

# Improving infrastructure delivery: Alliancing code of practice

Guidance on implementing Alliancing using NEC3 contracts

A large circular graphic with a blue-to-teal gradient background. It contains the text "INFRASTRUCTURE CLIENT GROUP" in white, uppercase letters. The background of the circle shows a collage of infrastructure-related images: a green field, a modern building under construction, and a large industrial structure with a complex metal framework.

INFRASTRUCTURE  
CLIENT GROUP

# **Improving infrastructure delivery: Alliancing Code of Practice**

## **Guidance on implementing Alliancing using NEC3 contracts**

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## **Foreword**

More collaborative approaches and integrated team working have been actively supported by the [Infrastructure Client Group \(ICG\)](#) and more widely by government and industry. [Alliancing](#) is one form of collaborative working that has been successfully adopted across a range of infrastructure organisations.

The NEC Guidelines on Implementing Alliancing provide another positive step in the development and use of collaboration. The [NEC3](#) is established as a contract model for collaborative arrangements. This report builds on this position by providing clear and valuable guidance on how to use the NEC3 for alliance arrangements and on the documents that should be developed in preparing the terms of an alliance agreement. In doing so, the guidelines build on the previous ICG [Alliancing Best Practice material](#) and [Code of Practice](#) for Alliancing.

The ICG actively promotes the sharing of best practice across infrastructure. This [suite of reports](#) on Alliancing accomplish this by effectively consolidating learning from a range of examples and making proven best practice available to any organisation considering or developing an alliance.

Andy Mitchell, Chair, Infrastructure Client Group and CEO, Thames Tideway Tunnel

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## 1. Introduction

The Infrastructure Client Group [Alliancing Code of Practice](#) sets out best practice under four elements of Alliancing – deciding to Alliance, creating an Alliance, delivering an Alliance and sustaining an Alliance. The section on creating an Alliance sets out the issues to be addressed in preparing the terms of the Alliance agreement. This note provides more detailed guidance on that aspect, by describing the documents that need to be created to prepare an Alliance contract using the NEC3 conditions of contract.

This paper considers five areas where more detailed guidance is thought to be necessary. These are

- basis of implementation,
- measurement of cost,
- incentive model and performance measurement
- risk allocation, and
- management of the Alliance.

## 2. Basis of implementation

The Alliance is created by the Employer entering into an individual NEC3 contract with each Alliance Partner. The NEC3 is a suite of contracts that allows all members of the Alliance to be procured on consistent terms and conditions that encourage the proactive collaboration that is a prerequisite for alliancing. The NEC3 also contains a secondary option – X12 Partnering – which is used to create multi-party partnering arrangements and is ideal to support the creation of an Alliance.

The Alliance Partners may include

- Consultants to provide design and other services,
- Contractors to carry out construction work, and where in-house capability exists, detailed design work,
- Suppliers of Plant and Materials that are key to the works or where value can be created by the early and consistent engagement of strategic vendors,
- existing maintenance Contractors and / or other Contractors whose work interfaces with the work of the Alliance, and
- maintainers and / or operators of the assets created by the Alliance whose input may help generate increased whole life cost through reduced operation and maintenance costs.

These Partners may be engaged directly by the Employer, or some of these Partners may be brought in through subcontracts. The subcontracts which bring in further Alliance Partners will also use NEC3 forms of contract including Option X12 (see Figure 1).

NEC3 has contract forms that can be used to engage each and every one of these parties including

- Engineering and Construction Contract (ECC) and Subcontract (ECS),
- Professional Services Contract (PSC),
- Supply Contract (SC),
- Term Service Contract (TSC).

Annex 3 contains examples of the Contract Data entries needed for the Contractor appointment under ECC and Consultant under PSC. These set out the essential entries, but further secondary options can be added where appropriate. If the NEC3 Supply Contract or Term Service Contract are required to include suppliers in the Alliance, Contract Data should be prepared using the same approach. When using these examples, care should be taken to verify that the needs of the Alliance have been fully covered.

The Alliance may be created to meet a specific project need, or it may be created for a programme of works. In either case, the Alliance will be created through the Employer entering into NEC3 contracts with each of the Alliance Partners. When using NEC3 contracts there is no need to create a separate overarching Alliance agreement as all the necessary contractual, commercial and procedural requirements for the Alliance will be contained in each individual NEC3 contract.

The scope of the works to be carried out and the outcomes expected from each Partner, along with the purpose of the Alliance, commitments, minimum requirements, and behaviours of the Alliance Partners are set out in the appropriate Works/ Service/ Supply Information / Scope. This should not be prescriptive in defining what each Partner is required to do, as the Partners are expected to collaborate in identifying the most efficient way of achieving the outcomes required. This will be achieved by allocating work to the party who is best placed to carry it out as decided by the Alliance.

The scope of the works to be carried out by the Partners would, for a programme of works, identify the programme, and possibly include for the addition of further works as and when the need for those works became identified. The Alliance Partners would be engaged under the NEC3 contract to provide their services for the entire project or programme. The contract would, therefore, include all the provisions necessary to manage the relationship between the Partners before, during and after the provision of individual works.

On complex or evolving Alliances, consideration will need to be given to the instruction of additional work and the introduction of new Partners into the Alliance. A mechanism will be needed to allow the creation of new and / or the modification of existing incentives, to link the performance of the new Partners with the existing.

The Partnering Information forms part of secondary Option X12 (Partnering) and allows the joint working arrangements to be described in detail. A suggested contents list for the Partnering Information is contained in Annex 1. Where further tiers of the supply chain are engaged by the Alliance Partners these contracts will, where appropriate, also include secondary Option X12 and the Partnering Information.

