

Major Projects Framework 2

NEC4 Option F Construction DA





Introduction

NEC Engineering and Construction Contract - Options F

This Delivery Agreement incorporates the NEC 4th edition engineering and construction contract June 2017 (the **NEC ECC**), including the additional public sector Z Clauses published by NEC to comply with the requirements of The Public Contracts Regulations.

Any subsequent amendments to the NEC ECC shall apply to this Model Delivery Agreement, if agreed in writing by Places for People and the Contractor, but shall only be incorporated into Delivery Agreements executed after such amendments are published and their inclusion has been agreed accordingly with Places for People.

The following rules apply to the incorporation of clauses into a Delivery Agreement:

- a) The contract clauses are varied by the incorporation of option clauses, a Z clause or as otherwise agreed in writing by the *Employer* and Places for People;
- b) The option clauses defined as '**Shall apply'** in the table below will be incorporated unless otherwise agreed by the *Employer* and Places for People;
- c) The option clauses defined as 'May apply' in the table below, may apply following agreement between the Employer and Contractor
- d) The Z clauses set out in the Delivery Agreement shall be incorporated unless otherwise agreed in writing by the Employer and Places for People.
- e) The *Employer* and *Contractor* shall indicate within the Delivery Agreement whether the clauses below shown in italics are to be incorporated.
- f) For the avoidance of doubt, Employers not wishing to use clauses specified as 'may apply', should 'strike-through' the clause reference in Contract Data Part 1, when completing Delivery Agreements.

MAIN OPTION CLAUSES

Option F: Priced contract with activity schedule

SECONDARY OPTION CLAUSES AND ADDITIONAL OPTIONS

OPTION NUMBER	OPTION TITLE	APPLICABLE?	
Secondary Options			
W2	Dispute resolution procedure		
X2	Changes in the law		
X7	Delay damages	Shall apply	
X15	Limitation of the Contractor's liability for his design to reasonable skill and care		
X18	Limitation of Liability		
X20	Key Performance Indicators	May apply	
X1	Price Adjustments for inflation		
X5	Sectional Completion		
Х8	Undertaking to the Client or others	Mayanniy	
X13	Performance bond	May apply	
X14	Advanced payment to the Contractor		
X17	Low Performance Damages		
Option Y			
Y(UK)1	Project Bank Accounts	May apply	
Y(UK)2	The Housing Grants, Construction and Regeneration Act 1996	Shall apply	
Y(UK)3	Contract (Third Party(Scotland)) Act 2017		

Construction Delivery Agreement

THIS AGREEMENT is made

BETWEEN:

(1) [insert Employer details] (the 'Employer')

AND

(2) Robertson[Fill in Division] of [] (the 'Contractor')

for the works [insert headline description of the Works]

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated 4th April 2022 made between **PLACES FOR PEOPLE GROUP LIMITED** and the Contractor (the 'Framework Agreement') and incorporates those provisions of the Model Delivery Agreement set out in Appendix [A12] of the Framework Agreement.

IT IS AGREED as follows:-

1. The Contractor's obligations

The *Contractor* provides the *works* and complies with its obligations in accordance with the conditions of contract set out in the Contract Data herein.

2. The Employer's obligations

The *Employer* pays the amount of money and complies with its obligations in accordance with the conditions of contract set out in the Contract Data herein.

¹ 3. The documents forming part of this agreement are:	
The Model Delivery Agreement	
The Contractor's []	
	g and construction contract Jun3 2017 (the NEC ECC), including the comply with the requirements of The Public Contracts Regulation
The Contract Data part one (and any appendices of sch	nedules referred to therein)
The Contract Data part two (and any appendices or sch	nedules referred to therein)
The Works Information	
The Activity Schedule	
The Site Information	
IN WITNESS WHEREOF these presents consisting of this page, Schedule and Site Information] are signed as follows:	, [Contract Data Parts One and Two, the Works Information, Activit
CUDCODIDED for each or holosif of [1]	
SUBSCRIBED for and on behalf of [] at	
on	
by	
Print Full Name	Director
before this witness	
Print Full Name	Witness
Address	
SUBSCRIBED for and on behalf of []	
at	
on by	
by	
Print Full Name	Authorised Signatory
before this witness	
Print Full Name	Witness
Address	

