

- a new
- engineering contract
- document

JUNE 2001



- the NEC
- partnering
- option

OPTION X12

Published for the Institution of Civil Engineers by Thomas Telford Publishing, Thomas Telford Limited, 1 Heron Quay, London E14 4JD.

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

The NEC Partnering Option is an option that can be used in all NEC contracts except the Adjudicator's Contract. The other documents in the family are as follows:

The Engineering and Construction Contract (ECC)

The Engineering and Construction Contract – Options A-F

- 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

The Engineering and Construction Subcontract

Guidance notes for the Engineering and Construction Contract

Flow charts for the Engineering and Construction Contract

The Professional Services Contract

Guidance notes and flow charts for the Professional Services Contract

The Engineering and Construction Short Contract

The Engineering and Construction Short Subcontract

Guidance notes and flow charts for the Engineering and Construction Short Contract

The Adjudicator's Contract

Guidance notes and flow charts for the Adjudicator's Contract

The NEC Partnering Option: First Edition, June 2001

9 8 7 6 5 4 3 2 1

ISBN 0 7277 2976 4

The NEC Partnering Option

Guidance Notes

Introduction

A partnering contract, between two Parties only, is achieved by using a standard NEC contract. This Option X12, which puts the NEC Partnering Option into a contract, is used for partnering between more than two parties working on the same project or programme of projects. The Partnering Option is used as a secondary option common to the contracts which each party has with the body which is paying for its work. The parties who have this option included in their contracts are all the bodies who are intended to make up the project partnering team. The Partnering Option does not create a multi-party contract.

The option does not duplicate provisions of the appropriate existing conditions of contract in the NEC family that will be used for the individual contracts. It follows normal NEC structure for an option, in that it is made up of clauses, data and information.

The content is derived from the Guide to Project Team Partnering published by the Construction Industry Council (CIC). The requirements of the CIC document that are not already in the NEC bi-party contracts are covered in this option. The structure of the NEC family of contracts means that this Partnering Option will not work unless an NEC contract is used.

The purpose of the Option is to establish the NEC family as an effective contract basis for multi-party partnering. As with all NEC documents, it is intended that the range of application of this document should be wide. By linking this document to appropriate bi-party contracts, it is intended that the NEC can be used

- for partnering for any number of projects (i.e. single project or multi-project),
- internationally,
- for projects of any technical composition, and
- as far down the supply chain as required.

The option is given legal effect by including it in the appropriate bi-party contract by means of an additional clause (Option X12 in the ECC for example). This option is not a free standing contract but a part of each bi-party contract that is common to all contracts in a project team.

The underlying bi-party NEC contract will be for a contribution of any type, as contractor or consultant for example, the work content or objective of which is sufficiently defined to permit a conventional NEC contract to be signed. The content need not be well defined for a cost reimbursable or time based contract in the early stages.

Parties must recognise that by entering into a contract which includes Option X12 they will be undertaking responsibilities additional to those in the basic NEC contract.

A dispute (or difference) between Partners who do not have a contract between themselves is resolved by the Core Group. This is the Group that manages the conduct of the Partners in

accordance with the Partnering Information. If the Core Group is unable to resolve the issue, then it is resolved under the procedure of the Partners' Own Contracts, either directly or indirectly with the *Client*, who will always be involved at some stage in the contractual chain. The *Client* may seek to have the issues on all contracts dealt with simultaneously.

The Partnering Option does not include direct remedies between non-contracting Partners to recover losses suffered by one of them caused by a failure of the other. These remedies remain available in each Partner's Own Contract, but their existence will encourage the parties to compromise any differences that arise.

This applies at all levels of the supply chain, as a Contractor/Consultant who is a Partner retains the responsibility for actions of a subcontractor/subconsultant who is a Partner.

The final sanction against any Partner who fails to act as stated in the Partnering Option is for the Partner who employed them not to invite them to partner again

There are many scenarios in setting up a project. The NEC family of contracts with the Partnering Option is sufficiently flexible to deal with them. For example, the contract may be a Professional Services Contract with a Contractor for a feasibility study. Subsequently that Contractor may do later work using the Engineering and Construction Contract. The Contractor may be a Partner during both stages of his contribution to the project.

Additional contract data for the Option

The *Client* is the Party for whom the projects are being carried out. He may also be the Employer in an NEC contract.

The *Client's* objective is the objective for the 'programme of projects' if more than one or for 'the project' if only one. The objective should be expressed quantitatively if possible (the business case). It should also include the partnering objectives.