The Partnering Information and the appropriate Works / Services / Supply Information / Scope will need to be carefully drafted to ensure they do not create any conflicts between the Alliance Partner's obligations to collaborate as part of the Alliance and the requirements of their own specific contract. Guidance on the preparation of these documents is given in the NEC3 guidance notes and published 'how to' guides.

Consideration will also need to be given to intellectual property rights (IPR) in relation to the data brought into the Alliance by the Partners. It will need to be clear who owns such IPR and when it can be reused by Alliance members. Any information, created by the Alliance, that relates to the construction, operation and management of the completed assets must become the intellectual property of the Employer.

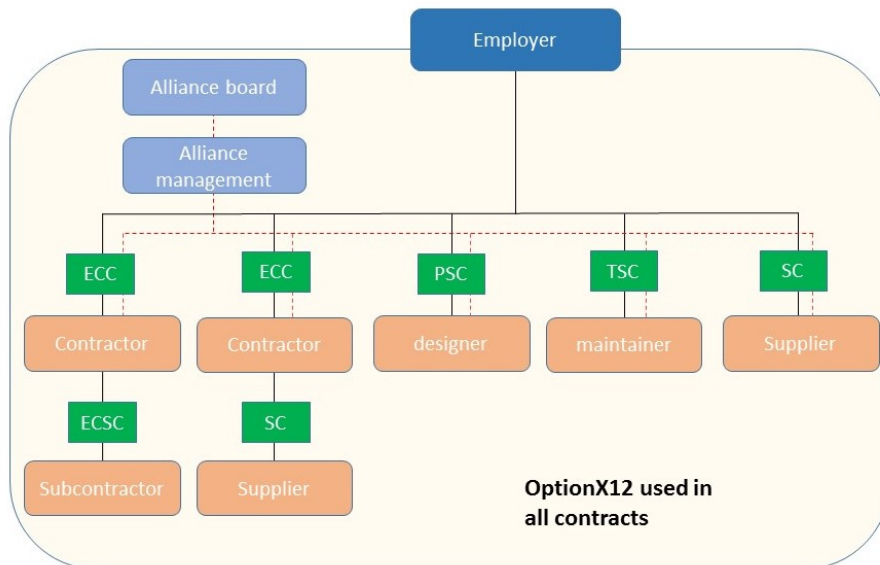


Figure 1 – Alliance contractual structure using NEC3 contracts

### 3. Measurement of cost

Full open book accounting is considered a key principle in any Alliance agreement and the NEC3 applies open book, cost reimbursable procedures through the selection of main Option E.

The Partnering Information should require each Alliance Partner to report their costs in a consistent format and feed this information into a single data system that all Partners have access to. The Partnering Information should also include an explanation of how costs are to be validated, with assurance undertaken both by Partners and the Employer. The focus should be on making the Alliance responsible for the first tier of audits to encourage the correct behaviours in the reporting of cost and the identification and removal of any unrecoverable costs, prior to presentation to the Employer.

Consideration will need to be given to the cost of accommodation, either on or off site and whether provided by the Alliance Partners and / or the Employer. Matters which need to be determined include

- Co-location – one of the key drivers for successful alliancing is co-location of the Employer and Partners in a shared office. If a shared office is to be used, then



consideration has to be given as to who will provide this; the Employer or an Alliance Partner. Whoever provides the office accommodation the costs should form part of the cost of the Alliance.

- Where an Alliance Partner provides site accommodation, this would be included as part of the Partner's cost and therefore part of the cost of the Alliance.
- Where members of the Alliance work out of their own offices, the method of recovery of the accommodation costs for these resources by the Alliance Partner must be established. This may be through an agreed percentage of resource cost, a daily/monthly rate or a simple lump sum.
- Where resources are office based but work within Alliance provided accommodation for a period of time, rules will need to be put in place to determine when these resources become 'based' in the Alliance provided accommodation and no longer attract a charge for accommodation in the Partner's own offices.

One of the key issues to consider will be the level of recovery of overheads and profit on the work carried out by the Alliance Partners. In order to drive performance in Alliances many users restrict the recovery of overheads and profit on the turnover of work carried out by the Alliance Partners. The Partners should only recover additional profit by achieving Employer objectives, rather than simply carrying out work. Restricting or removing overheads and profit on turnover discourages Partners from seeking a greater share of the work or being inefficient in how they deliver the works so as to generate increased turnover and therefore profit and overhead recovery. This approach supports one of the principle benefits of Alliances, which is the ability to select the best Partner / person for each task and to avoid one to one supervision.

The recovery of overhead and profit can be addressed in a number of different ways and the approach adopted will in part be dependent upon the nature of the Alliance, its duration and maturity. In some alliances overheads and profit are removed completely, whilst in others they only apply to limited elements of the Partner's costs and / or at a reduced level (commonly excluding profit). The Alliance Partners are still able to recover their overheads and profit but this is through the Alliance incentive model.

If it is intended to restrict overhead and profit recovery under the ECC or TSC contracts, and make it recoverable through the Alliance incentive model, the Employer should fix the fee percentages in Contract Data part 2. For the PSC contract, which does not include a fee, Consultants should be required to provide within their tender submission a build-up of their costs, to demonstrate that the Time Charge does not include a contribution towards business overhead and profit, or only includes the percentage determined by the Employer (as for the Contractor).

