses a compensation event using his own assessment of the programme for the remaining work if

- there is no Accepted Programme or
- the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by this contract.

64.3 The *Project Manager* notifies the *Contractor* of his assessment of a compensation event and gives him details of it within the period allowed for the *Contractor's* submission of his quotation for the same event. This period starts when the need for the *Project Manager's* assessment becomes apparent.

64.4 If the *Project Manager* does not assess a compensation event 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 within two weeks of this notification the notification is treated as acceptance of the *Contractor's* quotation by the *Project Manager*.

Implementing 65 compensation events 65.1

A compensation event is implemented when

- the *Project Manager* notifies his acceptance of the *Contractor's* quotation,
- the *Project Manager* notifies the *Contractor* of his own assessment or
- a *Contractor's* quotation is treated as having been accepted by the *Project Manager*.

65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

65.3 The changes to the forecast amount of the Prices, the Completion Date and the Key Dates are included in the notification implementing a compensation event.

7 Title

The <i>Employer's</i> title to Plant and Materials	70	
	70.1	Whatever title the <i>Contractor</i> has to Plant and Materials which is outside the Working Areas passes to the <i>Employer</i> if the <i>Supervisor</i> has marked it as for this contract.
	70.2	Whatever title the <i>Contractor</i> has to Plant and Materials passes to the <i>Employer</i> if it has been brought within the Working Areas. The title to Plant and Materials passes back to the <i>Contractor</i> if it is removed from the Working Areas with the <i>Project Manager's</i> permission.
Marking Equipment, Plant and Materials outside the Working Areas	71	
	71.1	The <i>Supervisor</i> marks Equipment, Plant and Materials which are outside the Working Areas if <ul style="list-style-type: none">• this contract identifies them for payment and• the <i>Contractor</i> has prepared them for marking as the Works Information requires.
Removing Equipment	72	
	72.1	The <i>Contractor</i> removes Equipment from the Site when it is no longer needed unless the <i>Project Manager</i> allows it to be left in the works.
Objects and materials within the Site	73	
	73.1	The <i>Contractor</i> has no title to an object of value or of historical or other interest within the Site. The <i>Contractor</i> notifies the <i>Project Manager</i> when such an object is found and the <i>Project Manager</i> instructs the <i>Contractor</i> how to deal with it. The <i>Contractor</i> does not move the object without instructions.
	73.2	The <i>Contractor</i> has title to materials from excavation and demolition only as stated in the Works Information.

8 Risks and insurance

Employer's risks 80 80.1

The following are *Employer's* risks.

- Claims, proceedings, compensation and costs payable which are due to
 - use or occupation of the Site by the works or for the purpose of the works which is the unavoidable result of the works,
 - negligence, breach of statutory duty or interference with any legal right by the Employer or by any person employed by or contracted to him except the Contractor or
 - a fault of the Employer or a fault in his design.
- Loss of or damage to Plant and Materials supplied to the *Contractor* by the Employer, or by Others on the Employer's behalf, until the Contractor has received and accepted them.
- Loss of or damage to the works, Plant and Materials due to
 - war, civil war, rebellion, revolution, insurrection, military or usurped power,
 - strikes, riots and civil commotion not confined to the Contractor's employees or
 - radioactive contamination.
- Loss of or wear or damage to the parts of the works taken over by the Employer, except loss, wear or damage occurring before the issue of the Defects Certificate which is due to
 - a Defect which existed at take over,
 - an event occurring before take over which was not itself an Employer's risk or
 - the activities of the Contractor on the Site after take over.
- Loss of or wear or damage to the works and any Equipment, Plant and Materials retained on the Site by the Employer after a termination, except loss, wear or damage due to the activities of the Contractor on the Site after the termination.
- Additional Employer's risks stated in the Contract Data.

The Contractor's risks 81 81.1

From the *starting date* until the Defects Certificate has been issued, the risks which are not carried by the Employer are carried by the Contractor.

Repairs 82 82.1

Until the Defects Certificate has been issued and unless otherwise instructed by the *Project Manager*, the Contractor promptly replaces loss of and repairs damage to the works, Plant and Materials.

Indemnity 83 83.1

Each Party indemnifies the other against claims, proceedings, compensation and costs due to an event which is at his risk.

83.2

The liability of each Party to indemnify the other is reduced if events at the other Party's risk contributed to the claims, proceedings, compensation and costs. The reduction is in proportion to the extent that events which were at the other Party's risk contributed, taking into account each Party's responsibilities under this contract.

Insurance cover 84 84.1

The Contractor provides the insurances stated in the Insurance Table except any insurance which the Employer is to provide as stated in the Contract Data. The Contractor provides additional insurances as stated in the Contract Data.

- 84.2 The insurances are in the joint names of the Parties and provide cover for events which are at the *Contractor's* risk from the *starting date* until the Defects Certificate or a termination certificate has been issued.

INSURANCE TABLE

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the <i>Employer</i>
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract	The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event

Insurance policies 85

- 85.1 Before the *starting date* and on each renewal of the insurance policy until the *defects date*, the *Contractor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by this contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. A reason for not accepting the certificates is that they do not comply with this contract.
- 85.2 Insurance policies include a waiver by the insurers of their subrogation rights against directors and other employees of every insured except where there is fraud.
- 85.3 The Parties comply with the terms and conditions of the insurance policies.
- 85.4 Any amount not recovered from an insurer is borne by the *Employer* for events which are at his risk and by the *Contractor* for events which are at his risk.

If the *Contractor* does not insure 86

- 86.1 The *Employer* may insure a risk which this contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance to the *Employer* is paid by the *Contractor*.

Insurance by the *Employer* 87

- 87.1 The *Project Manager* submits policies and certificates for insurances provided by the *Employer* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the policies and certificates if they comply with this contract.
- 87.2 The *Contractor's* acceptance of an insurance policy or certificate provided by the *Employer* does not change the responsibility of the *Employer* to provide the insurances stated in the Contract Data.
- 87.3 The *Contractor* may insure a risk which this contract requires the *Employer* to insure if the *Employer* does not submit a required policy or certificate. The cost of this insurance to the *Contractor* is paid by the *Employer*.

