



Technical

NEC4 – So what do you need to know?

Date: 30 Oct 2017

Introduction

1. NEC4 was released on the 22 June 2017, with a complete new suite of contracts, which the NEC states is “*evolution rather than revolution*”. The changes are as a direct result of feedback from the industry and provide solutions that Clients have been demanding. This article will summarise the key points and changes of NEC4 in a simple table.

Changes

2. A summary of the changes from NEC3 to NEC4 are as follows:

Category of Change	Clause Reference	Description and Comments
New Contracts		Design Build and Operate Contract (DBO) – This combines the functions of design, construction, operation and/or maintenance, to enable it to be procured from a single supplier.

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		Alliance Contract (ALC) – This is in consultation form and aims to fully integrate the delivery team for large complex projects. This will be different from other contracts in the NEC suite, as it will be a multi-party contract.
Terminology		<i>‘Employer’ has been replaced with ‘Client’.</i>
	11.2(16)	<i>‘Scope’ has replaced the different terms used previously of ‘Works Information’ in Engineering and Construction Contract (ECC), ‘Service Information’ in Term Service Contract (TSC) and ‘Goods Information’ in Service Contract (SC).</i>
		The Contract is now gender neutral. ‘He’ or ‘his’ for example is replaced with ‘it’ and ‘its’.
	11.2(8)	<i>‘Risk Register’ has been replaced by ‘Early Warning Register’.</i>
	80 to 86	NEC3 Section 8 <i>‘Risks and Insurance’</i> has been renamed <i>‘Liabilities and Insurance’</i> .
	X4	Secondary Option X4 <i>‘Parent Company Guarantee’</i> has been renamed <i>‘Ultimate holding company guarantee’</i> .

	X12	Secondary Option X12 ' <i>Partnering</i> ' has been renamed ' <i>Multiparty collaboration</i> '.
Core Clauses	18	Bribery and Corruption – A new clause provides the ability to terminate for Corrupt Acts.
	91.80	
	11.2(5)	
	29.1	Confidentiality and Publicity – Disclosure of project information will be restricted.
	28.1	Assignment (Transfer of benefits) – This allows transfer of a benefit or any rights to another party.
	36.1	Acceleration – The <i>Contractor</i> can now also propose acceleration to achieve Completion before the Completion Date. The NEC3 process with regard to acceleration will remain unchanged.
		Defined Cost – The Professional Services Contract (PSC), Term Service Contract (TSC) and Supply Contracts (SC) now use Defined Cost in the same way as the Engineering and Construction Contract (ECC). Therefore, there is a common approach across all contracts.

	50.9	<p>Review and acceptance of Defined Cost</p> <p>– New clauses have been introduced to allow contractors in the cost-based contracts (Main Options C, D, E and F) to request a review and acceptance of its Defined Cost during the project rather than waiting until the end. The Contractor notifies the <i>Project Manager</i>, who then has 13 weeks to review acceptance or advise of any errors. If the <i>Project Manager</i> fails to do this, then the <i>Contractor's</i> Defined Costs and Disallowed Costs will be treated as correct.</p>
	53	<p>Final assessment of payment due – The <i>Project Manager</i> will have to issue a final assessment of payment due to the <i>Contractor</i> within four weeks of the Defects Certificate or 13 weeks after a termination certificate. If the <i>Project Manager</i> fails to do this, the <i>Contractor</i> will be able to issue its own assessment. The final assessment will become conclusive evidence of the final amount due, if not challenged. This addition appears to be similar to the provisions in JCT contracts.</p>
	50.2	<p>Payment – The <i>Contractor</i> is required to make applications. NEC3 requires the <i>Project Manager</i> to make an assessment and if no application is made by the assessment date, the <i>Contractor</i> could receive no payment. This appears to be bringing the payment process in line with current case law. The <i>Project Manager</i> has an obligation to make an assessment and</p>

