DCMS

A SHORT GUIDE TO

The NEC4 Term Service 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 Term Service Contract (NEC4 TSC) 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. Links to the Daniel Contract Management website are provided throughout the guide for readers to obtain more information on various topics. A recommended reading list is also provided in **Error! Bookmark not defined.**

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 June 2017 edition of the NEC4 TSC incorporating 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 TSC.

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 contract-by-contract 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.

The NEC4 Term Service Contract is equally flexible in the type of service it can be used for. It can be used for a simple, repetitive maintenance service, for a complex outsourced service delivered across

a large asset portfolio, or for a combination of planned work and reactive work instructed through Task Orders during the service period.

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 contract-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 contractor 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. In the NEC4 TSC, the contractor is required to submit a plan for acceptance and to revise it regularly throughout the service period, together with a separate programme for each Task Order. The accepted plan and the task order programmes are used to monitor progress, plan future activities, and serve as the basis for assessing the effects of 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 When to use the NEC4 Term Service Contract

The NEC4 TSC is intended for the appointment of a contractor for a period of time to manage and provide a service. Typical applications include the maintenance and repair of highways, railways, water and energy networks, the maintenance of buildings and estates, and other services delivered to an operational asset owned or occupied by the client, such as cleaning, grounds maintenance and security.

The TSC differs from the NEC4 ECC in that the contractor is not appointed to deliver a defined project to completion. Instead, it provides a service throughout a service period, with work that is often repetitive, recurring or reactive. Where discrete pieces of work are needed during the service period, the service manager can instruct them as Tasks through the Task Order process.

The Term Service Subcontract (TSS) is the back-to-back subcontract for use with the TSC. For simple, low-risk services where a more straightforward contract is appropriate, the Term Service Short Contract (TSSC) may be used instead.

3.3 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.

3.4 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.

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4.0 Structure of the NEC4 Term Service Contract

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

4.1 Sections of the TSC standard form

The standard form of the NEC4 TSC includes the following sections:

- Core clauses
- Main option clauses
- Resolving and Avoiding Disputes option
- Secondary option Clauses
- Schedule of Cost Components
- Short Schedule of Cost Components
- Contract data

The conditions of contract are the core clauses and the clauses for the chosen main option, the chosen option for resolving and avoiding disputes and the chosen secondary options. The schedule of cost components forms part of the conditions of contract only when option C or E is used, and the short schedule of cost components only when option A is used. The contract data is not part of the conditions of contract; it provides the contract-specific information needed to operate them.

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 service to be provided. It specifies and describes the service and states any constraints on how the contractor provides the service (clause 11.2(14)). The scope can include service specifications, performance and service level requirements, procedures, health and safety requirements and the form in which plans, programmes and applications for payment are to be submitted. The client's scope is referenced in contract data part one and scope provided by the contractor for its plan may be referenced in contract data part two. Work instructed through a Task Order is added to the scope when the Task Order is issued (clause 19.8). A well-prepared scope enhances clarity, reduces ambiguity, and mitigates the risk of disputes by making the parties' responsibilities and expectations explicit.

4.3 Affected Property

Unlike the NEC4 ECC, the TSC has no site information. Its place is taken by the affected property, which is the property of the client or others that is affected by the work of the contractor, or used by the contractor in providing the service, and which is identified in the contract data (clause 11.2(2)). The affected property may be an asset, such as a road network, a portfolio of buildings or a water treatment works, and it is usually described in detail in a document referenced in contract data part one.

A clear and accurate description of the affected property is essential. It defines the extent of the service, and a change to the affected property, whether by instruction of the service manager, by the client or others, or as a result of a Task Order, is a compensation event (clauses 60.1(1) and 60.1(11)).

4.4 Service Areas

The service areas are the affected property together with those parts of the service areas stated in the contract data which are necessary for providing the service and used only for the services in the contract (clause 11.2(15)). They are identified by the contractor in contract data part two. The contractor may propose additional areas to be added to the service areas (clause 16.3).

4.5 Other documents required, depending on contract strategy

In addition to the scope and the affected property, 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:

- The plan (if one is to be identified in the contract data)
- The price list (options A, C and E)
- Information execution plan (X10)
- Schedule of Partners, including the key performance indicators (X12)
- Service level table (X17)
- 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 the client and others (option X8)
- Information Model Requirements (X10)
- The form of the performance bond (X13)
- Climate change requirements including the climate change partners (X29)

4.6 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 TSC are:

1 General
2 The contractor's main responsibilities
3 Time
4 Quality management
5 Payment
6 Compensation events
7 Use of equipment, plant and materials
8 Liabilities and insurance
9 Termination

The core clauses of the NEC4 TSC follow the same structure as the NEC4 ECC, although there are important differences in content. In particular, the TSC has no supervisor, no completion date or defects date, and uses a plan rather than a programme. Section 7 is headed 'Use of equipment, plant and materials' and, unlike the NEC4 ECC, has no provision for marking plant and materials outside the service areas.