9 Termination

Termination 90

- 90.1 If either Party wishes to terminate the *Contractor's* obligation to Provide the Works he notifies the *Project Manager* and the other Party giving details of his reason for terminating. The *Project Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.
- 90.2 The *Contractor* may terminate only for a reason identified in the Termination Table. The *Employer* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
The <i>Employer</i>	A reason other than R1–R21	P1 and P2	A1, A2 and A4
	R1–R15 or R18	P1, P2 and P3	A1 and A3
	R17 or R20	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
The <i>Contractor</i>	R1–R10, R16 or R19	P1 and P4	A1, A2 and A4
	R17 or R20	P1 and P4	A1 and A2

- 90.3 The procedures for termination are implemented immediately after the *Project Manager* has issued a termination certificate.
- 90.4 Within thirteen weeks of termination, the *Project Manager* certifies a final payment to or from the *Contractor* which is the *Project Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Project Manager's* certificate.
- 90.5 After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

Reasons for termination 91

- 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.
- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),
 - had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).
 - If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
 - made an arrangement with its creditors (R10).
- 91.2 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not put the default right within four weeks of the notification.
- Substantially failed to comply with his obligations (R11).

- Not provided a bond or guarantee which this contract requires (R12).
- Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).

91.3 The *Employer* may terminate if the *Project Manager* has notified that the *Contractor* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.

- Substantially hindered the *Employer* or Others (R14).
- Substantially broken a health or safety regulation (R15).

91.4 The *Contractor* may terminate if the *Employer* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).

91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).

91.6 If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,

- the *Employer* may terminate if the instruction was due to a default by the *Contractor* (R18),
- the *Contractor* may terminate if the instruction was due to a default by the *Employer* (R19) and
- either Party may terminate if the instruction was due to any other reason (R20).

91.7 The *Employer* may terminate if an event occurs which

- stops the *Contractor* completing the works or
- stops the *Contractor* completing the works by the date shown on the Accepted Programme and is forecast to delay Completion by more than 13 weeks, and which
- 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 (R21).

Procedures on termination 92

92.1 On termination, the *Employer* may complete the works and may use any Plant and Materials to which he has title (P1).

92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.

P2 The *Employer* may instruct the *Contractor* to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of this contract to the *Employer*.

P3 The *Employer* may use any Equipment to which the *Contractor* has title to complete the works. The *Contractor* promptly removes the Equipment from Site when the *Project Manager* notifies him that the *Employer* no longer requires it to complete the works.

P4 The *Contractor* leaves the Working Areas and removes the Equipment.

Payment on termination 93

93.1 The amount due on termination includes (A1)

- an amount due assessed as for normal payments,
- the Defined Cost for Plant and Materials
 - within the Working Areas or
 - to which the *Employer* has title and of which the *Contractor* has to accept delivery,
- other Defined Cost reasonably incurred in expectation of completing the whole

of the *works*,

- any amounts retained by the *Employer* and
- a deduction of any un-repaid balance of an advanced payment.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.

A2 The forecast Defined Cost of removing the Equipment.

A3 A deduction of the forecast of the additional cost to the *Employer* of completing the whole of the *works*.

A4 The *direct fee percentage* applied to any excess of the first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.

DISPUTE RESOLUTION

Option W1

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

- Dispute resolution W1
- W1.1 A dispute arising under or in connection with this contract is referred to and decided by the *Adjudicator*.
- The *Adjudicator* W1.2
- (1) The Parties appoint the *Adjudicator* under the NEC Adjudicator's Contract current at the *starting date*.
- (2) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.
- (3) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or is unable to act, the Parties choose a new adjudicator jointly. If the Parties have not chosen an adjudicator, either Party may ask the *Adjudicator nominating body* to choose one. The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.
- (4) A replacement *Adjudicator* has the power to decide a dispute referred to his predecessor but not decided at the time when the predecessor resigned or became unable to act. He deals with an undecided dispute as if it had been referred to him on the date he was appointed.
- (5) The *Adjudicator*, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

- The adjudication W1.3
- (1) Disputes are notified and referred to the *Adjudicator* in accordance with the Adjudication Table.

ADJUDICATION TABLE

Dispute about	Which Party may refer it to the <i>Adjudicator</i> ?	When may it be referred to the <i>Adjudicator</i> ?
An action of the <i>Project Manager</i> or the <i>Supervisor</i>	The <i>Contractor</i>	Between two and four weeks after the <i>Contractor's</i> notification of the dispute to the <i>Employer</i> and the <i>Project Manager</i> , the notification itself being made not more than four weeks after the <i>Contractor</i> becomes aware of the action
The <i>Project Manager</i> or <i>Supervisor</i> not having taken an action	The <i>Contractor</i>	Between two and four weeks after the <i>Contractor's</i> notification of the dispute to the <i>Employer</i> and the <i>Project Manager</i> , the notification itself being made not more than four weeks after the <i>Contractor</i> becomes aware that the action was not taken

A quotation for a compensation event which is treated as having been accepted	The <i>Employer</i>	Between two and four weeks after the <i>Project Manager's</i> notification of the dispute to the <i>Employer</i> and the <i>Contractor</i> , the notification itself being made not more than four weeks after the quotation was treated as accepted
Any other matter	Either Party	Between two and four weeks after notification of the dispute to the other Party and the <i>Project Manager</i>

(2) The times for notifying and referring a dispute may be extended by the *Project Manager* if the *Contractor* and the *Project Manager* agree to the extension before the notice or referral is due. The *Project Manager* notifies the extension that has been agreed to the *Contractor*. If a disputed matter is not notified and referred within the times set out in this contract, neither Party may subsequently refer it to the *Adjudicator* or the *tribunal*.

(3) The Party referring the dispute to the *Adjudicator* includes with his referral information to be considered by the *Adjudicator*. Any more information from a Party to be considered by the *Adjudicator* is provided within four weeks of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(4) If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract and if the subcontract allows, the *Contractor* may refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the dispute are interpreted as including the Subcontractor.

(5) The *Adjudicator* may

- review and revise any action or inaction of the *Project Manager* or *Supervisor* related to the dispute and alter a quotation which has been treated as having been accepted,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.

(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, he makes his assessment in the same way as a compensation event is assessed.

(8) The *Adjudicator* decides the dispute and notifies the Parties and the *Project Manager* of his decision and his reasons within four weeks of the end of the period for receiving information. This four week period may be extended if the Parties agree.

(9) Unless and until the *Adjudicator* has notified the Parties of his decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.

(10) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by this contract that he is dissatisfied with a decision of the *Adjudicator* and intends to refer the matter to the *tribunal*.

(11) The *Adjudicator* may, within two weeks of giving his decision to the Parties,

correct any clerical mistake or ambiguity.

Review by the *tribunal* W1.4

(1) A Party does not refer any dispute under or in connection with this contract to the *tribunal* unless it has first been referred to the *Adjudicator* in accordance with this contract.