Some of the NEC3 contracts used to create the Alliance (ECC, TSC) include the concept of 'Disallowed Cost'. These are costs which have been incurred by the relevant Partner, but ought not to have been incurred and are therefore not reimbursed. At the creation of the Alliance, the extent to which these Disallowed Costs should remain or be modified must be decided. The more elements of cost that remain as disallowed, the greater the incentive on each Partner to concentrate on their own costs, rather than those of if the Alliance. Removal of Disallowed Costs allows the Partners to concentrate on cost efficiency, with peer pressure

used to reduce wasted costs. A list of the Disallowed Costs present under the ECC, and guidance on issues to consider when determining whether they should be modified or not is included at Annex 2. An example clause providing for the adjustment of disallowed costs is included in Annex 3 as a suggested Z Clause.

#### 4. Incentive model and performance measurement

The incentive model will be a key driver of success for the Alliance. It will follow the approach set out in the Code of Practice.

The intent of the Alliance is to achieve agreed customer or project outcomes and the incentive model and performance measurement regime should directly link to the achievement of the Employer's required outcomes, whilst still achieving mandatory requirements such as health and safety and environmental performance. The performance measurement regime must be compatible with the contracts that create the Alliance; further guidance on measurement criteria and the use of leading and lagging measures is available from the Infrastructure Client Group.

The incentive model is included in the Partnering Information through reference to the 'incentive schedule' in the Partnering Information. The incentive schedule will provide a detailed description of how the model is to be operated to achieve Alliance objectives.

The incentive model is intended to generate financial savings through delivering the Employers required outcomes for a lower cost than the Employer's Budget; these savings will be shared between the Alliance Partners based on the achievement of performance targets.

The incentive model should be self-funding with the savings created by the Alliance forming the available financial return that is shared between the Partners. When creating the Alliance users will need to consider what costs are to be included in the incentive model, these may include

- the costs of all Alliance Partners,
- the costs of the further supply chain members,
- Employer costs,
- projected whole life costs and operating cost if applicable and
- other costs which could be influenced by Alliance decisions – for example utility costs or third-party compensation claims.

When considering what costs will form part of the incentive model the key factor will be to make sure they mirror the costs allowed for in the Employer's Budget so that a true like for like comparison can be made when determining the financial performance of the Alliance.

If the Employer's Budget is not set prior to contract award, details of how the Budget is to be established must be set out in the contract, together with the action to be taken if the budget cannot be agreed by all Partners. This would normally be to terminate the Alliance – for

example, clauses covering the agreement of the Budget and the replacement of Alliance Partners are included in Annex 3 as a suggested Z Clause.

The compensation event process in the individual contracts does not affect cost as these are cost reimbursable contracts, but still need to operate in relation to time, enabling the Completion Date in the individual Partner contracts to be changed. These events do not change the Employer's Budget; the Alliance is required to deal with the consequences of these events within the budgetary constraint set by the Employer.

However, the contract will also need to contain a mechanism for dealing with changes to the Employer's Budget for certain defined events. These are events that the Employer has decided are outside the control or influence of the Partners, but could have such an effect on costs that, if left as an Alliance risk, would damage the incentive mechanism. Careful consideration must be given to any link between the change mechanisms that operate at the Alliance level and at the compensation event process at contract level to ensure that they work together effectively. An example Z clause providing for the adjustment of the Budget for 'strategic risk events' is included in Annex 3.

The incentive model includes targets to be achieved by Alliance Partners. If these are to be established after the award of contracts, a methodology for deciding these targets must be included within the Partnering Information.

On completion of the project, the Alliance costs are compared to the Employer's Budget and the gain or pain is established. This is allocated to the Alliance Partners in the proportions stated in the incentive model based on the achievement of stated performance requirements.

The method for measuring performance against the specified targets is set out in the Partnering Information as Key Performance Indicators (KPI's) with a level to be achieved set for each KPI. The measurement of performance needs to be made as objective as possible to avoid the risk of disputes as to whether the required level of performance has been achieved. Longer term alliances may in addition make use of behavioural measures focused on sustaining the alliance.

Where an Alliance operates at a programme level the incentive mechanism normally operates on an aggregated basis across all work in the programme or at a sub programme level. There may be project level incentivisation as well, but consideration needs to be given the level of work and behaviours that will be created through the use of multiple tiers of incentivisation.

When an Alliance operates over multiple years consideration should be given to the assessment and award of gain or pain share at stages during the Alliance so as to create an ongoing incentive to drive performance of the Partners. There is risk on long-term projects or programmes that if the incentive is only assessed at the end it becomes too remote from the teams delivering the Alliance, some of whom may change during the life of the Alliance. Also at a corporate level the Partners cannot 'bank' any savings created until the end of the Alliance and this can be a particular issue depending on how overheads and profit have been dealt with, as the creation of savings may be the Partners' only opportunity to recover their overheads and profit. Staged assessments of incentivisation can take place on an annual basis or at the end of individual projects or packages of work.

To avoid creating unhelpful motivations, a cap and/or collar may be placed on the gain or pain to be suffered by each Partner. An additional clause providing for the payment of any overspend, including a cap, if required, is included in Annex 3 as a suggested Z Clause.

## 5. Risk allocation

An objective of the Alliance should be to create a process for identifying risks and deciding the actions required of the individual Partners to reduce or mitigate them so as to minimise its impact on the Alliance as a whole. This is best achieved by having risk shared wherever possible so that all Partners have a vested interest in risk management. If the costs resulting from specific risks are allocated to individual Partners, this is likely to motivate Partners to consider their own interests ahead of those of the Alliance.

There may be a need to amend the standard allocation of risk under the NEC3 contracts used to engage the Alliance Partners to reflect this revised risk allocation. However, as the underpinning contracts should be the cost reimbursable options the changes required should be limited. An example of where the risk allocation may need to be modified is given by the commentary on Disallowed Costs in the previous section on costs.

