DCMS

A SHORT GUIDE TO

The NEC4 Engineering and Construction Contract

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1.0 Introduction

1.1 Objective of this guide

The objective of this short guide is to provide new and existing users of the NEC4 Engineering and Construction Contract (NEC4 ECC) with an overview of its provisions and usage. To provide context, general information about the NEC contract forms, their philosophy, and history is also included. A recommended reading list is also provided in Chapter 14.

1.2 A modern form of contract

NEC contracts are modern forms of contract used for procuring works and services in the engineering and construction sector. The NEC forms are designed for the collaborative management of project risks within a legally binding agreement.

Originally designed and written by Dr Martin Barnes, the first edition of the New Engineering Contract was published by the Institution of Civil Engineers in 1993. The fourth edition of the contracts (NEC4), launched in 2017, is now one of the most widely used standard forms of contract in the UK and its use is growing internationally. The latest set of amendments for NEC4 was released in January 2023. This guide is based on the latest amendments.

1.3 Drafting convention

NEC contracts use italics to denote terms that are identified in the contract data and defined terms have capital initials. NEC contracts use terms unique to the contract and new users should ensure they understand their meaning. Defined terms are set out in clause 11.2. For ease of reading, all NEC contract terms used in this guide are written in lower-case, non-italic type, and their meanings are intended to be as defined and identified in the NEC4 ECC.

2.0 Philosophy and objectives of NEC contracts

In 1985 the Council of the Institution of Civil Engineers (ICE) gave its approval of the Legal Affairs Committee recommendation to undertake a fundamental review of contract strategies for the design and construction of civil engineering projects. The main objective of the review was to identify needs for good practice. In response the ICE, led by Dr, Martin Barnes, produced a specification for the new contracts with the following aims:

- Achieve a higher degree of clarity than existing contracts.
- Use simple, commonly occurring language and avoid legal jargon.
- Repeat identical phrases, if possible.
- Produce core conditions and exclude contract specific data, to avoid the need to change the core terms.
- Precisely and clearly set out key duties and responsibilities.
- Aim for clarity above fairness.
- Avoid including details that can be more adequately covered in a technical specification.

Implementing the aims of the specification, NEC contracts are drafted around three principal objectives:

- Flexibility
- Clarity
- Stimulus to good project management

2.1 Flexibility

NEC contracts provide for a range of procurement strategies, including:

- Traditional contracting (client design)
- Design and Build (contractor design)
- Early contractor involvement
- Design, Build and Operate
- Term service arrangements
- Alliancing (multi-party contract)
- Supply of goods
- Management contracting
- Facilities management

All NEC contracts include nine core clauses representing standardised terms. Users then have the option to use different commercial models, including fixed-price, target-cost, and cost-reimbursable contracts, by selecting the appropriate main option. Secondary options allow the parties to include additional contractual terms on a project-by-project basis. The secondary options have equal standing to the core clauses and main options and play an important role in risk allocation.

The core and main option clauses are purposely drafted to be non-jurisdictional allowing NEC contracts to be used globally. Laws governing security of payment and adjudication are provided for in optional Y and W clauses. Z clauses (additional conditions of contract) provide further flexibility.

There are no separate ‘build only’ or ‘design and construct’ versions of the contract. The NEC4 Engineering and Construction Contract is flexible in allocating design responsibility between the client and the contractor.

2.2 Clarity

NEC contracts are written with its users in mind. They are drafted in plain English avoiding latin terms and legal terminology. Sentences and paragraphs are shorter than those seen in traditional contracts, and there is no cross-referencing between the clauses. Bullet points are used to organise and structure the clauses, making what would otherwise be long, complicated clauses easier to read and understand.

A structured approach with core clauses, main and secondary options provides a logical framework for both preparation and use. Terms are defined at the start of the contract with project-specific information and documents identified in the contract data. An index provides a comprehensive list of key terms with clause references to help aid navigation. Despite this approach to simplicity and clarity, the parties will not readily understand NEC contracts or how to operate them without guidance and training.

2.3 Stimulus to good project management

NEC contracts are different from other forms of contract in many ways. A key difference, and one that sets it apart from traditional contracts, is that they incorporate the principles of good project management, requiring the parties to adhere to processes designed to manage time, cost and quality. Actions must be taken within prescribed timescales and there are contractual remedies for failing to comply.

The roles and responsibilities of the parties are defined with clear protocols for communication and powers of delegation. Submissions made by the supplier require objective decision making on behalf of the project manager with reasons for non-acceptance limited to those stated in the contract.
A detailed post-contract risk management regime is included in all long-form versions of the contract, comprising early warning notices and mandatory meetings to seek solutions to prevent or reduce matters.

Time management is a fundamental aspect of NEC contracts. Regular revisions to the programme submitted to the project manager for acceptance are required. Programmes must include an accurate record of completed work and a realistic forecast of the remaining work before acceptance is granted. The accepted programme is used to monitor progress, plan future activities, and serves as the basis for assessing any changes to the completion date due to compensation events.

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3.0 The NEC4 suite and usage

3.1 NEC4 suite

The publishers described the fourth edition as “an evolution not a revolution”. Feedback from NEC3 users, best practice and the latest legal developments formed the basis of changes made. There are twenty different contracts in the NEC4 suite, including new contracts for multi-party alliancing, design, build and operate, and facilities management.

The NEC4 suite of contracts comprises:

- Engineering and Construction Contract (ECC)
- Engineering and Construction Short Contract (ECSC)
- Engineering and Construction Subcontract (ECS)
- Engineering and Construction Short Subcontract (ECSS)
- Professional Service Contract (PSC)
- Professional Service Short Contract (PSSC)
- Professional Service Subcontract (PSS)
- Term Service Contract (TSC)
- Term Service Short Contract (TSSC)
- Term Service Subcontract (TSS)
- Supply Contract (SC)
- Supply Short Contract (SSC)
- Framework Contract (FC)
- Dispute Resolution Service Contract (DRSC)
- Design Build and Operate Contract (DBO)
- Alliance Contract (ALC)
- Facilities Management Contract (FMC)
- Facilities Management Subcontract (FMS)
- Facilities Management Short Contract (FMSC)
- Facilities Management Short Subcontract (FMSS)

3.2 Use of NEC contracts by the UK public sector

The catalyst for the UK Government’s endorsement of NEC contracts was the findings of Sir Michael Latham in his review of procurement and contractual arrangements published in the 1994 report “Constructing the Team”. The report commended the principles underlying the NEC contract and recommended its adoption by the public and private sectors. The UK Government Construction Board now recommend the use of NEC contracts. Since 1994, the NEC forms have become the first choice for many parts of the public sector, including central government, county and local councils. The NEC forms of contract have been used on notable projects, including the London 2012 Olympics, Heathrow Terminal 5, Crossrail (Elizabeth Line), High Speed 2, and Hinkley Point C.

