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Implications for the Construction Industry in Hong Kong**

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**Procurement using the NEC3**

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## SYNOPSIS

The paper describes the background to the NEC and the 3<sup>rd</sup> Edition, why it was developed and the philosophy behind it. It explains the principal objectives governing the original drafting of the NEC, which underpin the philosophy and mind set required by its users.

This is set within the context of NEC's increasing popularity in the UK and internationally – particularly in the public sector. The NEC's popularity, particularly since the 3<sup>rd</sup> Edition was published can be attributed to the Office of Government Commerce (OGC) endorsing it as the only standard form of contract that meets its Achieving Excellence in Construction initiative. Consequently the OGC recommend it for use by all public sector procurers. The paper highlights the principals behind the OGC's initiative in delivering value for money, how this can be achieved and how the NEC aligns with those principals.

The paper focuses on the Engineering and Construction Contract and describes the main features and its structure.

There are a number of case studies looking at a cross section of clients and how they are utilising the NEC suite of contracts.

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## PHILOSOPHY & HISTORY

### Introduction

The New Engineering Contract (NEC) is a modern day family of contracts that facilitates the implementation of sound project management principles and practices as well as defining legal relationships. Key to the successful use of NEC is users adopting the desired cultural transition. The main aspect of this transition is moving away from a reactive and hindsight-based decision-making and management approach to one that is foresight based, encouraging a creative environment with pro-active and collaborative relationships.

In September 1985 the Council of the Institution of Civil Engineers (ICE) approved a recommendation from its' Legal Affairs Committee "to lead a fundamental review of alternative contract strategies for civil engineering design and construction with the objective of identifying the needs for good practice".

From this initiative emerged the NEC (first published in 1992), which is now being used by many employers in the public and private sectors, most of whom have reported that the contract gives far greater control of time, cost and quality issues combined with greatly improved relationships between the contracting parties.

In July 1994 Sir Michael Latham in his report "Constructing the Team" recommended that the NEC should be adopted by clients in both the private and public sectors and suggested that it should become a national standard contract across the construction industry. As a result amendments were made and the Second Edition (NEC2) was published in November 1995.

Widely used in the civil engineering sector, the NEC continues to make major in-roads into the building sector. The many notable users in the UK include the 2012 Olympics, BAA, NHS Estates, Welsh Assembly, Highways Agency, Environment Agency, London Underground, BT and Sainsbury's.

### NEC3

NEC3, published in July 2005, is the result of feedback from industry on many years of successful use and is the first time that the complete integrated set of NEC documents have been launched at the same time. The family has been expanded to provide a Term Service Contract and Framework Contract, both complemented with the standard NEC approach of including guidance notes and flow charts.

NEC3 is a family of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.

Tim Knee-Robinson - Partner

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- It is a clear and simple document using language and a structure which are straightforward and easily understood.

NEC3 is an integrated set of contract documents that are designed to provide clients and their suppliers with project-focused outcomes. The intention is that use of NEC3 will lead more frequently to achievement of clients objectives for all projects in terms of its ultimate quality, performance, cost and time aspects. It should also be possible to set more rigorous targets for these objectives with greater confidence in achieving them.

NEC3 is drafted on a relational contracting basis that embodies efficient management processes. It is the belief that collaborative working across the entire supply chain optimises the likely project outcomes when compared with a typically fragmented and non-integrated approach to designing and constructing projects. NEC3 gives the tools to the users to draw out their skills to apply to the environment they are working in.

NEC3 is intended for global application and is effectively drafted on a neutral jurisdiction basis to achieve this goal. Some UK amendments are included in secondary Options to meet particular governing legislation and a similar process can be followed where necessary to suit other jurisdictions.

The Office of Government Commerce's (OGC) *Achieving Excellence in Construction* (AEC) initiative was launched in 1999 as part of its drive to save £2.6bn of public sector money. At that time no contract met its aims of collaborative non-adversarial working. The OGC advises public sector procurers that the form of contract used has to be selected according to the objectives of the project, aiming to satisfy the AEC principles. The NEC3 is the only standard form of contract that complies fully with these principles and consequently the OGC recommends its use for all public sector construction procurers.