How and where risk / contingency monies are held also needs careful consideration. The Employer when creating the Alliance may wish to include allowances for risk within the Employer's Budget and / or they may choose to hold some or all of the risk monies outside the Budget. If a risk event, held outside of the Budget, occurs an adjustment would need to be made to compensate. An example additional clause to provide for the adjustment of the Budget is included in Annex 3 as a suggested Z Clause.

Particular concern needs to be paid to the question of 'insurable risks'. These are risks for which insurance cover is normally carried by Contractors and Consultants. Depending on the nature of the Alliance it may well be beneficial for these risks to be covered through a project insurance policy taken out by the Employer. If not, these risks will be left with the individual Partners who will each need to cover the risk through their own insurance policies.

If the individual Partners are to provide their own insurance policies, consideration will need to be given as to whether policy excesses are to be included as an Alliance cost or a cost borne by the Alliance Partners. The contract would need an amendment if the excess was to be an Alliance cost; a suggested Z clause is included in Annex 3. The management of any claims made under the Partner's own policies could be problematic and needs careful consideration and control. The insurer will seek to keep its cost a minimum, regardless of the impact on the remainder of the Alliance. Additional costs could be incurred through delays, and the remediation the insurer is prepared to accept may not be the optimum one for the project.

## 6. Management of the Alliance

### *Partnering Information*

Most of the information which the Employer wishes to specify for the management of the Alliance relationship should be included within the Partnering Information. This sets out how the parties work together in managing the relationship and co-operate to best achieve

Alliance objectives. A suggested contents list for the Partnering Information is contained in Annex 1.

If the core team has not been established as part of the formation of the Alliance, the process for creating this and selecting the members on the basis of right person for the role and the avoidance of 'one to one supervision' will need to be included in the Partnering Information.

In order to maximise the benefits of collaboration in the Alliance a number of Alliance wide processes should be developed. These will include

- early warnings and a common risk register,
- a common master programme; and
- common procedures for cost capture, reporting and forecasting.

Alliances commonly introduce procedures for the resolution of disagreements prior to matters being referred to adjudication, such as the use of structured issue escalation / negotiation process, early neutral evaluation and dispute avoidance boards. Consideration should be given the creation of such approaches in the Partnering Information. Such process cannot, in the UK, remove the ability of any party to take a dispute to adjudication at any time, but are generally effective in allowing contentious matters to be resolved within the Alliance, without the need for formal dispute resolution processes, which are likely to be damaging to the Alliance.

Further issues may also need to be addressed in the creation of the Alliance.

- Procedure for replacement of Alliance member. This could be insolvency, poor performance by the supplier or realisation that the supplier does not have the capability needed for the project. In such case it would be necessary to introduce a new Partner, which would need to be agreed by all other Partners before appointment. The removal would be either by mutual agreement or through the termination provisions in the appropriate contract.
- Use of BIM. NEC has published standard contract amendments to provide for the use of the CIC BIM protocol.
- Ownership of material produced by Alliance members. If ownership is to be transferred to the Employer, an additional clause would be needed. An example clause is given in Annex 3.
- Processes to encourage the generation and sharing of innovation, best practice, and knowledge amongst the Alliance Partners.
- Operation of a project bank account or the adoption of other processes to ensure a fair payment regime is implemented. If a project bank account approach is selected it would be sensible to operate a single Alliance bank account and appropriate contract amendments for this option are set out in Annex 3.

### *Role of the Project Manager and Supervisor*

The role of the Project Manager, Service Manager and Supervisor and where they will sit in relation to the Alliance needs to be considered. This is particularly important in respect of the Project Managers / Service Managers duties relating to change control and payment, where they have a duty to act impartially and often under the governance of the Employer. Commonly these functions are kept outside of the Alliance, but other activities such as risk management and programming can be carried out by members of the Alliance.

Accordingly, the Employer may choose to split the functions of the Project Manager / Service Manager between an individual who is appointed directly by them and sits outside the Alliance, and a member of the Alliance. An alternative would be to have the same individual undertake both roles but with different governance dependent on the tasks being undertaken.

The role of the Supervisor is more commonly provided by a member of the Alliance or the duties are combined with other activities of Alliance members.

## Annex 1 – Material to be included in the Partnering Information

- Overriding purpose, role and the required behaviours for the Alliance – this will set the scene for the Alliance in terms of Employer objectives and the rationale and benefits expected by creating an Alliance delivery model.
- Customer outcomes / business objectives – the Employer will identify what benefits they want the Alliance to create and how this relates to their own objectives.
- End-to-end delivery process including key gateways, milestones and decision-making responsibility – this will provide details of the project (and / or programme) lifecycle including details of the project development, approval and delivery processes and the role the Alliance is intended to play in this.
- Organisation model including leadership roles – how the Alliance will be structured and operate and how it will interface with the Employer's existing business structure, including details over key roles and responsibilities. This will also cover establishment of the core team and (Project) Board including job specifications.
- Collective decision making process – this will detail the decision-making process and what aspects will reside in the Alliance as opposed to being retained by the Employer. It will also detail how collective decisions will be made – unanimous / majority etc. and will confirm who has the authority to commit Alliance members, the Employer and the Alliance as a whole.
- Approach to integration / colocation – how the Alliance will integrate the activities of the different Alliance Partners and where the members of the Alliance will be based including details of any co-located offices.
- How design and system integration will be managed within the Alliance.
- Role of Project Manager and Supervisor – will need to be defined including, who will be responsible for appointing them (Employer, Alliance, Alliance Partner), their responsibilities, governance requirements and how they will interface with the Employer and Alliance.
- Best for task approach to allocating work between Partners – details of how the allocation of work and roles and responsibilities between Alliance Partners will be determined.
- The incentive model – detailed provisions of the incentive model including
  - targets to be achieved by Alliance Partners and if these are to be established after the award of contract, a methodology for deciding these targets,
  - method of measurement of performance against specified targets,
  - process for setting the Employer's Budget (if not already set when the Alliance is formed),