		certify if a payment is due to the <i>Client</i> . This was previously applied in the NEC3 short forms of contract.
	60.1(20)	New compensation event – Where a quotation for a proposed instruction is not accepted, the <i>Contractor</i> will be able to notify of a compensation event. This is for the cost of preparing the quotation and is to ensure the <i>Contractor</i> is compensated for numerous quotations.
	60.1(21)	Add compensation events – A facility will be included in the Contract Data to add compensation events, rather than having to include as a Z clause.
Resolving Disputes	W2.1 W1.1	Dispute resolution – A new four-week period for review and resolution by Senior Representatives. This is consensual in the UK (Option W2 applies) and mandatory elsewhere (Option W1 applies).
	W3	Dispute avoidance board – Option W3 has been added, which can be used if the Construction Act does not apply. This refers any dispute to a Dispute Avoidance Board.
Secondary Options	X8	Undertakings to Others (collateral warranties) – Using this option, the <i>Client</i> can secure separate undertakings from other parties. The form of undertaking is included in the <i>Scope</i> . All other details are to be included in the Contract Data.

	X9	Transfer of Rights – A new secondary option, which allows the Client to own the <i>Contractor's</i> rights over material prepared for the design of the works, except as stated otherwise in the Scope.
	X10	Building Information Modelling (BIM) – This option provides the additional clauses required for production of information for BIM.
	X11	Termination by the Client – A new secondary option, which allows the <i>Client</i> to terminate the <i>Contractor's</i> works for a reason not identified in the termination table. This effectively gives the <i>Client</i> the power to terminate for what appears to be any reason.
	X15	Contractor's design – New more extensive design and build provisions are included in this secondary option, such as intellectual property ownership, licence to use material provided, retention of documents, professional indemnity insurance (extension to insurance table). Duty of care has been amended and is now the skill and care normally used by professionals designing similar works. Rather than the current ' <i>fit for purpose</i> ' obligation.
	X21	Whole Life Cost – A new secondary option, which allows the <i>Contractor</i> to identify opportunities to change the <i>Scope</i>

		that will reduce the cost of an asset over its whole life.
		Contractor's Proposals – The <i>Contractor</i> can propose a change to the <i>Scope</i> , which reduces cost. The <i>Project Manager</i> is able to accept and instruct, not accept, or request a quotation.
	X22	Early Contractor Involvement – This option was previously published in 2015. It is a method of appointing the <i>Contractor</i> at an early stage.
Schedules of Cost Components and Fee		Some changes have been made to simplify the Schedules of Cost Components:
		All contracts now include Schedules of Cost Components, which are used to assess Defined Cost.
		Options C, D and E now only use the Schedule of Cost Components (SCC).
	41 SCC and SSCC	<i>Subcontractor</i> costs have been included in the SCC and payment is consistent across all options. The Defined Cost is the cost paid to the <i>Subcontractor</i> . This should make it much easier to administer projects.

	11.2(20) (Core) 1 SCC and SSCC	The rules regarding people allow for working in different locations, not exclusively in the Working Areas. People whose normal place of work is not within the Working Areas, but are working in the Working Areas, are to be included in Defined Cost.
	11 SSCC	The Shorter Schedule of Cost Components (SSCC) Options A and B, with regard to people, will use a pre-agreed rates approach.
	No longer in 41 SCC and SSCC	Working Area Overhead and People Overhead have been removed. The relevant items are paid as actual Defined Cost. This will again make administering the project much easier.
	6 SCC and SSCC	Design Overhead has been removed.
	11.2(10) 52.1 11.2(29) or (30) or 31	There is now only one Fee, with no separate Subcontract Fee for subcontracted works. The application of the Fee is now consistent in all the main Options.
Programme	31.3	Treated acceptance – New provisions for ‘ <i>treated acceptance</i> ’ of the <i>Contractor’s</i> programme have been introduced.

	32.1	Implemented compensation events – The requirement to only show <i>‘the effects of implemented compensation events’</i> on the <i>Contractor’s</i> revised programme has been removed. <i>Contractors</i> will show actual progress for implemented and non-implemented compensation events
Contract Data		The Contract Data has been reformatted to make it easier to use and complete.

Summary

3. The NEC has obviously listened to the feedback it has received and it appears that NEC4 will be simpler to operate than its predecessor, NEC3. The requirement for Z clauses will hopefully diminish, but lawyers have, no doubt, drafted amendments to these new clauses.
4. Ramskill Martin will prepare more detailed articles on NEC4 in the future.

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