¹ Clause 3 (or part thereof) should be on same page as the first signing block in order that the document is signed in accordance with Scots law)

Contract Data

PART ONE – DATA PROVIDED BY THE CLIENT

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

1 General		
	The <i>conditions of contract</i> are the core clauses, the clauses for main Option F, Option for resolving and avoiding disputes and secondary Options of the NEC4 and Construction Contract June 2017	
	Option for resolving and avoiding disputes	
	Secondary Options	
	The works are	
	The Client is	
	Name	
	Address for communications	
	Address for electronic communications	
	The Project Manager is	
	Name	
	Address for communications	
	Address for electronic communications	
	The Supervisor is	
	Name	
	Address for communications	
	Address for electronic communications	

	The Scope is in		
	The Site Information is in		
	The boundaries of the site are		
	The language of the contract is	English	
	The law of the contract is the law of	Scotland	
	The period for reply is	14 days	except that
	 The period for reply for 		is
	• The period for reply for		is
	Early warning meetings are to be h	neld at intervals no longer th	an
2 The Contractor's ma	ain responsibilities		
f the <i>Client</i> has identified work which is set to meet a stated <i>condition</i> by a <i>key</i> date	The key dates and conditions to be condition to be met (1) (2) (3)		key date
	The Contractor prepares forecasts the whole of the works at intervals		r

3 Time			
	The starting date is		
	The access dates are		
	part of the Site		date
	(1)		
	(2)		
	(3)		
	The <i>Contractor</i> submits revised prog longer than	rammes at intervals no	
	longor than		
If the <i>Client</i> has decided the <i>completion date</i> for the whole of the <i>works</i>	The completion date for the whole of the	works is	
Taking over the <i>works</i> before the Completion Date	The Client Is/Is not willing to take ove Completion Date (Delete as applicable		
If no programme is	The period after the Contract Date within	n which the Contractor	
identified in part two of the Contract Data	is to submit a first programme for accept	tance is	
4 Quality manageme	ent		
	The period after the Contract Date w		or
	is to submit a quality policy statemen		
	The period between Completion of the and the defects date is	ne whole of the works	
			52 weeks after the Completion of the whole of the works.
	The defect correction period is	4 weeks	except that
	 The defect correction period for 	Serious	is 7 days
	The defect correction period for	Emergency	is 24 hours
5 Dayman'			
5 Payment			
	The currency of the contract is the		
	The assessment interval is		
	The interest rate is	% per annum (not less	s than 2) above the
		rate of the	bank

If the period in which payments are made is not three weeks and Y(UK)2 is not used	The period within which payments are made is
	The exchange rates are those published in
	on (date)
6 Compensation even	ts
	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
	Assumed values for the ten year weather return weather data for each weather measurement for each calendar month are
Where no recorded data are available	which were recorded at and which are available from Assumed values for the ten year weather return weather data for each weather

If there are additional compensation events

These are additional compensation events

compensation events	Inflation due to curre basis)	nt market conditions (to be reviewe	d on a Contract-by-Contract
8 Liabilities and insu	rance		
If there are additional Client's liabilities	of any direction, in party, including but	t's liabilities Fire Safety Strategy after the Contranterpretation or requirement of any state not limited to any local authority built affects the execution of the works	atutory body or relevant third lding control or approved
	(2)		
	(3)		
	the works, Plant and Mat person (not an employee Providing the Works for a The minimum amount of	cover for insurance against death of cout of and in the course of their emplo	bodily injury to or death of a connection with the <i>Contractor</i> Ten Million Pounds (£10,000,000) or bodily injury to employees
If the <i>Client</i> is to provide Plant and Materials	_	ss of or damage to the <i>works</i> , Plant a rials provided by the <i>Client</i> for an	and Materials is to include
If the <i>Client</i> is to provide	The Client provides these	e insurances from the Insurance Tabl	e
any of the insurances stated in the Insurance Table	(1) Insurance against		
	Minimum amount of cove	eris	
	The deductibles are		
	(2) Insurance against		
	Minimum amount of cove	eris	
	The deductibles are		
	(3) Insurance against		
	Minimum amount of cove	eris	
	The deductibles are		

