QUESTION 1. To help FCL out of this ‘quicksand’, critically assess and explain the approaches to change management, especially how the change is valued/assessed, under the NEC4 ECC and the FIDIC Red Book, 2017. Remember to compare and contrast the two approaches. [60% Weighting] 2. Identify and critically examine the contractual issues in the above scenario relating to change management and more specifically, the operation of the compensation event procedure under the NEC4 ECC. Remember to use authorities to support your analysis. [40% Weighting]

Scenario Forecasters Construction Limited (FCL), a Singaporean construction company, ventured into the UK construction market two years ago. The first project won by the group was a privately financed multi-purposed housing development in Aberdeen under the NEC4 ECC Contract Option A (without amendment save as is expressly mentioned in this scenario). Although very well known for their expertise in the use of FIDIC contracts in Singapore, this was the first time FCL had used the NEC4 ECC contract. According to the Contract data, the Client and the Contractor were to share design responsibilities. Part I of the Contract Data set out clearly each party’s responsibilities. FCL employed Accurate Designers to produce the required drawings. These were reviewed and approved by the designers engaged by the Client. Construction work commenced in mid-2019 and for the ensuing six months, FCL struggled to cope with the contract administration demands under the NEC4 ECC contract. FCL are used to the FIDIC terms, contractual language and approach. When it comes to the NEC4, they are particularly baffled by the extension of time and variation procedures under the NEC4 ECC contract. The project team from Singapore had heard of the NEC4 ECC contract but had assumed that they would be familiar with the processes, after all, both the FIDIC and the NEC contract forms have English origin and are for ‘big’ construction. Recently, the Project Manager had requested a quote in relation to a change event. Soon after the process for dealing with the quotes under the NEC4 ECC had been concluded, it became obvious to officials of FCL that the ‘estimates’ used were woefully inadequate. They are hoping that the work will be re-measured and valued at completion and the figures adjusted. On a related matter, the outcome of a compensation event process led by the Project Manager had taken a different view from FCL and ‘tweaked’ FCL’s provisional figures. FCL disagree with the outcome of the process and has recently commenced adjudication proceedings. In the course of the adjudication process, FCL have obtained the actual costs of the compensation events. These figures are higher than the provisional estimates previously provided to the Project Manager at the time of assessment. FCL sought to have the actual cost acknowledged and considered but the Adjudicator has hinted to them that, ‘that is not how the NEC4 ECC operates’. FCL do not understand what the adjudicator meant by this statement. There are other ‘claims’ outstanding from last year that FCL are yet to bring to the attention of the Project Manager. Most of these were ‘claims’ relating to events arising from Project Manager and Supervisor instructions.