- calculation of Alliance gain share / pain share including any caps,
  - payment profile for cash flow purposes,
  - change control process – for changes to the Employer’s Budget and delivery timescales.
- Common procedures and requirements / collaborative systems – details of how the Alliance will be required to adopt Alliance wide process including
  - use of common early warnings and risk register,
  - use of common master programme,
  - project estimating and cost forecasting processes provide a common view of the current value of risk.
- Open book and cost auditing – details for providing access to each Alliance Partners costs and the audit regimes to be adopted both within the Alliance and by the Employer.
- Process for developing individual team members and integrated teams – how the Alliance will develop its members both individually, within teams and Alliance wide.
- Supply chain strategy, development and engagement plan – how the Alliance will engage with the wider supply chain outside of the Alliance Partners in a consistent and collaborative manner, creating best value for the Alliance as a whole.
- Process for the replacement of Partners / addition of new Partners – details of the process, calculation of amounts due, handover and induction processes.
- Procedure for resolution of disagreements – a pre-adjudication review procedure – detailing steps / escalation process, timeline, decision makers and decision-making process.
- Exit strategy– covering both an early and planned end to the Alliance.



## Annex 2 – Disallowed Cost

### Recommendations for adjustment of Disallowed Cost in the ECC

Similar adjustments would be needed if other forms were used for Partner appointments.

Disallowed Cost	Recommendation	Comment / rationale
Cost not justified by the Contractor's accounts and records.	This provision should be maintained.	If the Partner is unable to demonstrate the cost then it may not have been incurred or paid by the Partner.
Cost that should not have been paid to a Subcontractor or supplier in accordance with his contract.	Consider the removal of this provision.	Any overpayment will affect the overall commercial performance of the Alliance and this should be the driver for the Partners to manage Subcontractors effectively.
Cost that was incurred only because the Contractor did not give an early warning which this contract required it to give.	Consider the removal of this provision.	The use of an Alliance wide early warning register will allow Partners to raise early warning on all contracts, and costs incurred due to a failure to do so will be shared by all the Alliance Partners, encouraging them to raise and share early warnings.
The cost of correcting Defects after Completion.	Consider the removal of this provision.	The correction of the Defect should be carried out by the Partner who would be able to do so most efficiently. Non-payment may result in disagreements about the responsibility for the Defect and which party should correct it. The issue of Defect correction may also be better encouraged via the Alliance incentivisation mechanism and could be a Key Performance Indicator.
The cost of correcting Defects caused by the Contractor not complying with a constraint on how it is to Provide the Works stated in the Works Information.	Consider the removal of this provision.	The issue of Defect correction during the works may be better encouraged via the Alliance incentivisation mechanism and could be a Key Performance Indicator.
The cost of Plant and Materials not used to Provide the Works (after allowing for reasonable wastage) unless resulting from a change to the Works Information.	Consider the removal of these provisions.	Alliance-wide incentives could be used to encourage the Partners to be efficient in how they Provide the Works. Peer pressure should be used to drive efficiencies, not non-payment.
The cost of resources not used to Provide the Works (after allowing for reasonable availability and utilisation) or not taken away from the Working Areas when the Project Manager requested.		

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<p>The cost of preparation for and conduct of an adjudication or proceedings of the tribunal.</p>	<p>This provision should be retained but modified to cover disputes between the Alliance and the Employer and between Alliance Partners, but not between the Partners and their Subcontractors / suppliers</p>	<p>There should be a form of alternative dispute resolution (ADR) within the Alliance that address disputes between Alliance Partners and the Employer. Retaining this ground of Disallowed Cost will encourage the use of this ADR process.</p>
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**Annex 3A – Example Contract Data, ECC**

**CONTRACT DATA**

**Part one – Data provided by the *Employer***

**1 General**

The *conditions of contract* are the core clauses and the clauses for main Option **E**, dispute resolution Option **W2** and secondary Options **X12**, **(YUK)2**, **Y(UK)3** of the NEC3 Engineering and Construction Contract April 2013.

The *works* are

.....

The *Employer* is

Name .....

Address .....

.....

The *Project Manager* is

Name .....

Address .....

.....

The *Supervisor* is

Name .....

Address .....

.....

The *Adjudicator* is

Name .....

Address .....

**Guidance notes**

Completion of the data in full is essential to create a complete contract.

Where entries are not used, they should be removed from the Contract Data.

These Contract Data entries cover the necessary requirements, and that if any other options are to be included, they need to be listed and any additional Contract Data entries added.

.....  
The Works Information is in

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

The Site Information is in

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

The *boundaries of the site* are .....

The *language of this contract* is .....

The *law of the contract* is the law of .....

The *period for reply* is ..... weeks.

.

The following matters will be included in the Risk Register

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

**2 The Contractor's main responsibilities**

The *Contractor* prepares forecasts of Defined Cost for the *works* at intervals no longer than ..... weeks.

**3 Time**

The *starting date* is .....

The *access dates* are

Part of the Site	Date
1.....	.....
2.....	.....
3.....	.....

If the *access dates* are not fixed, state "to be decided by the Alliance Partners"

The *completion date* for the whole of the *works* is .....

Include this statement if the *Employer* has decided the *completion date* for the whole of the *works*.

The *Employer* is not willing to take over the *works* before the Completion Date.

Include this statement if the *Employer* is not willing to take over the *works* before the Completion Date.

The *key dates* and *conditions* to be met are  
*condition* to be met

*key date*

1. ....
2. ....
3. ....

Include this statement if the *Employer* has identified work which is to meet a stated *condition* by a *key date*.