The Government's National Audit Office's report entitled *Improving public services through better construction*, published in March 2005, has singled out the ECC for recommendation. Amongst other things the report confirms that three of the four case study organisations featured in its 2001 report – namely the Environment Agency, Highways Agency and NHS Estates – now use the ECC within their framework arrangements.

## **The Objectives**

The objective of the NEC, and more specifically the ECC, were to make improvements under three headings:-

### Flexibility

The ECC is intended for use:

- in engineering and construction work containing any or all the traditional disciplines such as civil, building, electrical and mechanical work.
- whether the Contractor has full, some or no design responsibility.

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- in providing the common payment options available with other standard forms of contract such as priced, target, cost reimbursable and management contracts.
- in the United Kingdom and abroad.

### Clarity and Simplicity

Although a legal document the ECC is written in ordinary language and in the present tense. As far as possible it only uses words which are in common usage so that it is easily understood, particularly where the user's first language is not English. It has few sentences that contain more than 40 words and uses bullet points to subdivide longer clauses. The number of clauses and the amount of text are also less than in most other standard forms of contract and there is an avoidance of cross referencing found in more traditional standard forms of contract.

It is also arranged in a format which allows the user to gain familiarity with its contents and required actions are defined precisely, thereby reducing the likelihood of disputes.

Finally, subjective words like "fair" and "reasonable" have been used as little as possible in favour of more objective statements.

### Stimulus to Good Management

This is perhaps the most important objective of the ECC in that every procedure has been designed so that its implementation should contribute to, rather than detract from, the effective management of the work.

This is founded on two principles:

*"Foresight applied collaboratively mitigates problems and shrinks risk"*

and

*"Clear division of function and responsibility helps accountability and motivates people to play their part"*

An example of foresight is the early warning procedure and the management of compensation events. The Project Manager and Contractor notify each other upon becoming aware of any matter which could have an impact on cost, time or quality and the compensation event procedure requires the Contractor within 3 weeks to submit a quotation(s) showing the time and cost effect of the event. The Project Manager then has 2 weeks to agree or reject the quotation enabling the matter to be properly resolved close to the time of the event rather than many months or even years later.

The ECC is designed to provide a modern method for employers, designers, contractors and project managers to work collaboratively and to achieve their own objectives more consistently than has been possible using other traditional forms of contract. People will be motivated to play their part in collaborative management if it is in their commercial and professional interest to do so.

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Uncertainty about what is to be done and the inherent risks can often lead to disputes and confrontation but the ECC seeks to clearly allocate risks and the collaborative approach will reduce those risks for all the parties so that uncertainty will not arise.

### **Family of Contracts**

The complete NEC family of contracts includes:

- ECC Contract - Option A: Priced Contract with Activity Schedule
- ECC Contract - Option B: Priced Contract with Bills of Quantities
- ECC Contract - Option C: Target Contract with Activity Schedule
- ECC Contract - Option D: Target Contract with Bill of Quantities
- ECC Contract - Option E: Cost Reimbursable Contract
- ECC Contract - Option F: Management Contract
- ECC Subcontract
- Professional Services Contract
- ECC Short Contract
- ECC Short Subcontract
- Term Services Contract
- Adjudicator's Contract
- Framework Contract

There are also a number of supplementary documents that are published to assist in understanding the contract mechanisms, but do not form part of any of the contracts:

- ECC Guidance Notes
- ECC Flow Charts
- Professional Services Contract Guidance Notes
- ECC Short Contract Guidance Notes and Flow Charts
- Adjudicators Contract Guidance Notes and Flow Charts
- Term Services Contract Guidance Notes
- Term Services Contract Flow Charts
- Framework Contract Guidance Notes and Flow Charts

## ROLES AND DUTIES

The ECC sets out the responsibilities and roles of the following parties identified in the contract:

- the Employer
- the Contractor
- the Project Manager
- the Supervisor
- the Adjudicator
- Subcontractors
- Others

### **The Employer**

Under the ECC the role of the Employer is strictly that of a legal party who has no direct involvement in the running of the contract (except in the case of termination) other than via the Project Manager.

