DCMS

A SHORT GUIDE TO

The NEC4 Professional Service Contract

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November 2026

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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 Professional Service Contract (NEC4 PSC) 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, including professional 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 PSC.

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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 NEC4 Engineering and Construction Contract, which is flexible in allocating design responsibility between the client and the contractor. Similarly, the NEC4 PSC can be used to appoint any professional service provider, such as designers, project managers, cost consultants and other advisers.

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 service 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 service 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 Professional Service Contract

The NEC4 Professional Service Contract (PSC) 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 PSC standard form

The standard form of the NEC4 PSC 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 is information which specifies and describes the service or states any constraints on how the consultant provides the service (clause 11.2(13)). It sets out the requirements and expectations for the work to be carried out and can include the description of the service, deliverables, performance requirements, procedures and the standards to be applied. The client's scope is referenced in contract data part one and any scope provided by the consultant is 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 Other documents required, depending on contract strategy

In addition to the scope, 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)
- 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)

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 Others (option X8)
- Information Model Requirements (X10)

- The form of the performance bond (X13)
- Climate change requirements including the climate change partners (X29)

4.4 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 PSC are:

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

4.5 Main (payment) option clauses

There are three main options available in the NEC4 PSC 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 PSC are:

- Option A: Priced contract with activity schedule
- Option C: Target contract
- Option E: Cost reimbursable contract

4.6 Resolving and avoiding disputes

The NEC4 PSC provides two 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, and option W2, which is used when it does.

4.7 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 PSC are:

- X1: Price adjustment for inflation (used only with options A and C)
- X2: Changes in the law
- X3: Multiple currencies (used only with option A)
- X4: Ultimate holding company guarantee
- X5: Sectional completion
- X6: Bonus for early completion
- X7: Delay damages
- X8: Undertakings to Others
- X9: Transfer of rights
- X10: Information modelling

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- X11: Termination by the client
- X12: Multiparty collaboration (not used with option X20)
- X13: Performance bond
- X18: Limitation of liability
- X20: Key Performance Indicators (not used with option X12)
- X29: Climate change

4.8 Secondary (Y) option Clauses

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

- 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

4.9 Contract data

Contract data contains the contract-specific information required to activate and operate the contract's mechanisms. Contract data is in two parts. Part one is completed by the client and includes data such as the starting date, the completion date (where the client decides it), and the selected main option, option for resolving and avoiding disputes and secondary options. Part two is completed by the consultant and includes details such as the fee percentage, the key persons, any scope provided by the consultant, the programme, the activity schedule and tendered total of the prices (options A and C), and the people rates or overhead percentages used with the schedules of cost components. Although not part of the scope, contract data includes references to the documents that comprise the scope.

4.10 Z clauses – additional conditions of contract

Option Z clauses in the NEC4 PSC 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.

4.11 Activity schedule

The activity schedule is a pricing document used with options A and C of the NEC4 PSC that breaks down the service into discrete activities, each with a lump sum price. Under option A, the price for service provided to date is the total of the prices for each completed activity, so the consultant 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 consultant's share is calculated. Information in the activity schedule is not scope (clauses 55.1 and 55.2). The activity schedule should align with the scope and be structured to support the programme, and under option A the consultant revises it if the activities do not relate to the operations on the accepted programme (clause 55.3).

4.12 Programme

The programme is a vital management tool that sets out how and when the consultant intends to carry out the service. 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 the order and timing of the operations, provisions for float and time risk allowances, and the resources to be used. It serves as both a planning tool and a contractual record, enabling proactive risk management for both parties.

The service 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 parties (the client and the consultant) and the service manager to act as stated in 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 PSC 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 service manager may extend if the service manager and the consultant agree before the reply is due (clause 13.5).

When the service manager does not accept a submission, reasons must be given in sufficient detail so the consultant can correct the matter when resubmitting (clause 13.4). The service manager issues certificates to the client and the consultant (clause 13.6), and 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). The consultant retains copies of the documents which record the service for the period for retention stated in the contract data (clause 13.9).

5.3 The service manager

The service manager is appointed by the client to manage the contract. The service manager should act within their delegated authority and, for the majority of decisions, act impartially. The service manager acts as the primary communication hub between the client and the consultant. The role includes issuing instructions, accepting the consultant's programme, assessing compensation events, certifying payments, managing early warnings and early warning meetings, notifying defects and deciding the date of completion. Unlike the NEC4 ECC, the PSC does not include a supervisor; the service manager carries out all the contract management actions on the client's behalf.

