

# **ice-sa** **NEC Forum 4** **Including Jam Session 4**

**Thursday 9th May 2024**  
**4 pm – 5:30 pm**

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**GSE CONSTRUCTION**

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**FREE**

**HYBRID**

**Improving SA Infrastructure  
using NEC Contracts as intended**

**CPD  
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**NEC Jam Session 4**

**TOPIC:**  
**Section 2 – Contractor's  
main responsibilities**  
**Section 3 – Time**

# 10 NEC Jam Sessions Topics

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## Session 1

Introduction to the NEC3 family of contracts; How it came about, what it tries to do and how it is used; Synopsis of each of the 12 contracts in the family.

## Session 2

Procurement & contract strategies; Parties and role players; Getting the best out of the NEC contract - change of the culture.

## Session 3

Introduction to the sections of Core Clauses & actions in ECC3,  
Section 1 – General.

## Session 4

Section 2 - *Contractor's* main responsibilities,

Section 3 – Time.

## Session 5

Section 4 - Testing & Defects (Quality),  
Risk Management.

## Session 6

Alignment between contracting Parties,  
Diversity and Inclusion.

## Session 7

Section 5 - Payment, Cost and the Options,  
Section 6 - Change management through compensation.

## Session 8

Section 7 - Title,  
Section 8 - Liabilities and insurance,  
Section 9 - Termination,  
Disputes and Adjudication.

## Session 9

Pre-award documentation & Developing a contract.

## Session 10

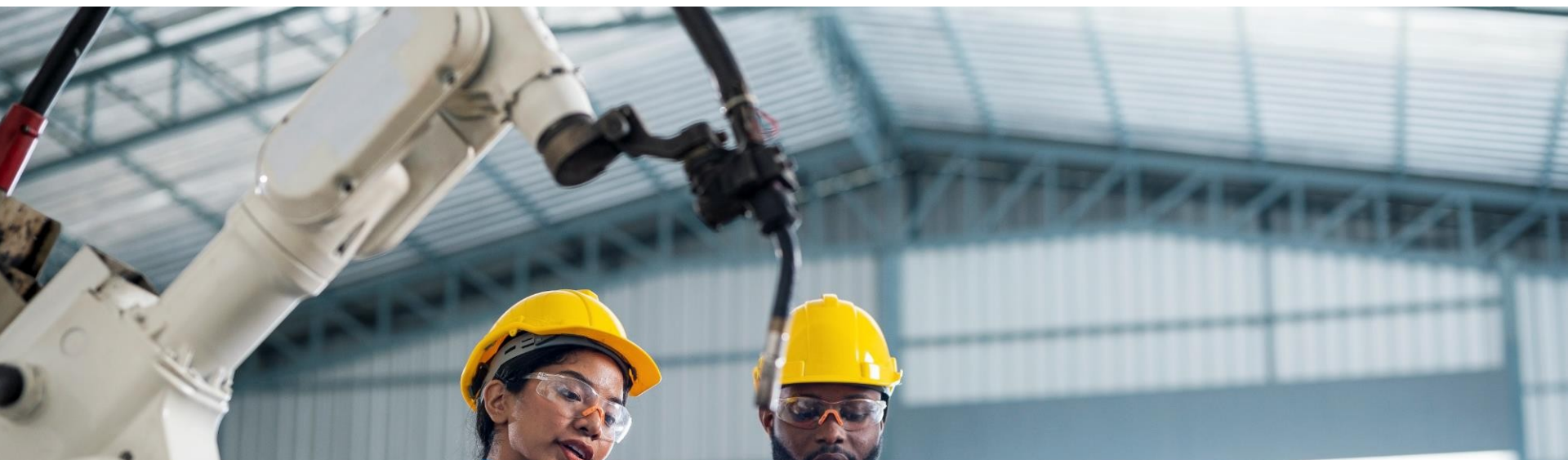
NEC3 and NEC4 – the differences.