(2) If, after the *Adjudicator* notifies his decision a Party is dissatisfied, he may notify the other Party that he intends to refer it to the *tribunal*. A Party may not refer a dispute to the *tribunal* unless this notification is given within four weeks of notification of the *Adjudicator's* decision.

(3) If the *Adjudicator* does not notify his decision within the time provided by this contract, a Party may notify the other Party that he intends to refer the dispute to the *tribunal*. A Party may not refer a dispute to the *tribunal* unless this notification is given within four weeks of the date by which the *Adjudicator* should have notified his decision.

(4) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in the *tribunal* proceedings to the information, evidence or arguments put to the *Adjudicator*.

(5) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.

(6) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

Option W2

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

Dispute resolution W2

W2.1

(1) A dispute arising under or in connection with this contract is referred to and decided by the *Adjudicator*. A Party may refer a dispute to the *Adjudicator* at any time.

(2) In this Option, time periods stated in days exclude Christmas Day, Good Friday and bank holidays.

The *Adjudicator* W2.2

W2.2

(1) The Parties appoint the *Adjudicator* under the NEC *Adjudicator's Contract* current at the starting date.

(2) The *Adjudicator* acts impartially and decides the dispute as an independent adjudicator and not as an arbitrator.

(3) If the *Adjudicator* is not identified in the Contract Data or if the *Adjudicator* resigns or becomes unable to act

- the Parties may choose an adjudicator jointly or
- a Party may ask the *Adjudicator nominating body* to choose an adjudicator.

The *Adjudicator nominating body* chooses an adjudicator within four days of the request. The chosen adjudicator becomes the *Adjudicator*.

(4) A replacement *Adjudicator* has the power to decide a dispute referred to his predecessor but not decided at the time when his predecessor resigned or became unable to act. He deals with an undecided dispute as if it had been referred to him on the date he was appointed.

(5) The *Adjudicator*, his employees and agents are not liable to the Parties for any action or failure to take action in an adjudication unless the action or failure to take action was in bad faith.

The adjudication W2.3

W2.3

(1) Before a Party refers a dispute to the *Adjudicator*, he gives a notice of adjudication to the other Party with a brief description of the dispute and the decision which he wishes the *Adjudicator* to make. If the *Adjudicator* is named in the Contract Data, the Party sends a copy of the notice of adjudication to the *Adjudicator* when it is issued. Within three days of the receipt of the notice of adjudication, the *Adjudicator* notifies the Parties

- that he is able to decide the dispute in accordance with the contract or
- that he is unable to decide the dispute and has resigned.

If the *Adjudicator* does not so notify within three days of the issue of the notice of adjudication, either Party may act as if he has resigned.

(2) Within seven days of a Party giving a notice of adjudication he

- refers the dispute to the *Adjudicator*,
- provides the *Adjudicator* with the information on which he relies, including any supporting documents and
- provides a copy of the information and supporting documents he has provided to the *Adjudicator* to the other Party.

Any further information from a Party to be considered by the *Adjudicator* is provided within fourteen days of the referral. This period may be extended if the *Adjudicator* and the Parties agree.

(3) If a matter disputed by the *Contractor* under or in connection with a subcontract is also a matter disputed under or in connection with this contract, the *Contractor* may, with the consent of the Subcontractor, refer the subcontract dispute to the *Adjudicator* at the same time as the main contract referral. The *Adjudicator* then decides the disputes together and references to the Parties for the purposes of the

dispute are interpreted as including the Subcontractor.

(4) The *Adjudicator* may

- review and revise any action or inaction of the *Project Manager* or *Supervisor* related to the dispute and alter a quotation which has been treated as having been accepted,
- take the initiative in ascertaining the facts and the law related to the dispute,
- instruct a Party to provide further information related to the dispute within a stated time and
- instruct a Party to take any other action which he considers necessary to reach his decision and to do so within a stated time.

(5) If a Party does not comply with any instruction within the time stated by the *Adjudicator*, the *Adjudicator* may continue the adjudication and make his decision based upon the information and evidence he has received.

(6) A communication between a Party and the *Adjudicator* is communicated to the other Party at the same time.

(7) If the *Adjudicator's* decision includes assessment of additional cost or delay caused to the *Contractor*, he makes his assessment in the same way as a compensation event is assessed. If the *Adjudicator's* decision changes an amount notified as due, payment of the sum decided by the *Adjudicator* is due not later than seven days from the date of the decision or the final date for payment of the notified amount, whichever is the later.

(8) The *Adjudicator* decides the dispute and notifies the Parties and the *Project Manager* of his decision and his reasons within twenty-eight days of the dispute being referred to him. This period may be extended by up to fourteen days with the consent of the referring Party or by any other period agreed by the Parties. The *Adjudicator* may in his decision allocate his fees and expenses between the Parties.

(9) Unless and until the *Adjudicator* has notified the Parties of his decision, the Parties, the *Project Manager* and the *Supervisor* proceed as if the matter disputed was not disputed.

(10) If the *Adjudicator* does not make his decision and notify it to the Parties within the time provided by this contract, the Parties and the *Adjudicator* may agree to extend the period for making his decision. If they do not agree to an extension, either Party may act as if the *Adjudicator* has resigned.

(11) The *Adjudicator's* decision is binding on the Parties unless and until revised by the *tribunal* and is enforceable as a matter of contractual obligation between the Parties and not as an arbitral award. The *Adjudicator's* decision is final and binding if neither Party has notified the other within the times required by this contract that he is dissatisfied with a matter decided by the *Adjudicator* and intends to refer the matter to the *tribunal*.

(12) The *Adjudicator* may, within five days of giving his decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.

Review by the *tribunal* W2.4

(1) A Party does not refer any dispute under or in connection with this contract to the *tribunal* unless it has first been decided by the *Adjudicator* in accordance with this contract.

(2) If, after the *Adjudicator* notifies his decision a Party is dissatisfied, that Party may notify the other Party of the matter which he disputes and state that he intends to refer it to the *tribunal*. The dispute may not be referred to the *tribunal* unless this notification is given within four weeks of the notification of the *Adjudicator's* decision.

(3) The *tribunal* settles the dispute referred to it. The *tribunal* has the powers to reconsider any decision of the *Adjudicator* and to review and revise any action or inaction of the *Project Manager* or the *Supervisor* related to the dispute. A Party is not limited in *tribunal* proceedings to the information or evidence put to the *Adjudicator*.

(4) If the *tribunal* is arbitration, the *arbitration procedure*, the place where the

arbitration is to be held and the method of choosing the arbitrator are those stated in the Contract Data.

(5) A Party does not call the *Adjudicator* as a witness in *tribunal* proceedings.