The responsibilities of the Employer under the contract are:

- to act as stated in the contract and in the spirit of mutual trust and co-operation
- to allow access to the site for the Contractor
- to give access to the site before the date for access shown on the accepted programme
- to pay the Contractor within four weeks of the assessment date
- to take over the works not more than two weeks after completion
- to give access to the Contractor after take over if needed for the correction of a defect

### **The Contractor**

The principle responsibility of the Contractor is to deliver the works in accordance with the Works Information.

Other key responsibilities of the Contractor are:

- to act as stated in the contract and in the spirit of mutual trust and co-operation
- to work within the times and conditions stated in the Works Information, failure to do so is a compensation event
- to reply to a communication within the period of reply as stated in the Contract Data
- to raise Early Warning notifications to the Project Manager if he becomes aware of a situation which may occur and cause cost, time or performance implications
- to attend early warning meetings when necessary, and co-operate in the seeking of solutions

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- to notify the Project Manager of any compensation events
- to submit quotations for compensation events, in accordance with the contract
- to submit a programme for acceptance, and submit revisions as specified by the Contract Data
- to comply with instructions given only by the Project Manager, or the Supervisor for defects and quality issues
- to co-operate with others in obtaining and providing information they need in connection with the works
- to submit names of subcontractors for acceptance by the Project Manager before their appointment
- to provide insurances as stated in the insurance table and Contract Data
- to manage risks that are not Employer's risks until the defects certificate is issued

### **The Project Manager**

The Project Manager is appointed by the Employer, either from his own staff, or from an outside body. His role is to manage the contract for the Employer to achieve the Employer's objectives for the completed project. The Project Manager is normally appointed at the feasibility stage of the project, his duties then including advising on design, procurement, cost planning and programme matters.

The ECC places a great deal of authority in the hands of the Project Manager and assumes that he has the full authority to carry out his actions on the Employer's behalf. If the Employer has set limits upon his level of authority, for instance agreeing the value of compensation events, he must ensure that there is an efficient and speedy authorisation procedure to allow him to exceed these limits.

Due to the nature of the procedures within the ECC, it is important that the Project Manager is fully conversant and experienced in the use of the ECC and its procedures and can proactively manage the contract administration.

The key duties of the Project Manager under the contract are:

- to act as stated in the contract and in the spirit of mutual trust and co-operation
- to work within the times and conditions stated in the Works Information, failure to do so is a compensation event
- to reply to a communication within the period of reply as stated in the Contract Data
- to reply to a communication submitted for acceptance, or to state reasons for non-acceptance
- to issue instructions to the Contractor
- to assess payments at the assessment dates
- to issue certificates to the Employer and to the Contractor

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- to give early warning of matters which may have delay, cost or performance implications
- to convene, chair and minute risk reduction meetings and update and re-issue the risk register
- to accept Contractors design, or give reasons for non-acceptance
- to notify compensation events to the Contractor and to assess and make decisions on their impact, based upon quotations from the Contractor, or independently
- to assess the Contractor's programme
- to accept the Contractors programme within two weeks and subsequent revisions, or to give reasons for non-acceptance
- to decide on the date of completion and to certify completion within one week of completion

### **The Supervisor**

The Supervisor is appointed by the Employer. He can be either from the Employer's own staff, or from an outside body. Essentially, his role is to check that the works are carried out in accordance with the Works Information. This role is similar to that of a Clerk of Works or Resident Engineer in other standard forms of contracts. However, the Supervisor can only instruct the Contractor in relation to a problem with the quality of the works, a defect or in relation to the carrying out of tests/inspections.