# Objectives of 10 NEC Jam Sessions

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- Delegates should leave with
  - an understanding of the NEC philosophy, its associated culture change and how it contributes to the effective management of a project;
  - a basic understanding of how to prepare, tender to, and administer the ECC3 (Engineering and Construction Contract)

# Introduction to ECS ice-sa



## Collaborative Project Strategies©

**ECS Associates**  
**Empowered Contract and Project Management Services**



[www.ecs.co.za](http://www.ecs.co.za)



## Facts and Values

A leading, fully-empowered organisation.  
35% black woman owned. BBBEE Level1



3 decades of experience in South Africa and overseas

Delivery of international best practice professional contract and project management services from front end studies to implementation

Business solutions through a combination of expert knowledge and hands on experience

Drive clients' success through collaborative, mutually beneficial contract and business management practices

**Collaborative Project Strategies©**  
Agile Project Delivery

Our Founder Andrew Baird was a key member of the drafting committee for NEC 1, 2 & 3

Our associate Peter Higgins is chairman of the drafting committee for NEC4

Network based business model – low overhead cost  
(current staff 100+, network 1000+)

**I**ntegrity

**P**rofessionalism

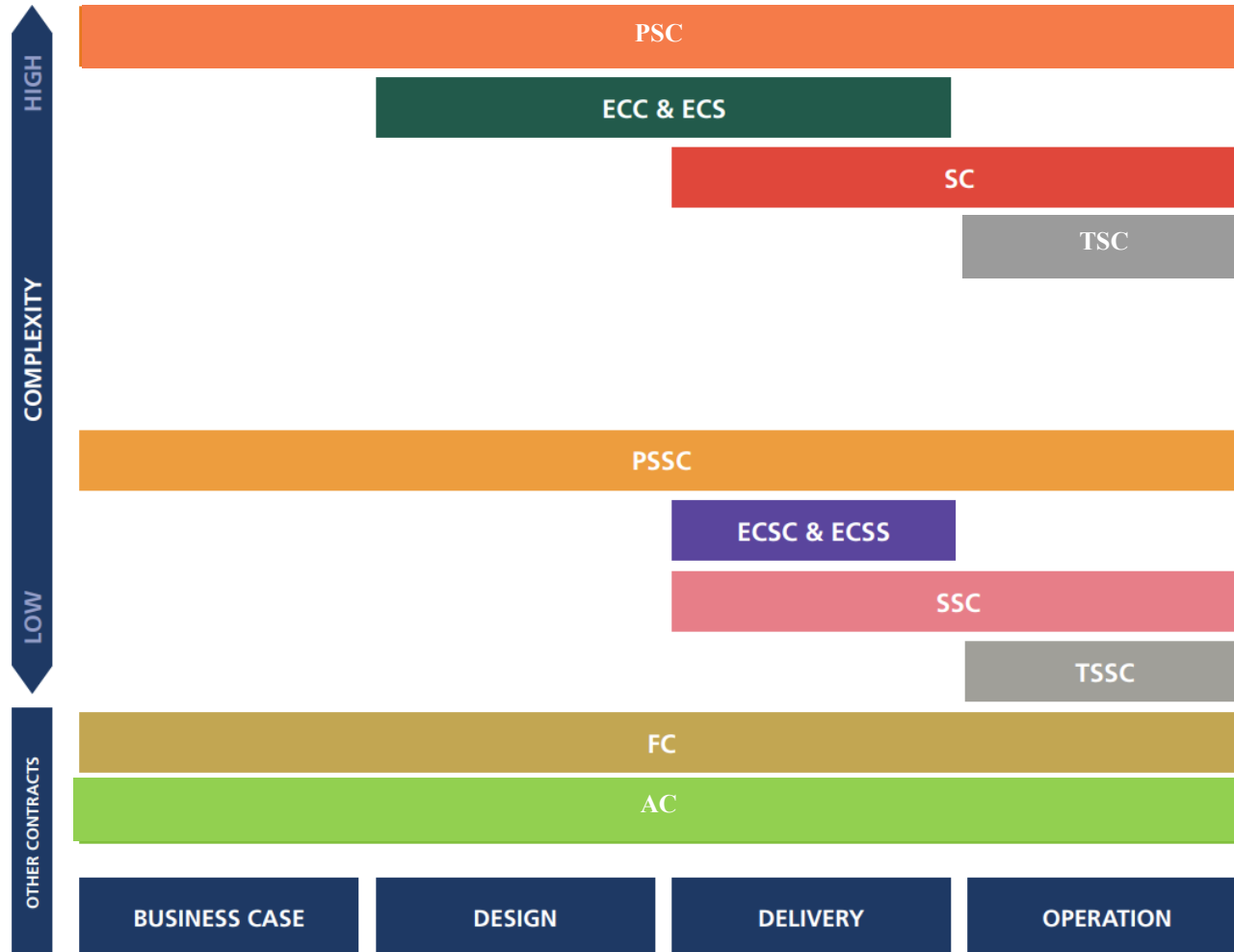
**C**ollaboration

**C**ourage

# Reflection on the previous sessions

- Flexibility
- Clarity and simplicity
- Stimulus to good management
  - The most important objective; every procedure is designed to contribute to rather than detract from the effectiveness for all parties
    - foresight applied collaboratively mitigates problems and shrinks risk
    - clear division of function and responsibility helps accountability and motivates people

# Contracts in NEC3 family **ice-sa**





## Procurement Strategies

- How to split project in smaller components if required?
- Who does Engineering, Procurement and Construction?
- Who is managing interfaces?