Core clause 14 defines the authority of the service manager and clarifies how their actions affect the consultant's obligations. Acceptance by the service manager of a communication from the consultant or of the work does not change the consultant's responsibility to provide the service (clause 14.1).

The service manager may delegate any of their actions, and later cancel that delegation, after notifying the consultant, although they retain the right to take the delegated actions themselves (clause 14.2).

The service manager has the authority to issue instructions which change the scope or a key date (clause 14.3), but does not give an instruction which would require the consultant to act outside its professional code of conduct (clause 14.4). The client may replace the service manager by notifying the consultant of the name of the replacement (clause 14.5).

5.4 Early warnings

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

The consultant and the service 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 meeting a key date, impair the usefulness of the service to the client, or affect the work of the client, a client's contractor or another consultant (clause 15.1). The service 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 when instructed and at no longer interval than that stated in the contract data, with other people attending if both agree and 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 service 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 Ambiguities and inconsistencies

Clause 16.1 requires the service manager and the consultant 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 service 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 consultant 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 16.2 applies a similar notification requirement where the scope includes an illegal or impossible requirement, and the service manager then gives an instruction to change the scope appropriately.

5.6 Prevention

Clause 18.1 describes a prevention event. It applies where an event stops the consultant completing the whole of the service, or completing it by the date for planned completion shown on the accepted programme. The event must be one which neither party could prevent and which an experienced consultant would have judged at the contract date to have such a small chance of occurring that it would have been unreasonable to have allowed for it.

In such circumstances, the service manager gives an instruction stating 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(12)), and the client may terminate if the event is forecast to delay completion of the whole of the service by more than thirteen weeks (clause 91.7, reason R21).

6.0 The consultant's main responsibilities

6.1 Providing the service

Clause 20.1 imposes a primary obligation on the consultant to provide the service in accordance with the scope. This means the consultant must carry out all the work necessary to complete the service and meet the contractual requirements as defined in the scope. This establishes the scope as the fundamental benchmark for compliance of the service.

6.2 Skill and care

Clause 20.2 sets the standard of the consultant's obligation as the skill and care normally used by professionals providing services similar to the service. This is a reasonable skill and care obligation rather than an obligation of fitness for purpose. Clause 20.3 confirms that the consultant is not liable for a defect unless it failed to carry out the service using that standard of skill and care.

The consultant also prepares forecasts, in consultation with the service manager and at the intervals stated in the contract data, of the total expenses under option A (clause 20.4) and of the total defined cost and expenses under options C and E (clause 20.5).

6.3 Key persons

Clause 21.1 requires the consultant to provide each key person named in the contract data to do the job stated, or a replacement person who has been accepted by the service manager. The consultant submits the name, relevant qualifications and experience of a proposed replacement for acceptance, and a reason for not accepting the replacement is that their relevant qualifications and experience are not as good as those of the person being replaced.

Clause 21.2 allows the service manager, having stated the reasons, to instruct the consultant to remove a person. After one day, that person must have no further connection with the work included in the contract.

6.4 Working with the client and others

Clause 22.1 requires the consultant to co-operate with others, including in obtaining and providing the information they need in connection with the service. Where necessary to provide the service, the consultant holds or attends meetings with others, informing the service manager beforehand so that the service manager may attend (clause 22.2).

Clause 22.3 makes the consultant liable for the additional cost the client incurs, either in carrying out work or by paying an additional amount to others, if the service manager decides that the condition stated for a key date has not been met by the date stated. The service manager assesses the additional cost within four weeks of the condition being met, and this recovery is the client's only right in those circumstances.

6.5 Subcontracting

Under clause 23.1, the consultant remains responsible for providing the service as if it had not subcontracted, and the contract applies as if a subcontractor's employees were the consultant's.

Clause 23.2 requires the consultant to submit the name of each proposed subcontractor to the service manager for acceptance. A reason for not accepting the proposed subcontractor is that its appointment will not allow the consultant to provide the service. The consultant does not appoint the subcontractor until it has been accepted.

