AMENDMENTS JUNE 2006

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

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<td>10</td>
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<td>61</td>
<td>Contract Data Part one, 1.</td>
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AMENDMENTS APRIL 2013

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

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<td>11</td>
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<td>16</td>
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|      | 61.3   | 1    | text replaced with: ‘The Contractor notifies the Project Manager of an event which has happened or which he expects to happen as a compensation event if

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

If the Contractor does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices, the Completion Date or a Key Date unless the event arises from the Project Manager or the Supervisor giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption.’ |
| 17   | 61.4   | 1    | text replaced with: ‘If the Project Manager decides that an event notified by the Contractor

- arises from a fault of the Contractor,
- has not happened and is not expected to happen,
- has no effect upon Defined Cost, Completion or meeting a Key Date or
is not one of the compensation events stated in this contract
he notifies the Contractor of his decision that the Prices, the Completion Date and the Key Dates are not to be changed. If the Project Manager decides otherwise, he notifies the Contractor accordingly and instructs him to submit quotations.
The Project Manager notifies his decision to the Contractor and, if his decision is that the Prices, the Completion Date or the Key Dates are to be changed, instructs him to submit quotations before the end of either
- one week after the Contractor’s notification or
- a longer period to which the Contractor has agreed.
If the Project Manager does not notify his decision, the Contractor may notify the Project Manager of his failure. A failure by the Project Manager to reply within two weeks of this notification is treated as acceptance by the Project Manager that the event is a compensation event and an instruction to submit quotations.’

| 18 | 62.6 | 63.1 | 2 | replace: ‘to this effect’ with ‘of his failure’
1 | replace final paragraph with:
‘If the compensation event arose from the Project Manager or the Supervisor giving an instruction, issuing a certificate, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.’

| 19 | 64.4 | 2 | replace: ‘to this effect’ with ‘of his failure’

| 25 | 91.4 | 1 | text replaced with ‘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).’

| 28 | 63.14 | 2 | delete: ‘instead of Defined Cost’

| 29 | 63.13 | last paragraph delete: ‘instead of Defined Cost’

| 33 | 63.14 | 1 | insert new clause ‘If the Project Manager and the Contractor agree, rates and lump sums may be used to assess a compensation event.’

| 37 | 63.13 | last paragraph delete: ‘instead of Defined Cost’

| 39 | 63.14 | 1 | insert new clause ‘If the Project Manager and the Contractor agree, rates and lump sums may be used to assess a compensation event.’

| 41 | 63.14 | 1 | insert new clause ‘If the Project Manager and the Contractor agree, rates and lump sums may be used to assess a compensation event.’

| 46 | W2.3(7) | 1 | text replaced with: ‘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.’

added at end: new sentence ‘The Adjudicator may in his decision allocate his fees and expenses between the Parties.’

text replaced with: ‘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.’

insert new clause: ‘Project Bank Account’

Y1.1 Definitions
(1) The Authorisation is a document authorising the project bank to make payments to the Contractor and Named Suppliers.
(2) Named Suppliers are named suppliers and other Suppliers who have signed the Joining Deed.
(3) Project Bank Account is the account used to receive payments from the Employer and the Contractor and make payments to the Contractor and Named Suppliers.
(4) A Supplier is a person or organisation who has a contract to
• construct or install part of the works,
• provide a service necessary to Provide the Works or
• supply Plant and Materials for the works.
(5) Trust Deed is an agreement in the form set out in the contract which contains provisions for administering the Project Bank Account.
(6) Joining Deed is an agreement in the form set out in the contract under which the Supplier joins the Trust Deed.

Y1.2 Project Bank Account
The Contractor establishes the Project Bank Account with the project bank within three weeks of the Contract Date.

Y1.3
Unless stated otherwise in the Contract Data, the Contractor pays any charges made and is paid any interest paid by the project bank. The charges and interest by the project bank are not included in Defined Cost.

Y1.4
The Contractor submits to the Project Manager 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 Contractor provides to the Project Manager copies of communications with the project bank in connection with
Y1.5 Named Suppliers
The Contractor includes in his contracts with Named Suppliers the arrangements in this contract for the operation of the Project Bank Account and Trust Deed. The Contractor notifies the Named Suppliers of the details of the Project Bank Account and the arrangements for payment of amounts due under their contracts.

Y1.6
The Contractor submits proposals for adding a Supplier to the Named Suppliers to the Project Manager for acceptance. A reason for not accepting is that the addition of the Supplier does not comply with the Works Information. The Employer, the Contractor and the Supplier sign the Joining Deed after acceptance.

Y1.7 Payments
On or before each assessment date, the Contractor submits to the Project Manager 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 project bank to make payment to the Contractor and Named Suppliers in accordance with the contract,
- the Employer makes payment to the Project Bank Account of the amount which is due to be paid under the contract and
- the Contractor makes payment to the Project Bank Account of any amount which the Employer has notified the Contractor he intends to withhold from the certified amount and which is required to make payment to Named Suppliers.

Y1.9
The Contractor prepares the Authorisation, setting out the sums due to Named Suppliers as assessed by the Contractor and to the Contractor 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
Y1.12 Effect of payment

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.

Y1.13 Trust Deed

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

Y1.14 Termination

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

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**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
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

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|      |        | text replaced with ‘The Act is the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.’ paragraph 3, text replaced with ‘The Project Manager’s certificate is the notice of payment to the Contractor specifying the amount due at the payment due date (the notified sum) and stating the basis on which the amount was calculated.’ text replaced with ‘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.’

3rd bullet: text replaced with ‘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.’

Contract Data part one, 1.  date replaced with ‘April 2013’

1  text inserted
‘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.’

1  text inserted:
If Options Y(UK)1 and Y(UK)3 are both used
   • The provisions of Option Named Suppliers
     Y(UK)1

1  text inserted
If Option Y(UK)1 is used
   • The project bank is . . . . . . . . . . . . . . . . . .
   • named suppliers are . . . . . . . . . . . . . . . . . .