## Contract Strategies

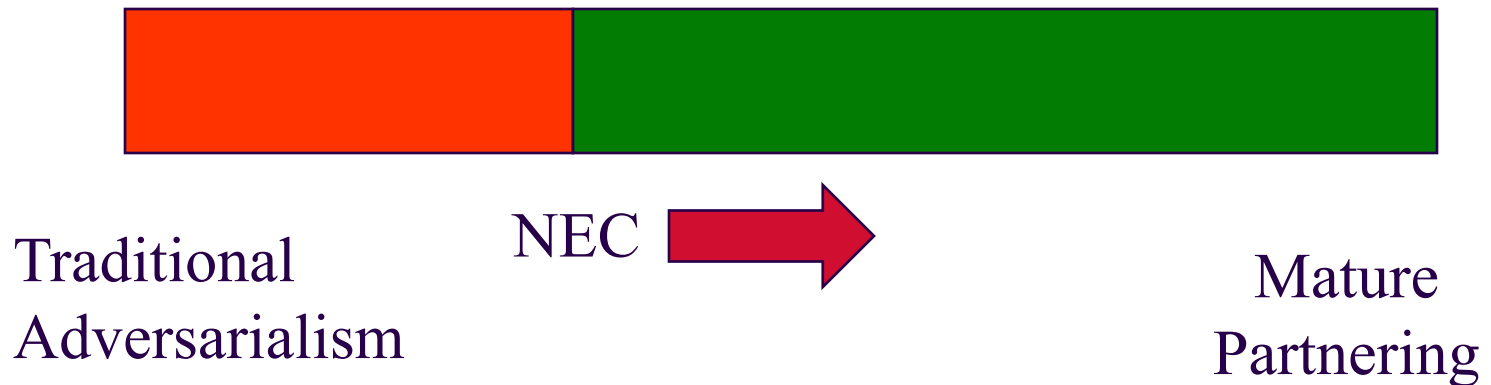
- Allocation of risk and incentive
- Choosing the right Options through selection of Main and Secondary Options

**Best practice**: Use the NEC contract with no or minimum changes where required through Z clauses

# NEC is the route to partnering

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## Moving industry culture



- **Section 1 – General**

- |   |                         |
|---|-------------------------|
| • <b>Actions</b>  | <b>Clause 10 (10.1)</b> |
| • <b>Identified and defined terms</b>                         | <b>Clause 11</b>        |
| • <b>Interpretation and the law</b>                           | <b>Clause 12</b>        |
| • <b>Communications</b>                                       | <b>Clause 13</b>        |
| • <b>The <i>Project Manager</i> and the <i>Supervisor</i></b> | <b>Clause 14</b>        |
| • <b>Adding to the Working Areas</b>                          | <b>Clause 15</b>        |
| • <b>Early warning</b>  | <b>Clause 16</b>        |
| • <b>Ambiguities and inconsistencies</b>                      | <b>Clause 17</b>        |
| • <b>Illegal and impossible requirements</b>                  | <b>Clause 18</b>        |
| • <b>Prevention</b>   | <b>Clause 19</b>        |

## NEC Jam session 4

### Introduction to the sections of Core Clauses & actions in ECC3

- Section 2 - *Contractor's* main responsibilities
- Section 3 – Time

## Section 2

### *Contractor's main responsibilities*

# Obligations & responsibilities

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- Obligation: burden to be undertaken
- The *Contractor* may have an obligation to undertake design
- 60 express obligations, 'acts' 'notifies' 'obtains' plus 'shall' in 10.1
- Responsibility : a burden to be carried
- may also have responsibility for design undertaken by others

# The Contractor Provides the Works

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## 20.1 Provide the Works in accordance with the Works Information

- implications of the *Contractor's Works Information*
- The *Project Manager* may instruct change in Works Information 14.3
  - to an extent 'incidental to the works'
- The *Contractor* obeys the *Project Manager's* instruction per 27.3