Clause 23.3 requires the consultant to submit the proposed subcontract documents, except any pricing information, to the service manager for acceptance, unless the subcontract is an unamended NEC contract or the service manager has agreed that no submission is required. A reason for not accepting them is that their use will not allow the consultant to provide the service 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 and E, the consultant also submits the pricing information in the proposed subcontract documents to the service manager, unless the service manager has agreed that no submission is required (clause 23.4).

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 service, achieving completion and meeting any key dates. The consultant does not start work until the starting 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 service in accordance with its defined term (11.2(2)) and the scope. The service 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 consultant plans and carries out the service 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 consultant (clause 22.3).

7.2 The first programme and revised programmes

Clauses 31 and 32 establish the obligation to plan the service 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 consultant to submit a first programme to the service 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 consultant 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 consultant plans to do the work, identifying the resources which will be used, and
- the dates when the consultant will need access, information and things to be provided by the client, and information and approval from others.

Clause 31.3 requires the service manager to notify acceptance or the reasons for non-acceptance within two weeks, so that the programme can become the accepted programme or be corrected and resubmitted. If the service manager fails to reply and the failure continues for one week after the consultant 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 consultant 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 consultant 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 service. 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 PSC, represents spare time available for use in the programme before planned completion is affected. Float is shared between the client and the consultant and is available to absorb the consultant's own delays (consultant risk) and the effect of compensation events (client risk), whichever occurs first.

Time risk allowances

Time risk allowances cover the consultant'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 consultant 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 consultant by virtue of the assessment rule for compensation events as set out in clause 63.5.

7.4 Acceleration

Core clause 35 outlines a process for agreeing an acceleration to achieve completion before the completion date. Either the consultant or the service manager may propose an acceleration. If both are prepared to consider it, the service manager instructs the consultant 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 consultant submits the quotation within three weeks and the service 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 service manager accepts the consultant's quotation, changes the prices, the completion date and the key dates and accepts the revised programme (clause 35.3). The process is managed by the service manager and the consultant, but in practice, will inevitably involve the client. An agreement to bring forward the completion date under clause 35 is not a compensation event.

8.0 Quality Management

8.1 Quality management system

Clause 40.1 requires the consultant to operate a quality management system that complies with the requirements stated in the scope. Within the period stated in the contract data, the consultant 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 service manager may instruct the consultant to correct a failure to comply with the quality plan, and this instruction is not a compensation event (clause 40.3).

8.2 Correcting defects

A defect is a part of the service which is not in accordance with the scope or the applicable law (clause 11.2(6)). Until the defects date, the service manager and the consultant notify each other as soon as they become aware of a defect, and at completion the consultant notifies the service manager of the defects which have not been corrected (clause 41.1). The client's rights in respect of a defect which the service manager has not found or notified by the defects date are not affected.

Clause 41.2 requires the consultant to correct a defect whether or not the service manager has notified it, within a time which minimises the adverse effect on the client or others. If the consultant does not correct a notified defect within the time required, the service manager assesses the cost to the client of having the defect corrected by other people and this amount is paid by the consultant; the scope is then treated as having been changed to accept the defect. The consultant is not liable for a defect unless it failed to use the skill and care normally used by professionals providing similar services (clause 20.3), and correcting a defect for which it is not liable is a compensation event (clause 60.1(13)).

8.3 Accepting defects

Clause 42 provides a mechanism for the scope to be changed so that a defect does not have to be corrected. Either the consultant or the service manager may propose such a change (clause 42.1). If both are prepared to consider it, the consultant submits a quotation for reduced prices, an earlier completion date or both. If the quotation is accepted, the service manager changes the scope, the prices and the completion date accordingly and accepts the revised programme (clause 42.2).

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

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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 service 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 four weeks after the defects date or until the service manager issues a termination certificate. It is a payee-led process, and assessments are carried out by the service manager.

The service manager assesses the amount due as the Price for Service Provided to Date, plus the amount of the expenses properly spent by the consultant in providing the service, plus other amounts to be paid to the consultant, less amounts to be paid by or retained from the consultant (clause 50.3). Assessment of the Price for Service Provided to Date depends on the main option.

Under option A, the Price for Service Provided to Date is the total of the prices for each completed activity. Under options C and E, it is the total defined cost which the service manager forecasts will have been paid by the consultant before the next assessment date, plus the fee.

