

nec users' group NEWSLETTER

Introducing the NEC4 contract suite

ELIZABETH BROOKFIELD NEC PRODUCT DEVELOPMENT

The new NEC4 contract suite will be published in June 2017. It builds upon the success of NEC3 contracts, which have had a transformative effect on the construction industry since their introduction 12 years ago.

The launch of NEC4 reflects continuing evolution of industry practice while retaining the proven and unique NEC processes for collaboration, fair dealing and good project management. The contracts have been updated and streamlined following feedback from the industry, evolving government priorities and emerging best practice.

Two brand new contracts have been added to the suite – the NEC4 Design, Build and Operate Contract (DBO) and the consultative NEC4 Alliance Contract (ALC). The result is a contract suite with improved flexibility, clarity and ease of use. Whether supplying high-value goods or low-risk items, NEC4 enables users to deliver projects on time, on budget and to the highest standards.

Potential benefits of NEC4

Key benefits of NEC4 include

- streamlined processes and updated definitions
- improved contract administration and reduced administration costs
- greater clarity and reduced potential for problems
- provision for building information modelling and early contractor involvement
- improved risk opportunity and risk management.

According to Matthew Garratt, NEC consultant and Costain commercial director for Thames Tideway Tunnel project, 'It has been 12 years since NEC3 was published, and the publication of NEC4 responds to demand from users to continue to improve the way that their projects and work programmes are delivered.'

'NEC4 supports the on-going drive towards further collaboration and integration of teams, use of modern work methods, avoidance of disputes, and identification and management of both risk and opportunity for a successful outcome.'

Beth West, commercial director of High Speed Two and chair of the NEC Users' Group comments, 'Procurement methods need to keep evolving

NEC4's key potential benefits



and improving to support the ways in which the construction industry itself is developing. The extended and streamlined NEC4 suite is a perfect example of this.

'It puts the core NEC principles of collaboration and open communication into a wider range of contractual structures, helping to achieve consistent positive behaviours across an even bigger variety of projects and programmes.'

NEC4 contract suite

The NEC4 contract suite consists of the following new and updated contracts.

- NEC4 Dispute Resolution Service Contract (DRSC) (previously NEC3 Adjudicator's Contract)
- NEC4 Design, Build and Operate Contract (DBO)
- NEC4 Engineering and Construction Contract (ECC)
- NEC4 Engineering and Construction Short Contract (ECSC)
- NEC4 Engineering and Construction Subcontract (ECS)
- NEC4 Engineering and Construction Short Subcontract (ECSS)
- NEC4 Framework Contract (FC)
- NEC4 Professional Service Contract (PSC)
- NEC4 Professional Service Short Contract (PSSC)
- NEC4 Supply Contract (SC)

- NEC4 Supply Short Contract (SSC)
- NEC4 Term Service Contract (TSC)
- NEC4 Term Service Short Contract (TSSC)
- NEC4 Alliance Contract (ALC) (consultative version, not included in the June 2017 suite).

This special issue of the NEC Users' Group newsletter introduces the new contracts as well as the guidance documents that will accompany them. It also reviews the legal and insurance issues of NEC4 and provides details of the forthcoming NEC4 launch webinar and seminar.

For further information please visit the NEC website neccontract.com/nec4-products. A 10% discount on paperbound contracts is available to users if pre-ordered with the code **NEC4PRE**.

CONTENTS

New NEC4 Design, Build and Operate Contract	2
New NEC4 Alliance Contract	2
Changes in the NEC4 works contracts	3
Changes in the NEC4 service contracts	4
Changes in the NEC4 supply contracts	5
NEC4 guidance notes	6
Legal and insurance aspects	7
NEC launch events	8

New NEC4 Design, Build and Operate Contract



ROSS HAYES, RICHARD PATTERSON AND BARRY TREBES NEC4 DRAFTERS

NEC4 brings a new addition to the NEC family of contracts: NEC4 Design, Build and Operate Contract (DBO). It has been added to the suite of contracts in response to the increasing demand for contracts extending into the operational phase.