## 21 The Contractor's design ...

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- Designs parts of works, which Works Information states
- Fitness for purpose implied, or as Works Information details
  - Option X15 for lesser skill & care
- Particulars of the *Contractor's* design
  - all obligations must be stated in Works Information
  - component specifications and boundary data
- The *Contractor* does not proceed until design accepted by the *Project Manager*

# The Contractor's design liability

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- Option X18 can be used to limit liability for latent defects (in terms of time and cost)
- Clause 83 requires the *Contractor* to indemnify the *Employer* against interference with any legal right (Intellectual Property - IP) as per 80.1

# The Contractor's design

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- Clause 22.1 - The *Employer* may use and copy (but not own) the *Contractor's* design for the *works* only
  - Other conditions may be stated in Works Information
- Will need to obtain rights for this from Subcontractors where necessary
- Note statements on the *Contractor's* drawings
- Re-engineering of OEM's parts?
  - A feast for the lawyers?(OEM – Original Equipment Manufacturer)

# Design of the Contractor's Equipment

- Clause 23.1 - Particulars of the design submitted to the *Project Manager* if he instructs; for critical items such as:
  - caisson, comprehensive shutter, tunnel boring machine, heavy lift crane
  - could cause significant delay or safety threat if design not competent

If the Equipment design accepted by the *Project Manager* , it is still *Contractor's* responsibility and liability

# People

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## 24. The Contractor's people

- key people named in Contract Data part two
- substitution needs the *Project Manager's* acceptance
- removal for reasons in one day

11.2(17) Labour broker is not a Subcontractor

# Working with the *Employer* and Others

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- The *Contractor* co-operates with Others for information they need for the works
- Works Information states how the *Contractor* shares the Working Areas
- The *Contractor* & the *Employer* each provide services to the other as stated in Works Information
- The *Contractor* pays the *Employer* if he does not provide services
- Compensation event if the *Employer* does not provide the *Contractor* whatever he is supposed to provide

## 25.3 Use of Key Dates

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- Can state in Contract Data a *condition* which must be met by its Key Date
  - Not same thing as *sectional completion dates*
- 25.3 If the *Project Manager* decides
  - that the work does not meet the *condition* stated for a Key Date by the date stated and, as a result, the *Employer* incurs additional cost....
  - the additional cost...is paid by the *Contractor*
- Optional – no obligation to use Key Dates



## 26. Subcontracting

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- Liability for the *Contractor* as if he had not subcontracted
- Subcontractors' people & equipment as though they were *Contractor's*
- Subcontractor subject to the *Project Manager's* acceptance
- The *Contractor* should make use of NEC subcontracts; or the *Employer* may specify in Works Information

## 27 Other responsibilities

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27.1 Design approval from Others

27.2 Access to work being done

27.3 The *Contractor* obeys instructions

- Note: The *Project Manager* & the *Supervisor* are not Parties to the contract, but the *Employer's* agents

27.4 Health and safety requirements stated in Works Information; regulating compliance with OHS Act not restating it

# Section 3

## Time Planning & programming

# *starting date and Completion*

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- Clause 30.1 - The Contractor does work so Completion is on or before Completion Date
- Clause 30.2 - the *Project Manager* decides date of Completion
- Clause 30.3 – the Contractor to work so that the *condition* stated in Contract Data is met by Key Date
- work commences on *starting date*
  - implied by the Accepted Programme
- *access date* relates to start on Site

# Completion related matters

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- See definition in Works Information to determine when Completion has been achieved
- Works Information MUST state what has to be done before Completion Date, or what may be done after it
- Option X5 introduces *sectional completion dates*
- The Completion Date can only be delayed by compensation events

# Clause 31.2 programme to show

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- *start, access, the Key Dates and the Completion Date*
- *planned Completion*
- *Order and timing of operations*
- *Order & timing of work of the Employer & Others*
- *Dates planned to meet condition and allow others to do their work*
- *Provisions for*
  - *Float & time risk allowances*
  - *Health & safety requirements*
  - *Procedures set out in the contract*