4.7 Main (payment) option clauses

There are three main options available in the NEC4 TSC of which one is chosen. The main option clause is combined with the core, secondary options and dispute resolution clause 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 TSC are:

- Option A: Priced contract with price list
- Option C: Target contract with price list
- Option E: Cost reimbursable contract

There are no bill of quantities or management contract options in the TSC. Under option A the contractor carries the risk of the cost of providing the service at the prices in the price list. Under option C the financial risk is shared between the parties through the contractor's share mechanism, and under option E the client carries most of the financial risk. The main options are described further in **Error! Bookmark not defined.**

4.8 Resolving and avoiding disputes

The NEC4 TSC provides two options that set out the procedures for resolving and avoiding disputes. Option W1 is used where the Housing Grants, Construction and Regeneration Act 1996 does not apply and option W2 is used where it does. Under option W1, a dispute is first referred to the parties' nominated senior representatives, who try to resolve it within a three-week period before it is referred to the adjudicator. Under option W2, the senior representatives stage is used only if the parties agree, and a party may refer a dispute to the adjudicator at any time (clauses W2.1(1) and W2.2(1)). Unlike the NEC4 ECC, option W3 (the dispute avoidance board) is not available for use with the TSC.

4.9 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 contract management.

The secondary options available for use with the NEC4 TSC 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
- X8: Undertakings to the client or others
- X10: Information modelling
- X11: Termination by the client (not used with option X19)
- X12: Multiparty collaboration (not used with option X20)
- X13: Performance bond

- X17: Low service damages
- X18: Limitation of liability
- X19: Termination by either party (not used with option X11)
- X20: Key Performance Indicators (not used with option X12)
- X21: Whole life cost
- X23: Extending the service period
- X24: The accounting periods
- X29: Climate change

Options X5 to X7, X9, X14 to X16 and X22 of the NEC4 ECC, which include those dealing with sectional completion, delay damages, the contractor's design, retention and early contractor involvement, are not used in the TSC. Three of the secondary options are found only in the NEC4 service-period contracts (the term service and facilities management contracts and, for X23, the design build and operate contract):

- X19 allows either party to terminate for convenience after a minimum period of service, by giving the notice stated in the contract data.
- X23 allows the client, with the contractor's agreement, to extend the service period by one or more periods for extension, up to a maximum service period and subject to any criteria for extension stated in the contract data.
- X24 requires the service manager to make an assessment of the final amount due for the service provided during each accounting period. Unless disputed within the stated timescales, each assessment becomes conclusive evidence of the amount due for that period.

4.10 Secondary (Y) option Clauses

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

- 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

4.11 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 selected main and secondary options, the service, the affected property, the starting date, the service period, the intervals for revised plans and early warning meetings, and the period within which task order programmes are to be submitted. Part two is completed by the contractor and includes details such as the fee percentage, the service areas, key persons, the plan (if one is to be identified), the price list and, for options A and C, the tendered total of the prices. Although not part of the scope, contract data includes references to the documents that comprise the scope and the affected property.

4.12 Z clauses – additional conditions of contract

Option Z clauses in the NEC4 TSC are drafted by the parties to address contract-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.

4.13 Price list

The price list is the pricing document used under all three main options. It lists the items of service, which may be priced either as lump sums or as a quantity multiplied by a rate. Lump sum items suit planned and recurring work, such as a monthly inspection regime, while rates suit reactive or variable work where the quantity cannot be known in advance, such as the number of call-outs or the area of grass cut. The price list includes a statement of the method and rules used to compile it (clause 11.2(12)).

Information in the price list is not scope (clause 55.1). The service manager is required to instruct the correction of a mistake in the price list which departs from the method and rules used to compile it or which is due to an ambiguity or inconsistency (clause 14.5), and such an instruction is a compensation event (clause 60.1(16)). When a Task Order is issued, the task price list is inserted into the price list (clause 19.8).

Under option A, the price list determines the payments made to the contractor, and the contractor is required to show how each item in the price list relates to the operations on its plan and task order programmes (clause 31.4). Under option C the total of the prices forms the target. Under option E the contractor is paid defined cost plus the fee, and the prices serve only as a forecast of the total cost of the service.

4.14 The contractor's plan

The contractor's plan is the principal management tool for time under the NEC4 TSC. It sets out how and when the contractor intends to provide the service throughout the service period, including the timing of Tasks, the resources it will use, and the dates when it will need access, acceptances, and things to be provided by the client and others. Like the programme in the NEC4 ECC, it is not merely a schedule of activities but a document that must be regularly updated to reflect progress and changes.

Discrete pieces of work instructed through Task Orders each have their own task order programme, which is the equivalent of an ECC programme for that Task.

More information on the accepted plan and management of time is available in **Error! Bookmark not defined.**

5.0 General provisions

5.1 Actions

Clause 10.1 requires the client, contractor and 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 TSC 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 on receipt at the notified address (clause 13.2). Replies required by the contract are given within the period for reply (clause 13.3), which may be extended by agreement before the reply is due (clause 13.5).

When the service manager does not accept a submission, reasons must be given in sufficient detail to enable the contractor to correct the matter, and the contractor resubmits within the period for reply. A reason for withholding acceptance is that more information is needed to assess the submission fully (clause 13.4). Notifications and certificates are issued 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 service manager

The service manager is appointed by the client to manage the contract. The service manager should act within their delegated authority. The contract does not expressly require the service manager to act impartially, but the service manager, like the parties, acts in a spirit of mutual trust and co-operation (clause 10.2). The service manager acts as the primary communication hub between the client and the contractor. The role includes issuing instructions, issuing Task Orders, accepting the contractor's plan and task order programmes, managing early warnings, assessing compensation events, and certifying payments.