The consultant 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 service manager takes this application into account but makes an independent assessment and then certifies the payment, stating the basis for the assessment. If the consultant does not submit an application, the amount due is the lesser of the service 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, one quarter of the Price for Service Provided to Date is retained in assessments of the amount due until the consultant 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 consultant to ensure a timely submission of a compliant first programme.

Clause 50.6 requires the service 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 service manager certifies a payment within one week of each assessment date, including details of how the amount due has been assessed. The first payment is the amount due and each subsequent payment is the change in the amount due since the previous assessment; if the change reduces the amount due, the payment is made by the consultant to the client (clause 51.1). The party to which payment is due submits an invoice within one week of the certificate, and each certified payment is made by the later of one week after the paying party receives the invoice and three weeks after 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 service 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 later of the defects date and the date the last defect is corrected, or thirteen weeks after a termination certificate is issued. The assessment must show how the final amount has been calculated, and the final payment is made by the later of one week after the paying party receives an invoice and three weeks after the assessment date (clause 53.1).

If the service manager does not make this assessment within the required time, the consultant 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 or W2), 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 options C and E, for payment.

Under options C and E, the amount due is assessed using the defined cost plus the fee. For these options, defined cost is the cost of the components in the schedule of cost components less disallowed cost (clause 11.2(17)). All the consultant's costs which are not included in defined cost are treated as included in the fee, and defined cost includes only amounts calculated using rates and percentages stated in the contract data and other amounts at open market or competitively tendered prices, with deductions for all discounts, rebates and taxes which can be recovered (clause 52.1).

For main option A, defined cost is the cost of the components in the short schedule of cost components (clause 11.2(16)) and is used only for the assessment of compensation events.

9.5 Expenses

A feature of the NEC4 PSC is the separate treatment of expenses. The expenses stated in the contract data by the client and the consultant are paid in addition to the Price for Service Provided to Date (clause 50.3) and are not included in defined cost, since a cost component is only included in the schedules of cost components if it does not form part of the expenses.

9.6 The consultant's share (option C)

Under option C, the service manager assesses the consultant's share of the difference between the total of the prices (the target) and the Price for Service Provided to Date, using the share ranges and consultant's share percentages stated in the contract data. The consultant is paid its share of any saving or pays its share of any excess. A preliminary assessment is made at completion of the whole of the service and a final assessment is included in the final amount due (clause 54).

9.7 Disallowed Cost

Disallowed cost is a cost the consultant has incurred but the contract does not allow to be included in defined cost, and therefore the client does not pay it. The items of cost which are disallowed are listed in clause 11.2(18) and include cost which is not justified by the consultant's accounts and records, cost incurred only because the consultant did not follow a procedure stated in the scope or give a

required early warning, and the cost of correcting defects after completion. Disallowed cost applies only to the cost-based main options C and E, where payment is based on defined cost plus the fee. It does not apply to option A.

9.8 Schedule of cost components

The schedule of cost components is used with the cost-based main options C and E to define which costs the consultant is reimbursed for and to assess the value of compensation events. The schedule comprises four components of cost:

1. People
2. Subcontractors
3. Charges (support people and office overhead)
4. Insurance (deductions for insured events and payments from insurers)

9.9 Short schedule of cost components

The short schedule of cost components is used with the priced main option A to assess the value of compensation events only. The short schedule has three cost components: people (calculated using the people rates), subcontractors and insurance.

10.0 Compensation events

10.1 General

Compensation events are events that, provided they do not arise from the consultant's fault, give the consultant 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 consultant, it can equally result in a reduction.

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

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

10.2 Compensation events

Core clause 60.1 sets out the events which entitle the consultant to a change to the prices, the completion date and any key dates when they arise and are not the consultant's fault. The list includes instructed changes to the scope, failure by the client to allow access or to provide something by the dates shown on the accepted programme, instructions to stop or not to start work or to change a key date, and the client or others not working within the times shown on the accepted programme. It also includes the service manager not replying to a communication within the period required, changing a previous decision or withholding an acceptance for a reason not stated in the contract, an event which is a client's liability, the correction of an earlier service manager assumption, and any breach of contract by the client.