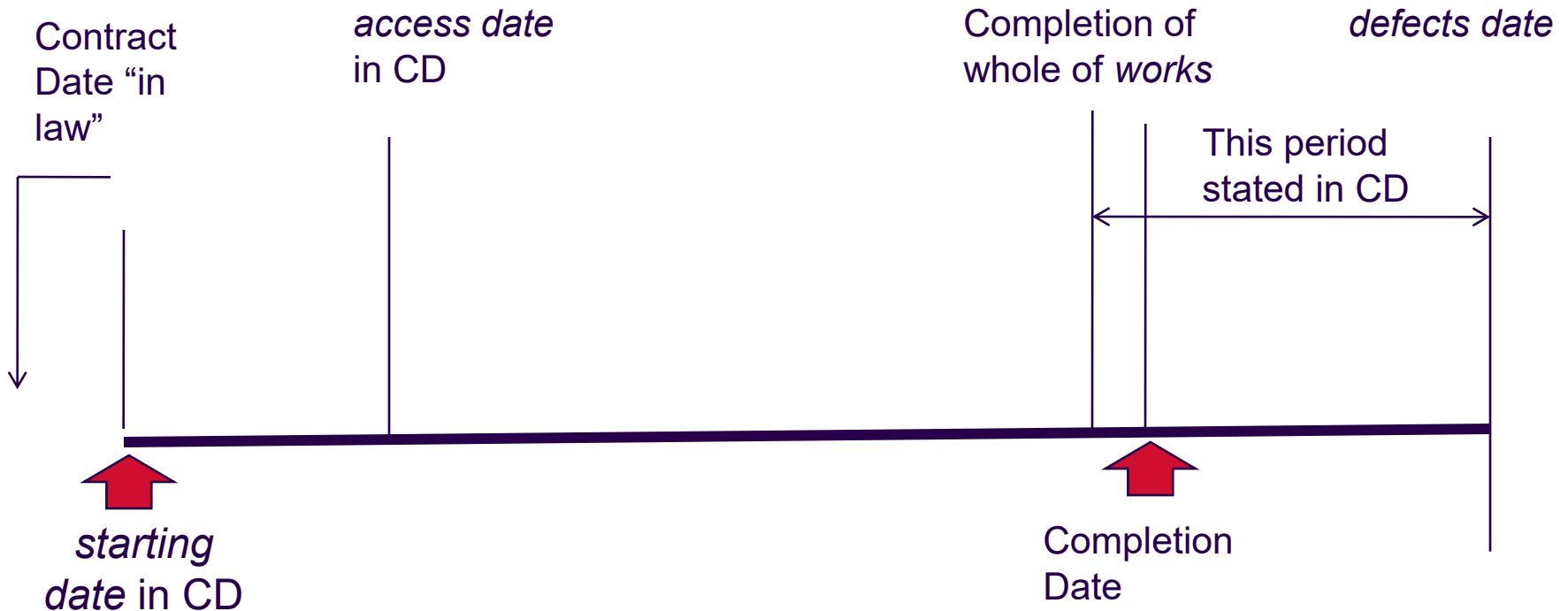
# Each programme shows...

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- Dates for access, acceptances, free issue Plant and Materials
- Information from Others
- For each operation how the *Contractor* plans to do the work with principal Equipment and other resources he plans to use
- Other information which Works Information requires
- Additional requirements for Options A & C



# Principal dates in ECC3



Completion Date is *completion date* in CD unless later changed

CD = Contract Data



# Compensation events ...

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- Many compensation events include in their definition reference to the Accepted Programme
- If information is not shown, or programme not accepted, compensation may not be due
- The *Contractor* can show float to his benefit, but only owns the terminal float

# Accepting & revising programmes

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**31.3** Within 2 weeks of receiving the *Contractor's* programme, the *Project Manager* **MUST** either accept or not for one of the listed reasons

- silence does not mean acceptance

**32.1** Lists what is to be shown on each revised programme

**32.2** When revised programmes are to be submitted for the *Project Manager's* acceptance

# Take over & testing

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## 35 Take over separate from Completion

- Option in Contract Data to not take over before the Completion Date
- Otherwise take over within 2 weeks of Completion. Risk in clause 80.1 passes on take over
- The *Project Manager* to certify within one week of it
- Works Information to state whether tests are to be done before or after Completion

# Suspension & acceleration

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**34. Suspension : could be a compensation event in 60.1(4) if not due to the Contractor's fault**

**36. Acceleration - not to deal with delays**

- If the *Employer* needs to bring the Completion Date forwards
- The *Contractor* provides a quotation; not a compensation event
- No criteria stated for acceptance hence subject to negotiation

# The end of NEC Jam Session 4



# Next NEC Jam Session

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## Session 5

- Section 4 - Testing & Defects (Quality)
- Risk Management



**Thank you for your  
participation**

**Feedback is welcome**

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