There is no supervisor under the NEC4 TSC. The functions that the supervisor carries out under the NEC4 ECC, such as carrying out tests and inspections and notifying defects, are carried out by the service manager. In practice, the service manager often delegates these duties to inspectors or other members of the client's team.

Core clause 14 defines the authority of the service manager and clarifies how its actions affect the contractor's obligations. Acceptance of a communication or of the work by the service manager does not change the contractor's responsibility to provide the service or its liability for its plan or its design (clause 14.1).

The service manager 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).

The service manager has the authority to issue instructions which change the scope, a Task or the affected property (clause 14.3). The client may replace the service manager by notifying the

contractor (clause 14.4). The service manager is also required to instruct the correction of mistakes in the price list (clause 14.5).

5.4 Early warnings

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

The contractor 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, interfere with the timing of the service or impair the effectiveness of the service (clause 15.1). Either may also give an early warning of any other matter which could increase the contractor's total cost. The service manager records notified matters in the early warning register, issues the first register within one week of the starting date and instructs the contractor to attend the first early warning meeting within two weeks of the starting date. Further meetings are held when instructed and, in any case, at no longer than the interval stated in the contract data until the end of the service period. Other people, including subcontractors, may attend where this would assist (clause 15.2).

The purpose of the early warning meeting is for those attending to co-operate in making and considering proposals to avoid or reduce the effects of the matters in the register, seek solutions that bring advantage to all those affected, decide on the actions to be taken and who will take them, and remove matters from the register which are no longer relevant (clause 15.3). The service manager revises the early warning register to record the decisions made and issues the updated version within one week of the meeting, giving any necessary instructions 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 provided by the client in order to reduce the amount the client pays for providing the service. When a proposal is submitted, the service 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
- informs the contractor that the proposal is not accepted, giving any reason for doing so (clause 16.2).

How any saving is shared depends on the main option. Under option A the prices are reduced by only a proportion of the saving, calculated using the value engineering percentage, which is 50% unless another percentage is stated in the contract data (clause 63.12). Under option C 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 an area to the service areas for acceptance by the service manager. A proposal is not accepted if the area is not necessary for providing the service or is to be used for services not in the contract.

5.6 Ambiguities, inconsistencies and illegal or impossible requirements

Clause 17.1 requires the service manager and the contractor to notify each other as soon as they become aware of any 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. Where this requires an instruction changing the scope, the change is assessed as if the prices and the task completion dates were for the interpretation most favourable to the party which did not provide the scope (clause 63.11).

Clause 17.2 applies the same notification requirement where the scope includes an illegal or impossible requirement. If it does, the service manager gives an instruction to change the scope appropriately.

5.7 Corrupt Acts

Clause 18 prohibits the contractor from doing a corrupt act and requires it to take action to stop a corrupt act of a subcontractor or supplier of which it is, or should be, aware. Equivalent provisions must be included in subcontracts and supply contracts. A corrupt act is defined in clause 11.2(4) and includes bribery and the abuse of entrusted power for private gain in connection with the contract or any other contract with the client. A corrupt act by the contractor is a reason for the client to terminate (R21).

5.8 Task Orders

Task Orders are a distinctive feature of the NEC4 TSC. A Task is work included in the service which the service manager instructs the contractor to carry out and for which a task order programme is required (clause 11.2(18)). Task Orders are well suited to discrete pieces of work within the scope of the service which cannot be planned at the outset, such as a repair scheme, a refurbishment or an improvement.

Before issuing a Task Order, the service manager instructs the contractor to submit a quotation for the Task. The instruction includes a detailed description of the work, the task starting date, the task completion date, and the amount of any delay damages for late completion of the Task. Delay damages must not be more than the estimated cost to the client of late completion (clause 19.1).

The contractor submits its quotation within three weeks, with details of its assessment. The service manager replies within two weeks by

- accepting the quotation and issuing the Task Order,
- instructing a revised quotation, giving reasons,
- notifying that the service manager will make the assessment, or
- notifying that the Task will not be instructed (clause 19.2).

The time limits may be extended by agreement (clause 19.4). Where the contractor fails to submit a quotation in time, or the service manager decides the contractor has not assessed the Task correctly, the service manager makes its own assessment and issues the Task Order (clause 19.5).

The assessment of a Task is in the form of a task price list. Items covered by rates in the price list are priced using those rates, while other items are assessed in the same way as a compensation event (clause 19.6). If task completion is later than the task completion date, the contractor pays delay damages at the rate stated in the Task Order (clause 19.7).

When the Task Order is issued, the task price list is inserted into the price list and the work is added to the scope. The issue of a Task Order is not a compensation event (clause 19.8), although a notification that a Task will not be instructed is (clause 60.1(17)).

6.0 The contractor's main responsibilities

6.1 Providing the service

Clause 20.1 imposes a primary obligation on the contractor to provide the service in accordance with the scope. This means the contractor must do all the work necessary to provide the service and meet the contractual requirements as defined in the scope, together with all incidental work, services and actions which the contract requires (clause 11.2(13)). This establishes the scope as the fundamental benchmark for quality compliance of the service.