SECONDARY OPTION CLAUSES

Option X2: Changes in the law

Changes in the law X2
X2.1

A change in the law of the country in which the Site is located is a compensation event if it occurs after the Contract Date. The *Project Manager* may notify the *Contractor* of a compensation event for a change in the law and instruct him to submit quotations. If the effect of a compensation event which is a change in the law is to reduce the total Defined Cost, the Prices are reduced.

Option X4: Parent company guarantee

Parent company X4
guarantee X4.1

If a parent company owns the *Contractor*, the *Contractor* gives to the *Employer* a guarantee by the parent company of the *Contractor's* performance in the form set out in the Works Information. If the guarantee was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.

Option X5: Sectional Completion

Sectional Completion X5
X5.1

In these *conditions of contract*, unless stated as the whole of the *works*, each reference and clause relevant to

- the *works*,
- Completion and
- Completion Date

applies, as the case may be, to either the whole of the *works* or any *section* of the *works*.

Option X6: Bonus for early Completion

Bonus for early Completion	X6 X6.1	<p>The <i>Contractor</i> is paid a bonus calculated at the rate stated in the Contract Data for each day from the earlier of</p> <ul style="list-style-type: none">• Completion and• the date on which the <i>Employer</i> takes over the works <p>until the Completion Date.</p>
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Option X7: Delay damages

Delay damages	X7 X7.1	<p>The <i>Contractor</i> pays delay damages at the rate stated in the Contract Data from the Completion Date for each day until the earlier of</p> <ul style="list-style-type: none">• Completion and <p>the date on which the <i>Employer</i> takes over the works.</p>
	X7.2	<p>If the Completion Date is changed to a later date after delay damages have been paid, the <i>Employer</i> repays the overpayment of damages with interest. Interest is assessed from the date of payment to the date of repayment and the date of repayment is an assessment date.</p>
	X7.3	<p>If the <i>Employer</i> takes over a part of the works before Completion, the delay damages are reduced from the date on which the part is taken over. The <i>Project Manager</i> assesses the benefit to the <i>Employer</i> of taking over the part of the works as a proportion of the benefit to the <i>Employer</i> of taking over the whole of the works not previously taken over. The delay damages are reduced in this proportion.</p>

Option X12: Partnering

Identified and defined terms	X12 X12.1	<p>(1) The Partners are those named in the Schedule of Partners. The <i>Client</i> is a Partner.</p> <p>(2) An Own Contract is a contract between two Partners which includes this Option.</p> <p>(3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.</p> <p>(4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with this contract.</p> <p>(5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.</p>
Actions	X12.2	<p>(1) Each Partner works with the other Partners to achieve the <i>Client's objective</i> stated in the Contract Data and the objectives of every other Partner stated in the</p>

Schedule of Partners.

(2) Each Partner nominates a representative to act for it in dealings with other Partners.

(3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.

(4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group unless stated otherwise in the Partnering Information.

(5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.

(6) This Option does not create a legal partnership between Partners who are not one of the Parties in this contract.

Working together X12.3

(1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and co-operation.

(2) A Partner may ask another Partner to provide information which he needs to carry out the work in his Own Contract and the other Partner provides it.

(3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners.

(4) The Partners use common information systems as set out in the Partnering Information.

(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.

(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.

(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. The *Contractor* changes his programme if it is necessary to do so in order to comply with the revised timetable. Each such change is a compensation event which may lead to reduced Prices.

(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that another Partner is to carry out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.

(9) A Partner notifies the Core Group before subcontracting any work.

Incentives X12.4

(1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.

(2) The *Client* may add a Key Performance Indicator and associated payment to the Schedule of Partners but may not delete or reduce a payment stated in the Schedule of Partners.

Option X13: Performance bond

Performance bond X13

X13.1

The *Contractor* gives the *Employer* a performance bond, provided by a bank or insurer which the *Project Manager* has accepted, for the amount stated in the Contract Data and in the form set out in the Works Information. A reason for not accepting the bank or insurer is that its commercial position is not strong enough to carry the bond. If the bond was not given by the Contract Date, it is given to the *Employer* within four weeks of the Contract Date.

Option X14: Advanced payment to the *Contractor*

Advanced payment X14

X14.1

The *Employer* makes an advanced payment to the *Contractor* of the amount stated in the Contract Data.

X14.2

The advanced payment is made either within four weeks of the Contract Date or, if an advanced payment bond is required, within four weeks of the later of

- the Contract Date and
- the date when the *Employer* receives the advanced payment bond.

The advanced payment bond is issued by a bank or insurer which the *Project Manager* has accepted. A reason for not accepting the proposed bank or insurer is that its commercial position is not strong enough to carry the bond. The bond is for the amount of the advanced payment which the *Contractor* has not repaid and is in the form set out in the Works Information. Delay in making the advanced payment is a compensation event.

X14.3

The advanced payment is repaid to the *Employer* by the *Contractor* in instalments of the amount stated in the Contract Data. An instalment is included in each amount due assessed after the period stated in the Contract Data has passed until the advanced payment has been repaid.

Option X15: Limitation of the *Contractor's* liability for his design to reasonable skill and care

The *Contractor's* design X15

X15.1

The *Contractor* is not liable for Defects in the works due to his design so far as he proves that he used reasonable skill and care to ensure that his design complied with the Works Information.

X15.2

If the *Contractor* corrects a Defect for which he is not liable under this contract it is a compensation event.

Option X16: Retention

Retention	X16	
	X16.1	After the Price for Work Done to Date has reached the <i>retention free amount</i> , an amount is retained in each amount due. Until the earlier of <ul style="list-style-type: none">• Completion of the whole of the <i>works</i> and• the date on which the <i>Employer</i> takes over the whole of the <i>works</i> the amount retained is the <i>retention percentage</i> applied to the excess of the Price for Work Done to Date above the <i>retention free amount</i> .
	X16.2	The amount retained is halved <ul style="list-style-type: none">• in the assessment made at Completion of the whole of the <i>works</i> or• in the next assessment after the <i>Employer</i> has taken over the whole of the <i>works</i> if this is before Completion of the whole of the <i>works</i>. The amount retained remains at this amount until the Defects Certificate is issued. No amount is retained in the assessments made after the Defects Certificate has been issued.

Option X17: Low performance damages

Low performance damages	X17	
	X17.1	If a Defect included in the Defects Certificate shows low performance with respect to a performance level stated in the Contract Data, the <i>Contractor</i> pays the amount of low performance damages stated in the Contract Data.