The Contractor is to submit a first programme for acceptance within . . . . . weeks of the Contract Date.

The Contractor submits revised programmes at intervals no longer than  
..... weeks.

**4 Testing and Defects**

The *defects date* is . . . . . weeks after Completion of the whole of the *works*.

The *defect correction period* is . . . . . weeks except that

The *defect correction period* for . . . . . is . . . . . weeks

The *defect correction period* for . . . . . is . . . . . weeks.

**5 Payment**

The *currency of this contract* is the . . . . .

The *assessment interval* is . . . . . weeks (not more than five).

The *interest rate* is . . . . . % per annum (not less than 2) above the . . . . . rate of the . . . . . bank.

The period within which payments are made is . . . . .

Include this statement if the period in which payments are made is not three weeks

**6 Compensation events**

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 .....

Where no recorded data are available, delete these entries and replace with the assumed values

Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are

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

**8 Risks and insurance**

These are additional *Employer's* risks

Include this statement if there are additional *Employer's* risks

1.....

2.....

3.....

The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is

.....

The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is

.....

The insurance against loss of or damage to the *works*, Plant and Materials is to include cover for Plant and Materials provided by the *Employer* for an amount of

Include this statement if the *Employer* is to provide Plant and Materials

.....

The *Employer* provides these insurances from the Insurance Table

Include this statement if the *Employer* is to provide any

- 1. Insurance against  
Cover/indemnity is . . . . .
- The deductibles are . . . . .
- 2. Insurance against . . . . .
- Cover/indemnity is . . . . .
- The deductibles are . . . . .
- 3. Insurance against . . . . .
- Cover/indemnity is . . . . .
- The deductibles are . . . . .

The *Employer* provides these additional insurances

- 1. Insurance against . . . . .
- Cover/indemnity is . . . . .
- The deductibles are . . . . .
- 2. Insurance against . . . . .
- Cover/indemnity is . . . . .
- The deductibles are . . . . .
- 3. Insurance against . . . . .
- Cover/indemnity is . . . . .
- The deductibles are . . . . .

The *Contractor* provides these additional insurances

- 1. Insurance against . . . . .
- Cover/indemnity is . . . . .
- 2. Insurance against . . . . .
- Cover/indemnity is . . . . .
- 3. Insurance against . . . . .
- Cover/indemnity is . . . . .

**Option W2**

The *Adjudicator nominating body* is . . . . .  
The *tribunal* is arbitration

of the insurances stated in the Insurance Table

Consideration should be given to insurance by the *Employer* for

- Loss of or damage to the *works*,
- Plant and Materials and
- Loss of or damage to Equipment, Liability for loss of or damage to property and liability for bodily injury to or death of a person caused by activity in connection with this contract.

This statement provides for any additional insurances the *Employer* may be providing.

The *arbitration procedure* is .....

The place where arbitration is to be held is .....

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is .....

**Option X12**

The *Client* is  
Name .....

Address .....

The *Client's* objective is .....

The Partnering Information is in .....

**Option Z**

The *additional conditions of contract* are clauses AC1 to AC8

Amend this as appropriate by deleting unused provisions or adding further Z clauses.

**Additional Clause AC2**

The share paid by the *Contractor* does not exceed ..... %

State percentage cap if AC2.2 is used



**Additional Clause  
AC5**

- The *strategic risk events* are .....

**Additional conditions of contract**

**AC1 Definitions**

- f AC1.1 (1) Alliance Partners are the Partners named in the Schedule of Partners
- (2) Employer's Budget is the amount fixed by the *Employer* in accordance with this contract
- (3) Final Total Cost is the total cost incurred by the *Employer* against each of the items in the Employer's Budget.

Include clause (3) if AC2 is used.

**AC2 Partner  
contribution to  
budget overspend**

- AC2.1 If the Final Total Cost is greater than the Employer's Budget, the *Contractor* pays its share of the excess stated in the Contract Data.
- AC2.2 The share paid by the *Contractor* does not exceed the percentage stated in the Contract Data.

As Option X12 only provides for the payment of additional monies (gain share), an additional clause is required to provide for any contribution from Partners towards the overspend against the budget. Clause AC2.2 applies only if a limit on contribution is to be introduced.

**AC3 Disallowed  
Cost**

- AC3.1 Delete clause 11.2(25) and replace with the following.
- 11.2(25) Disallowed Cost is
- cost which the *Project Manager* decides is not justified by the *Contractor's* accounts and records and
  - the cost of preparation for and conduct of an adjudication or proceedings of the *tribunal* between the *Contractor* and the *Employer*.

Annex 2 deals with potential changes to disallowed cost. If changes are to be made, clause 11.2(25) should be replaced by a clause which sets out the Disallowed Costs which remain. This example clause makes the changes recommended in Annex 2.

**AC4 Setting the  
Employer's  
Budget**

- AC4.1 The Alliance Partners jointly agree the Employer's Budget for the work under this contract as set out in the Partnering Information. If the budget is not agreed by all Alliance Partners, the *Employer* may terminate any or all of the Alliance Partner's obligations to Provide the Works.
- AC4.2 Following a termination, the *Employer* may, with the agreement of remaining Alliance Partners, appoint a replacement Alliance Partner.

Unless the budget is fixed at the time of the Partner's appointment, it would be necessary to include a process for establishing it. It would be necessary to involve the Alliance Partners in setting the budget – particular the case where the Alliance involves a programme of work, some parts of which may not have been developed sufficiently to allow a realistic budget to be set. In this case, this additional clause should be used to set out how the budget is established

**AC5 Strategic Risks**

AC5.1 If a *strategic risk event* occurs, the Alliance Partners and the *Employer* jointly assess the effect of the event on the forecast Final Total Cost and what consequential change should be made to the Employer's Budget.