The demand is coming both from UK clients and from international funding agencies, such as the World Bank and the Asian Development Bank (ADB). In 2015 ADB commissioned NEC to draft a consultative DBO contract, the feedback from which has helped to shape the NEC4 version.

It also aligns with the UK government's commitment to 'soft landings', in which designers and constructors are involved with projects at least three years after construction completion to ensure a smoother handover to the operator.

New and existing assets

The new DBO contract is not only intended for the 'traditional' DBO approach, where the client requires a new facility or asset to be designed, constructed and then operated by a contractor. It is also available for situations where a client wants to have an existing facility or asset operated by the contractor while it is being upgraded or extended.

In such situations, the timing of the design and construction phase would normally be stated by the client, but may be determined by the contractor – which will undertake the work at a

point to suit the performance requirements of the overall service.

The new DBO contract provides for option A (priced contract with price list), option C (target contract with price list) and option E (reimbursable contract).

Focus on operational needs

The contract starts with the operational and service requirements of the client and then integrates the new or replacement asset to reflect the way that the operation has been specified.

Perhaps even more than other contracts, the development of the client's requirements and specification in the scope will be crucial to the understanding, use and success of the contract.

Greater role for contractor

All the standard NEC provisions for communications, early warning and compensation events are retained along with some other features added in the NEC4 suite.

The management of the work through plans and programmes for the construction and operation phases are still important.

Recognising the greater involvement and responsibility of the DBO contractor in the operational phase, the contract has a lighter touch than some standard NEC design and build options.

Incentives and productivity

A key issue for the client is identifying and incentivising performance and productivity of the total asset. This may be through any or all of the traditional NEC approaches, including the reduction of payments for poor performance.

The new DBO contract brings incentives and productivity options together into one schedule and requires the client to identify and develop the approaches it wishes to use.



◀ NEC4 Design, Build and Operate Contract extends NEC into the operational phase of a project

New NEC4 Alliance Contract



MATTHEW GARRATT AND IAN HEAPHY NEC4 CONTRACT BOARD MEMBERS

The construction industry is continually being challenged to deliver improvements in the outcome of projects and programmes of work. Collaboration and better integration of teams are seen as ways to achieve this.



◀ NEC4 Alliance Contract is for clients wanting a single collaborative contract with a number of participants

NEC has been at the forefront of the process, creating a suite of contracts that allow all members of the supply chain to be engaged on similar terms and conditions.

Moving towards alliancing

Demand for better integration of teams continues – particularly for large, highly complex projects and programmes. In these situations, some clients have adopted a fully integrated delivery model known as an 'alliance'.

An alliance is where the client and key members of the supply chain are engaged under a single multi-party contract with shared objectives, risks and rewards. In the UK and internationally, most notably Australia, alliances have delivered better outcomes for both clients and suppliers, with increased efficiency and fewer disputes.

In 2015 the UK government advisory body Infrastructure UK published *Improving Infrastructure Delivery: Alliancing Code of Practice*. This said there was a clear business

case for using alliancing as a procurement route, with increased efficiency being delivered through behavioural and cultural change.

New NEC4 Alliance Contract

Existing NEC contracts are bi-party arrangements onto which an alliance arrangement can be overlaid, such as by using secondary option X12. Last year NEC worked with the UK Infrastructure Client Group to publish *Guidance on implementing alliancing using NEC3 contracts*.

NEC users have requested the development of a distinct alliancing form in which all participants are engaged under a single multi-party contract. This has led to development of the new NEC4 Alliance Contract (ALC), which will initially be published in consultative form to allow industry feedback.

The basis of the contract is that all parties work together in achieving client objectives, and share in the risks and benefits of doing so.

The new ALC is therefore very different from other contracts in the NEC4 suite. However, it follows where possible the same principles and structure of other NEC4 contracts with familiar provisions, proactive management processes and terminology.

