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Major Projects Framework 2

# NEC3 Enabling Works DA

*The following Delivery Agreement template is drafted on the basis that the law of Scotland applies.*

## Introduction

### NEC Short Contract

This Delivery Agreement incorporates the NEC 3<sup>rd</sup> edition engineering and construction short contract April 2013 (the **NEC Short Contract**), including the additional public sector Z Clauses published by NEC to comply with the requirements of The Public Contracts Regulations 2015.

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

- a) The conditions of contract set out below shall be incorporated unless varied by an incorporated amendment to contract or as otherwise agreed in writing by the *Employer* and Places for People;
- b) The amendments to contract clauses set out below shall be incorporated unless otherwise agreed in writing by the *Employer* and Places for People.

This Delivery Agreement will only be used for Enabling Works as defined in the Framework Agreement.

## Enabling Works Delivery Agreement

**THIS AGREEMENT** is made

BETWEEN:

(1) [.....] of [.....] (the 'Employer')

AND

(2) [.....] of [.....] (the 'Contractor')

for the Services of [.....]

Whereas:

This Delivery Agreement is made pursuant to the Framework Agreement dated 4<sup>th</sup> 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 [A11] of the Framework Agreement.

**IT IS AGREED** as follows:-

1. **The Contractor's obligations**

The *Contractor* provides the services and comply with his 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.

**3. The documents forming part of this agreement are:**

The Model Delivery Agreement

*The Contractor's Offer*

*The conditions of contract* (NEC 3<sup>rd</sup> edition engineering and construction short contract April 2013 )

*The Contract Data part one* (and any appendices of schedules referred to therein)

*The Contract Data part two* (and any appendices or schedules referred to therein)

*The Works Information*

*The Price List*

*The Site Information*

IN WITNESS WHEREOF these presents consisting of this page, [Contract Data Parts One and Two, the Works Information, Price List, Contractor's Offer and Site Information] are signed as follows:

SUBSCRIBED for and on behalf of [Employer ]

at  
on  
by

\_\_\_\_\_  
Print Full Name  
before this witness

\_\_\_\_\_  
Print Full Name  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Director

\_\_\_\_\_  
Witness

SUBSCRIBED for and on behalf of [Robertson/Subsidiary ]

at  
on  
by

\_\_\_\_\_  
Print Full Name  
before this witness

\_\_\_\_\_  
Print Full Name  
Address  
\_\_\_\_\_

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Witness

## Contract Data

The following details the Contract Data which will be provided by the *Employer* and the *Contractor* for each Delivery Agreement.

Certain defined terms and information in the Contract Data will be common to all Delivery Agreements other information included in the Contract Data will be specific to individual Projects.

The *Employer* is

Name [to be agreed on a project specific basis]

Address

Telephone

E-mail address

The *Employer's* delegate is

Name [to be agreed on a project specific basis]

Address

Telephone

E-mail address

The *Employer's* delegate is authorised to perform all duties and responsibilities of the *Employer* up to [Completion/defects date]\* excluding the following:

- Termination
- [to be agreed on a project specific basis]

***\*delete as appropriate,***

The *works* are [to be agreed on a project specific basis]

The *site* is [to be agreed on a project specific basis]

The *starting date* is [to be agreed on a project specific basis]

The *completion date* is [to be agreed on a project specific basis]

The *period for reply* is 2 weeks

The *defects date* is [to be agreed on a project specific basis]

The *defect correction period* is 24 hours for 'Emergency Defects', 7 days for 'Serious Defects' and 4 weeks for 'Routine Defects' as defined by the *Employer* in accordance with Clause 40.3

The *delay damages* are [to be agreed on a project specific basis] per day

The *assessment day* is the [to be agreed on a project specific basis] day of each month

The retention is ~~[to be agreed on a project specific basis]~~ %

Does the United Kingdom Grants, Construction and Regeneration Act (1996) apply? **Yes**

**If Clause 100 The Contracts (Third Party Rights) (Scotland) Act 2017 is used**

- Term person or organisation  
.....  
.....

The *Adjudicator* is

**[Either insert the Adjudicator's Name, Address, Telephone, Fax, E-mail address – or leave blank and in default the Adjudicator nominating body is as stated below namely the Royal Institution of Chartered Surveyors]**

The interest rate on late payments is **4 %** per complete week of delay

The *Contractor* is not liable to the *Employer* for loss of or damage to the *Employer's* property in excess of **[to be agreed on a project specific basis]** for any one event.

The *Employer* provides this insurance - Insurance for all existing buildings and property existing within the Site or at the sole discretion of the *Employer* he may elect to 'self-insure' such existing buildings and property and in doing so accepts all of the *Employer's* associated risks arising out of or in relation to such 'self-insurance'. In accordance with an *Employer's* decision to 'self-insure' they do not accept any additional insurance premium/cost from the *Contractor*. **[to be agreed on a project specific basis]**

The minimum amount of cover for the third insurance stated in the Insurance Table is **£10,000,000**

The minimum amount of cover for the fourth insurance stated in the Insurance Table is **£10,000,000**

The *Adjudicator nominating body* is **Royal Institution of Chartered Surveyors**

The *tribunal* is the **Courts of Scotland**

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract April 2013 and the following additional conditions, amendments, alterations, additions and deletions which take priority over the standard form short contract:

**AMENDMENTS TO CONTRACT**

The provisions of the *additional conditions of contract* prevail over all other provisions of this contract.