3.3 International use of NEC contracts

NEC contracts are increasingly popular with clients outside the UK. According to the Hong Kong Government Development Bureau the value of works and services using NEC contracts between 2009 and 2021 was £16 billion. Other notable users include sporting venues for the Lima Pan America Games, Sydney Water’s £2.2 billion P4S investment programme for its water and wastewater assets. The NEC forms of contract are also used in South Africa, New Zealand and Singapore.

4.0 Structure of the NEC4 Engineering and Construction Contract

The NEC4 Engineering and Construction Contract (ECC) comprises standard clauses organised into several sections, with main and secondary options used to tailor the contract to the client's and project's requirements. To form a complete agreement, several additional documents are required.

4.1 Sections of the ECC standard form

The standard form of the NEC4 ECC includes the following sections that collectively form the conditions of contract:

- Core clauses
- Main option clauses
- Resolving and avoiding disputes options
- Secondary option Clauses
- Schedule of Cost Components
- Short Schedule of Cost Components
- Contract data

Additional contract conditions may be incorporated by including Z clauses (option Z).

The NEC do not include a Form of Agreement within the contract, but it does provide a template in its User Guides.

4.2 Scope

The scope sets out the requirements, constraints, and expectations for the work to be carried out. It defines what the contractor is to do and, where applicable, what parts of the works are to be designed by the contractor. The scope can include technical specifications, drawings, performance criteria, procedures, and design standards. The client's scope is referenced in contract data part one and scope provided by the contractor may be referenced in contract data part two. A well-prepared scope enhances clarity, reduces ambiguity, and mitigates the risk of disputes by making the parties' responsibilities and expectations explicit.

4.3 Site Information

The site information is prepared by the client with the purpose of providing details about the physical conditions of the site and its surrounding areas that are known to the client at the time of tender. The site information describes the site and its surroundings (clause 11.2(18)) and is the primary document used to assess compensation events for unforeseen physical conditions (clause 60.2).

4.4 Other documents required, depending on contract strategy

In addition to the scope and site information, other documents and information may be required, depending on the client's contract strategy and the chosen main and secondary options. These documents should be referenced in the contract data or provided in the scope. The other documents, when relevant to the contract, that should also be referenced in contract data are:

- Programme
- A priced activity schedule (options A and C)
- A priced bill of quantities (options B and D)
- Information execution plan (X10)
- Schedule of Partners, including the key performance indicators (X12)
- Incentive schedule including key performance indicators (X20)
- The climate change plan (X29)
- Performance table (X29)

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The documents and information that should be referenced in the scope are:

- The form of the ultimate holding company guarantee (option X4)
- The forms of the undertakings to the client and others (option X8)
- Information Model Requirements (X10)
- The form of the performance bond (X13)
- The form of the retention bond (X16)
- Climate change requirements including the climate change partners (X29)

4.5 Core clauses

The core clauses form the foundation of all NEC4 contracts and apply to whichever main and secondary options are chosen. The nine core clauses of the NEC4 ECC are:

1 General
2 The contractor's main responsibilities
3 Time
4 Quality management
5 Payment
6 Compensation events
7 Title
8 Liabilities and insurance
9 Termination

4.6 Main (payment) option clauses

There are six main options available in the NEC4 ECC of which one is chosen. The main option clauses are combined with the core clauses, the option for resolving and avoiding disputes and any secondary options to form the conditions of contract. The main option represents the payment mechanism for the contract and is the principal means by which the risk of cost is allocated between the parties. It is often referred to as the payment option. The main options in the NEC4 ECC are:

- 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

4.7 Resolving and avoiding disputes

The NEC4 ECC provides three options that set out the procedures for resolving and avoiding disputes: option W1, which is used when the Housing Grants, Construction and Regeneration Act 1996 does not apply; option W2, which is used when it does; and option W3, which provides for a dispute avoidance board and is used when the Act does not apply.

4.8 Secondary (X) option clauses

In addition to the main option, the parties may include secondary X options in their contract. It is not mandatory to include any of these options, although in practice it is unlikely that none would be used. The secondary options enable further refinement of contractual risk allocation and the inclusion of

additional features to incentivise and facilitate effective project management. The secondary options available for use with the NEC4 ECC are:

- X1: Price adjustment for inflation (used only with options A, B, C and D)
- X2: Changes in the law
- X3: Multiple currencies (used only with options A and B)
- X4: Ultimate holding company guarantee
- X5: Sectional completion
- X6: Bonus for early completion
- X7: Delay damages
- X8: Undertakings to the client or others
- X9: Transfer of rights
- X10: Information modelling
- X11: Termination by the client
- X12: Multiparty collaboration (not used with option X20)
- X13: Performance bond
- X14: Advanced payment to the contractor
- X15: The contractor's design
- X16: Retention (not used with option F)
- X17: Low performance damages
- X18: Limitation of liability
- X20: Key Performance Indicators (not used with option X12)
- X21: Whole life cost
- X22: Early contractor involvement (used only with options C and E)
- X29: Climate change

4.9 Secondary (Y) option Clauses

There are three Y options available for use with the NEC4 ECC:

- Y(UK)1: Project Bank Account
- Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996
- Y(UK)3: The Contracts (Rights of Third Parties) Act 1999

4.10 Contract data

Contract data contains the contract-specific information required to activate and operate the contract's mechanisms within the project. Contract data is in two parts. Part one is completed by the client and includes data such as the starting date, completion date, and the selected main option, option for resolving and avoiding disputes and secondary options. Part two is completed by the contractor and includes details such as the fee percentage, the key persons, any scope provided by the contractor for its design, the programme and the pricing information. Although not part of the scope, contract data includes references to the documents that comprise the scope, site information, and pricing documents such as the activity schedule or bill of quantities.