Because the service is usually provided in and around property which the client or others continue to occupy and use, clause 20.2 also requires the contractor to minimise the interference caused to the affected property and the activities taking place in it.

Under the cost-based options C and E, the contractor is also required to advise the service manager on the practical implications of the accepted plan and on subcontracting arrangements (clause 20.3), and to prepare forecasts of the total defined cost for the whole of the service at the intervals stated in the contract data, with an explanation of the changes made since the previous forecast (clause 20.4).

6.2 Design of equipment

The NEC4 TSC is a service contract, and the core clauses do not provide for the contractor to design any part of the affected property. Clause 21.1 deals only with the design of equipment. The contractor submits particulars of the design of an item of equipment to the service manager for acceptance only if instructed to do so. A reason for not accepting the design is that it will not allow the contractor to provide the service in accordance with the scope, the accepted plan or the applicable law. Where the client requires the contractor to carry out design, the requirements should be set out in the scope.

6.3 People

Clause 22.1 requires the contractor to provide the key persons named in the contract data, or replacements accepted by the service manager. A reason for not accepting a replacement is that their qualifications and experience are not as good as those of the person being replaced. The service manager may, having stated reasons, instruct the contractor to remove a person, who must then have no further connection with the work after one day (clause 22.2).

6.4 Working with the client and others

Clause 23.1 requires the contractor to co-operate with others, including obtaining and providing the information they need in connection with the service, and to share the affected property with others as stated in the scope.

Clause 23.2 provides that both the client and the contractor provide the services and other things stated in the scope. If the contractor fails to provide what it is required to provide, the service manager assesses the resulting cost to the client and this is paid by the contractor, whereas failure by the client to provide something by the date shown on the accepted plan or the latest accepted task order programme is a compensation event (clause 60.1(3)).

6.5 Subcontracting

Under clause 24.1, the contractor remains fully responsible for providing the service as if it had not subcontracted, and the contract operates as though the subcontractor's employees and equipment were those of the contractor.

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Clause 24.2 requires the contractor 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 would not allow the contractor to provide the service in accordance with the contract.

Clause 24.3 requires the contractor to submit the proposed subcontract documents, except any pricing information, 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 is that the documents will not allow the contractor 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.

The cost-based contracts of main options C and E require the contractor to also submit the pricing information in the proposed subcontract documents to the service manager (clause 24.4).

6.6 Other responsibilities

Clause 25 sets out several further obligations. The contractor obtains approval from others where necessary, provides access to work being done and to plant and materials being stored for the service manager and others named by the service manager, obeys instructions given in accordance with the contract, and acts in accordance with the health and safety requirements stated in the scope.

Clause 26 requires either party to notify the other if it intends to transfer the benefit of the contract or any rights under it. Clause 27 prevents the parties from disclosing information obtained in connection with the service, except when necessary to carry out their duties, and allows the contractor to publicise the service only with the client's agreement.

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7.0 Time and the Accepted Plan

7.1 Starting and the service period

Core clause 30 sets out the time framework for the service. The contractor does not start work until the starting date and provides the service throughout the service period (clause 30.1). Unlike the NEC4 ECC, there is no completion date for the service as a whole. The service period is stated in the contract data and, apart from the automatic extension for outstanding Tasks under clause 30.3, may only be extended where secondary option X23 applies.

For work included in a Task, the contractor does not start until the Task Order has been issued and is required to achieve task completion on or before the task completion date. A Task Order cannot be issued after the end of the service period (clause 30.2). If task completion of any Task is after the end of the service period, the service period is extended until the latest task completion. During this extended period the contractor provides only the service relating to the outstanding Tasks (clause 30.3).

7.2 The first plan and revised plans

Clauses 31 and 32 establish the obligation to plan the service through an accepted plan and the process for keeping that plan up to date. If a plan is not identified in the contract data, clause 31.1 requires the contractor to submit a first plan to the service manager for acceptance within the period stated in the contract data.

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

- the starting date and the end of the service period,
- for each Task, the task starting date, planned task completion and the task completion date,
- the order and timing of the work of the client and others,
- provisions for time risk allowances, health and safety requirements and the procedures set out in the contract,
- the dates when the contractor will need access to the affected property, acceptances, things to be provided by the client and information from others,
- for each operation, a statement of how the contractor plans to do the work, identifying the principal equipment and other resources to be used, and
- other information which the scope requires.

Clause 31.3 requires the service manager to notify acceptance or non-acceptance, with reasons, within two weeks. The reasons for not accepting a plan are that the contractor's plans are not practicable, the plan does not show the information which the contract requires, it does not represent the contractor's plans realistically or it does not comply with the scope. If the service manager fails to reply within the time allowed, the contractor may notify that failure and, if it continues for a further week, the plan is treated as accepted.

Clause 32.1 requires each revised plan to show the actual progress achieved 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 the contractor proposes to make. Clause 32.2 requires a revised plan to be submitted when instructed, after the service manager has instructed a change to the affected property, when the contractor chooses to and, in any case, at no longer interval than that stated in the contract data. Together these clauses make the plan the central management tool for time, risk and change under the contract.

7.3 Task order programmes

Clause 33.1 requires the contractor to submit a task order programme for each Task to the service manager for acceptance within the period stated in the contract data. The content required by clause 33.2 is similar to that of the plan but focuses on the Task, showing the task starting date, task completion date and planned task completion, the order and timing of the operations, and provisions for float and time risk allowances.