Option X18: Limitation of liability

Limitation of liability	X18	
	X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for the <i>Employer's</i> indirect or consequential loss is limited to the amount stated in the Contract Data.
	X18.2	For any one event, the liability of the <i>Contractor</i> to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to the amount stated in the Contract Data.
	X18.3	The <i>Contractor's</i> liability to the <i>Employer</i> for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.
	X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the <i>law of the contract</i> . The excluded matters are amounts payable by the <i>Contractor</i> as stated in this contract for <ul style="list-style-type: none">• loss of or damage to the <i>Employer's</i> property,• delay damages if Option X7 applies and

- low performance damages if Option X17 applies.

X18.5 The *Contractor* is not liable to the *Employer* for a matter unless it is notified to the *Contractor* before the *end of liability date*.

Option X20: Key Performance Indicators (not used with Option X12)

Incentives	X20.1	A Key Performance Indicator is an aspect of performance by the <i>Contractor</i> for which a target is stated in the Incentive Schedule. The Incentive Schedule is the <i>incentive schedule</i> unless later changed in accordance with this contract.
	X20.2	From the <i>starting date</i> until the Defects Certificate has been issued, the <i>Contractor</i> reports to the <i>Project Manager</i> his performance against each of the Key Performance Indicators. Reports are provided at the intervals stated in the Contract Data and include the forecast final measurement against each indicator.
	X20.3	If the <i>Contractor's</i> forecast final measurement against a Key Performance Indicator will not achieve the target stated in the Incentive Schedule, he submits to the <i>Project Manager</i> his proposals for improving performance.
	X20.4	The <i>Contractor</i> is paid the amount stated in the Incentive Schedule if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved.
	X20.5	The <i>Employer</i> may add a Key Performance Indicator and associated payment to the Incentive Schedule but may not delete or reduce a payment stated in the Incentive Schedule.

OPTION Y

Option Y(UK)1: Project Bank Account

Definitions	Y(UK)1	
	Y1.1	<p>(1) The Authorisation is a document authorising the <i>project bank</i> to make payments to the <i>Contractor</i> and Named Suppliers.</p> <p>(2) Named Suppliers are <i>named suppliers</i> and other Suppliers who have signed the Joining Deed.</p> <p>(3) Project Bank Account is the account used to receive payments from the <i>Employer</i> and the <i>Contractor</i> and make payments to the <i>Contractor</i> and Named Suppliers.</p> <p>(4) A Supplier is a person or organisation who has a contract to</p> <ul style="list-style-type: none">• construct or install part of the <i>works</i>,• provide a service necessary to Provide the Works or• supply Plant and Materials for the <i>works</i>. <p>(5) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.</p> <p>(6) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.</p>
	Project Bank Account	Y1.2 The <i>Contractor</i> establishes the Project Bank Account with the <i>project bank</i> within three weeks of the Contract Date.
		Y1.3 Unless stated otherwise in the Contract Data, the <i>Contractor</i> pays any charges made and is paid any interest paid by the <i>project bank</i> . The charges and interest by the <i>project bank</i> are not included in Defined Cost.
		Y1.4 The <i>Contractor</i> submits to the <i>Project Manager</i> for acceptance details of the banking arrangements for the Project Bank Account. A reason for not accepting the banking arrangements is that they do not provide for payments to be made in accordance with this contract. The <i>Contractor</i> provides to the <i>Project Manager</i> copies of communications with the <i>project bank</i> in connection with the Project Bank Account.
	Named Suppliers	Y1.5 The <i>Contractor</i> includes in his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The <i>Contractor</i> notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.
Payments		Y1.6 The <i>Contractor</i> submits proposals for adding a Supplier to the Named Suppliers to the <i>Project Manager</i> for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information. The <i>Employer</i> , the <i>Contractor</i> and the Supplier sign the Joining Deed after acceptance.
		Y1.7 On or before each assessment date, the <i>Contractor</i> submits to the <i>Project Manager</i> an application for payment, and shows in the application the amounts due to Named Suppliers in accordance with their contracts.
		Y1.8 Within the time set out in the banking arrangements to allow the <i>project bank</i> to make payment to the <i>Contractor</i> and Named Suppliers in accordance with the contract,
		<ul style="list-style-type: none">• the <i>Employer</i> makes payment to the Project Bank Account of the amount which is due to be paid under the contract and• the <i>Contractor</i> makes payment to the Project Bank Account of any amount which the <i>Employer</i> has notified the <i>Contractor</i> he intends to withhold from the certified amount and which is required to make payment to Named Suppliers.
		Y1.9 The <i>Contractor</i> prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the <i>Contractor</i> and to the <i>Contractor</i> for the balance of the

payment due under the contract. After signing the Authorisation, the *Contractor* submits it to the *Project Manager* no later than four days before the final date for payment. The *Employer* signs the Authorisation and submits it to the *project bank* no later than one day before the final date for payment.

Y1.10 The *Contractor* and Named Suppliers receive payment from the Project Bank Account of the sums set out in the Authorisation as soon as practicable after the Project Bank Account receives payment.

Y1.11 A payment which is due from the *Contractor* to the *Employer* is not made through the Project Bank Account.

Effect of payment

Y1.12 Payments made from the Project Bank Account are treated as payments from the *Employer* to the *Contractor* in accordance with this contract or from the *Contractor* or *Subcontractor* to Named Suppliers in accordance with their contracts as applicable. A delay in payment due to a failure of the *Contractor* to comply with the requirements of this clause is not treated as late payment under this contract.

Trust Deed

Y1.13 The *Employer*, the *Contractor* and *named suppliers* sign the Trust Deed before the first assessment date.

Termination

Y1.14 If the *Project Manager* issues a termination certificate, no further payment is made into the Project Bank Account.

Trust Deed

This agreement is made between the *Employer*, the *Contractor* and the Named Suppliers.
Terms in this deed have the meanings given to them in the contract between and
..... for (the works).

Background

The *Employer* and the *Contractor* have entered into a contract for the works.

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the works.

The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

Agreement

The parties to this deed agree that

- sums due to the *Contractor* and Named Suppliers and set out in the Authorisation are held in trust in the Project Bank Account by the *Contractor* for distribution to the *Contractor* and Named Suppliers in accordance with the banking arrangements applicable to the Project Bank Account,
- further Named Suppliers may be added as parties to this deed with the agreement of the *Employer* and *Contractor*. The agreement of the *Employer* and *Contractor* is treated as agreement by the Named Suppliers who are parties to this deed,
- this deed is subject to the law of the contract for the works,
- the benefits under this deed may not be assigned.

Executed as a deed on

by

..... (Employer)

..... (Contractor)

.....

.....

.....

.....

