



## **An outline Supplemental Agreement for transition from NEC3 to NEC4 on a Live Project**

### **Introduction:**

For those Parties who have already entered into contract under NEC3, by signing up to this contract addendum you are able to take the benefits of some of the new NEC4 clauses that would suit both Parties for the efficient and commercial benefit of the project.

Only clauses that can be introduced by agreement have been selected. Any clauses that would change the commercial offering from the Contractor (e.g. changing contract data percentages types) or would alter the risk profile in a negative way have not been chosen.

This document is a template example only as to what could be achieved and you should consider specific advice before entering into any supplemental agreement to fully consider any risks based on the status of the project, the Works Information and any bespoke amendments or associated contracts



## **Form of Words to Incorporate Parts of NEC4 Into NEC3**

### **Supplemental Agreement**

#### **Parties**

1. The Employer is [definition of Employer from original contract]
2. The Contractor is [definition of Contractor from original contract]

#### **Preamble**

1. The Parties entered into a contract in the form of an NEC3 Option [which] on [date]. The *works* as defined in that contract were [repeat from the contract data part one]. The contract included Secondary Options [which] as well as the bespoke amendments and adjustments incorporated in it as set out in the contract (the Contract).
2. The Parties have agreed to vary the terms of the Contract as set out in this agreement (the Supplemental Agreement).
3. This Supplemental Agreement incorporates various of the provisions of the standard NEC4 equivalent to the Contract but is not intended to alter or vary any secondary options or Z-clauses. Any conflict between the Supplemental Agreement and a secondary options or Z-clause shall be resolved in favour of the secondary option or Z-clause unless specifically stated to the contrary in the Supplemental Agreement.

#### **Amendments**

4. Schedule 1 to the Supplemental Agreement sets out those clauses from the relevant standard form NEC4 that are hereby incorporated into the Contract either as an amendment to the existing NEC3 wording or, where the clause is wholly new in NEC4, then the provision is added as provided for herein.
5. None of the amendments herein are to have retrospective effect to communications already made and actions already taken. They are to apply from the date of the Supplemental Agreement to any communication or event occurring thereafter.
6. The term Employer as defined in the Contract and generally in NEC3 shall have the same meaning as Client in respect of any clause set out in Schedule 1 and as generally incorporated in NEC4.
7. The term Works Information as defined in the Contract and generally in NEC3 shall have the same meaning as Scope in respect of any clause set out in Schedule 1 and as generally incorporated in NEC4.
8. Where and to the extent that any of the provisions incorporated by this Supplemental Agreement, as set out in Schedule 1, contradict, vary or could be interpreted differently to the same, similar or related provisions in the NEC3 standard terms forming part of the Contract then the form of words used in Schedule 1 shall take precedence and any interpretation be consistent with the clause in the context of the NEC4 standard form.



## SCHEDULE 1

Amendment number	Clause from NEC4 to be added or used to replace NEC3 equivalent	Guidance note on purpose of change (not to be used in interpretation of the clause or this amendment) and/or benefit to be derived
1	13.4	Amendment to wording that requires Project Manager to confirm reasons for rejection in sufficient detail to allow the Contractor to correct the matter.
2	15.1	Early Warning Register rather than Risk Register
3	15.2	Obliges the Project Manager to produce and issue the first Early Warning Register within one week of the starting date. Project Manager also instructs Contractor to attend first early warning meeting within 2 weeks of the starting date. Also then confirms that later meetings will be as instructed by either side, or as a minimum at the intervals stated in Contract Data. Also states that Subcontractor can attend if it would assist to decide actions to be taken. Adopted for a project which has already been commenced the requirements as to first Register and first Meeting are not expected to apply
4	15.3	Extra emphasis on early warning meeting to review previous actions and decide any different actions that need to be taken and who should take them
5	15.4	Obliges Project Manager to reissue Early Warning Register within one week of early warning meeting
6	16.1	Clause 16 heading change to Contractor's Proposals  Contractor can propose to the Project Manager a change in Works Information in order to reduce the amount the Client pays the Contractor to provide the works. (Contractor will benefit through the new engineering ratio for options A/B and through share percentage for options C/D). It is recommended that the default share be set to 50:50 for the purposes of a Supplemental Agreement
7	16.2	Within four weeks the Project Manager accepts the proposal and either a) issues an instruction changing scope, b) instructs a proposed quotation, or c) rejects proposal.
8	31.3	If Project Manager does not respond to a programme issued for acceptance by the Contractor, the Contractor can notify this non-response to the Project Manager. Failure to respond to the notification within a further week would mean that the programme is treated as having been accepted (i.e. deemed accepted)
9	51.1	Obliges Project Manager to show how the certified payment has been assessed
10	53	Add new section on Final Assessment