The list further covers a prevention event meeting the strict NEC test of neither party being able to prevent it (clause 60.1(12)), the consultant correcting a defect for which it is not liable (clause 60.1(13)), the service manager correcting information provided by the client (clause 60.1(14)) and the service manager notifying that a quotation for a proposed instruction is not accepted (clause 60.1(15)). Finally, it allows additional compensation events to be stated in contract data part one (clause 60.1(16)), ensuring the risk profile can be tailored to the specific contract. Unlike the NEC4 ECC, the PSC does not include compensation events for physical conditions or weather.

Compensation events are also found in:

- Changes in the law (X2.1)
- Multiparty collaboration (X12.3(6) and X12.3(7))
- 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 the service manager giving an instruction or notification or changing an earlier decision, the service manager is required to notify the consultant at the time of that communication (clause 61.1) and, unless the event

arises from a fault of the consultant or has no effect on defined cost, completion or meeting a key date, instructs the consultant to submit quotations (clause 61.2).

For all other events, the consultant must notify the service manager if it believes an event which has happened or is expected to happen is a compensation event and the service manager has not notified it. If the consultant does not notify the event within eight weeks of becoming aware that it has happened, there is no change to the prices, the completion date or a key date, unless the event arises from the service manager giving an instruction or notification or changing an earlier decision (clause 61.3).

The service manager is required to reply to the consultant's notification within one week, or a longer period agreed by the consultant, either confirming that the event is a compensation event and instructing quotations or notifying, with reasons, that the prices, the completion date and the key dates are not to be changed. If the service manager fails to reply and the failure continues for a further two weeks after the consultant 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 service manager where the effects are too uncertain to be forecast reasonably (clause 61.6). Where the consultant did not give an early warning which an experienced consultant could have given, the service manager states this in the instruction to submit quotations (clause 61.5) and the event is assessed as if the early warning had been given (clause 63.7). Compensation events are not notified after the defects date (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 consultant'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 consultant, together with details of the assessment and any alterations to the accepted programme (clause 62.2). The consultant is required to submit quotations within three weeks and the service manager replies within two weeks by accepting the quotation, instructing a revised quotation with reasons or notifying that the service manager will make the assessment (clause 62.3). The time limits may be extended by agreement (clause 62.5). If the service manager fails to reply and the failure continues for a further two weeks after the consultant'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 the actual defined cost of the work done by the dividing date, the forecast defined cost of the work not done by the dividing date and the resulting fee, with the dividing date linked to the relevant communication or notification. Rates or lump sums may be used by agreement (clause 63.2). The prices are reduced only in limited circumstances, such as a change 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 The service manager's assessments

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

The service manager carries out the assessment where

- the consultant has not submitted a quotation within the period required,
- the quotation has not been prepared in accordance with the contract and the service manager has not instructed submission of a revised quotation,
- the consultant 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 service manager to obtain a prospective assessment of the cost and time effect of a possible instruction before deciding whether to issue it. The service manager may instruct the consultant 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 consultant does not put the proposed change into effect.

The consultant submits the quotation within three weeks, and it is assessed in the same way as a compensation event. By the stated decision date, the service 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 service 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 service manager

- accepts the consultant’s quotation,
- when a quotation is treated as accepted, or
- when the service 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 (clause 63.12), so they can be taken into account in subsequent assessments for payment; for option C, 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.

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11.0 Rights to material

11.1 The client's use of the consultant's material

Core clause 7 deals with the parties' rights to use material rather than with title to goods. Clause 70.1 gives the client the right to use the material provided by the consultant for the purpose stated in the scope, and the consultant obtains equivalent rights for the client from its subcontractors over the material they prepare. It is therefore important that the scope states clearly the purposes for which the client will need to use the consultant's material, for example for the construction, operation, maintenance or alteration of a project.

11.2 The consultant's use of material provided by the client

Clause 70.2 restricts the consultant's use of material provided by the client solely to providing the service. The consultant may, however, make this right available to its subcontractors. The limitation on use means the consultant cannot use the client's designs or data for unrelated work or other contracts.

11.3 Transfer of rights (option X9)

Under English law, the initial copyright in material is generally owned by its author, and the core clauses give the client a right of use rather than ownership. If secondary option X9 is included, the client owns the consultant's rights over material prepared for the contract, except as stated otherwise in the scope (clause X9.1). The consultant must also obtain other rights for the client as stated in the scope, obtain equivalent rights from its subcontractors, and provide the documents which transfer these rights to the client.