4.11 Z clauses – additional conditions of contract

Option Z clauses in the NEC4 ECC are drafted by the parties to address project-specific requirements not covered by the standard clauses. Strictly speaking, Z clauses are intended to be additional conditions, but in practice, they are also used for bespoke amendments. They are not part of the published contract and are used to reflect particular legal, commercial, or operational needs. Z clauses require careful drafting to avoid conflicts with existing NEC provisions or unintended legal

consequences. Improper or excessive use of Z clauses can undermine the clarity and collaborative ethos of NEC contracts, thereby increasing the potential for disputes.

4.12 Activity schedule

The activity schedule is a pricing document used with options A and C of the NEC4 ECC that breaks down the works into discrete activities, each with a lump sum price. Under option A, the price for work done to date is the total of the prices for each completed activity, so the contractor is paid upon completion of each activity listed in the schedule, making it a key mechanism for managing cash flow and performance. Under option C, the total of the activity prices forms the target against which the contractor's share is calculated. Information in the activity schedule is not scope or site information (clauses 55.1 and 55.2). The activity schedule must align with the scope and be structured to support the programme.

4.13 Bill of quantities

The bill of quantities is the pricing document used under options B and D. Usually prepared by the client, it lists the items of work and their estimated quantities, measured using standard methods such as CESMM4 or NRM2. The contractor prices each item, and these prices form part of the tender. Information in the bill of quantities is not scope or site information (clause 56.1), and, unlike traditional contracts, its rates are not automatically used to assess compensation events unless the project manager and the contractor agree (clause 63.2). It is particularly suited to projects where the scope is well-defined and the design is largely complete at tender stage.

4.14 Programme

The programme is a vital management tool that sets out how and when the contractor intends to carry out the works. It is not merely a schedule of activities but a document that must be regularly updated to reflect progress, changes, and the effects of compensation events. The programme includes key information such as work sequences, timing, float, critical path, and resource usage. It serves as both a planning tool and a contractual record, enabling proactive risk management for both parties.

The project manager uses the accepted programme to assess the impact of changes on time, including delays or acceleration. A well-maintained programme is essential for effective contract management and achieving project objectives.

More information on the accepted programme and the management of time is available in Chapter 7.

5.0 General provisions

5.1 Actions

Clause 10.1 requires the client, contractor, project manager, and supervisor to carry out the actions assigned to them under the contract, thereby establishing that all stated duties are contractual obligations. Core clause 10.2 then provides that they act in a spirit of mutual trust and co-operation. Complying with this obligation supports proactive, collaborative management processes within the NEC4 ECC but does not alter the specific rights, responsibilities, or liabilities set out elsewhere in the contract.

5.2 Communications

Core clause 13 sets out the mandatory requirements for all communications under the contract and links them to the operation of the management processes. Communications must be in a form that can be read, copied and recorded and are written in the language of the contract (clause 13.1).

Where the scope specifies a communication system, a communication only has effect when issued through that system; otherwise, it takes effect when it is received at the last address notified by the recipient or, if none is notified, at the address stated in the contract data (clause 13.2). Replies required by the contract are given within the period for reply (clause 13.3), which the project manager may extend if the project manager and the contractor agree before the reply is due (clause 13.5).

When the project manager does not accept a submission, reasons must be given in sufficient detail so the contractor can correct the matter when resubmitting (clause 13.4). The project manager issues certificates to the client and the contractor, and the supervisor issues certificates to the project manager, the client and the contractor (clause 13.6). Notifications and certificates are communicated separately from other communications (clause 13.7). Withholding acceptance for a reason stated in the contract is not a compensation event (clause 13.8).

5.3 The project manager and supervisor

The project manager and supervisor are appointed by the client to manage the contract, although their roles are primarily procedural. The project manager and supervisor should act within their delegated authority and, for the majority of decisions, act impartially. The project manager acts as the primary communication hub between the client and the contractor. The role includes issuing instructions, accepting the contractor’s programme, assessing compensation events, certifying payments, managing early warnings and early warning meetings, and deciding the date of completion.

The supervisor’s role is to check that the works are provided in accordance with the scope. The supervisor carries out tests and inspections, notifies defects and may instruct the contractor to search for a defect. At the end of the contract, the supervisor issues a defects certificate listing any uncorrected defects or a statement that all notified defects have been corrected. The supervisor’s function is independent quality assurance and compliance, separate from the project manager’s role.

Core clause 14 defines the authority of the project manager and the supervisor and clarifies how their actions affect the contractor’s obligations. Acceptance of a communication or of the work by the project manager or supervisor does not transfer responsibility for providing the works or for design to them; the contractor remains fully liable (clause 14.1).

The project manager and the supervisor may delegate any of their actions, and later cancel that delegation, by notifying the contractor, although they retain the right to act themselves (clause 14.2).

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The project manager has the authority to issue instructions which change the scope or a key date (clause 14.3). The client may replace either the project manager or the supervisor by notifying the contractor (clause 14.4).

5.4 Early warnings

Core clause 15 provides a structured and collaborative mechanism for proactive risk management during the contract.

The contractor and the project manager are required to give an early warning as soon as either becomes aware of any matter which could increase the total of the prices, delay completion or a key date, or impair the performance of the works in use (clause 15.1). The project manager records notified matters in the early warning register and issues the first register within one week of the starting date, together with an instruction to attend the first early warning meeting within two weeks of the starting date. Further meetings are held at the stated intervals or when instructed, with other participants, including subcontractors, attending where this would assist (clause 15.2).

The purpose of the early warning meeting is for those attending to co-operate in identifying and evaluating options to avoid or reduce the effects of the notified matters, agree the actions to be taken and decide who will take them in accordance with the contract (clause 15.3). The project manager revises the early warning register to record the decisions made and issues the revised register within one week of each meeting, giving any necessary instruction to change the scope at the same time (clause 15.4).

5.5 Contractor's proposals

Clause 16.1 allows the contractor to propose changes to the scope in order to reduce the amount the client pays for providing the works. When a proposal is submitted, the project manager consults with both the client and the contractor and, within four weeks, either

- accepts the proposal and issues an instruction changing the scope,
- informs the contractor that the client is considering it and instructs the contractor to submit a quotation for a proposed instruction to change the scope, or
- rejects the proposal, giving any reason for doing so (clause 16.2).