Partnering Information includes any requirements for

- use of common information systems, sharing of offices,
- attendance at Partners' and Core Group meetings,
- participation in partnering workshops,
- arrangements for joint design development,
- value engineering and value management,
- risk management, and
- other matters that the Core Group manages.

This information should not duplicate requirements in the bi-party contracts.

The additional contract data for the Option, like other Contract Data in the NEC contracts, does not change. The Schedule of Partners and the Schedule of Core Group Members, like the Activity Schedule and other schedules referred to in Contract Data do change from time to time. The following are samples of the typical information required in these schedules.

Schedule of Core Group Members

Date of last revision:

The Core Group members are the *Client* and the following.

Name of Partner	Address and contact details	Joining date	Leaving date

Including the option in the Own Contracts

This option is incorporated into the Own Contract of a Partner as follows.

1. Add “X12 (published by the ICE June 2001)” to the list of Options set out in the first entry in Part one of the Contract Data.
2. Add the following entry to the Contract Data in each bi-party contract:

“Option X12

The *Client* is

.....

Address.....

.....

.....

Contact Details

.....

Telephone..... Fax.....

..... E-mail.....

The *Client*'s objective is

.....

.....

.....

.....

.....

The Partnering Information is in

.....

.....

.....

GUIDANCE NOTES ON CLAUSES

Identified and defined terms

Clause X12.2 (1)

The point at which someone becomes a Partner is when his Own Contract (which includes the Partnering Option) comes into existence. They should then be named in the Schedule of Partners, and their representative identified.

Clause X12.2 (3)

Not every Partner is a member of the Core Group.

Clause X12.2 (5)

There are two options for subcontractor partners. Either the amount payable cascades down if the schedule allocates the same bonus/cost to the main contractor and subcontractor, or the main contractor absorbs the bonus/cost and does not pass it on.

Working together

Clause X12.3 (5)

The Core Group organises and holds meetings. It produces and distributes records of each meeting which include agreed actions. Instructions from the Core Group are issued in accordance with the Partner's Own Contract. The Core Group may invite other Partners or people to a meeting of the Core Group.

Clause X12.3(8)

The Partners should give advice and assistance when asked, and in addition whenever they identify something that would be helpful to another Partner.

Clause X12.3 (9)

A subcontractor/subconsultant may be a Partner, but the general policy on this should be decided at the beginning of the Project. The Core Group should advise the Contractor/Consultant at the outset if a subcontractor/subconsultant is to be asked to be a Partner. A subcontractor/subconsultant who the Core group decides should be a Partner should not be appointed if he is unwilling to be a Partner.

Incentives

Clause X12.4 (1) (also "X12.1 (1) and X12.3(3)")

If one partner lets the others down for a particular target by poor performance, then all lose their bonus for that target. If the Employer tries to prevent a target being met, he is in breach of clause 10.1.

There can be more than one KPI for each partner. KPIs may apply to one Partner, to several partners or to all partners.

An example of a KPI

KPI	Number of days to complete each floor of the building framework
Target	14 days
Measurement	Number of days between removal of falsework from the entire slab and from the slab below
Amount	Main contractor - £5,000 each floor Formwork and concrete sub-contractor - £2,000 each floor Structural designer - £750 each floor

Clause X12.4 (2)

The *Client* should consult with the other Partners before adding a KPI. The effect on subcontracted work should be noted; adding a KPI to work which is subcontracted can involve a change to the KPI for a subcontractor/subconsultant.

Option X12: Partnering

- Actions X12.1**
- (1) Each Partner works with the other Partners to achieve the *Client's* objective stated in the Contract Data and the objectives of every other Partner stated in the Schedule of Partners.
 - (2) Each Partner nominates a representative to act for it in dealings with other Partners.
 - (3) The Core Group acts and takes decisions on behalf of the Partners on those matters stated in the Partnering Information.
 - (4) The Partners select the members of the Core Group. The Core Group decides how they will work and decides the dates when each member joins and leaves the Core Group. The *Client's* representative leads the Core Group unless stated otherwise in the Partnering Information.
 - (5) The Core Group keeps the Schedule of Core Group Members and the Schedule of Partners up to date and issues copies of them to the Partners each time either is revised.
 - (6) This option does not create a legal partnership between Partners who are not one of the Parties in this contract.