11	53.1	Final assessment by Project Manager to be made within four weeks of Defect Certificate issued by Supervisor, giving details of how it has been assessed
12	53.2	If the Project Manager does not make this assessment, Contractor may issue to Client an assessment of the amount due. If Client agrees, payment made within three weeks of assessment.
13	53.3	Assessment of final amount due issued within time stated in contract is conclusive evidence of the final amount due unless party takes action under W1/2/3 i.e. refers matter for dispute
14	60.1(20)	Project Manager notifies the Contractor that a quotation for a proposed instruction is not accepted
15	63.1	Adds the term dividing date in terms of boundary between actual/defined cost. Dividing date is the date of the instruction/changed decision, or for all other compensation events the dividing date is the date the compensation event is notified.
<b>If Option A is used in the Contract</b>		
17	55.1	Extra line to say if activities on the Activity Schedule do not relate to Scope, Contractor corrects activity schedule.
18	63.12	Confirms that changes to Client Scope proposed by Contractor and accepted, the Prices are reduced by an amount calculated by applying the value engineering percentage in contract data part 1. It is recommended that the default share be set to 50:50 for the purposes of a Supplemental Agreement.
<b>If Option B is used in the Contract</b>		
19	63.12	Confirms that changes to Client Scope proposed by Contractor and accepted, the Prices are reduced by an amount calculated by applying the value engineering percentage in contract data part 1. It is recommended that the default share be set to 50:50 for the purposes of a Supplemental Agreement.
<b>If Option C is used in the Contract</b>		
20	26.4	Default is that Contractor submits pricing information in proposed subcontract documents unless Project Manager agrees no such submission is required
21	DELETE 31.4	no obligation under option C for items on the activity schedule to relate to programme, or option/requirement to revise and have accepted
22	50.9	allows by agreement Contractor to notify to Project Manager when parts of Defined Cost have been finalised and records available to demonstrate it has been correctly assessed. Project Manager reviews records within 13 weeks notifying either a) acceptance, or b) further records are needed, or c) Contractor errors in assessment. If further records required these are to be provided within four weeks, and Project Manager has to accept or notify own assessment within further four weeks. If the



		Project Manager does not notify a decision within time stated then Contractor assessment is treated as being deemed accepted.
<b>If Option D is used in the Contract</b>		
23	26.4	Default is that Contractor submits pricing information in proposed subcontract documents unless Project Manager agrees no such submission is required
24	50.9	allows by agreement Contractor to notify to Project Manager when parts of Defined Cost have been finalised and records available to demonstrate it has been correctly assessed. Project Manager reviews records within 13 weeks notifying either a) acceptance, or b) further records are needed, or c) Contractor errors in assessment. If further records required these are to be provided within four weeks, and Project Manager has to accept or notify own assessment within further four weeks. If the Project Manager does not notify a decision within time stated then Contractor assessment is treated as being deemed accepted.
<b>If Option E is used in the Contract</b>		
25	26.4	Default is that Contractor submits pricing information in proposed subcontract documents unless Project Manager agrees no such submission is required
26	50.9	allows by agreement Contractor to notify to Project Manager when parts of Defined Cost have been finalised and records available to demonstrate it has been correctly assessed. Project Manager reviews records within 13 weeks notifying either a) acceptance, or b) further records are needed, or c) Contractor errors in assessment. If further records required these are to be provided within four weeks, and Project Manager has to accept or notify own assessment within further four weeks. If the Project Manager does not notify a decision within time stated then Contractor assessment is treated as being deemed accepted.
<b>Secondary Options</b>		
27	W1.1 (if W1 applies in the Contract)	Add requirement to try to resolve with senior representatives, and if not resolved then go to Adjudication
28	W2.1 (if W2 applies in the Contract)	Add requirement to try to resolve with senior representatives, and if not resolved then go to Adjudication
29	X21	Whole Life Cost – Contractor can propose change to Scope to benefit operating cost/maintenance. Quotation accepted or not accepted. If accepted, Project Manager changes Scope/Prices/Completion Date accordingly. Change to Scope is not a compensation event.