The service manager must accept or reject a task order programme within one week (clause 33.3), a shorter period than for the plan. The same reasons for non-acceptance, and the same deemed acceptance mechanism, apply. Clause 34 requires the contractor to submit revised task order programmes when instructed or when it chooses to, and the latest accepted task order programme supersedes any previous one.

7.4 Float and time risk allowances

Float

Float, although not defined by the NEC4 TSC, represents spare time available in a task order programme before planned task completion is affected. The contractor is required to show float on each task order programme (clause 33.2).

Time risk allowances

Time risk allowances cover the contractor's risks under the contract and are required to be shown on both the plan and each task order programme. Time risk allowances are retained by the contractor when assessing the time effects of compensation events.

Task completion and the task completion date

The time effect of a compensation event on a Task is assessed as the delay to planned task completion shown on the task order programme current at the dividing date (clause 63.6). Any period between planned task completion and the task completion date is, in effect, owned by the contractor in the same way as terminal float under the NEC4 ECC, because a delay that does not move planned task completion beyond the task completion date can still result in a change to the task completion date.

7.5 Access

Clause 35.1 requires the client to provide the right of access to the affected property as shown on the accepted plan, or by the date for access shown on the latest accepted task order programme. Failure to do so is a compensation event (clause 60.1(2)).

7.6 Instructions to stop or not to start work

Clause 36.1 allows the service manager to instruct the contractor to stop or not to start any work. The service manager subsequently instructs the contractor to re-start or start the work or removes the work from the scope. An instruction to stop or not to start work is a compensation event (clause 60.1(5)). If such an instruction affects substantial work or all work and is not lifted within thirteen weeks, either party may have a right to terminate, depending on whose default caused the instruction (reasons R18 to R20).

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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 provides the service manager with a quality policy statement and a quality plan for acceptance, and any changes to the quality plan are also submitted for acceptance (clause 40.2). The service manager may instruct the contractor to correct a failure to comply with the quality plan, and such an instruction is not a compensation event (clause 40.3).

8.2 Tests and inspections

The procedure for carrying out tests and inspections required by the scope or the applicable law is set out in core clause 41. The contractor and the client provide the materials, facilities and samples for tests and inspections as stated in the scope (clause 41.2). Failure by the client to do so is a compensation event (clause 60.1(13)). The contractor and the service manager are required to inform each other of each test or inspection before it starts and inform the other of the results, and the service manager may watch any test done by the contractor (clause 41.3).

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

Clause 41.5 requires the service manager to carry out its tests and inspections without causing unnecessary delay to the work or to any payment that is conditional upon a test or inspection being successful. Where the service manager has not done such a test and the delay is not the contractor's fault, the payment becomes due at the end of the service period. An unnecessary delay caused by a service manager's test or inspection is a compensation event (clause 60.1(10)).

Clause 42.1 provides that plant and materials which the scope states are to be tested or inspected before delivery are not delivered until the service manager has notified the contractor that they have passed.

8.3 Notifying and correcting defects

A defect is a part of the service which is not in accordance with the scope or the applicable law or the accepted plan (clause 11.2(5)). Until the end of the service period, the service manager and the contractor notify each other as soon as they become aware of a defect (clause 43.1). The contractor is required to correct a defect whether or not it has been notified (clause 43.2).

There is no defects date or defect correction period in the NEC4 TSC. Instead, clause 43.3 requires the contractor to correct a notified defect within a time which minimises the adverse effect on the client or others. If the contractor fails to do so, the service manager assesses the cost to the client of having the defect corrected by other people and the contractor pays this amount. The scope is then treated as having been changed to accept the defect. If access is required for the contractor to correct a defect, the service manager is responsible for arranging it with the client (clause 43.4).

8.4 Accepting defects

Clause 44 provides the mechanism for the scope to be changed so that a defect does not have to be corrected. Either the contractor or the service manager may propose the change. If both are prepared to consider it, the contractor submits a quotation for reduced prices, an earlier task completion date, or both. If the quotation is accepted, the service manager changes the scope, the Task, the prices and the task completion date accordingly and accepts the revised plan or task order programme.

These provisions allow the work to remain in place where correction is unnecessary or uneconomic, while ensuring that the client is compensated for the resulting loss of value.

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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 set to suit the procedures of the parties and is no later than the assessment interval after the starting date. Later assessments take place at the end of each assessment interval until four weeks after the end of the service period 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 contractor is required to submit an application for payment before each assessment date, setting out the amount it considers due and how it has been assessed, in the form stated in the scope (clause 50.2). The service manager considers the application when assessing the amount due. Where an application is submitted, the amount due is the price for service provided to date, plus other amounts to be paid to the contractor, less amounts to be paid by or retained from the contractor (clause 50.3). Assessment of the price for service provided to date depends on the main option.

Clause 50.4 provides a strong incentive for the contractor to submit its applications on time. If it does not, the amount due is the lesser of the service manager's own assessment and the amount due at the previous assessment date.