- Identified and defined terms X12.2**
- (1) The Partners are those named in the Schedule of Partners. The *Client* is a Partner.
 - (2) An Own Contract is a contract between two Partners which includes this option.
 - (3) The Core Group comprises the Partners listed in the Schedule of Core Group Members.
 - (4) Partnering Information is information which specifies how the Partners work together and is either in the documents which the Contract Data states it is in or in an instruction given in accordance with the contract.
 - (5) A Key Performance Indicator is an aspect of performance for which a target is stated in the Schedule of Partners.

- Working together X12.3**
- (1) The Partners work together as stated in the Partnering Information and in a spirit of mutual trust and cooperation.

(2) A Partner may ask another Partner to provide information that he needs to carry out the work in his Own Contract and the other Partner provides it.

(3) Each Partner gives an early warning to the other Partners when he becomes aware of any matter that could affect the achievement of another Partner's objectives stated in the Schedule of Partners .

(4) The Partners use common information systems as set out in the Partnering Information.

(5) A Partner implements a decision of the Core Group by issuing instructions in accordance with its Own Contracts.

(6) The Core Group may give an instruction to the Partners to change the Partnering Information. Each such change to the Partnering Information is a compensation event which may lead to reduced Prices.

(7) The Core Group prepares and maintains a timetable showing the proposed timing of the contributions of the Partners. The Core Group issues a copy of the timetable to the Partners each time it is revised. A Partner incorporates information in the timetable into its Own Contract programme.

(8) A Partner gives advice, information and opinion to the Core Group and to other Partners when asked to do so by the Core Group. This advice, information and opinion relates to work that the other Partner is carrying out under its Own Contract and is given fully, openly and objectively. The Partners show contingency and risk allowances in information about costs, prices and timing for future work.

(9) A Partner notifies the Core Group before subcontracting any work. A Partner is responsible under its Own Contract for the actions and inactions of its subcontractor.

Incentives X12.4 (1) A Partner is paid the amount stated in the Schedule of Partners if the target stated for a Key Performance Indicator is improved upon or achieved. Payment of the amount is due when the target has been improved upon or achieved and is made as part of the amount due in the Partner's Own Contract.

(2) The *Client* may add a Key Performance Indicator or associated payment but may not delete or reduce a payment stated in the Schedule of Partners.

ACKNOWLEDGEMENTS

The First Edition of the NEC Partnering Option was produced by the Institution of Civil Engineers through its New Engineering Contract Panel. The members of the Partnering Option Working Group are:

Peter Higgins, (Chairman) BSc, CEng, FICE, FCI Arb
Dr. Martin Barnes, BSc(Eng), PhD, FEng, FICE, FCI OB, CIMgt,
ACI Arb, MBCS, FRSA, FInstCES, FAPM
Ms Frances Forward, BA(Hons), DipArch, MSc(Const Law), RIBA,
FCI Arb
A. J. McNaughton, BEng, MSc, CEng, MICE

The original New Engineering Contract was designed and drafted by Dr Martin Barnes then of Coopers and Lybrand with the assistance of Professor J. G. Perry of The University of Birmingham, T. W. Weddell then of Travers Morgan Management, T. H. Nicholson, Consultant to the Institution of Civil Engineers, A. Norman then of the University of Manchester Institute of Science and Technology and P. A. Baird, then Corporate Contracts Consultant, Eskom, South Africa.

The members of the New Engineering Contract Panel are:

P. Higgins, (Chairman) BSc, CEng, FICE, FCI Arb.
P. A. Baird, BSc, CEng, FICE, M(SA)ICE, MAPM
Dr. M. Barnes, BSc(Eng), PhD, FEng, FICE, FCI OB, CIMgt, ACI Arb,
MBCS, FRSA, FInstCES, FAPM
A. J. M. Blackler, BA, LLB(Cantab), MCI Arb
P. T. Cousins, BEng(Tech), CEng, MICE
L. T. Eames, BSc FRICS, FCI OB
Ms F Forward, BA(Hons), DipArch, MSc(Const Law), RIBA, FCI Arb
Professor J. G. Perry, MEng, PhD, CEng, FICE, MAPM
N. C. Shaw, FCIPS, CEng, MIMechE
T. W. Weddell, BSc, CEng, DIC, FICE, FI StructE, ACI Arb
F. N. Vernon, BSc, CEng, MICE (Technical Adviser)

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Printed and bound in Great Britain



THE INSTITUTION OF CIVIL ENGINEERS

One Great George Street Westminster London SW1P 3AA United Kingdom
Tel + 44 (0)20-7222 7722 Fax +44 (0)20-7222 7500

Registered Charity 210252

ISBN 0-7277-2976-4



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