Benefits to users

The potential benefit of using the new ALC is a much deeper collaboration between all project participants, bound by common interests and

reduced grounds for dispute.

The contract drives appropriate behaviours in the alliance members through

- an emphasis on outcomes
- creation of a commercial model which rewards expected behaviours

- alignment of goals with client and suppliers
- use of integrated systems and processes
- a best-for-project philosophy.

Commercial performance is measured at an alliance rather than individual party level, with reward criteria based on client's objectives. All

alliance members are engaged on an open-book basis with project-specific incentive arrangements agreed at the outset. ○

Changes in NEC4 works contracts



ROBERT GERRARD NEC USERS' GROUP SECRETARY AND **TIM KNEE-ROBINSON** NEC4 DRAFTER

The new works contracts are the NEC4 Engineering and Construction Contract (ECC), the NEC4 Engineering and Construction Subcontract (ECS), the NEC4 Engineering and Construction Short Contract (ECSC) and the NEC4 Engineering and Construction Short Subcontract (ECSS).

This article looks at the main changes and new provisions in the ECC and ECS, followed by a specific change in the shorter versions.

The changes have been designed to support the on-going drive for further collaboration and integration of teams, greater use of modern work methods, better avoidance of disputes and more effective identification and management of risk and opportunity – all of which will help lead to more successful outcomes.

ECC and ECS

There have been key changes to provisions in the ECC and ECS, as follows.

- Early warning provisions – the 'Risk Register' has been re-named the 'Early Warning Register' to distinguish it from the project risk register often used for wider project management purposes. There are now default periods for early warning meetings.
- Programming changes – there are new 'dividing date' provisions similar to those used in compensation events. New provisions provide for 'treated acceptance' of the contractor's programme in situations where the project manager does not respond to a programme issued by the contractor for acceptance, or to a reminder. This is to unlock the impasse which can sometimes occur.
- Terms standardised – 'Employer' becomes 'Client', and 'Works Information' becomes 'Scope'.

There are also some important new provisions in ECC and ECS to help promote collaboration, as follows.

- Identifying opportunities – an additional procedure includes the identification of opportunities by either party. These are discussed jointly and the contractor can share in the cost savings of opportunities that it initiates
- Early contractor involvement – this is now included as a secondary option, based upon the clauses published by NEC in 2015.
- Supporting information modelling – a new secondary option is added specifically to

support the use of information models and digital engineering models. This requires the contractor to provide an information model execution plan either for incorporation in the contract from the outset, or within a period defined by the client.

- Dispute negotiation – a 4 week period for escalation and negotiation of a dispute has been introduced, which takes place prior to commencing any formal proceedings. This requires nominated senior representatives of each party to meet and try to reach a negotiated solution.
- Dispute avoidance – the works contracts now include a dispute avoidance option W3 which can be used if the UK Housing, Grants, Construction and Regeneration Act does not apply. This is to refer any dispute to a dispute avoidance board. The benefit of this new option is to encourage and support the parties in resolving any potential dispute consensually, and to support users who wish to use this facility on their projects.
- Financial agreement – for payment applications and final accounts, there are now procedures aimed at reaching agreement on the final amounts due. Provisions have been introduced to the cost-based contracts (main options C to F) that allow the contractor to instigate a review and acceptance of its defined cost by the project manager, upon request. This encourages checking and agreement of defined cost and disallowed cost progressively as the work proceeds, and not to defer the exercise until the project has been completed.

Other new and changed provisions in ECC and ECS include the following.

- Collaboration – in secondary option X12, 'Partnering' has been changed to 'Collaboration' better to reflect the intent.
- Retention – the secondary option X16 for retention now includes the optional provision of a retention bond instead of having money retained.
- Confidentiality – a new core clause deals with confidentiality, restricting the disclosure of project information.
- Communication – the use of a communication system, including an electronic one, are recognised through amended clause 13.2, and if required is defined in the scope.