The following clauses of this contract shall be amended:

**1 General**

- 11.2 (1) After Works Information insert: 'including the execution of any collateral warranties stated in the Works Information and'.
- 11.2 (14) Insert a new definition:
- 'Framework Agreement' is the framework agreement between **PLACES FOR PEOPLE GROUP LIMITED** and the *Contractor* dated 4<sup>th</sup> April 2022
- 11.2 (15) Insert a new definition:
- Pool Re Arrangement – Terrorism Insurance purchased through Pool Reinsurance Company Limited as expressed in the ABI standard wording
- 11.2 (16) Insert a new definition:
- The Price for Work Done to Date is the total of the Prices for
- the percentage of the work which the *Contractor* has completed in the activity schedule Completed work is work without Defects which would either delay or be covered by immediately following work
- 11.2(17) Fire Safety Strategy means the specifications and drawings setting out the detailed design for the *works* and specifying all systems, methods, products and materials to be used in the construction and delivery of the external walls of the *works* including for the avoidance of doubt the insulation materials, cladding materials, methods of fixing cavity barriers and other fire protection measures as comprised in the documents which the Contract Data states it is in."
- 11.2 (18) 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 *Employer's* risk.
- 11.2 (19) Insert a new clause:
- "Unfixed Materials" means goods and/or materials which are delivered and physically present on Site but not yet incorporated into the Works
- 11.2(20) 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
- 11.2(21) Russian Federation's attack on Ukraine and other wars in violation of international law
- 11.2(22) "Implications of the constraints upon the availability of **KEY** Equipment and/or Plant and Materials to be provided by the *Contractor*

**2 Providing the Works**

20.3 Insert new clause 20.3

20.3.1 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 Client, 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 Client, 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**

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

**6 Compensation Events<sup>1</sup>**

60.1 (20) 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 (21) 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.

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<sup>1</sup> Additional compensation events may be agreed between the parties

- 60.1 (23) 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 and which prevents the Contractor taking delivery of the forementioned"
- 60.1(24) 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."
- 60.1.(25) Insert a new Clause
- Inflation caused by current market conditions and availability of Equipment and/or Plant and Materials.

## **8 Indemnity, insurance and liability**

82.1 **Add to the Insurance Table – after 'loss of or damage to the works' insert:-**

*'save as caused by*

- *Terrorism to the extent not insured under the Pool Re Arrangement*
- *Pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds'.*

*(Z clause 82.1 (i.e. the above insertions only) may be deleted at the Employer's sole discretion).*

*Insert the following new section:*

### **The *Contractor's* Offer**

The *Contractor* is

Name *[to be agreed on a project specific basis]*

Address

Telephone

E-mail address

The percentage for overheads and profit added to the Defined Cost for people is *[as set out in the Framework Commercial Model] %*

The percentage for overheads and profit added to other Defined Cost is *[as set out in the Framework Commercial Model] %*

The offered total of the Prices is *[to be agreed on a project specific basis]*

Enter the total of the Prices from the Price List.
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**Price List**

Entries in the first four columns in the Price List are made either by the Employer or the tenderer.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tenderer enters the amount in the Price column only; the Unit, Quantity and Rate Columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is to be the rate for the work multiplied by the quantity completed, the tenderer enters the rate which is then multiplied by the expected quantity to produce the Price, which is also entered.

*[to be agreed on a project specific basis]*

Item number	Description	Unit	Quantity	Rate	Price
-------------	-------------	------	----------	------	-------

The total of the Prices

**Works Information**

The Works Information should be a complete and precise statement of the *Employer's* requirements.

If it is incomplete or imprecise there is a risk that the *Contractor* will interpret it differently from the *Employer's* intention. Information provided by the *Contractor* should be listed in the Works Information only if the *Employer* is satisfied that it is required, is part of a complete statement of the *Employer's* requirements and is consistent with other parts of the Works Information.

**1 Description of the works**

Give a detailed description of what the *Contractor* is required to do and of any work the *Contractor* is to design.

.....

.....

*[to be agreed on a project specific basis]*

**2 Drawings**

List the drawings that apply to this contract.

Drawing number	revision	Title
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

*[to be agreed on a project specific basis]*

**3 Specifications.**

List the specifications which apply to this contract.

Title	Date of revision	Tick if publically available
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

*[to be agreed on a project specific basis].*

Schedule 13 (Template Works Information) is deemed to be included in the Works Information

#### 4 Constraints on how the *Contractor* Provides the Works

State any constraints on the sequence and timing of work and on the methods and conduct of work including the requirements for any work by the *Employer*.

.....  
 .....

*[to be agreed on a project specific basis]*

#### 5 Requirements for the programme.

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

State what the use of the *works* is intended to be at their Completion as defined in clause 11.2(1)

All programmes shall be in a Gantt chart format. They shall contain the following information, as a minimum:-

- The *starting date* and Completion Date
- The latest forecast of the *Contractor's* planned Completion
- The order and timing of the operations which the *Contractor* plans to do in order to Provide the Works
- Other information which the Works Information requires the *Contractor* to show on the programme

The first programme is to be submitted to the *Employer* two weeks prior to the *starting date*. The programme is to be updated and similarly distributed each month until the date of Completion.

.....  
 .....

*[Insert any project specific requirements]*

#### 6 Services and other things provided by the *Employer*

Describe what the *Employer* will provide, such as services (including water and electricity) and 'free issue' Plant and Materials and equipment.

Item	Date by which it will be provided
.....	.....
.....	.....
.....	.....

*[to be agreed on a project specific basis]*

Site Information

Give information about the *site* such as ground conditions and other information which is likely to affect the *Contractor's* work such as limitations on access and the position of adjacent structures.

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

*[to be agreed on a project specific basis]*



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