This clause should be used if the Employer intends to make an adjustment to the budget for certain specified events.

AC5.2 The *Employer* decides on the change to the Employer's Budget (taking into account the joint assessment) and notifies the Alliance Partners of its decision. The Employer's Budget is changed in accordance with the *Employer's* decision.

**AC7 Alliance bank account**

AC7.1 Delete clauses Y1.2 to 1.4 and replace with the following

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

NEC has published standard project bank account clauses, but these are based on the Contractor setting up the account and paying charges. With several Contractors and Consultants being covered by the same account, it is more appropriate for the Employer to set up the account. This clause provides for this.

Y1.3 The *Employer* pays any charges made and is paid any interest paid by the project bank.

Y1.4 The *Employer* gives to the *Contractor* details of the banking arrangements for the Project Bank Account including copies of communications with the project bank in connection with the Project Bank Account.

Part two – Data provided by the *Contractor*

**Guidance**

**Statements given in all contracts**

The *Contractor* is  
 Name .....  
 Address .....  
 .....  
 The *direct fee percentage* is ..... %.  
 The *subcontracted fee percentage* is ..... %.  
 The *Working Areas* are the Site and .....  
 The key people are  
 (1) Name .....  
 Job .....  
 Responsibilities .....  
 .....  
 Qualifications .....  
 Experience .....  
 .....  
 (2) Name .....  
 Job .....  
 Responsibilities .....  
 .....  
 Qualifications .....  
 Experience .....  
 .....  
 The following matters will be included in the Risk Register  
 .....

Set fee percentages to zero or a low percentage as being the amount of recovery which could be obtained through turnover. The balance of the fee will be recovered through savings on the Employer's Budget

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

The Works Information for the *Contractor's* design is in

Include this statement if the *Contractor* is to provide Works Information for his design

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

**Option Y(UK)1**

**Data for  
Schedule of Cost  
Components**

*named suppliers* are .....

The listed items of Equipment purchased for work on this contract, with an on cost charge, are

Equipment	time-related charge	per time period
.....		per .....
.....		per .....
.....		per .....
.....		per .....

The rates for special Equipment are

Equipment	size or capacity	rate
.....		.....
.....		.....
.....		.....
.....		.....

The percentage for Working Areas overheads is ..... %.

The hourly rates for Defined Cost of manufacture and fabrication outside the Working Areas are

category of employee	hourly rate
.....	.....
.....	.....

.....  
.....

The percentage for manufacture and fabrication overheads is. . . . . %.

**Data for both  
schedules of cost  
components**

The hourly rates for Defined Cost of design outside the Working Areas are  
category of employee    hourly rate

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

The percentage for design overheads is. . . . . %.

The categories of design employees whose travelling expenses to and from the Working Areas are included as a cost of design of the *works* and Equipment done outside of the Working Areas are

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

**Data for the Shorter  
Schedule of Cost  
Components**

The percentage for people overheads is . . . . . %.

The published list of Equipment is the last edition of the list published by

.....

The percentage for adjustment for Equipment in the published list is

..... % (state plus or minus).

The rates for other Equipment are

Equipment                      size or capacity                      rate

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

**Annex 3B – Example Contract Data, PSC**

## CONTRACT DATA

### Part one – Data provided by the *Employer*

#### Statements given in all contracts

#### 1 General

The *conditions of contract* are the core clauses and the clauses for main Option **E**, dispute resolution Option **W2** and secondary Options **X9, X12, Y(UK)1, Y(UK)2** of the NEC3 Professional Services Contract April 2013.

The *Employer* is

Name .....

Address .....

.....

The *Adjudicator* is

Name .....

Address .....

.....

The *services* are

.....

.....

.....

The *Scope* is in

.....

.....

The *language of this contract* is .....

The *law of the contract* is the law of .....

The *period for reply* is ..... weeks.

The *period for retention* is ..... years following Completion or earlier termination.

#### Guidance notes

Completion of the data in full is essential to create a complete contract.

Where entries are not used, they should be removed from the Contract Data.

These Contract Data entries cover the necessary requirements, and that if any other options are to be included, they need to be listed and any additional Contract Data entries added.

The *Adjudicator nominating body* is .....

The *tribunal* is .....

The following matters will be included in the Risk Register  
.....  
.....

**2 The Parties' main responsibilities**

The *Employer* provides access to the following persons, places and things

access to	<i>access date</i>
.....	.....
.....	.....
.....	.....
.....	.....

The *Consultant* prepares forecasts of the total Time Charge and *expenses* at intervals no longer than ..... weeks.

**3 Time**

The *starting date* is .....

The *completion date* for the whole of the *services* is .....

Include this statement if the *Employer* has decided the *completion date* for the whole of the *services*

The *Consultant* is to submit a first programme for acceptance within ..... weeks of the Contract Date.

The *Contractor* submits revised programmes at intervals no longer than ..... weeks.

**4 Quality**

The quality policy statement and quality plan are provided within ..... weeks of the Contract Date.

The *defects date* is ..... weeks after Completion of the whole of the *services*.

**5 Payment**

The *assessment interval* is .....

The *currency of this contract* is.....

The *interest rate* is . . . . . % per annum (not less than 2) above the .....

rate of the ..... bank.

The period for payment is .....

Include this statement if the final date for payment is not 14 days after the date when payment is due.

The *expenses* stated by the *Employer* are

item	amount
.....	.....
.....	.....
.....	.....

Include this statement if the *Employer* states any *expenses*.