If an accepted proposal reduces the total defined cost, the saving is shared in accordance with the main option. Under options A and B, the prices are reduced by only the value engineering percentage of the saving, which is 50% unless another percentage is stated in the contract data (clause 63.12). Under options C and D, the prices are not reduced and the saving is shared through the contractor's share mechanism (clause 63.13). This process provides a structured mechanism for value engineering while retaining the client's control over whether the change is implemented.

Clause 16.3 allows the contractor to propose the addition of working areas for acceptance by the project manager. A proposal is not accepted if the area is unnecessary for providing the works or is to be used for activities not included in the contract.

5.6 Ambiguities and inconsistencies

Clause 17.1 requires the project manager and the contractor to notify each other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The project manager then states how the ambiguity or inconsistency should be resolved, which may involve an instruction changing the scope (clause 14.3).
Such an instruction is a compensation event (clause 60.1(1)) unless it changes the scope provided by the contractor for its design in order to comply with the scope provided by the client. The

compensation event is assessed as if the prices, the completion date and the key dates were for the interpretation most favourable to the party which did not provide the scope (clause 63.10). Clause 17.2 applies a similar notification requirement where the scope includes an illegal or impossible requirement.

5.7 Prevention

Clause 19.1 describes a prevention event. It applies where an event stops completion of the whole of the works or prevents completion by the planned completion shown on the accepted programme. The event must be one which neither party could prevent and which an experienced contractor would have considered so unlikely at the contract date that it would have been unreasonable to allow for it.

In such circumstances, the project manager instructs on how the event is to be dealt with, taking control of the contractual response. A qualifying prevention event is a compensation event (clause 60.1(19)), and the client may terminate if the event is forecast to delay completion of the whole of the works by more than thirteen weeks (clause 91.7, reason R21).

6.0 The contractor's main responsibilities

6.1 Compliance with the scope

Clause 20.1 imposes a primary obligation on the contractor to deliver the project by requiring that the works be provided in accordance with the scope. This means the contractor must carry out all the work necessary to complete the works and meet the contractual requirements as defined in the scope. This establishes the scope as the fundamental benchmark for quality compliance of the works.

6.2 Contractor's design

Clause 21.1 states that the contractor designs the parts of the works (permanent works) which the scope states it is to design. The contractor submits the particulars of its design, as the scope requires, to the project manager for acceptance, and a reason for not accepting is that the design does not comply with the scope or the applicable law. The contractor does not proceed with the relevant work until the project manager has accepted its design (clause 21.2), although the design may be submitted in parts if each part can be assessed fully (clause 21.3).

Clause 23.1 states that the contractor is responsible for the design of equipment (temporary works). Submission of these designs to the project manager is triggered by an instruction from the project manager. Unlike the design of the works, the contractor is not required to wait for the project manager's acceptance before proceeding with the relevant work.

6.3 Working with the client and others

Clause 25.1 requires the contractor to co-operate with others by obtaining and providing the information they need for the works and by sharing the working areas to the extent stated in the scope.

Clause 25.2 provides that both the client and the contractor supply the services and other things stated in the scope. If the contractor fails to provide what it is required to provide, the project manager assesses the resulting cost to the client and this is paid by the contractor, whereas failure by the client is dealt with as a compensation event (clause 60.1(3)).

Clause 25.3 makes the contractor liable for the additional cost the client incurs if the Condition for a key date is not met by the required date, this recovery being the client's sole remedy in those circumstances.

6.4 Subcontracting

Under clause 26.1, the contractor remains fully liable for the performance of the subcontracted work as if it had carried it out itself, and the contract operates as though the subcontractor's people and equipment were those of the contractor.

Clause 26.2 requires the contractor to submit the name of each proposed subcontractor to the project manager for acceptance. A reason for not accepting the proposed subcontractor is that its appointment would not allow the contractor to Provide the Works in accordance with the contract.

Clause 26.3 requires the contractor to submit the proposed subcontract documents, except any pricing information, to the project manager for acceptance, unless the subcontract is an unamended NEC contract or the project manager has agreed that no submission is required. A reason for not accepting them is that their use will not allow the contractor to provide the works or that they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation.

Under the cost-based main options C, D, E and F, the contractor also submits the pricing information in the proposed subcontract documents to the project manager, unless the project manager has agreed that no submission is required (clause 26.4).

7.0 Time and the Accepted Programme

7.1 Starting, completion and key dates

Core clause 30 sets out the time framework for starting the works, achieving completion and meeting any key dates. The contractor does not start work on the site until the first access date and does the work so that completion is on or before the completion date (clause 30.1). Completion is defined by the state of the works in accordance with its defined term (11.2(2)) and the scope. The project manager decides the date of completion and certifies it within one week of that date (clause 30.2).

Where key dates are stated in contract data, the contractor plans and carries out the works so that the specified condition is met by each key date (clause 30.3). If the condition for a key date is not met and the client incurs additional cost as a result, that cost is recoverable from the contractor (clause 25.3).

7.2 The first programme and revised programmes

Clauses 31 and 32 establish the obligation to plan the works through an accepted programme and the process for keeping that programme up to date. If a programme is identified in the contract data, it is the accepted programme (clause 11.2(1)). Otherwise, clause 31.1 requires the contractor to submit a first programme to the project manager for acceptance within the period stated in the contract data.

Clause 31.2 sets out the information the programme must show, including:

- the starting date, access dates, key dates, the completion date and planned completion,
- the order and timing of the operations the contractor plans to do and of the work of the client and others,
- provisions for float, time risk allowances, health and safety requirements and the procedures set out in the contract,
- a statement of how the contractor plans to do each operation, identifying the principal equipment and other resources which will be used, and
- the dates when the contractor will need access to parts of the site, acceptances, plant and materials and other things to be provided by the client, and information from others.

Clause 31.3 requires the project manager to notify acceptance or non-acceptance, with reasons, within two weeks, so that the programme can become the accepted programme or be corrected and resubmitted. If the project manager fails to reply and the failure continues for one week after the contractor has notified it, the programme is treated as accepted.

Clause 32.1 requires each revised programme to show the actual progress achieved on each operation and its effect on the timing of the remaining work, how the contractor plans to deal with any delays and to correct notified defects, and any other changes it proposes to make to the accepted programme.