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

Clause 50.6 requires the service manager to correct any incorrectly assessed amount due in a later payment certificate. Interest is due on the correcting amount where the correction arises from a mistake or a compensation event, an unnecessary delay to a service manager's test or inspection, or a decision of the adjudicator or the tribunal (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 payment within one week of each assessment date, giving 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. A notable feature of the NEC4 TSC is that, if the change reduces the amount due, the payment is made by the contractor to the client. The party to which payment is due submits an invoice within one week of the service manager's certificate (clause 51.1).

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. Interest is payable on late payment, including where a payment is late because the service manager has not issued a certificate (clause 51.2). Interest is calculated daily at the interest rate stated in the contract data and compounded annually (clause 51.4).

9.3 Final assessment

Assessing and certifying the final amount due under the contract and 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 thirteen weeks after the end of the service period (or a different period if stated in the contract data), or thirteen weeks after a termination certificate is issued. The service manager gives the contractor details of how the amount has been assessed, and the final payment is then invoiced and paid in the same way as other payments (clause 53.1).

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

If the assessment is not challenged through the dispute resolution procedure within the contractual timescales, it becomes conclusive evidence of the final amount due and cannot later be reopened (clause 53.3). On long service contracts, this finality can be achieved progressively by using secondary option X24, under which the service manager makes a final assessment for each accounting period.

9.4 Price for service provided to date

The price for service provided to date is the basis of each payment, and its definition depends on the main option chosen.

Under option A it is the total of the prices for each lump sum item in the price list which the contractor has completed and, where a quantity is stated for an item, the quantity completed multiplied by the rate (clause 11.2(25)). Completed work is work without notified defects whose correction will delay the work of the contractor, the client or others.

Under options C and E it is the total defined cost which the service manager forecasts will have been paid by the contractor before the next assessment date, plus the fee (clause 11.2(26)).

9.5 Defined cost

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

Under options C and E, the amount due is assessed as the defined cost plus the fee, and defined cost is the cost of the components in the schedule of cost components less disallowed cost (clause 11.2(23)). The contractor is required to keep records of its payments and to allow the service manager to inspect them (clauses 52.2 and 52.3). Clause 50.9 provides a mechanism for agreeing the defined cost for parts of the service progressively, so that the defined cost for a part of the service can be finalised during the contract rather than at the end.

For main option A, defined cost is used only for assessment of compensation events in accordance with the short schedule of cost components (clause 11.2(22)). Under option A, compensation events may also be assessed using the people rates stated in the contract data. Where the people rates do not include a rate for a category of person required, the service manager and the contractor may agree a new rate or, failing agreement, the service manager assesses one (clause 63.15).

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9.6 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(24) and include cost not justified by the contractor's accounts and records, cost incurred because the contractor did not follow a stated procedure or give a required early warning, the cost of correcting defects caused by the contractor not complying with a constraint stated in the scope, and the cost of resources not used to provide the service. Disallowed cost applies only to the cost-based contracts, main options C and E. It does not apply to option A.

9.7 The contractor's share

Under option C, the total of the prices in the price list forms the target. Clause 54 sets out how the difference between the total of the prices and the price for service provided to date is shared between the parties, using the share ranges and the contractor's share percentages stated in contract data part one. If the price for service provided to date is less than the total of the prices, the contractor is paid its share of the saving. If it is greater, the contractor pays its share of the excess.

A distinctive feature of the TSC is that the contractor's share is assessed at the dates stated in the contract data as well as when the final amount due is assessed (clause 54.3). This means that, on a long service contract, the gain or pain is shared at regular intervals throughout the service period rather than only at the end.

9.8 Schedule of cost components

The schedule of cost components is used with the cost-based contracts (options C 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. Shared services
8. Insurance

The shared services component replaces the design component found in the NEC4 ECC. It covers the cost of people providing a shared service outside the service areas, such as a call centre or a central planning function, using the rates stated in the contract data.

9.9 Short schedule of cost components

The short schedule of cost components is used with the priced contract (option A) 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 and any affected task completion dates 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 TSC 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 eighteen events which entitle the contractor to a change to the prices and any affected task completion dates when they arise and are not the contractor's fault. The list includes matters such as instructed changes to the scope, a Task or the affected property, failure by the client to provide access or things it is to provide, receipt of a Task Order after the task starting date it states, an instruction to stop or not to start work, and the client or others not working in accordance with the accepted plan, the latest accepted task order programme or the conditions stated in the scope.

The list also covers failures by the service manager to reply within the period required, changed decisions, acceptance withheld for a reason not stated in the contract, unnecessary delay caused by a service manager's test or inspection, a change to the affected property by the client or others or as a result of a Task Order, an event which is a client's liability, a correction to an assumption made by the service manager, an instruction to correct a mistake in the price list, notification that a quotation for a proposed instruction is not accepted or that a Task will not be instructed, and any breach of contract by the client. Finally, it allows additional compensation events to be stated in the contract data, ensuring the risk profile can be tailored to the specific contract.

There are no compensation events in the NEC4 TSC for physical conditions, weather or prevention, reflecting the different nature of a service contract. Where the client wishes to retain such risks, they should be included as additional compensation events in the contract data.

Compensation events are also found in:

- Main options A and C (clause 60.2)
- Changes in the law (X2)
- Multiparty collaboration (X12.3)
- Suspension of performance (Y2.5)

Clause 60.2 applies under options A and C, where the price list includes quantities. A difference between the final total quantity and the quantity stated for an item is a compensation event if it does not result from a change to the scope, it causes the defined cost per unit of quantity to change, and the rate multiplied by the final total quantity is more than 0.5% of the total of the prices at the contract date. If the defined cost per unit is reduced, the prices are reduced.