**8 Indemnity, insurance and liability**

The amounts of insurance and the periods for which the *Consultant* maintains insurance are

Consideration should be given to insurance by the *Employer*.

event	cover	period following Completion of the whole of the services or earlier termination
failure of the <i>Consultant</i> to use the skill and care normally used by professionals providing services similar to the <i>services</i>	..... in respect of each claim, without limit to the number of claims	.....
death of or bodily injury to a person (not an employee of the <i>Consultant</i> ) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	..... in respect of each claim, without limit to the number of claims	.....
death of or bodily injury to		



employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	..... in respect of each claim, without limit to the number of claims	.....
--	--	-------

The *Employer* provides the following insurances

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

This statement provides for any additional insurances the *Employer* may be providing.

The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to

.....

**W2 Dispute resolution procedure**

The *arbitration procedure* is

.....

Include this statement if this contract is a subcontract and the main contract provides for joint adjudication of disputes

The place where arbitration is to be held is

.....

The person or organisation who will choose an arbitrator

if the Parties cannot agree a choice or

if the *arbitration procedure* does not state who selects an arbitrator is

.....

The main contract Adjudicator is .....

**Option X12: Partnering**

The *Client* is

Name .....

Address .....

.....

The *Client's* objective is

.....

.....

.....

.....

.....  
 The Partnering Information is in  
 .....  
 .....  
 .....

**Option Z**

The additional conditions of contract are clauses AC1 to AC8

Amend this as appropriate by deleting unused provisions or adding further Z clauses.

**Additional Clause AC2**

- The share paid by the *Consultant* does not exceed ..... %

State percentage cap if AC2.2 is used

**Additional Clause AC5**

- The *strategic risk events* are .....

**AC1 Definitions**

- AC1.1 (1) Alliance Partners are the Partners named in the Schedule of Partners  
 (2) Employer's Budget is the amount fixed by the *Employer* in accordance with this contract  
 (3) Final Total Cost is the total cost incurred by the *Employer* against each of the items in the Employer's Budget.

Include clause (3) if AC2 is used

**AC2 Partner contribution to budget overspend**

- AC2.1 If the Final Total Cost is greater than the Employer's Budget, the *Consultant* pays its share of the excess stated in the Contract Data.  
 AC2.2 The share paid by the *Consultant* does not exceed the percentage stated in the Contract Data.

As Option X12 only provides for the payment of additional monies (gain share), an additional clause is required to provide for any contribution from Partners towards the overspend against the budget. Clause AC2.2 applies only if a limit on contribution. is to be introduced.

**AC4 Setting the Employer's Budget**

- AC4.1 The Alliance Partners jointly agree the Employer's Budget for the work under this contract as set out in the Partnering Information. If the budget is not agreed by all Alliance Partners, the *Employer* may terminate any or all of the Alliance Partner's obligations to Provide the Works.  
 AC4.2 Following a termination, the *Employer* may, with the agreement of remaining Alliance Partners, appoint a replacement Alliance Partner.

Unless the budget is fixed at the time of the Partner's appointment, it would be necessary to include a process for establishing it. It would be necessary to involve the Alliance Partners in setting the budget – particular the case where the Alliance involves a programme of work, some parts of which may not have been developed sufficiently to allow a realistic budget to be set. In this case, an additional clause is needed to set out how the budget is established, and the consequences of the budget not been agreed.

**AC5 Strategic Risks**

AC5.1 If a strategic risk event occurs, the Alliance Partners and the *Employer* jointly assess the effect of the event on the forecast Final Total Cost and what consequential change should be made to the Employer's Budget.

This clause should be used if the Employer intends to make an adjustment to the budget for certain specified events.

AC5.2 The *Employer* decides on the change to the Employer's Budget (taking into account the joint assessment) and notifies the Alliance Partners of his decision. The Employer's Budget is changed in accordance with the *Employer's* decision.

**AC7 Alliance bank account**

AC7.1 Delete clauses Y1.2 to 1.4 and replace with the following

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

Y1.3 The *Employer* pays any charges made and is paid any interest paid by the project bank.

Y1.4 The *Employer* gives to the *Consultant* details of the banking arrangements for the Project Bank Account including copies of communications with the project bank in connection with the Project Bank Account.

NEC has published standard project bank account clauses, but these are based on the Contractor setting up the account and paying charges. With several Contractors and Consultants being covered by the same account, it is more appropriate for the Employer to set up the account. This clause provides for this.

**AC8 Insurance**

AC8.1. Add to the end of clause 85.4 "except the cost incurred up to the stated policy excess amount"

This clause should only be used if the Alliance Partners are required to provide their own insurance and the policy excesses are to be included as an Alliance cost.

AC8.2 Delete the entry against Schedule of Cost Components section 7 – Insurance and replace with the following.

The following are deducted from cost

- the cost of events for which this contract requires the Contractor to insure except the cost incurred up to the stated policy excess amount and
- other costs paid to the Contractor by insurers.

**Part two – Data provided by the *Consultant***

**Statements given in  
all contracts**

The *Consultant* is

Name .....

Address .....

.....

.....

The following matters will be included in the Risk Register

.....

.....

.....

.....

.....

The *key people* are

(1) Name .....

Job .....

Responsibilities .....

Qualifications .....

Experience .....

(2) Name .....

Job .....

Responsibilities .....

Qualifications .....

Experience .....

The following matters will be included in the Risk Register

.....

.....

.....

.....

The *Employer* provides access to the following persons, places and things  
access to

access date

Include this statement if the *Consultant* requires additional access

.....  
.....

The *staff rates* are

name/designation

rate

.....  
.....

The *expenses* stated by the *Consultant* are

item

amount

Include this statement if the *Consultant* states any expenses

.....  
.....

**Option Y(UK)1**

*named suppliers* are .....



**ICG**