Clause 32.2 requires the contractor to submit a revised programme for acceptance when instructed to (within the period for reply), when it chooses to and, in any case, at no longer interval than that stated in the contract data until completion of the whole of the works. Together these clauses make the programme the central management tool for time, risk and change under the contract.

7.3 Ownership of float, time risk allowances and terminal float

Float
Float, although not defined by the NEC4 ECC, represents spare time available for use in the programme before planned completion is affected. Float is shared between the client and the contractor and is available to absorb the contractor's own delays (contractor risk) and the effect of compensation events (client risk), whichever occurs first.

Time risk allowances
Time risk allowances cover the contractor's risks under the contract and are included with the duration of the operations shown on the programme. Time risk allowances are retained by the contractor when assessing the time effects of compensation events.

Terminal float
The period between planned Completion and the Completion Date is commonly called terminal float and is effectively owned by the contractor by virtue of the assessment rule for compensation events as set out in clause 63.5.

7.4 Take over

Clause 35 deals with take over. Unless the contract data states that the client is not willing to take over the works before the completion date, the client takes over the works not later than two weeks after completion (clause 35.1). The client may use any part of the works before completion has been certified, and it takes over that part when it begins to use it, unless the use is for a reason stated in the scope or to suit the contractor's method of working (clause 35.2). The project manager certifies the date of take over and the extent of the part taken over within one week of that date (clause 35.3). From take over, loss of or damage to the part taken over is generally a client's liability (clause 80.1).

If the project manager certifies take over of a part of the works before both completion and the completion date, this is a compensation event (clause 60.1(15)).

7.5 Acceleration

Core clause 36 outlines a process for agreeing an acceleration to achieve completion before the completion date. Either the contractor or the project manager may propose an acceleration. If both are prepared to consider it, the project manager instructs the contractor to submit a quotation, which comprises proposed changes to the prices and a revised programme showing the earlier completion date and any changed key dates. The contractor submits the quotation within three weeks and the project manager replies within three weeks, either accepting it or notifying that it is not accepted.

Acceleration is a mutual process that only takes effect once the project manager accepts the contractor's quotation, changes the prices, the completion date and the key dates and accepts the revised programme (clause 36.3). The process is managed by the project manager and the contractor, but in practice, will inevitably involve the client. An agreement to bring forward the completion date under clause 36 is not a compensation event.

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8.0 Quality Management

8.1 Quality management system

Clause 40.1 requires the contractor to operate a quality management system that complies with the requirements stated in the scope. Within the period stated in the contract data, the contractor is also required to provide a quality policy statement and a quality plan for acceptance and, if the quality plan is changed, to provide the changed plan for acceptance (clause 40.2). The project manager may instruct the contractor to correct a failure to comply with the quality plan, and this instruction is not a compensation event (clause 40.3).

8.2 Tests and inspections

The procedure for carrying out tests and inspections is set out in core clause 41, which applies only to tests and inspections required by the scope or the applicable law (clause 41.1). The contractor and the client provide the materials, facilities and samples for tests and inspections as stated in the scope (clause 41.2). The contractor and the supervisor are required to inform each other of each of their tests and inspections before it starts and afterwards inform the other of the results (clause 41.3).

If a test or inspection shows that any work has a defect, the contractor corrects the defect and the test or inspection is repeated (clause 41.4). The project manager assesses the cost incurred by the client in repeating the test or inspection, and the contractor pays this amount (clause 41.6).

Clause 41.5 requires the supervisor to carry out the tests and inspections it is responsible for without causing unnecessary delay to the work or to any payment that is conditional upon a test or inspection being successful. Where a payment is conditional on a supervisor's test or inspection being successful, that payment becomes due at the later of the defects date and the end of the last defect correction period, provided (i) the supervisor has not done the test or inspection and (ii) the delay is not the contractor's fault.

8.3 Searching for and notifying of defects

The contractor is not obliged to search for defects unless the supervisor instructs it to do so (clause 43.1). When such an instruction is given, the contractor carries out the search and the resulting cost is allocated according to the outcome. If a defect is found, the cost is borne by the contractor. If no defect is found, the instruction is treated as a compensation event (clause 60.1(10)), unless the search is needed only because the contractor gave insufficient notice of doing work which obstructed a required test or inspection.

Clause 43.2 deals with the identification of defects by requiring the supervisor and the contractor to notify the other of a defect as soon as it is found.

8.4 Correcting defects

Clauses 44.1 to 44.4 set out the contractor's obligation to correct defects. The contractor corrects a defect whether or not the supervisor has notified it (clause 44.1), and corrects a notified defect before the end of the defect correction period, which begins at completion for defects notified before completion and when the defect is notified for other defects (clause 44.2).

The supervisor issues the defects certificate at the defects date if there are no notified defects or, otherwise, at the earlier of the end of the last defect correction period and the date when all notified defects have been corrected (clause 44.3). If access to a part of the works which has been taken over is needed for the contractor to correct a defect, the project manager arranges for the client to allow it (clause 44.4).

8.5 Accepting defects

Clause 45 provides a mechanism for the scope to be changed so that a defect does not have to be corrected. Either the contractor or the project manager may propose such a change (clause 45.1). If both are prepared to consider it, the contractor submits a quotation for reduced prices, an earlier completion date or both. If the quotation is accepted, the project manager changes the scope, the prices and the completion date accordingly and accepts the revised programme (clause 45.2).

These provisions allow the works to remain in place where correction is unnecessary or uneconomic, while ensuring that the client benefits from a corresponding reduction in the prices or the completion date.

8.6 Uncorrected defects

Core clause 46 covers defects which remain uncorrected. If the contractor is given access to correct a notified defect but does not correct it within its defect correction period, the project manager assesses the cost to the client of having the defect corrected by other people and the contractor pays this amount (clause 46.1). If the contractor is not given access to correct a notified defect before the defects date, the project manager assesses the cost to the contractor of correcting it and the contractor pays this amount (clause 46.2). In both cases the scope is treated as having been changed to accept the defect.

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9.0 Payment and the main options

9.1 Assessing the amount due

The process by which the amount due is assessed at each assessment date is set out in clause 50.1. The first assessment date is decided by the project manager to suit the procedures of the parties and is not later than the assessment interval after the starting date. Subsequent assessments take place at the end of each assessment interval until the supervisor issues the defects certificate or the project manager issues a termination certificate. It is a payee-led process, and assessments are carried out by the project manager.