'The changes have been designed to support the on-going drive for further collaboration and integration of teams'

- Quality – section 4 quality management provisions introduce a requirement for the contractor to prepare and issue a quality management system and a plan.
- Schedules of cost components – some changes have been made to simplify the schedules of cost components and associated contract data inputs. The 'Schedule of Cost Components' is used only for main options C, D and E and the 'Short Schedule of Cost Components' has been removed from these contracts. The short schedule is now used exclusively in options A and B and only to assess compensation events. It adopts a pre-priced approach for people cost to replace the previous cost-based approach.
- Fee percentage – there is now only one fee percentage, with no separate fee percentage for subcontracted works. The application of fee to defined cost is consistent across all main options.

ECSC and ECSS

A number of the above ECC and ECS changes have been passed through to the ECSC and ECSS.

The main change specific to the ECSC and ECSS is that the compensation event procedure has been simplified and shortened. ○



◀ Most changes in the NEC4 ECC main works contract also appear in the ECS subcontract and, where appropriate, in the shorter ECSC and ECSS

Changes to NEC4 service contracts



ROSS HAYES AND BEN WALKER NEC4 DRAFTERS

With NEC4 comes change to all the service contracts.

The new service contracts are the NEC4 Term Service Contract (TSC), the NEC4 Term Service Short Contract (TSSC), the NEC4 Professional Service Contract (PSC), the NEC4 Professional Service Short Contract (PSSC) and the new NEC4 Dispute Resolution Service Contract (DRSC – based on the NEC3 Adjudicator's Contract).

Since the service contracts have been changed in the same way as all contracts in the NEC4 family, there are a number of changes in common with those in the works and supply forms. This includes standardisation of terms, with 'Employer' becoming 'Client' and 'Service Information' becoming 'Scope'.

Other changes in the NEC4 TSC and NEC4 PSC make the total changes arguably more significant. This article looks at the specific changes to the service contracts.

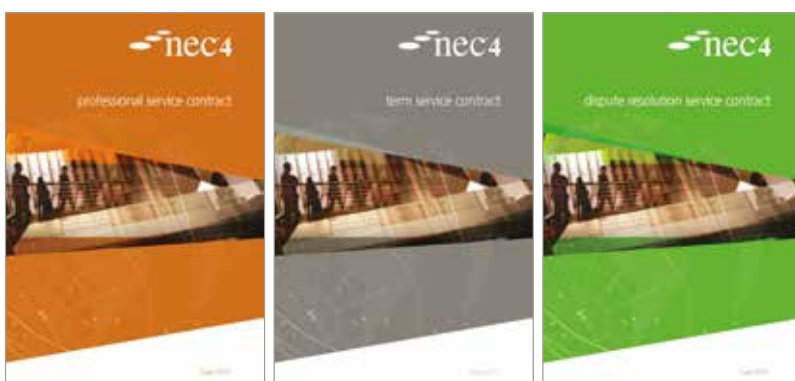
TSC

The principal changes specific in the NEC4 TSC compared to the NEC3 version are as follows.

- Service manager instructions – NEC3 acknowledged changes to the affected property could occur, but in NEC4 the service manager may instruct them. This will be useful where the extent of a client's asset fluctuates, for example increases in numbers of houses for housing associations or new roads for highway authorities.

- Task orders – NEC4 reinforces the intended purpose of task orders with clearer distinction over how instructions changing the scope, task orders and 'call off' against existing scope work in combination.
- Accepted plan and task order programmes – a failure by the service manager to reply to plans submitted for acceptance paves the way for a new sanction, similar to that for compensation events, resulting in it being treated as accepted.
- Payment – NEC4 TSC requires the contractor to submit an application for payment before each assessment date and, following the service manager's certification of payment, the contractor is required to submit an invoice.
- Compensation events – two new compensation events address material differences in anticipated versus actual quantities, and the correction of mistakes in the price list.
- Schedules of cost components – in NEC4 the TSC, like the ECC, now includes both a schedule of cost components and a short schedule of cost components. A new concept of service areas provides clarity in distinguishing defined cost from fee.
- Extending the service period and accounting periods – the ability for the parties to agree to extend the service period has been elevated into a new secondary option. A further new secondary option provides for a final amount due at the end of each accounting period.