- to act as stated in the contract and in the spirit of mutual trust and co-operation
- to ensure the works are carried out in accordance with the Works Information
- to work within the times and conditions stated in the Works Information, failure to do so is a compensation event
- to be responsible for monitoring and ensuring the quality of works with regard to the Works Information
- to issue instructions in relation to the quality of the works and defects
- to issue certificates to the Project Manager and Contractor confirming status of the works at the assessment date
- to reply to a communication within the period of reply as stated in the Contract Data
- to notify the Contractor of and carry out tests and inspections
- to notify the Contractor of any defects found
- to issue the defects certificate

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## **The Adjudicator**

The Adjudicator is appointed jointly by the Employer and the Contractor for the contract. The name of the Adjudicator is inserted into part one of the Contract Data if one is identified prior to contract. If not the name of the person who is to appoint an Adjudicator if the parties do not agree, is inserted.

The Adjudicator becomes involved only when either contracting party refers a dispute to him. As an independent person he is required to give a decision on the dispute within stated time limits. If either party does not accept the decision they may proceed to the tribunal (litigation or arbitration). Payment of the Adjudicator's fees is shared by the parties.

## **Subcontractors**

The ECC has been designed on the assumption that work may be subcontracted and within the NEC family of contracts is the Engineering and Construction Subcontract (ECSC). This is very similar to the ECC in terms of its clauses and working providing back to back provisions but has a small number of changes appropriate to subcontracts.

There is no provision for nomination of subcontractors within the NEC contracts, this change having been made to simplify contractual arrangements and to eliminate clouding of responsibilities which nomination often causes.

## **Others – Designers, Quantity Surveyors, Planning Supervisor, Legal Representatives etc.**

The Employer or the Contractor would normally appoint designers for his own design. If several designers are employed, possibly covering different disciplines, then it is usual for a lead designer/consultant to be appointed.

The roles of the designers or lead designer are not recognised by the ECC. They are referred to as others in the contract and have no involvement in the administration or supervision procedures.

The designer's role is to produce the designs that form part of the Works Information describing the project to meet the Employer's objectives, to the point where tenders for the construction can be invited and the contract can be formed. If the level of the Contractor's design is high (design and build or develop and construct) then it is usual for the Contractor to supplement the Works Information with his own design proposals.

The roles of the traditional Quantity Surveyor and CDM Coordinator are not recognised either by the ECC. However, depending upon which main option clause is used, there is almost certainly going to be a requirement for a Quantity Surveyor and their role and interactions with the Contractor can be described in the Works Information. Similarly as a consequence of the CDM Regulations the majority of projects will have a CDM Coordinator appointed and again their involvement and interactions with the Contractor should be described in the Works Information.

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## ARRANGEMENTS OF THE ECC

The ECC includes the following sections:

### Core clauses

1. General
2. The Contractor's main responsibilities
3. Time
4. Testing and Defects
5. Payment
6. Compensation events
7. Title
8. Risks and Insurance
9. Termination

### Main option clauses

Option A	Priced contract with activity schedule
Option B	Priced contract with bill of quantities
Option C	Target contract with activity schedule
Option D	Target contract with bill of quantities
Option E	Cost reimbursable contract
Option F	Management contract

These six main options enable Employers to select a payment mechanism most appropriate to the project and the various risks involved.

*Option A – Priced contract with activity schedule*

*Option B – Priced contract with bill of quantities*

Priced contracts under Options A and B are normally used where the Employer is able to specify accurately what he requires. An activity schedule is a list of activities prepared by the Contractor which he expects to carry out in providing the Works. The list of activities should correlate with the accepted programme. When the Contractor has priced it, the lump sum for each activity is the Price to be paid by the Employer on completion of that activity.

Option A is effectively a stage payment contract and as payment is linked to completion of activities, the Contractor must plan and carry out his work effectively with the cash flow requirements for both parties being clearly visible.