If additional insurances are	The Client provides these additional ins	surances
to be provided	(1) Insurance against	
	Minimum amount of cover is	
	The deductibles are	
	(2) Insurance against	
	Minimum amount of cover is	
	The deductibles are	
	(3) Insurance against	
	Minimum amount of cover is	
	The deductibles are	
	The Contractor provides these additional	al insurances
	(1) Insurance against	
	Minimum amount of cover is	
	The deductibles are	
	(2) Insurance against	
	Minimum amount of cover is	
	The deductibles are	
	(3) Insurance against	
	Minimum amount of cover is	
	The deductibles are	
Pacalying and avaid	ling disputes	
Resolving and avoid	ing disputes	
	The tribunal is	
If the tribunal is arbitration	The arbitration procedure is	
	The place where arbitration	
	is to be held is	
	The person or organisation who will cho choice or if the <i>arbitration procedure</i> do	pose an arbitrator if the Parties cannot agree a les not state who selects an arbitrator is
If Option W1 or W2 is used	The Senior Representatives of the Cla	ient are
	Name (1)	

	Address for communication	ations				
	Address for electronic of	communications				
	Name (2)					
	Address for communica	ations				
	Address for electronic of	communications				
	The Adjudicator is					
	Name					
	Address for communica	ations				
	Address for electronic of	communications				
	The Adjudicator nominating	g body is				
If Option W3 is used applicable)	The number of members of t	he Dispute Avoida	ance Board is <u>on</u>	<u>e/three</u> (Delet	e as	
If Option W3 is used and	The Client's nomination for t	he Dispute Avoid	ance Board is			
the number of members of the Dispute Avoidance	Name					
Board is three	Address for electron	ic communication	ıs			
	The Dispute Avoidance Bo	ard visit the Site a	at intervals no lor	nger than		months
	The Dispute Avoidance Bo	ard nominating				
	body is					
X5: Sectional Com	pletion					
If Option X5 is used	The completion date for each	section of the wo	orks is			
	section	description		completion d	ate	
	(1)					
	(2)					
	(3)					
	(4)					
X6: Bonus for early	/ Completion					
If Option X6 is used without Option X5	The bonus for the whole of the	works is			per da	у

If Option X6 is used with	The bonus for each section of the works is				
Option X5	section	description		amount per day	
	(1)				
	(2)				
	(3)				
	(4)				
	The bonus for the	e remainder of the works is			
X7: Delay damages					
If Option X7 is used without Option X5	Delay damages fo	or Completion of the whole of	the works are	per day	
If Option X7 is used with	Delay damages fo	or each section of the works a	are		
Option X5	section	description		amount per day	
	(1)				
	(2)				
	(3)				
	(4)				
	The delay damages for the remainder of the works are				
V9: Undortakings to	the Client or C	Othors			
X8: Undertakings to If Option X8 is used					
ii opiloii no lo dood	are provided to				
]		
	The Subcontracto	or undertaking to Others are	I		
	works	Ŭ	provided to		
	The Subcontractor undertaking to the Client				
	are works				
]		

X10: Information modelling

If Option X10 is used

If no information execution plan is identified in part two of the Contract Data	The period after the Contract Date within which the <i>Contractor</i> is to submit a first Information Execution Plan for acceptance is
	The minimum amount of insurance cover for claims made against the <i>Contractor</i> arising out of its failure to use the skill and care normally used by professionals providing information similar to the Project Information is, in respect of each claim
	The period following Completion of the whole of the works or earlier termination for which the Contractor maintains insurance for claims made against it arising out of its failure to use the skill and care is
X12: Multiparty collab	poration (not used with Option X20)
	The Promoter is
	The Schedule of Partners is in
	The Client's objective is
The Partnering Information is in	1