'In drafting NEC4 the decision was taken to bring PSC closer to the other contracts and move away from what might be considered a more traditional way of appointing a consultant or other professional. This has resulted in considerable change'



NEC4 TSC, PSC and DRSC and shorter service contract forms TSSC and PSSC have been further integrated

PSC

In drafting NEC4 the decision was taken to bring PSC closer to the other contracts and move away from what might be considered a more traditional way of appointing a consultant or other professional. This has resulted in considerable change – indicated by a name change from Professional Services Contract to the Professional Service Contract to show its relationship to the TSC. While many of the changes are those seen in the TSC, there are some areas where it still differs from it.

The principal changes are as follows.

- Service manager and payment – the employer's agent option X10 has been removed and a service manager introduced as integral to contract. Among other changes this brings, the assessment of the amount due now lies with the service manager rather than with the consultant.
- Defined cost – this has been introduced together with a schedule and shorter schedule of cost components. These follow the principles of the schedule and shorter schedule of cost components in the ECC and, now, the TSC.
- Option G – this has been removed, leaving options A, C and E. A client which wants a call-off arrangement for professional services is now expected to set up a framework using the NEC4 Framework Contract (FC) and PSC contracts for the work packages. Small packages of work could be instructed under the PSSC.
- Termination – by bringing PSC in line with other NEC4 contracts, the termination provisions have been changed, providing the parties with more clear and extensive termination rights.
- Programme – this has retained its importance as a management requirement, and the new sanction of deemed acceptance for a lack of response from the service manager is also included in the PSC.

TSSC and PSSC

The new TSSC and PSSC reflect the procedures adopted in the new TSC and PSC while still retaining simplicity of management.

Changes include

- modifications to the compensation event procedures, with a defined cost approach now adopted, and one fee percentage quoted
- a procedure to agree people rates
- the option of adjustments to the prices for inflation.

DRSC

The DRSC is the NEC4 version of the NEC3 Adjudicator's Contract (AC), emphasising that it is not restricted just to appointing an adjudicator. It can also be used to appoint a member of the dispute avoidance board in an NEC contract.

A new section to apply to the duties of a dispute avoidance board member has been introduced as an alternative to the adjudication section in the AC. Users of the AC should easily transfer to this new form. ○

Changes in NEC4 supply contracts



JOHN LOFTY AND STUART KINGS NEC4 DRAFTERS

The NEC4 Supply Contract (SC) and NEC4 Supply Short Contract (SSC) have been updated in line with the rest of the contracts in the new NEC4 suite.

Since they first appeared in 2009, the two supply contracts have become increasingly widely used. This is anticipated to continue as the NEC4 suite becomes the 'contract of choice' for many organisations.

The SC and SSC enable the purchase of goods of any complexity sourced from anywhere in the world. The contracts can be for any sector and any level in the supply chain.

The updated contracts have better alignment with the NEC4 suite of contracts, provide improved commercial arrangements and offer

more opportunities for purchasers and suppliers to be proactive and innovative.

The main changes from the NEC3 versions are as follows.

- **Managing risk** – as with other NEC4 contracts, the term 'Risk Register' has been replaced with the more appropriately termed 'Early Warning Register', better reflecting the risk management process within the contract.
- **Communications** – the communication protocol also now includes provision to specify a communication system within the scope. This mirrors modern use of the SC and frequent adoption of collaborative software systems in practice.

'The SC and SSC enable the purchase of goods of any complexity sourced from anywhere in the world. The contracts can be for any sector and any level in the supply chain.'