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, notification or changed decision of the service manager, the service 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 or a task completion, instructs the contractor to submit quotations (clause 61.2).

For all other events, the contractor must notify the service 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 or a task completion date, except for those events which the service manager should have notified (clause 61.3).

The service manager is required to reply to the contractor's notification within one week, either confirming that the event is a compensation event and instructing quotations or notifying that the prices and task completion date are not to be changed, with reasons. If the service manager fails to respond, a further notification by the contractor results in deemed acceptance after a further two weeks (clause 61.4). Assumptions may be stated by the service manager for uncertain effects (clause 61.6). The service manager states if the contractor did not give an early warning which an experienced contractor could have given (clause 61.5), and the event is then assessed as if the early warning had been given (clause 63.8). Compensation events are not notified later than eight weeks after the end of the service period (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, plan-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 a task completion date, with details of the assessment and any alterations to the accepted plan or the task order programme (clause 62.2). The service manager may, after discussion with the contractor, instruct alternative quotations for different ways of dealing with the event (clause 62.1). The contractor is required to submit quotations within three weeks and the service manager replies within two weeks by accepting, requesting a revised quotation with reasons, or notifying that it 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 contractor gives a further notification, the quotation is treated as accepted after a further two weeks (clause 62.6).

The NEC4 TSC provides two methods of assessing the change to the prices. Where a compensation event only affects the quantities of work shown in the price list, the change is assessed by multiplying the changed quantities by the appropriate rates (clause 63.1). For other compensation events, the change is assessed as the effect of the 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

(clause 63.2). Rates or lump sums may be used by agreement (clause 63.3). Price reductions occur only in limited circumstances (clauses 63.4 and 63.5). Assessments include risk allowances for matters with a significant chance of occurring which are not compensation events, and assume that the contractor reacts competently and promptly (clauses 63.9 and 63.10).

Time effects are assessed only in relation to Tasks, as the delay to planned task completion shown on the task order programme current at the dividing date (clause 63.6). The rights of the client and the contractor to changes to the prices and the task completion dates are their only rights in respect of a compensation event (clause 63.7). Under options A and C, assessments are made in the form of changes to the price list (clause 63.14).

10.5 Service manager's assessments

Core clause 64 sets out when the service 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 service manager carries out the assessment where

- the contractor has not submitted a quotation within the period required,
- the quotation has not been assessed correctly and the service manager has not instructed submission of a revised quotation,
- the contractor has not submitted a plan or alterations to a plan which the contract requires, or the service manager has not accepted the latest plan for a reason stated in the contract, or
- a Task is affected and the contractor has not submitted the required alterations to a task order programme, or the service manager has not accepted the programme for a reason stated in the contract.

Where there is no accepted plan or task order programme, the service manager assesses the plan or programme for the remaining work and uses it in the assessment (clause 64.2). The service manager's assessment must be notified within the period allowed for the contractor's quotation (clause 64.3). If the service manager fails to do so, the contractor may notify that failure and, if it continues for a further two weeks, the contractor's quotation is treated as accepted (clause 64.4).

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 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 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 (clause 65.3).

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

- notifies acceptance of the contractor's quotation,
- notifies the contractor of its own assessment, or
- when a contractor's quotation is treated as accepted.

At the point of implementation the compensation event is closed and its effect is incorporated into the contract by changing the prices and the task completion date where applicable (clause 66.2). Under options A and C the changed prices are built into the price list 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 contract (clause 66.3), and can only be altered through the dispute resolution procedures or by agreement between the parties (clause 12.3).

11.0 Title and use of equipment, plant and materials

11.1 Title to plant and materials

Section 7 of the NEC4 TSC is titled ‘Use of equipment, plant and materials’ and is considerably shorter than the equivalent section of the NEC4 ECC. There is no provision for the marking of plant and materials outside the service areas.

Clause 70.1 operates as a vesting clause. Whatever title the contractor has to plant and materials passes to the client if they have been brought within the service areas, and passes back to the contractor if they are removed from the service areas with the service manager's permission. Title therefore transfers from the contractor to the client without payment, simply when the plant and materials are moved into the service areas. However, the contractor must have good title in the first place, mirroring 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).

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

Clause 71.1 restricts the contractor's use of any equipment, plant and materials and other material provided by the client solely to providing the service. The contractor may, however, extend this right to its subcontractors. The limitation on use means the contractor cannot use the client's equipment, data or information for unrelated work or other contracts.

11.3 Obligations at the end of the service period

Clause 71.2 sets out the contractor's obligations at the end of the service period, which are particularly important where the service is to be transferred to a new contractor or taken back in-house by the client. The contractor returns to the client the equipment and surplus plant and materials provided by the client, provides items of equipment for the client's use as stated in the scope, and provides information and other things as stated in the scope.

Clients should consider carefully what equipment, records, asset data and other information they will need at the end of the service period and set this out clearly in the scope. The same information must also be provided if the contract is terminated (procedure P1, clause 92.1).