(Named Suppliers)

Joining Deed

This agreement is made between the *Employer*, the *Contractor* and (the Additional Supplier).

Terms in this deed have the meanings given to them in the contract between and for (the *works*).

Background

The *Employer* and the *Contractor* have entered into a contract for the *works*.

The Named Suppliers have entered into contracts with the *Contractor* or a Subcontractor in connection with the *works*.

The *Contractor* has established a Project Bank Account to make provision for payment to the *Contractor* and the Named Suppliers.

The *Employer*, the *Contractor* and the Named Suppliers have entered into a deed as set out in Annex 1 (the Trust Deed), and have agreed that the Additional Supplier may join that deed.

Agreement

The Parties to this deed agree that

- the Additional Supplier becomes a party to the Trust Deed from the date set out below,
- this deed is subject to the law of the contract for the *works*,
- the benefits under this deed may not be assigned.

Executed as a deed on

by

..... (Employer)

..... (Contractor)

..... (Additional Supplier)

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

Definitions	Y(UK)2 Y2.1	(1) The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009. (2) A period of time stated in days is a period calculated in accordance with Section 116 of the Act.
Dates for payment	Y2.2	The date on which a payment becomes due is seven days after the assessment date. The final date for payment is fourteen days or a different period for payment if stated in the Contract Data after the date on which payment becomes due. The <i>Project Manager's</i> certificate is the notice of payment to the <i>Contractor</i> specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.
Notice of intention to pay less	Y2.3	If either Party intends to pay less than the notified sum, he notifies the other Party not later than seven days (the prescribed period) before the final date for payment by stating the amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this contract unless he has notified his intention to pay less than the notified sum as required by this contract.
Suspension of performance	Y2.4	If the <i>Contractor</i> exercises his right under the Act to suspend performance, it is a compensation event.

Option Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

Third party rights	Y(UK)3 Y3.1	A person or organisation who is not one of the Parties may enforce a term of this contract under the Contracts (Rights of Third Parties) Act 1999 only if the term and the person or organisation are stated in the Contract Data.
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Option Z: Additional conditions of contract

Additional conditions of contract	Z1 Z1.1	The <i>additional conditions of contract</i> stated in the Contract Data are part of this contract.
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SCHEDULE OF COST COMPONENTS

In this schedule the *Contractor* means the *Contractor* and not his Subcontractors. An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

- People 1** The following components of the cost of
- people who are directly employed by the *Contractor* and whose normal place of working is within the Working Areas and
 - people who are directly employed by the *Contractor* and whose normal place of working is not within the Working Areas but who are working in the Working Areas.
- 11 Wages, salaries and amounts paid by the *Contractor* for people paid according to the time worked while they are within the Working Areas.
- 12 Payments to people for
- (a) bonuses and incentives
 - (b) overtime
 - (c) working in special circumstances
 - (d) special allowances
 - (e) absence due to sickness and holidays
 - (f) severance related to work on this contract.
- 13 Payments made in relation to people for
- (a) travel
 - (b) subsistence and lodging
 - (c) relocation
 - (d) medical examinations
 - (e) passports and visas
 - (f) travel insurance
 - (g) items (a) to (f) for dependants
 - (h) protective clothing
 - (i) meeting the requirements of the law
 - (j) pensions and life assurance
 - (k) death benefit
 - (l) occupational accident benefits
 - (m) medical aid
 - (n) a vehicle
 - (o) safety training.
- 14 The following components of the cost of people who are not directly employed by the *Contractor* but are paid for by him according to the time worked while they are within the Working Areas.
Amounts paid by the *Contractor*.
- Equipment 2** The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for Working Areas overheads).
- 21 Payments for the hire or rent of Equipment not owned by
- the *Contractor*,
 - his parent company or
 - by a company with the same parent company

		at the hire or rental rate multiplied by the time for which the Equipment is required.
22		Payments for Equipment which is not listed in the Contract Data but is <ul style="list-style-type: none"> • owned by the <i>Contractor</i>, • purchased by the <i>Contractor</i> under a hire purchase or lease agreement or • hired by the <i>Contractor</i> from the <i>Contractor's</i> parent company or from a company with the same parent company at open market rates, multiplied by the time for which the Equipment is required.
23		Payments for Equipment purchased for work included in this contract listed with a time-related on cost charge, in the Contract Data, of <ul style="list-style-type: none"> • the change in value over the period for which the Equipment is required and • the time-related on cost charge stated in the Contract Data for the period for which the Equipment is required. <p>The change in value is the difference between the purchase price and either the sale price or the open market sale price at the end of the period for which the Equipment is required. Interim payments of the change in value are made at each assessment date. A final payment is made in the next assessment after the change in value has been determined.</p> <p>If the <i>Project Manager</i> agrees, an additional item of Equipment may be assessed as if it had been listed in the Contract Data.</p>
24		Payments for special Equipment listed in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
		If the <i>Project Manager</i> agrees, an additional item of special Equipment may be assessed as if it had been listed in the Contract Data.
25		Payments for the purchase price of Equipment which is consumed.
26		Unless included in the hire or rental rates, payments for <ul style="list-style-type: none"> • transporting Equipment to and from the Working Areas other than for repair and maintenance, • erecting and dismantling Equipment and constructing, fabricating or modifying Equipment as a result of a compensation event.
27		Payments for purchase of materials used to construct or fabricate Equipment.
28		Unless included in the hire rates, the cost of operatives is included in the cost of people.
Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	Payments for <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.
Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	Payments for provision and use in the Working Areas of <ul style="list-style-type: none"> • water, • gas and • electricity.
	42	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	43	Payments for

- (a) cancellation charges arising from a compensation event
- (b) buying or leasing land
- (c) compensation for loss of crops or buildings
- (d) royalties
- (e) inspection certificates
- (f) charges for access to the Working Areas
- (g) facilities for visits to the Working Areas by Others
- (h) specialist services
- (i) consumables and equipment provided by the *Contractor* for the *Project Manager's* and *Supervisor's* offices.

44 A charge for overhead costs incurred within the Working Areas calculated by applying the percentage for Working Areas overheads stated in the Contract Data to the total of people items 11, 12, 13 and 14. The charge includes provision and use of equipment, supplies and services, but excludes accommodation, for

- (a) catering
- (b) medical facilities and first aid
- (c) recreation
- (d) sanitation
- (e) security
- (f) copying
- (g) telephone, telex, fax, radio and CCTV
- (h) surveying and setting out
- (i) computing
- (j) hand tools not powered by compressed air.

Manufacture and fabrication 5

The following components of the cost of manufacture and fabrication of Plant and Materials which are

- wholly or partly designed specifically for the *works* and
- manufactured or fabricated outside the Working Areas.