Where there is a significant amount of Contractor's design, Option A should be used rather than Option B, as it allows the Contractor to price the work and include the various design stages within his activity schedule rather than the Employer measuring the works which would not be practical with this method of procurement.

A bill of quantities comprises a list of work items and quantities. Standard methods of measurement are published which state the items to be included and how the quantities are calculated.

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When selecting Option B one should consider the merits of preparing and using bills of quantities against activity schedules.

Option C – Target contract with activity schedule

Option D – Target contract with bill of quantities

Target contracts are a development of cost reimbursable contracts and are used where the extent of work to be done is not fully defined or where anticipated risks are greater. Financial risks are shared, not necessarily equally, between the Employer and the Contractor.

The Contractor tenders a target price using either an activity schedule (Option C) which he prepares, or a bill of quantities (Option D) normally prepared by the Employer. The target price includes the Contractor's estimate of actual cost (Defined Cost) plus other costs, overheads and profit to be covered by his Fee. The Contractor tenders his Fee in terms of a percentage to be applied to the Defined Cost.

In order to establish an appropriate the target cost the level of detail of the Employer's specifications needs to be considered carefully in light of the other main options available given that such a level of detail will not be dissimilar to that required to tender a priced contract (i.e. Option A or B).

During the course of the contract, the Contractor is paid the Defined Cost plus the Fee and at the end of the contract, the Contractor is paid (or pays) his share of the difference between the final total of the Prices and the final Payment for Work Done to Date according to a formula stated in the Contract Data.

Option E – Cost Reimbursable contract

A cost reimbursable contract should be used where the Employer's specification for the work to be done is inadequate even as a basis for a target price and yet an early start is required. In such circumstances the Contractor cannot be expected to take risks. He carries minimum risk and is reimbursed his actual cost (Defined Cost) plus his tendered Fee, subject only to a number of constraints designed to motivate efficient working.

Option F – Management contract

Under a Management Contract the Contractor's responsibilities for the construction work are the same as those under the other main options although he does not carry out any construction work himself. The Contractor's work mainly applies to the construction phase though he can be appointed for pre-construction services.

All subcontracts are directly with the Contractor. If the Employer wishes to be a party to the subcontracts he can adopt a construction management approach by using the ECC direct with the various package contractors.

The Contractor tenders his Fee and his estimated total of the prices of the subcontracts. The subcontract prices are then paid to the Contractor as Defined Cost and are the only element to be paid in this way. The Contractor is responsible for supplying management services and completing or advising on design if required. If the Contractor is responsible for design he will be appointed on a design and manage basis.

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The Contractor's Fee will increase as the subcontractor's prices increase due to compensation events.

### Secondary option clauses

Option W1	Dispute Resolution (used unless the Housing Grants, Construction and Regeneration Act 1996 applies)
Option W2	Dispute Resolution (used when the Housing Grants, Construction and Regeneration Act 1996 applies)
Option X1	Price adjustment for inflation
Option X2	Changes in the law
Option X3	Multiple currencies
Option X4	Parent company guarantee
Option X5	Sectional Completion
Option X6	Bonus for early Completion
Option X7	Delay damages
Option X12	Partnering
Option X13	Performance bond
Option X14	Advanced payment to the Contractor
Option X15	Limitation of the Contractor's liability for his design to reasonable skill and care
Option X16	Retention
Option X17	Low performance damages
Option X18	Limitation of liability
Option X20	Key Performance Indicators
Option Y (UK)2	Housing Grants, Construction & Regeneration Act 1996
Option Y (UK)3	Contracts (Rights of Third Parties) Act 1999
Option Z	Additional conditions of contract

Note Options X8 to X11, X19 and Y(UK)1 are not used

### Schedules of Cost Components

The Schedule of Cost Components (SCC) establishes the Defined Cost (or allowable costs) with regard to the assessment of compensation events and payments to the Contractor.

The Shorter SCC is only used with main Options A and B in the assessment of compensation events. The Full SCC is used with main Options C, D and E in the assessment of compensation events and the evaluation of the payments to the Contractor.