The project manager assesses the amount due using the price for work done to date together with other amounts to be paid to the contractor and subtracts amounts to be paid by or retained from the contractor (clause 50.3). Amounts retained from the contractor include retention under secondary option X16. Assessment of the price for work done to date depends on the main option.

The contractor is required to submit an application for payment before each assessment date, showing the amount it considers due and how it was calculated (clause 50.2). The project manager takes this application into account but makes an independent assessment and then certifies the payment, stating the basis for the assessment. If the contractor does not submit an application, the amount due is the lesser of the project manager's assessment and the amount due at the previous assessment date (clause 50.4).

Clause 50.5 states that, if no programme is identified in the contract data, the project manager retains one quarter of the price for work done to date in assessing the amount due until the contractor has submitted its first programme for acceptance, showing the information the contract requires. This reinforces the importance of the accepted programme and is intended to motivate the contractor to ensure a timely submission of a compliant first programme.

Clause 50.6 requires the project manager to correct any incorrectly assessed amount due in a later payment certificate. Interest is then paid on the correcting amount (clause 51.3).

9.2 Payment

The rules and procedures for certifying and making payment are set out in clause 51. This part of the contract should be read together with the provisions of Y(UK)2, where the secondary option applies.

The project manager certifies payment within one week following each assessment date, stating the amount due and the basis for its calculation. The first payment is for the full amount due and each subsequent payment is the change in the amount due since the previous assessment. The client then pays the certified amount within three weeks of the assessment date or within a different period if stated in the contract data (clause 51.2).

Payments are made in the currency of the contract unless otherwise stated in the contract (clause 51.1). Interest is payable on late payment (clause 51.2), calculated on a daily basis at the interest rate and compounded annually (clause 51.4).

9.3 Final assessment

Assessing and certifying the final amount due under the contract and for giving that assessment contractual finality is provided for under clause 53.

The project manager is required to assess the final amount due and certify a final payment, if any is due, no later than four weeks after the supervisor issues the defects certificate or thirteen weeks after

the project manager issues a termination certificate. The assessment must show how the final amount has been calculated and any balance is then paid within three weeks of the assessment, or within a different period if stated in the contract data (clause 53.1).

If the project manager does not make this assessment within the required time, the contractor may issue its assessment to the client for agreement and payment (clause 53.2).

If the assessment is not challenged through the dispute resolution procedure within the timescales stated for the option used (W1, W2 or W3), it becomes conclusive evidence of the final amount due and cannot later be reopened (clause 53.3).

9.4 Defined cost

Defined cost is a term which varies depending on the main option. Defined cost is the assessment basis for compensation events and, under the cost-based main options, for payment.

Under options C, D, E, and F, the amount due is assessed as the defined cost plus the fee. The term is also used to describe costs included in the assessment of compensation events. For options C, D and E, defined cost is the cost of the components in the schedule of cost components less disallowed cost (clause 11.2(24)).

For main options A and B, defined cost is the cost of the components in the short schedule of cost components (clause 11.2(23)) and is used only for the assessment of compensation events.

9.5 Disallowed Cost

Disallowed cost is a cost the contractor has incurred but the contract does not allow to be included in the defined cost, and therefore the client does not pay it. The items of cost which are disallowed are listed in clause 11.2(26)/(27). Disallowed cost applies only to the cost-based contracts main options C, D, E and F, where payment is based on defined cost plus the fee. It does not apply to options A and B.

9.6 Schedule of cost components

The schedule of cost components is used with the cost-based contracts (options C, D, and E) to define which costs the contractor is reimbursed for and to assess the value of compensation events. The schedule comprises eight components of cost:

1. People
2. Equipment
3. Plant and Materials
4. Subcontractors
5. Charges
6. Manufacture and fabrication
7. Design
8. Insurance

9.7 Short schedule of cost components

The short schedule of cost components is used with the priced contracts (options A & B) to assess the value of compensation events only. The short schedule also has eight cost components, but the coverage differs from that of the “long” schedule.

10.0 Compensation events

10.1 General

Compensation events are events that, provided they do not arise from the contractor's fault, give the contractor an entitlement to be compensated. In other words, compensation events are client risk items under the contract. Compensation events are assessed for their effect on both time and money. This means the prices, completion date, and any key dates included in the contract are reassessed. Whilst a compensation event will frequently increase the amount due to the contractor, it can equally result in a reduction.

Compensation events are covered by core clause 6 of the NEC4 ECC and are divided into seven sub-clauses:

- A list of compensation events (clause 60)
- Notification (clause 61)
- Quotations (clause 62)
- Assessments (clause 63)
- project manager's assessments (clause 64)
- Proposed instructions (clause 65)
- Implementation (clause 66)

10.2 Compensation events

Core clause 60.1 sets out the principal events which entitle the contractor to a change to the prices, the completion date and any key dates when they arise and are not the contractor's fault. The list includes matters such as instructed changes to the scope, failure by the client to allow access to the site or to provide something by the dates shown on the accepted programme, failure by the project manager or supervisor to reply to a communication within the period required, and the client or others not working within the times shown on the accepted programme. It also includes correction of earlier project manager assumptions, take-over before completion, and any breach of contract by the client.

The clause further transfers to the client the risk of unforeseeable physical conditions and exceptionally adverse weather measured against the weather data (clauses 60.1(12) and 60.1(13)). It also covers a prevention event (clause 60.1(19)) meeting the strict NEC test for neither party being able to prevent it, and the situation where the project manager does not accept a quotation for a proposed instruction. Finally, it allows additional compensation events to be recorded in the contract data, ensuring the risk profile can be tailored to the specific contract.

Compensation events are also found in:

- Main options B and D (clauses 60.4 to 60.7)
- Changes in the law (X2.1)
- Multiparty collaboration (X12.3(6) and X12.3(7))
- Advance payment to the contractor (X14.2)
- The contractor's design (X15.2)
- Suspension of performance (Y2.5)

10.3 Notifying compensation events

Core clause 61 establishes the procedure and time limits for notifying compensation events and determining whether they are to be assessed. Where a compensation event arises from an instruction, certificate, notification or changed decision of the project manager or supervisor, the project manager is required to notify the contractor at the time of that communication (clause 61.1) and, unless the event is the contractor's fault or has no effect on defined cost, completion or a key date, instructs the contractor to submit quotations (clause 61.2).