51 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.

52 An amount for overheads calculated by multiplying this total by the percentage for manufacturing and fabrication overheads stated in the Contract Data.

Design 6

The following components of the cost of design of the *works* and Equipment done outside the Working Areas.

61 The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.

62 An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.

63 The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.

Insurance 7

The following are deducted from cost

- the cost of events for which this contract requires the *Contractor* to insure and
- other costs paid to the *Contractor* by insurers.

SHORTER SCHEDULE OF COST COMPONENTS

An amount is included only in one cost component and only if it is incurred in order to Provide the Works.

People	1	<p>The following components of the cost of</p> <ul style="list-style-type: none"> • people who are directly employed by the <i>Contractor</i> and whose normal place of working is within the Working Areas, • people who are directly employed by the <i>Contractor</i> and whose normal place of working is not within the Working Areas but who are working in the Working Areas and • people who are not directly employed by the <i>Contractor</i> but are paid for by him according to the time worked while they are within the Working Areas.
	11	Amounts paid by the <i>Contractor</i> including those for meeting the requirements of the law and for pension provision.
Equipment	2	The following components of the cost of Equipment which is used within the Working Areas (including the cost of accommodation but excluding Equipment cost covered by the percentage for people overheads).
	21	Amounts for Equipment which is in the published list stated in the Contract Data. These amounts are calculated by applying the percentage adjustment for listed Equipment stated in the Contract Data to the rates in the published list and by multiplying the resulting rate by the time for which the Equipment is required.
	22	Amounts for Equipment listed in the Contract Data which is not in the published list stated in the Contract Data. These amounts are the rates stated in the Contract Data multiplied by the time for which the Equipment is required.
	23	The time required is expressed in hours, days, weeks or months consistently with the list of items of Equipment in the Contract Data or with the published list stated in the Contract Data.
	24	<p>Unless the item is in the published list and the rate includes the cost component, payments for</p> <ul style="list-style-type: none"> • transporting Equipment to and from the Working Areas other than for repair and maintenance, • erecting and dismantling Equipment and • constructing, fabricating or modifying Equipment as a result of a compensation event.
	25	Unless the item is in the published list and the rate includes the cost component, the purchase price of Equipment which is consumed.
	26	Unless included in the rate in the published list, the cost of operatives is included in the cost of people.
	27	Amounts for Equipment which is neither in the published list stated in the Contract Data nor listed in the Contract Data, at competitively tendered or open market rates, multiplied by the time for which the Equipment is required.
Plant and Materials	3	The following components of the cost of Plant and Materials.
	31	<p>Payments for</p> <ul style="list-style-type: none"> • purchasing Plant and Materials, • delivery to and removal from the Working Areas, • providing and removing packaging and • samples and tests.
	32	Cost is credited with payments received for disposal of Plant and Materials unless the cost is disallowed.

Charges	4	The following components of the cost of charges paid by the <i>Contractor</i> .
	41	A charge calculated by applying the percentage for people overheads stated in the Contract Data to people item 1.1 to cover the costs of <ul style="list-style-type: none"> • payments for the provision and use in the Working Areas of water, gas and electricity, • payments for buying or leasing land, compensation for loss of crops or buildings, royalties, inspection certificates, charges for access to the Working Areas, facilities for visits to the Working Areas by Others and • payments for the provision and use of equipment, supplies and services (excluding accommodation) for catering, medical facilities and first aid, recreation, sanitation, security, copying, telephones, telex, fax, radio, CCTV, surveying, setting out, computing and hand tools not powered by compressed air.
	42	Payments for cancellation charges arising from a compensation event.
	43	Payments to public authorities and other properly constituted authorities of charges which they are authorised to make in respect of the <i>works</i> .
	44	Consumables and equipment provided by the <i>Contractor</i> for the <i>Project Manager's</i> and <i>Supervisor's</i> office.
	45	Specialist services.
Manufacture and fabrication	5	The following components of the cost of manufacture and fabrication of Plant and Materials, which are <ul style="list-style-type: none"> • wholly or partly designed specifically for the <i>works</i> and • manufactured or fabricated outside the Working Areas.
	51	Amounts paid by the <i>Contractor</i> .
Design	6	The following components of the cost of design of the <i>works</i> and Equipment done outside the Working Areas.
	61	The total of the hours worked by employees multiplied by the hourly rates stated in the Contract Data for the categories of employees listed.
	62	An amount for overheads calculated by multiplying this total by the percentage for design overheads stated in the Contract Data.
	63	The cost of travel to and from the Working Areas for the categories of design employees listed in the Contract Data.
Insurance	7	The following are deducted from cost <ul style="list-style-type: none"> • costs against which this contract required the <i>Contractor</i> to insure and • other costs paid to the <i>Contractor</i> by insurers.

CONTRACT DATA

Part one – Data provided by the *Employer*

Statements given in all
contracts
1 General

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

- The *conditions of contract* are the core clauses and the clauses for main Option E, dispute resolution Option and secondary Options of the NEC3 Engineering and Construction Contract April 2013.
- The *works* are
.....
- The *Employer* is
Name
Address
.....
- The *Project Manager* is
Name
Address
.....
- The *Supervisor* is
Name
Address
.....
- The *Adjudicator* is
Name
Address
.....
- The *Works Information* is in
.....
.....
.....
- The *Site Information* is in
.....
.....
.....
- The *boundaries of the site* are
- The *language of this contract* is
- The *law of the contract* is the law of
- The *period for reply* is weeks.
- The *Adjudicator nominating body* is
- The *tribunal* is
.....

- The following matters will be included in the Risk Register

.....

3 Time

- The *starting date* is
- The *access dates* are

Part of the Site	Date
1.
2.
3.

- The *Contractor* submits revised programmes at intervals no longer than weeks.

4 Testing and Defects

- The *defects date* is weeks after Completion of the whole of the works.
- The *defect correction period* is weeks except that
 - The *defect correction period* for is weeks
 - The *defect correction period* for is weeks.

5 Payment

- The *currency of this contract* is the
- The *assessment interval* is weeks (not more than five).
- The *Interest rate* is % per annum (not less than 2) above the rate of the bank.