Where option X10 is used, the client owns the information model and the consultant's rights over project information, except as stated otherwise in the information model requirements (clause X10.6).

11.4 The consultant's use of its own material

Clause 70.3 allows the consultant to use the material it provides under the contract for other work unless stated otherwise in the scope. Where option X9 applies, this right should be considered alongside the transfer of rights to the client.

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 which are due to the unavoidable result of the service, 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 consultant),
- A fault of the client or any person employed by or contracted to it, except the consultant, and
- Additional client's liabilities stated in the contract data.

Clause 81.1 then lists the consultant's liabilities, unless they are stated as being client's liabilities: claims and proceedings from others arising from or in connection with the consultant providing the service, costs incurred by the client arising from a failure by the consultant to use the skill and care normally used by professionals providing similar services, and death or bodily injury to the consultant's employees. Under clause 82, each party recovers from the other the costs arising from an event for which the other is liable, reduced in proportion to the extent that an event for which it was itself liable contributed to the costs.

12.2 Insurance

Clause 83 requires the consultant to provide the insurances stated in the insurance table, except any which the client is to provide as stated in the contract data, together with any additional insurances stated in the contract data. The insurances cover events which are the consultant's liability from the starting date until the end of the periods stated in the contract data (clause 83.3), which typically extend for a number of years after completion of the whole of the service.

The insurance table lists three insurances, each with a minimum amount of cover stated in the contract data: the consultant's liability for failing to use the skill and care normally used by professionals providing similar services (professional indemnity), loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the consultant), and liability for death of or bodily injury to the consultant's employees. The last of these is, in the UK, required by law.

The service manager is required to review the consultant's insurance certificates before the starting date and on each renewal until the defects date, and accepts them if the insurance complies with the contract and the insurer's commercial position is strong enough to carry the insured liabilities (clause 84.1). After the defects date, certificates are submitted to the client. If the consultant does not submit a required certificate, the client may insure and recover the cost from the consultant (clause 85.1). Where the client is providing any of the insurances, the service manager submits the certificates to the consultant for acceptance before the starting date (clause 86.1).

12.3 Professional indemnity insurance

Unlike the NEC4 ECC, professional indemnity insurance is a core requirement of the NEC4 PSC, reflecting the consultant's obligation to use reasonable skill and care. The client should state in contract data part one the minimum amount of cover required in respect of each claim and the period following completion of the whole of the service for which the cover is to be maintained.

12.4 Limitation of liability

Clause 87.1 limits the consultant's total liability to the client for all matters arising under or in connection with the contract to the amount stated in the contract data. The limit does not apply to excluded matters, which include delay damages (if option X7 applies), the consultant's share (if option C applies), an infringement of the rights of others, and loss of or damage to third party property and death of or bodily injury to a person other than the consultant's employees. Option X18 provides further limits, including on liability for indirect or consequential loss and for defects not found until after the defects date, and sets an end of liability date after which the consultant is not liable for matters not notified to it.

13.0 Termination

Core clause 9 of the PSC 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 consultant's obligation to provide the service (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 consultant will be liable for its defects.

Either party may terminate for a reason identified in the termination table, which also sets out the procedures to be followed and the amounts due (clause 90.2). The reasons include insolvency events (R1 to R10), the consultant substantially failing to comply with its obligations (R11), non-payment by the client for thirteen weeks (R16), a prolonged instruction to stop work (R18 to R20), a prevention event forecast to delay completion by more than thirteen weeks (R21) and a corrupt act by the consultant (R22). Where option X11 is included, the client may also terminate for a reason not identified in the termination table.

The termination process described in NEC4 PSC may appear straightforward, but in practice, it is complex and potentially contentious. Faced with the prospect of termination, clients, service managers and consultants 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 a Professional Service Contract (Thomas Telford, 2017).
- NEC, NEC4: Managing a Professional Service Contract (Thomas Telford, 2017).
- NEC, NEC4: Professional Service Contract Flow Charts (Thomas Telford, 2017).
- Kelvin Hughes, Understanding the NEC4 Professional Service Contract: A Practical Handbook, 2nd edition (Routledge, 2025).
- Patrick Waterhouse, NEC4: A Practical Guide to the Professional Service Contracts (ICE Publishing, 2026).
- David Thomas KC (ed.), Keating on NEC, 2nd edition (Sweet & Maxwell, 2022).

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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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