The SCC is not a schedule of rates, it is a reference list of cost headings under which the Contractor recovers costs for undertaking the works and / or any compensation events

## CONTRACT DOCUMENTS

The structure of a contract based on the ECC would typically be as follows:

- Articles of Agreement – there is no standard NEC format
- Contract Data
- Contract Prices – i.e. the activity schedule or bill of quantities
- Works Information
- Site Information
- Programme and Risk Register

### Contract Data

Contract Data it is divided into Contract Data Part I (information provided by the Employer) and Contract Data Part II (information provided by the Contractor) and in essence a contract is formed by combining the contract data.

Contract Data Part I identifies the:

- main and secondary option clauses
- the works
- Employer, Project Manager, Supervisor and Adjudicator
- Works Information
- Site Information
- boundaries of the site
- language, law, tribunal and currency of the contract
- the risks i.e. the Risk Register
- period of reply
- starting date, access date, key dates and completion date
- defects date and defects correction period
- insurance requirements
- assessment interval, payment period and interest rate
- weather measurements
- risk and insurance

Contract Data Part II identifies the:

- Contractor
- direct fee and subcontract fee percentages
- working areas of the project
- key people
- Works Information for the Contractor's design (i.e. his design proposals for the project which form part of the Works Information)
- programme (if available) and the completion date if different to that stated in Contract Data Part I
- activity schedule or bill of quantities

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- total of the Prices
- data for the Schedule of Cost Components

### **Works Information**

The Contractor provides the works in accordance with the Works Information, these documents being identified in the Contract Data. There are numerous clauses that refer to the Works Information and hence the need for the information to be included in the Works Information and typically it should include the following:

- Brief description of the works
- Specific requirements for completing the works and the use of the Site
- Contractors design - provision, content and use of documents, drawings and specifications
- Completion and take over
- Additional requirements for the programme
- Quality Assurance
- Tests and Inspection requirements
- Management of the works
- Administration and procedures
- Facilities and services to be provided by the Contractor for use by the Employer and Others
- Facilities and services to be provided by the Contractor for his own use
- Facilities and services to be provided by the Employer for use by the Contractor
- Work by Others with whom the Contractor shares the Working Areas
- Title in excavated materials or demolished buildings
- Marking Equipment, Plant and Materials
- Health and Safety requirements
- Subcontracting
- Consequential requirements resulting from use of certain main and secondary option clauses

### **Site Information**

The documents in which the Site Information is contained are identified in Part I of the Contract Data. Site Information may typically include:

- Subsoil investigations, borehole records and test results.
- Reports obtained by the Employer concerning the physical conditions within the Site or its surroundings. This may include mapping, hydrographical and hydrological information.
- References to publicly available information.
- Information about plant and services below the surface of the site.
- Information about piped or other services.
- Information about existing buildings, structures and plant on or adjacent to the Site.

