



Webinar: The new CIC BIM Protocol – what’s changed? Questions and Answers

Question	Answer
Is it possible using the protocol with other standards e.g. FIDIC White Book and can the reference clause be used as well?	The CIC Protocol is intended to be used with any form of contract with limited amendment. It could be incorporated into the FIDIC White Book by including the standard incorporation clause in the Particular Conditions. The order of precedence under clause 1.15 of the General Conditions and clause 2 of the FIDIC White Book 2017 should be considered to ensure that the Protocol has the intended effect and we suggest the Protocol is stated to take precedence over the General Conditions.
What is the recourse if information cannot be issued in accordance with the responsibility Matrix for other Task Teams and also for the Employer? What are the financial considerations relating to this?	There would typically be no direct contractual recourse between the Project Team Members in such circumstances (unless they have all entered into an alliancing or partnering type of multiparty contract). The other members of the project team will be entitled to an extension of time and additional payment as a result of the delay in the provision of the information, if their contractual terms provide for this. Similarly, if the circumstances which delayed the information being provided do not entitle the Project Team Member to an extension of time it is likely the Project Team Member will be in breach of contract and liable to the Employer.
If the new protocol ‘piggy backs’ on underlying agreements more, isn’t there an increased risk that the agreement between Tier 1 – sub contractors will not align where those piggy backs occur?	The extent to which there is inconsistency between the application of the Protocol across different tiers of the supply chain will be determined by the contracts in place. The use of BIM underlines the importance of subcontracts being back to back with the main agreement, as is usually the case in order to ensure a consistent approach is taken across the project. This is why the Protocol requires the Project Team Member to include equivalent obligations in any subcontracts. The risk you mention will only arise if the sub-contract does not include sufficient obligations to enable the Project Team Member appointing the sub-contractor to comply with the Protocol.
What is the state of the legal community’s understanding of BIM and the Protocol?	As highlighted by the Winfield-Rock Report, the legal community’s understanding of BIM (and the Protocol) could certainly improve. The position is improving but for BIM to be clearly reflected in contract documents it is important that legal teams try to gain a good understanding of the approach to BIM, rather than include general provisions based on precedents. We hope the Second Edition of the Protocol will encourage this approach.
Function state is defined by the suitability, why are they both referenced as independent items?	These items are separate to emphasise that both the functional state and the suitability should be taken into account when using BIM information. Although suitability may determine the functional state, the specific suitability and the general functional state should both be considered.
How should the Protocol be incorporated into NEC4 (if the NEC4 Option is also included)?	The Protocol can be used alongside Option X10 as detailed in the guidance note published by the NEC. This guidance identifies how the terms used in the Protocol relate to the different terms in Option X10. In our view, an incorporation clause based on that in the guidance to the Protocol should be included in the additional conditions of contract and the main body of the Protocol should be stated to form part of the additional conditions of contract, rather than the Scope as suggested in the NEC guidance. Otherwise a project manager’s instruction could amend the main body of the Protocol, which could increase the Project Team Member’s liability and obligations. Any overlap between the Protocol and the other conditions of contract should then be considered carefully and the contract should make clear (as is generally the case in NEC contracts) that the additional conditions of contract (including the Protocol) take priority over the conditions of contract in the event of any conflict.



<p>Why is the programme not referred against the MIDP? Now part of the appendix will provide the exact required date as part of the agreed programme?</p>	<p>Appendix 2 can identify whatever programme has been agreed. This could be the MIDP, a detailed programme with exact dates or a programme based on project stages.</p>
<p>How does the 2nd Edition deal with ownership of Federated Models?</p>	<p>The Project Team Members' contributions to the Federated Model fall within the definition of Material, so each contribution to a Federated Model will be owned by whoever owns the Material pursuant to clause 6.1.</p>
<p>PAS 1192-5 states that sensitive information 'IS' shared for the CDE but using heightened security protocols such as visibility/access based on security rating. How did this clause come about?</p>	<p>The Protocol provides a mechanism which enables the Sensitive Information to be dealt with in a different way to other information (as is stated in Appendix 3 or instructed by the BASM). The effect of this will depend upon the security protocols on the project. Whilst the Protocol does enable Sensitive Information to be provided outside the CDE, this is not compulsory and the Protocol can be used to introduce heightened security measures as you suggest.</p>
<p>Do parties need to expand on the references to Asset information Model?</p>	<p>The details of the assistance to be provided in respect of the Asset Information Model should be set out in Appendix 2. Asset owners should also discuss the approach to the Asset Information Model with their facilities management teams and reflect the intended approach in the contracts with any third party FM providers.</p>
<p>How does the protocol capture multiple EIRs? The client should have an EIR to their Tier 1, but the Tier 1 should have an EIR to their Tier 2 (they are the employer). How does this all get captured in the protocol is common between all appointments?</p>	<p>In the Tier 1 contract, the Tier 1 EIR should be identified in Appendix 1. Contracts further down the chain then need to include obligations which enable the Tier 1 contractor/consultant to comply with the Tier 1 EIR. This could be by reference to the relevant parts of the Tier 1 EIR or an amended version.</p>
<p>If Protocol takes precedence over JCT, is that only for particular clauses or (as per 1st Edition), taking precedence for all clauses?</p>	<p>For the whole Protocol to have effect all of the Protocol should be stated to take precedence as suggested in the guidance note. However, this is not essential for the Protocol to "work" and if this is not the agreed position the Agreement could state that only clauses 3, 4 and Appendices 1-2 take precedence.</p>