6 Compensation events

- The place where weather is to be recorded is

- The *weather measurements* to be recorded for each calendar month are
 - the cumulative rainfall (mm)
 - the number of days with rainfall more than 5 mm
 - the number of days with minimum air temperature less than 0 degrees Celsius
 - the number of days with snow lying at hours GMT
 - and these measurements:

- The *weather measurements* are supplied by
- The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at and which are available from

Where no recorded data are available

- Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are

8 Risks and insurance

- The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is

- The minimum limit of indemnity for insurance in respect of death of or bodily injury

to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is

Optional statements

If the *tribunal* is arbitration

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

If the *Employer* has decided the *completion date* for the whole of the works

- The *completion date* for the whole of the works is

If the *Employer* is not willing to take over the works before the Completion Date

- The *Employer* is not willing to take over the works before the Completion Date.

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

- The *Contractor* is to submit a first programme for acceptance within weeks of the Contract Date.

If the *Employer* has identified work which is to meet a stated *condition* by a *key date*

- The *key dates* and *conditions* to be met are

<i>condition</i> to be met	<i>key date</i>
----------------------------	-----------------

- | | |
|--------|-------|
| 1..... | ..... |
| 2..... | ..... |
| 3..... | ..... |

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

- The period within which payments are made is

If Y(UK)2 is used and the final date for payment is not 14 days after the date when payment is due

- The period for payment is

If there are additional *Employer's* risks

- These are additional *Employer's* risks

- | | |
|--------|-------|
| 1..... | ..... |
| 2..... | ..... |
| 3..... | ..... |

If the *Employer* is to provide Plant and Materials

- The insurance against loss of or damage to the works, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of

If the *Employer* is to provide any of the insurances stated in the Insurance Table

- The *Employer* provides these insurances from the Insurance Table

- | | |
|----------------------------|-------|
| 1. Insurance against ..... | ..... |
| Cover/indemnity is ..... | ..... |
| The deductibles are ..... | ..... |
| 2. Insurance against ..... | ..... |
| Cover/indemnity is ..... | ..... |
| The deductibles are ..... | ..... |
| 3. Insurance against ..... | ..... |

Cover/indemnity is
The deductibles are

If additional insurances are to be provided

- The *Employer* provides these additional insurances

1. Insurance against

Cover/indemnity is

The deductibles are

2. Insurance against

Cover/indemnity is

The deductibles are

3. Insurance against

Cover/indemnity is

The deductibles are

- The *Contractor* provides these additional insurances

1. Insurance against

Cover/indemnity is

2. Insurance against

Cover/indemnity is

3. Insurance against

Cover/indemnity is

-
- The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than weeks.
 - The *exchange rates* are those published in on (date).
-

If Option X5 is used

- The *completion date* for each section of the *works* is

section	description	completion date
1
2
3
4

If Options X5 and X6 are used together

- The *bonus* for each section of the *works* is

section	description	amount per day
1
2
3
4

Remainder of the *works*

If Options X5 and X7 are used together

- *Delay damages* for each section of the *works* are

section	description	amount per day
1
2
3

4

Remainder of the works

If Option X6 is used (but not if Option X5 is also used)

- The bonus for the whole of the works is per day.

If Option X7 is used (but not if Option X5 is also used)

- Delay damages for Completion of the whole of the works are per day.

If Option X12 is used

- The Client is

Name

Address

- The Client's objective is

.....

.....

.....

.....

.....

- The Partnering Information is in

.....

.....

.....

If Option X13 is used

- The amount of the performance bond is

If Option X14 is used

- The amount of the advanced payment is
- The Contractor repays the instalments in assessments starting not less than weeks after the Contract Date.
- The instalments are
(either an amount or a percentage of the payment otherwise due)
- An advanced payment bond is/is not required.

If Option X16 is used

- The retention free amount is
- The retention percentage is %.

If Option X17 is used

- The amounts for low performance damages are
amount performance level
..... for
..... for
..... for
..... for

If Option X18 is used

- The Contractor's liability to the Employer for indirect or consequential loss is limited to
- For any one event, the Contractor's liability to the Employer for loss of or damage

to the *Employer's* property is limited to

- The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to
- The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to
- The *end of liability date* is years after the Completion of the whole of the works.

If Option X20 is used (but not if Option X12 is also used)

- The *incentive schedule* for Key Performance Indicators is in
- A report of performance against each Key Performance Indicator is provided at intervals of months.

If Option Y(UK)1 is used and the *Employer* is to pay any charges made and is paid any interest paid by the *project bank*

- The *Employer* is to pay any charges made and is paid any interest paid by the *project bank*.

If Option Y(UK)3 is used

- term person or organisation
.....
.....
.....
.....

If Options Y(UK)1 and Y(UK)3 are both used

- term person or organisation
The provisions of Option Y(UK)1 Named Suppliers

If Option Z is used

- The *additional conditions of contract* are
.....

Part two – Data provided by the *Contractor*

Statements given in all contracts

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

- The *Contractor* is
 - Name
 - Address
 -
- The *direct fee percentage* is %.
- The *subcontracted fee percentage* is %.
- The *working areas* are the Site and
- The key people are
 - (1) Name
 - Job
 - Responsibilities
 -
 - Qualifications
 - Experience
 -
 - (2) Name
 - Job
 - Responsibilities
 -
 - Qualifications
 - Experience
 -
- The following matters will be included in the Risk Register
 -
 -
 -
 -

Optional statements

If the *Contractor* is to provide Works Information for his design

- The Works Information for the *Contractor's* design is in
 -
 -
 -
 -
 -

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is

If the *Contractor* is to decide the *completion date* for the whole of the works

- The *completion date* for the whole of the works is

If Option Y(UK)1 is used

- The *project bank* is
 - *named suppliers* are
-

**Data for Schedule of
Cost Components**

- The listed items of Equipment purchased for work on this contract, with an on cost charge are

Equipment	time-related charge	per time period
.....	per.
.....	per.
.....	per.
.....	per.

- The rates for special Equipment are

Equipment	size or capacity	rate
.....
.....
.....
.....

- The percentage for Working Areas overheads is %.

- The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee	hourly rate
.....
.....
.....
.....

- The percentage for manufacture and fabrication overheads is %.

**Data for both schedules
of cost components**

- The hourly rates for Defined Cost of design outside the Working Areas are

category of employee	hourly rate
.....
.....
.....
.....

The percentage for design overheads is %.

- The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the works and Equipment done outside the Working Areas are

.....
.....
.....
.....

**Data for the Shorter
Schedule of Cost
Components**

- The percentage for people overheads is %.

- The published list of Equipment is the last edition of the list published by

- The percentage for adjustment for Equipment in the published list is % (state plus or minus).

- The rates for other Equipment are

Equipment	size or capacity	rate
.....
.....
.....

Engineering and Construction Contract Option E

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SECTION 6

NEC 3 CONDITIONS OF CONTRACT OPTION A



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 A: Priced contract with activity schedule

An NEC document

April 2013

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