- **Scope** – this replaces the term 'Goods Information' and is now standard in all NEC4 contracts. The scope includes supply requirements, which allow users to comply with the latest international trading terms if they need to do so.
- **Cost transparency** – commercial amendments include an improved definition of cost. This now sees the incorporation of a detailed schedule of cost components. Provision for people rates have also been included.
- **Option improvements** – the X12 partnering option has been replaced with a multiparty collaboration option, a term which better describes the structured collaborative agreements typically seen on larger contracts. This should help suppliers in being genuinely included within supply chain arrangements and provide real incentive for innovation. This is further enhanced through a new option on supplier's proposals. This provides the facility for the supplier to propose changes to the scope to reduce the cost of an asset over its whole life.



The NEC4 SC and short form have been updated in line with the rest of the NEC suite

NEC4 guidance notes



TIM KNEE-ROBINSON NEC4 DRAFTER

The existing NEC guidance documents – in the form of guidance notes, flow charts and 'How to' guides – have been developed and added to over many years. This has led to guidance on a specific topic sometimes appearing in more than one place and some topics being less well covered than they might be.

In producing the NEC4 contracts, a comprehensive review and re-structuring of all guidance documents was completed. The aim has been to

- provide a simple, easy-to-follow structure so that guidance is more readily accessible
- address any gaps
- include explanations of how clauses are used
- provide practical advice by including checklists where appropriate.

The new NEC4 user guides provide step-by-step support to help users choose the most appropriate NEC4 contract, prepare the chosen contract, select a supplier and then manage the contract to deliver

the client's objectives.

Each of the topics is covered in a separate user guide.

Establishing procurement and contract strategies

The user guide on procurement and contract strategies helps clients to identify the best way of achieving their project objectives, taking into account constraints, funding, risk and asset ownership. It provides guidance on selecting the most appropriate procurement route and choice of available NEC4 contracts and available options to meet their specific needs.

The starting point assumes that the client has resolved the following

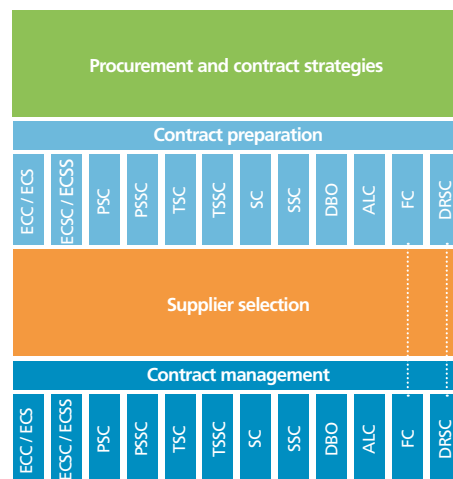
- the business case and project objectives
- the risk profile and overall management strategy including, in broad terms, decisions made with regard who is best placed to manage the risks

- a decision has been made to use the NEC4, but the contract strategy has not been determined.

Preparing the contract

The contract preparation user guide helps clients prepare the particular NEC4 contract they have chosen to use to achieve their project objectives ready for supplier selection to

There are 24 user guides supporting users throughout the NEC4 procurement process ▼



commence. For each NEC4 contract, the relevant user guide includes

- an explanation of the constituent parts the contract
- a checklist on how to complete contract data as well as a worked example
- a checklist on what should be included in the scope and where relevant other documents like the site information (ECC, ECS, ECSC and ECSS) and affected property (TSC and TSSC)
- guidance on preparing a pricing document where relevant.

The starting point assumes the client has resolved its contract strategy and decided which contract to use, including the main and secondary options where relevant.

Selecting suppliers


The supplier selection user guide helps with how to select a supplier. Where tendering has been chosen as the method of selection, guidance is provided on the tender process including sending out invitations to tender, tender evaluation and assessment. Guidance is also provided on finalising and awarding contracts.

The starting point assumes the client has

prepared the relevant NEC4 contract.

Managing the contract

The contract management user guide helps manage the chosen contract correctly once the contract comes into existence. For each NEC4 contract, the relevant guidance book provides detailed practical guidance, broadly based on the clause structure, on how to operate them to achieve a successful outcome.

The nature of the FC and DRSC mean that the contract preparation and management parts of the guidance are contained in the same user guide. 