X13: Performance	bond
If Option X13 is used	The amount of the performance bond is
X14: Advanced p	ayment to the <i>Contractor</i>
If Option X14 is used	The amount of the advanced payment is
	The period after the Contract Date from which the
	Contractor repays the instalments in assessments is
	The instalments are (either an amount or a percentage of the payment otherwise due)
Advanced payment bond	An advanced payment bond <u>Is/Is not</u> required (Delete as applicable)
X15: The Contrac	tor's design
If Option X15 is used	The <i>period for retention</i> following Completion of the whole of the <i>works</i> or earlier termination is
	The minimum amount of insurance cover for claims made against the <i>Contractor</i> arising out of its failure to use the skill and care normally used by professionals designing works similar to the <i>works</i> is, in respect of each claim
	The period following Completion of the whole of the <i>works</i> or earlier termination for which the <i>Contractor</i> maintains insurance for claims made against it arising out of its failure to use the skill and care is
X17: Low perform	ance damages
If Option X17 is used	The amounts for low performance damages are
	amount performance level
	for
	for
	for
	for
X18: Limitation o	liability
If Option X18 is used	The Contractor's liability to the Client for indirect or consequential loss is limited to
	For any one event, the <i>Contractor's</i> liability to the <i>Client</i> for loss of or damage to the <i>Client's</i> property is limited to
	The Contractor's liability for Defects due to its design which are not listed on the Defects Certificate is limited to

	The Contractor's total liability to arising under or in connection we excluded matters, is limited to The end of liability date is	vith the contract, other than	n of the whole of the works
X20: Key Performan	nce Indicators (not used w	ith Option X12)	
If Option X20 is used	The incentive schedule for Key I	Performance Indicators is in	
	A report of performance agains Indicator is provided at intervals		months
Y(UK)1: Project Bar	nk Account		
Charges made and nterest paid by the project bank	The Contractor Is/Is not to pay a project bank (Delete as applicable)	ny charges made and to be paid a e)	any interest paid by the
Y(UK)2: The Housin	ng Grants, Construction ar	nd Regeneration Act 1996	
f Option Y(UK)2 is used and the final date for payment is not fourteen days after the date on which payment becomes due	The period for payment is 14	days after the date on whi	ich payment become due
Y(UK)3: The Contra	acts (Rights of Third Partie	es) Act 1999	
Option Y(UK)3 is used	term	beneficiary	
f Y(UK)3 is used with	term	beneficiary	
((UK)1 the following entry s added to the table for ((UK)3	The provisions of Options Y(UK)1	Named Suppliers	

If Option Z is used

The additional conditions of contract are

11.2(35) Insert new definition: "'Fire Safety Strategy' means the specifications and drawir setting out the detailed design for the works and specifying systems, methods, products and materials to be used in t
setting out the detailed design for the works and specifying systems, methods, products and materials to be used in t
construction and delivery of the external walls of the work including for the avoidance of doubt the insulation material cladding materials, methods of fixing cavity barriers and other for protection measures as comprised in the documents which the Contract Data states it is in."
11.2 (36) Insert a new definition:
'Framework Agreement' is the framework agreement betwee PLACES FOR PEOPLE GROUP LIMITED and the Contractor dated April 2022
11.2 (37) Insert a new definition:
Pool Re Arrangement – Terrorism Insurance purchased through Pool Reinsurance Company Limited as expressed the ABI standard wording.
11.2 (42) Insert a new clause:
"Specified Perils" are fire, lighting, explosion, storm, flood, escape of water from any tank, apparatus or pipe, earthquake, aircraft, and any other aerial devices or articles dropped there from, riot and civil commotion, but excluding any such event stated as an <i>Employer</i> 's risk.
11.2(43) Public Health Emergency such as the occurrence of a "public hea emergency", such as coronavirus disease (COVID-19), or any oth disease variant caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) virus
11.2(44) Russian Federation's attack on Ukraine and other wars in violati of international law
11.2(45) "Implications of the constraints upon the availability of K Equipment and/or Plant and Materials to be provided by t Contractor
2 The Contractor's main responsibilities
20.6 Insert a new clause 20.6:
'In executing this contract, the <i>Contractor</i> accepts that all obligations and duties owed by it, acting as:
 the 'Consultant' in the provision of the Services undo a preceding design Delivery Agreement; and/or
 the 'Contractor' in the provision of the Works under preceding enabling works Delivery Agreement,
are deemed to be obligations and duties owed by the