For all other events, the contractor must notify the project manager if it believes a compensation event has occurred and it has not already been notified. This notification must be given within eight weeks of the contractor becoming aware of the event, otherwise there is no change to the prices, the completion date or a key date, unless the event arises from the project manager or supervisor giving an instruction or notification, issuing a certificate or changing an earlier decision (clause 61.3).

The project manager is required to reply to the contractor's notification within one week, or a longer period agreed by the contractor, either confirming that the event is a compensation event and instructing quotations or rejecting it with reasons. If the project manager fails to reply and the failure continues for a further two weeks after the contractor notifies it, this is treated as acceptance that the event is a compensation event and an instruction to submit quotations (clause 61.4). Assumptions may be stated by the project manager for uncertain effects (clause 61.6). The impact of the contractor's failure to give an early warning is recorded (clause 61.5) and such failure may affect the extent of the contractor's entitlement to a change in the prices and the completion date (clause 63.7). Compensation events are not notified after the defects certificate has been issued (clause 61.7).

10.4 Quotations and assessments

Core clauses 62 and 63 set out the mechanism for pricing and time-assessing compensation events through a prospective, programme-based approach in which the contractor's quotation becomes the primary method of adjustment.

Quotations comprise proposed changes to the prices and any delay to the completion date and key dates assessed by the contractor, together with details of the assessment and any alterations to the accepted programme (clause 62.2). The contractor is required to submit quotations within three weeks and the project manager replies within two weeks by accepting the quotation, instructing a revised quotation with reasons or notifying that the project manager will make the assessment (clause 62.3). The time limits may be extended by agreement (clause 62.5). If the project manager fails to reply and the failure continues for a further two weeks after the contractor's notification, the quotation is treated as accepted (clause 62.6).

Clause 63.1 provides that changes to the prices are assessed as the effect of the compensation event on defined cost plus the Fee with the dividing date between actual cost and forecasts linked to the relevant notification or instruction. Rates or lump sums may be used by agreement (clause 63.2). The prices are reduced only in limited circumstances, such as certain changes to the scope or a corrected assumption (clauses 63.3 and 63.4). Time effects are assessed by the delay to planned completion shown on the Accepted programme current at the dividing date (clause 63.5).

10.5 Project manager's assessments

Core clause 64 sets out when the project manager makes the assessment of a compensation event instead of accepting a contractor's quotation and establishes the time limits and consequences of failing to do so. The project manager carries out the assessment where

- the contractor has not submitted a quotation within the period required,
- the quotation has not been prepared in accordance with the contract and the project manager has not instructed submission of a revised quotation,
- the contractor has failed to submit a programme or programme alterations required for the assessment and
- where the latest programme has not been accepted for a reason stated in the contract.

10.6 Proposed instructions

Core clause 65 provides a mechanism for the project manager to obtain a prospective assessment of the cost and time effect of a possible instruction before deciding whether to issue it. The project manager may instruct the contractor to submit a quotation for a proposed instruction and states the date by which the instruction may be given. Until an instruction is actually issued, the contractor does not put the proposed change into effect.

The contractor submits the quotation within three weeks, and it is assessed in the same way as a compensation event. By the stated decision date, the project manager either requests a revised quotation with reasons, issues the instruction and accepts the quotation, or notifies that the quotation is not accepted. If no reply is given within that period, the quotation is treated as not accepted.

Where the quotation is not accepted, but the project manager later decides to proceed, the instruction is issued, notified as a compensation event, and the normal compensation event procedure for obtaining a quotation then applies.

10.7 Implementation

Clause 66 addresses the final stage of the compensation event procedure and concerns the formal implementation of the event rather than the execution of the changed work.

Implementation occurs when the project manager

- accepts the contractor's quotation,
- when a quotation is treated as accepted, or
- when the project manager makes their own assessment.

At the point of implementation the compensation event is closed and the prices, the completion date and any affected key dates are changed accordingly (clause 66.2). Under main options A and C, assessments of changed prices are in the form of changes to the activity schedule, and under options B and D they are in the form of changes to the bill of quantities, so they can be taken into account in subsequent assessments for payment. For options C and D, changes to the prices result in a revised target. Once implemented, the assessment of a compensation event is not revised except as stated in the conditions of contract (clause 66.3), although it may still be referred through the dispute resolution procedures.

11.0 Title and Intellectual Property Rights

11.1 Plant and materials outside the working areas

Clause 70.1 states; 'Whatever title the contractor has to plant and materials which are outside the working Areas passes to the client if the supervisor has marked them as for the contract.' Clause 70.1 mirrors the position in English law that title cannot be transferred from the contractor to the client if the contractor does not have good title – see Sale of Goods Act 1979 S 21(1) and Supply of Goods and Services Act 1982 s 2. Title is transferred upon the action of marking by the supervisor and not by payment.

The contractor must allow the supervisor access to plant and materials being stored for the contract (clause 27.2). The obligation on the supervisor to mark plant and materials (and equipment) only arises once two conditions are satisfied. Firstly, that the contract identifies them for payment and secondly, the contractor has prepared them for marking as required by the scope (clause 71.1).

Clause 70.2, which also operates as a vesting clause, states: 'Whatever title the *contractor* has to Plant and Materials passes to the *client* if they have been brought within the Working Areas. The title to Plant and Materials passes back to the *contractor* if they are removed from the Working Areas with the *project manager's* permission.' Like clause 70.1, the contract provides for title to transfer from the contractor to the client without payment. Transfer occurs simply when the plant and materials are moved into the working areas. But again, the contractor must have good title in the first place.

11.2 The contractor's use of material provided by the client.

Clause 74.1 restricts the contractor's use of any material supplied by the client solely to purposes necessary for providing the works. The contractor may, however, extend this right to its subcontractors. The limitation on use means the contractor cannot use the client's designs or data provided in the scope for unrelated work or other contracts. This restriction includes drawings or information provided in the site information.

11.3 Client's use and ownership of the contractor's design

Clause 22.1 gives the client the right to 'use and copy' the contractor's design '…for any purpose connected with the construction, use, alteration or demolition of the works unless otherwise stated in the scope.' This restricts the client from using the contractor's design for another project in a different location and precludes its use to construct an extension to the works.