Legal and insurance aspects



PETER HIGGINS NEC4 CONTRACT BOARD CHAIR AND JOHN HUGHES-D'AETH NEC4 CONTRACT BOARD MEMBER

Since it was first published in 1992, the NEC suite has promoted collaborative management processes over legal verbiage.

While lawyers (and occasionally judges) have criticised its drafting style and 'loose language', the NEC suite has successfully delivered projects with a combined value of many billions of pounds, both in the UK and overseas. It can also be fairly said that, on the few occasions when disputes have reached the courts, the judges have had no difficulty in giving NEC contracts their intended meaning.

With that impressive track record, it is unsurprising that the brief given by the NEC board to the drafting team responsible for NEC4 called for an update only, rather than a radical revision. The priority has been to maintain the NEC3 philosophy and there was simply no compelling case for a major re-write. So, any lawyers looking for wholesale re-drafting will be disappointed.

Users' Group feedback

However, the brief did not suggest there was no scope for improvement. One of the benefits of the NEC Users' Group network is that it has generated a wealth of feedback on how the forms are used in practice. This has identified a number of areas where the suite would benefit from clarification or additional provisions to facilitate its use.

We have been privileged to be part of the team responsible for delivering the changes, following in the distinguished footsteps of Philip Capper and Tony Blackler, who have provided legal input to previous editions. We are pleased to report that, in a number of areas, NEC4 represents a significant step forward from its predecessors.

Many of the revisions are described in detail elsewhere in this issue. This article focuses on changes that are more of a legal nature, or which have liability or insurance implications. Inevitably it is selective and should not be taken as an exhaustive list.

Alignment of provisions

One important change is that the various forms in the suite have been aligned as far as possible, so that common themes are dealt with in a consistent way. For example, the confidentiality provisions

that previously appeared only in the NEC3 Professional Services Contract (PSC) clauses 70.3 and 70.4 are now included in all NEC4 contracts.

Of course, there remains a number of areas where the forms diverge, reflecting the different nature of the works and services to be supplied under them. The dream (espoused by some) of a 'grand unified contract' covering all types of works, goods and services remains a distant prospect.

Dealing with corruption

New provisions have been included dealing with 'corrupt acts'. These reflect the increasing worldwide focus on bribery and corruption and imposes express obligations on the contractor, both directly and in relation to its supply chain.

An additional reason for termination linked to corruption has also been included.

Enabling transfer of benefits

An assignment provision has been included. This generally permits either party to transfer the benefit of the contract (but not the burden, which under English law may only be transferred by way of novation).

Reflecting the NEC imperative of mutual trust and co-operation, the client may not transfer to a party who does not intend to act in that spirit.

Finality of costs

Also for the first time, NEC4 includes provision for the issue of a final certificate, either following completion of the contractor's obligations or on termination. The NEC suite has historically taken the approach that, since costs and compensation events are required to be assessed in real time, there is no need for a final account process.

However, it has become clear that users would



NEC4 represents a significant step forward from its predecessors

'A substantially new option X8 has been introduced in NEC4 contracts, entitled 'Undertakings to the Client and Others'. This replaces a section on collateral warranty agreements'

benefit from a mechanism that gave finality to the final cost and avoided later challenges. The new clause obliges the project or service manager to assess and certify the final amount due, with a right for the contractor to issue an assessment if a certificate is not issued within the time stated.

The assessment will be conclusive of the final amount due unless either party invokes the dispute resolution provisions within a fixed timescale.

Allowing cost of supply chain disputes

The definition of 'Disallowed Cost' in the cost-based contracts has been amended so that only the cost of legal proceedings between the parties is disallowed.

The thinking is that the cost of proceedings between the contractor and its supply chain should be chargeable as 'Defined Cost', since otherwise the contractor will be motivated to settle claims (at the client's expense) rather than challenge them.

Risks and insurance clarified

Section 8 in NEC3 contracts on risks and insurance has been significantly revised to clarify its intent and address concerns raised by insurance experts.