Contractor under this contract.

All and any of the *Contractor's* duties and obligations under such previous Delivery Agreements shall determine and cease to have any effect.

Any payments made by an 'Employer' under such previous Delivery Agreements shall be treated as payments on account, pursuant to this contract.'

21.4 Insert new clause 21.4

'Notwithstanding any contrary provision in the Contract or any documents forming part of the Contract it is hereby expressly agreed and acknowledged that: -

- a) no fitness for purpose warranty is either given or implied, whether under statute or otherwise, in relation to the works to be delivered under this Contract and/or method, system, design, products and materials provided by the Contractor, and
- b) the Contractor in designing the Works shall exercise reasonable skill and care and shall have the like liability to the Employer, whether under statute, this contract or otherwise, as would an architect or, as the case may be, any other appropriate professional designer holding himself out as competent to take on such work for such design and material selection who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with the works to be carried out by a building contractor who is not the supplier of the design.'

5 Payment

50.3 At the end of the first bullet point, insert "plus amounts in respect of unfixed materials on site"

6 Compensation event

60.1 (23) Insert a new clause:

a) Any event listed in Clause 60.1 which is consequent upon or necessitated by omission, default, breach of contract or breach of statutory duty of the *Contractor*, his servants or agents or any Subcontractor or supplier or their respective servants or agents ("Contractor Act") shall be a compensation event only if the Contractor Act arises as a result of one or more Specified Perils which are covered by the insurance provided by the *Contractor* in respect of loss of or damage to the works, Plant and Material and loss of or damage to Equipment;

60.1 (24) Insert a new clause:

Public Health Emergency such as the occurrence of a "public health emergency", such as coronavirus disease (COVID-19), or any other disease variant caused by the severe acute

respiratory syndrome coronavirus 2 (SARS-CoV-2) virus and/or any the implementation of public health measures in connection with the outbreak, directly affecting the execution of the Works, including but not limited to:

- shortages of labour or supervision as a result of preventative measures to alleviate the outbreak spreading and/or due to infection, or potential infection, and the resulting quarantine, or self-isolation or similar, required; or
- shortages of plant or materials due to delays in their manufacture, importation or transportation; or
- site closure, or restricted access or amended working methods as a result of measures to contain the outbreak; or
- the exercise by the Scottish or United Kingdom Government of any statutory power.

shall be a Compensation Event and the total of the Prices and completion date shall be subject to adjustment.

The parties agree that for compensation events arising under clause60.1(4) where the reason for the instruction is the resurgence of COVID-19 and/or emergence of another similar virus and/or notifiable disease resulting in the implementation of new or further public health measures in connection therewith; and/or, compensation events arising under 60.1(22), any change to the Prices is assessed.

60.1 (26) Insert a new Clause:

"Constraints upon the availability of Equipment and/or Plant and Materials to be provided by the *Contractor* which the *Contractor* has taken all reasonable steps to avoid or mitigate.

60.1(27) Insert a new Clause:

"Implications of the Russian Federation's attack on Ukraine and other wars in violation of international law including but not limited to the availability of Equipment and/or Plant and Equipment.