## SUMMARY - KEY FEATURES / BENEFITS OF THE ECC

- The same form is used whether procuring the project traditionally or through a design and build approach. There are a range of main option clauses (covering different payment mechanisms) and secondary option clauses (that deal with issues like delay damages, sectional completions, performance bonds, parent company guarantees etc).
- **Project Management** processes are embedded within the contract clauses.
- **Risk Management** is embedded in the contract, with the risk register being a contract document that is intended to be used as a management tool throughout the contract. The early warning process forms part of the risk management / change management process.
- **Change Management** (compensation events) - the contract requires the affects of changes (both time and money) to be agreed as close to the event as possible and once agreed they are fixed. Consequently in essence you have a “running” final account and on a number of projects it has been possible to agree the final account by Completion date. The final account has been agreed within one month of Completion on a high proportion of projects, where Davis Langdon have been appointed as the Project Manager.
- **Programme** – recognised as a key management tool and is a contract document. It is intended to be used as a management tool throughout the contract and the processes in the contract reflect this. If the contract processes are followed properly this reduces the ability of the Contractor to include his own delays with those rightfully associated with compensation events.
- **Handover** - the condition / status the Contractor must achieve in order for Completion to be certified by the Project Manager is defined within the Works information facilitating a degree of flexibility and clarity not available under other standard forms. In defining Completion this can result in the receipt of all handover documentation appropriate to the project, i.e. O&M manuals, building log book, as-builts etc prior to the issuing of Completion and establishes a clear management process which the contractor must follow in order to achieve Completion.
- **Quality** - the contract establishes a clear definition of what a Defect is, unlike other standard forms of contract. A "snag" is not a recognised term in the contract. The contract also establishes clear processes with respect to tests and inspections and the clearance of Defects and this is linked to the payment provisions. Following Completion a period in which Defects are to be corrected is defined (the defects correction period) and failure to comply enables the Project Manager to deduct monies and get others to correct the Defect if necessary. The ECC recognises the fact that Defects should be corrected as the works progress and consequently the Project Manager has the power to restrict access post Completion and still charge the Contractor for uncorrected defects, even if access was not possible.
- **Contract Administration** - this is split between the Project Manager and Supervisor. The Supervisor deals only with quality issues. The Project Manager has significant powers under the contract, more so than other standard forms so it is important that the levels of authority are agreed before hand and there are efficient processes in place for gaining approvals if necessary due to the timescales in the contract. Critical to the success is appointing a Project Manager

Tim Knee-Robinson - Partner

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who fully understands the contract and its processes. It is possible to combine the role of Project Manager and Supervisor depending upon the procurement method and complexity and value of the contract. The Quantity Surveyor is not identified as a party to the contract and it is assumed this role falls within that of the Project Manager. The Quantity Surveyor's role however, can be defined in the Works Information as may be appropriate.

- **Penalties** - whilst there are project management processes embedded in the contract, the contract also includes penalties if a party fails to adhere to them. For example 25% of payment due to the Contractor can be withheld until the first programme is issued. Another example is that if the Contractor does not notify a potential change (compensation event) within 8 weeks he forgoes all entitlement to costs or time for that event (similar to FIDIC). This significantly reduces the Contractors ability to submit claims during a contract and particularly after Completion.
- The **Works Information** is essentially the Employers Requirements, Prelims, Contractors Proposals, drawings and specifications all rolled into one. Whilst the contracts flexibility is a strength it can also be a disadvantage in so far as the Works Information is a critical document and it is extremely important that it is drafted properly otherwise the contract may not operate correctly or as intended.
- **Clarity** – the NEC seeks to achieve a degree of clarity in order to reduce potential disputes that may arise. There are numerous examples of this including the minimal use of subjective statements; no priority of contract documents; notifications being separate from other forms of communication and Completion and Defects being clearly defined terms.
- **Partnering** – the NEC has been drafted to foster a collaborative non-adversarial working relationship between parties. It is not a partnering contract. However, secondary option clause X12 is available should a more formal partnering approach be required.
- **Employer contractors** - Within the Works Information it is possible to define how "Others" may share the site. For example contractors who are directly engaged by the Employer e.g. IT fit out. In essence if this is drafted properly within the Works Information the Contractor must allow this work to occur (in accordance with the Works Information) and the Contractor is not entitled to a compensation event.
- **Takeover** – in essence this is similar to partial possession, but without the mutual consent of the Contractor
- Some consider the contract to be more onerous from the point of view of administration. This will be dependant upon the procurement route and main option clause adopted. The reality is that the contract is really only making the parties deal with actions at the time of the event or as close to rather than leaving it until much later. This is only good project management practice.

Tim Knee-Robinson is a Partner with Davis Langdon LLP and is the practices expert in this form of contract. He has been actively working using the NEC since 2002. This has included working with numerous clients including the University of Cambridge, contractors and consultants providing technical advice on the use of NEC and its successful implementation. Tim leads a team of Project and Cost Managers who have extensive experience in the use and implementation of the NEC.