Clause 22.1 also allows the client to use the contractor's design for 'other purposes as stated in the contract'. This means the 'other purposes' could be included in any of the documents forming part of the contract, not just the scope.

Under English law, the initial copyright of material is owned by its author. However, if secondary option X9 is included, rights to the material prepared for design is transferred to the client. X9 also requires the contractor to obtain and transfer any related rights from subcontractors.

11.4 Contractor's use of its own material

Secondary option clause X15.3 allows the contractor to use the material it provides under the contract for other work unless ownership has been given to the client, or it is stated to the contrary in the scope.

12.0 Liabilities and Insurance

12.1 Liabilities

Liability for risk is allocated between the parties under core clause 8. The client's liabilities are listed in clause 80.1 and include:

- Claims and proceedings from others due to use or occupation of the site which is the unavoidable result of the works, or to negligence, breach of statutory duty or interference with a legal right by the client or anyone employed by or contracted to it (other than the contractor),
- A fault of the client and a fault in the design contained in the scope provided by the client or in an instruction changing the scope,
- Loss of or damage to
  - plant and materials supplied by the client until the contractor has received and accepted them,
  - the works, plant and materials due to war, strikes, riots and radioactive contamination,
  - parts of the works taken over by the client, and the works retained by the client after a termination, and
- Additional client's liabilities stated in the contract data.

The NEC4 ECC takes a different approach to its predecessor (ECC3) in how the allocation of liability is expressed. Instead of listing only the events that the client is liable for and stating that everything else is the contractor's, clause 81.1 of the NEC4 ECC specifies four events for which the contractor is liable.

12.2 Insurance

The default position under the NEC4 ECC is that the contractor only has to insure against events it is liable for (clause 83.3). The client has no obligation to insure against events it is liable for. Insurance is required to be in place from the starting date and, with the exception of professional indemnity insurance (X15.5), the obligation to be insured ceases after the defects certificate is issued.

The Insurance Table in clause 83.3 lists four events against which the contractor is to insure with a minimum amount of cover. The fourth event covers death of or bodily injury to the contractor's employees, and in the UK, is required by law.

The project manager is required to review the contractor's insurance certificates and decide to accept or reject them (clause 84.1). In making this decision, the project manager is required to ascertain if the insurance complies with the contract and assess the commercial position of the insurer. Where the client is providing the insurance, the project manager will need to obtain and submit for acceptance the insurance certificates to the contractor before the starting date (clause 86.1).

12.3 Professional indemnity insurance

The NEC4 ECC core clauses do not require the contractor to insure against claims of negligence in its design. If secondary option X15 is chosen, the contractor's liability for its design is limited to the standard of 'skill and care normally used by professionals designing works similar to the *works*'. X15.5 requires the contractor to take out professional indemnity insurance. If secondary option X15 is not included in the contract, it is advisable that additional insurance for professional indemnity is stated by the client in Contract data part one.

12.4 Co-insurance

With the exception of the insurance for death of or bodily injury to the contractor's employees, the NEC4 ECC requires the insurances in the insurance table to be in the joint names of the parties (clause 83.3), and the policies must include a waiver by the insurers of their subrogation rights against the parties, except where there is fraud (clause 84.2). Subrogation is the act of the insurer stepping into the shoes of the insured with the intention of seeking damages from the party who is allegedly

responsible for the loss or damage. A waiver of subrogation rights under a co-insured policy addresses the circuitry argument by preventing the insurer from making a claim against an insured party for the amount paid out to the other.

13.0 Termination

Core clause 9 of the ECC sets out the parties' rights and obligations on termination. This section of the contract comprises four parts:

- Termination (clause 90)
- Reasons for termination (clause 91)
- Procedures on termination (clause 92)
- Payment on termination (clause 93)

Termination is of the contractor’s obligation to provide the works (clause 90.1). This approach is consistent with the common law doctrine ‘the contract survives termination’, meaning any rights and liabilities accrued under the contract remain. For example, the contractor will be liable for its defects.

The termination process described in NEC4 ECC may appear straightforward, but in practice, it is complex and potentially contentious. Faced with the prospect of termination, clients, project managers and contractors should all seek competent legal advice. They should always follow the contract and, in particular, any amendments.

14.0 Recommended reading list

- NEC, NEC4: Preparing an Engineering and Construction Contract (Thomas Telford, 2017).
- NEC, NEC4: Managing an Engineering and Construction Contract (Thomas Telford, 2017).
- Kelvin Hughes, Understanding the NEC4 ECC Contract: A Practical Handbook, 2nd edition (Routledge, 2024).
- Bronwyn Mitchell and Barry Trebes, Managing Reality, 3rd edition: Complete Set (ICE Publishing, 2017).
- Michael Rowlinson, A Practical Guide to the NEC4 Engineering and Construction Contract (Wiley Blackwell, 2018).
- Patrick Waterhouse, NEC4: Defined Cost and Compensation Events (ICE Publishing, 2021).
- Tim Willis, NEC4: Effective Preparation and Management of the Construction Programme (ICE Publishing, 2025).
- Michael Smith, Matthew Finn, Jon Broome and Catherine Maddox, Early Contractor Involvement: Improving the Management of Contract Risk (ICE Publishing, 2025).
- David Thomas KC (ed.), Keating on NEC, 2nd edition (Sweet & Maxwell, 2022).
- Brian Eggleston, The NEC4 Engineering and Construction Contract: A Commentary, 3rd edition (Wiley Blackwell, 2019).

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David is an NEC contract specialist. With over forty years of experience, he has a proven record in delivering complex projects with multiple stakeholders in both the public and private sectors. A professionally qualified and conscientious individual with an established career in civil engineering and construction, his projects include working in the infrastructure, transport, energy, education, leisure, manufacturing, and commercial industries.

David's experience with the NEC suite of contracts extends over a twenty-five-year period acting as Employer, NEC Project Manager and Contractor. A strong advocate of the NEC forms, David believes they provide an equitable means of procurement and managing risk in an effective and collaborative manner whilst working within a commercial environment. David has practical experience acting in the role of the NEC Project Manager and in 2015 was named 'NEC Project Manager of the Year' at the inaugural NEC awards.

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