SHORTER SCHEDULE OF COST COMPONENTS

- Add at the end of clause 11 '(but excluding any sums necessary to top up a pension fund)'.
- Delete Clause 41 from 'to cover the cost of' replace with:

Payments for the provision of

- catering. Includes tea, coffee, water, biscuits, sandwiches and other drinks for Employer/ contractor meetings. Includes microwave, kettle, cutlery, refrigerator and other domestic appliances.
- medical facilities and first aid. Includes for compliance with all H&S requirements, (for example medical first aid box and eye wash).
- recreation.
- sanitation. Includes for compliance with all H&S
 requirements, all cleaning equipment, materials
 and consumables (brushes, mops, disinfectant, toilet
 rolls, tea towels, soap, hand wash, refuse sacks, dusters,
 bleach), servicing chemical toilets if provided.
- security. Includes the following to the site compound only: fencing/hoardings, gates, floodlights, cabin alarms.
- copying.
- telephone, telex, fax, radio and cabin/compound CCTV. Includes for telephone, fax and ISDN/ broadband lines and line rental to the temporary site establishment and any mobile phones. CCTV to the site compound shall be at the Contractor's discretion (no adjustment shall be made to the Contractor's Fee if CCTV is not provided).
- surveying and setting out. Includes for a site level and staff for cross check of setting out, weather surveys to determine weather measurements in accordance with the NEC contract, digital camera for use on site.
- surveying and setting out. Includes for a site level and staff for cross check of setting out, weather surveys to determine weather measurements in accordance with the NEC contract, digital camera for use on site.
- computing. Includes for any contractors computer hardware and software, laptops, printers and all computer infrastructure and networking costs.

 hand tools not powered by compressed air. Includes any tools hired, bought or brought by the Contractor for the purposes of setting up the temporary site establishment.

Add the following new Shorter Schedule of Cost Components items

- '46 'the cost of the Performance Bond provided under Option X13'
- '47 Payments for the provision and use in the Working Areas of water, gas and electricity'
- '48 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'

PART TWO – DATA PROVIDED BY THE CONTRACTOR

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

1 General	
The Contractor is	
Name	
Address for communications	
Address for electronic communication	S
The fee percentage is	%
The working areas are	
The key persons are	
Name (1)	
Job	
Responsibilities	
Qualifications	
Experience	
Name (2)	
Job	
Responsibilities	
Qualifications	
Experience	
The following matters will be included in th	e Early Warning Register

2 The Contractor's m	ain responsibilities
If the <i>Contractor</i> is to provide Scope for its design	The Scope provided by the <i>Contractor</i> for its design is in
3 Time	
If a programme is to be identified in the Contract Data	The programme identified in the Contract Data is
If the <i>Contractor</i> is to decide the <i>completion date</i> for the whole of the <i>works</i>	The completion date for the whole of the works is
5 Payment	
	Work which the Contractor will do is
	activity price
Resolving and avoidi	ng disputes
If Option W1 or W2 is used	The Senior Representatives of the Contractor are
	Name (1)
	Address for communications
	Address for electronic communications
	Name (2)
	Address for communications
	Address for electronic communications
If Option W3 is used	The Contractor's nomination for the Dispute Avoidance Board is
	Name
	Address for electronic communications

X10: Information modelling			
If Option X10 is used			
If an information execution plan is to be identified in the Contract Data	The information execution plan identified in the Contract Data is		
Y(UK)1: Project Bank Account			
If Option Y(UK)1 is used	The <i>project bank</i> is		
	named suppliers are		

Listed below are various optional Appendice headings to be selected /added to on a project by project basis

(Project Title)

Contract Documentation

Construction Delivery Agreement

Contract Data: Part One

Option Z Clauses – The additional Conditions of Contract

Contract Data: Part Two

Appendix Part I Works Information

a) Employers Works Information

b)Contractors Works Information

Appendix Part II Site Investigation

Appendix Part iii Site Boundaries

Appendix Part iv Activity Schedule

Appendix Part v Contract Programme

Appendix Part vi Parent Company Guarantee

Appendix Part vii Performance Bond

Appendix Part viii Various Warranties

Appendix Part ix Project Band Account with Joining Deed and Trust Deed

Appendix Part x Vesting Agreeme



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Part of Places for People

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