11.4 Intellectual property

The NEC4 TSC core clauses do not contain provisions dealing with the ownership or use of the contractor's design or other material it prepares. Under English law, the initial copyright of material is owned by its author. The confidentiality obligations in clause 27 apply, but where the client requires rights to use material prepared by the contractor, such as asset information or design, those requirements should be stated in the scope or addressed through additional conditions of contract.

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 the use or occupation of the affected property which is the unavoidable result of the service, or due to the negligence, breach of statutory duty or interference with a legal right by the client or its people
- A fault of the client or any person employed by or contracted to it, except the contractor
- Loss of or damage to
    - equipment and plant and materials supplied by the client until the contractor has received and accepted them,
    - plant and materials due to war, strikes, riots and radioactive contamination,
    - equipment, plant and materials retained by the client after a termination,
    - the affected property and other client property, unless the loss or damage arises from or in connection with the contractor providing the service, and
    - plant and materials after they have been included in the affected property.
- Additional client's liabilities stated in the contract data

Clause 81.1 specifies four events for which the contractor is liable, unless they are stated as being client's liabilities. These are claims and proceedings from others arising from the contractor providing the service, loss of or damage to plant and materials before they are included in the affected property, equipment and client-provided equipment, loss of or damage to the affected property and other client property arising from the contractor providing the service, and death or bodily injury to the contractor's employees.

12.2 Recovery of costs

Clause 82 provides a mechanism for each party to recover costs arising from an event for which the other is liable. Any cost which the client pays as a result of an event for which the contractor is liable is paid by the contractor (clause 82.1), and any cost which the contractor pays to others as a result of an event for which the client is liable is paid by the client (clause 82.2). The right to recover is reduced in proportion to the extent that an event for which the recovering party is liable contributed to the costs (clause 82.3).

12.3 Insurance

The client provides the insurances which it is to provide as stated in the contract data (clause 83.1), and the contractor provides the insurances stated in the insurance table, except any which the client is to provide, together with any additional insurances stated in the contract data (clause 83.2). Insurance cover is required from the starting date until the end of the service period or until a termination certificate has been issued (clause 83.3).

The insurance table in clause 83.3 lists three events against which the contractor is to insure, with a minimum amount of cover:

- loss of or damage to plant and materials and equipment,
- loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the contractor), and
- death of or bodily injury to the contractor's employees which, in the UK, is required by law.

Unlike the NEC4 ECC, there is no requirement to insure the works themselves, because the affected property generally belongs to the client or others and is already in use.

The contractor is required to submit insurance certificates to the service manager for acceptance before the starting date and on each renewal until the end of the service period (clause 84.1). In making this decision, the service manager is required to ascertain if the insurance complies with the contract and assess whether the insurer's commercial position is strong enough to carry the insured liabilities. If the contractor does not submit a required certificate, the client may insure and recover the cost from the contractor (clause 85.1). Where the client is providing insurance, the service manager submits the certificates to the contractor for acceptance before the starting date (clause 86.1), and the contractor has a corresponding right to insure if the client fails to do so (clause 86.3).

12.4 Professional indemnity insurance and limitation of liability

The NEC4 TSC core clauses do not require the contractor to hold professional indemnity insurance. Where the scope requires the contractor to carry out design or provide professional advice, the client should consider stating professional indemnity insurance as an additional insurance in contract data part one.

Secondary option X18 allows the client to limit the contractor's liability for indirect or consequential loss, for loss of or damage to the client's property, for defects due to its design of an item of equipment, and in total, and to set an end of liability date after the end of the service period.

12.5 Co-insurance

With the exception of employer's liability insurance, the NEC4 TSC requires the insurances in the insurance table to be in joint names (clause 83.3) and precludes a right of subrogation by the insurer (clause 84.2). Subrogation is the act of the insurer stepping into the shoes of the assured 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.

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13.0 Termination

Core clause nine of the TSC 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 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. After a termination certificate has been issued, the contractor does no further work necessary to provide the service (clause 90.4).

A party wishing to terminate notifies the service manager and the other party, giving details of the reason. If the reason complies with the contract, the service manager issues a termination certificate. The termination table in clause 90.2 sets out, for each of the reasons R1 to R21, which party may terminate, the procedures to be followed (P1 to P4) and the amounts due (A1 to A4). The reasons include insolvency of either party, substantial default by the contractor which is not put right within four weeks, non-payment by the client for thirteen weeks, release from the contract under the law, prolonged instructions to stop work, and corrupt acts by the contractor.

Termination for convenience is not available under the core clauses. If the client wishes to have that right, secondary option X11 should be included. Alternatively, option X19, which is found only in the NEC4 term service and facilities management contracts, allows either party to terminate for any reason after the minimum period of service stated in the contract data, at the end of the stated notice period. Options X11 and X19 cannot be used together.

The termination process described in NEC4 TSC may appear straightforward, but in practice, it is complex and potentially contentious. Faced with the prospect of termination, clients, service 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

- NEC4 User Guide vol. 2: Preparing a term service contract.
- NEC4 User Guide vol. 4: Managing a term service contract.
- NEC4: Term Service Contract Flow Charts.
- Kelvin Hughes and Patrick Waterhouse, Understanding the NEC4 Term Service Contract: A Practical Handbook, 2nd edition (Routledge, 2024).
- Bronwyn Mitchell and Barry Trebes, NEC4: The Role of the Service Manager (ICE Publishing, 2019).

About the author



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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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