The term 'risks' in section 8 led to particular confusion as 'risk' has a different meaning elsewhere in the suite, so in NEC4 it has been

changed to 'liabilities'. The NEC3 word 'indemnity' has also been removed, partly because it is not well understood outside the UK.

The contractor's liabilities have been set out in detail, rather than being defined by exception as in NEC3. The interaction between the client's liabilities in section 8 and the compensation event regime in section 6 has also been clarified.

Finally, clause 84.2 in certain NEC4 contracts now requires insurance policies to include a waiver of subrogation rights against the parties, so that insurers can no longer take action which would undermine the agreed allocation of liabilities under the contract.

Enhanced secondary options

Secondary option X4 on parent company guarantees has been amended in NEC4 contracts to clarify that the client may require a guarantee either from the contractor's ultimate parent, or from an intermediate holding company if the client is satisfied with its financial strength. This reflects the approach commonly adopted on major projects.


A substantially new option X8 has been introduced in NEC4 contracts, entitled 'Undertakings to the Client and Others'. This replaces a section on collateral warranty agreements, which previously appeared only in NEC3 PSC. The new option has been designed primarily to meet the needs of the UK building

market, although it should be noted that the Contracts (Rights of Third Parties) Act 1999 is increasingly being used in the UK as an alternative means of conferring rights on third parties. However, option X8 will remain relevant in a non-UK context.

Option X15 on limitation of the contractor's design responsibility has been substantially rewritten in NEC4 contracts so that the contractor's design obligations and ancillary provisions (such as rights to use material and professional indemnity insurance) are aligned with those of a consultant under the PSC. In the process, the burden of proof has been reversed, so that (as under most contracts) it will be for the client to prove that the contractor failed to exercise skill and care in its design.

Improved dispute resolution options

Finally, NEC4 dispute resolution options have been substantially expanded to reflect the range of dispute avoidance and resolution mechanisms now in use on major projects worldwide.

NEC4 options W1 and W2 now include referral to senior representatives of the parties prior to the appointment of an adjudicator. A new option W3 provides for the use of a 'Dispute Avoidance Board' as an alternative to adjudication for contracts not subject to the UK Construction Act. 

Become an NEC4 early adopter

DANIEL CELINO
NEC BUSINESS DEVELOPMENT

The launch of NEC4 on 22 June presents NEC users with an opportunity to enhance their procurement strategy, contract management, business processes and behaviours. Naturally many organisations will be keen to adopt NEC4 immediately, especially where there is a long-term project about to start.


The NEC team wishes to ensure such organisations have every opportunity to transition to NEC4 and realise the intended strategic, operational, financial and behavioural benefits. We would therefore like to engage with potential

'early adopters' to support their transition to NEC4 before the contracts are officially launched.

Free consultation service

For early adopters we can offer a free consultation service to support the transition to NEC4. We can also offer project support delivered by our NEC4 subject experts and NEC4 drafting team, who will be on hand to provide guidance, advice and assistance. We will help you to identify the appropriate NEC4 contract strategy, draft

tender documents and equip your team and stakeholders with the information, skills and practices needed to ensure success.

Working with NEC to become an early adopter will also speed up the release of your tenders following the launch of NEC4 in June. 

For further information and to become an early adopter, please email daniel.celino@necontract.com. Terms for the free consultation to be agreed for each project.



NEC4 launch events

5 April 2017: 'Revealing NEC4' – NEC webinar

The first public presentation of NEC4 will take place on line at 13:00 UK time (GMT + 1) on 5 April 2017 in a webinar entitled 'Revealing NEC4'.

Peter Higgins, chair of the NEC4 contract board, and Ian Heaphy, NEC consultant and board member, will explain why and how NEC4 was developed and guide NEC users through the new suite. Higgins drove the overall NEC4 drafting process and Heaphy has been directly involved in drafting and development.

During the webinar they will discuss the new features and changes in the NEC4 contract suite and how these are an improvement on NEC3. They will also introduce the new NEC4 Design, Build and Operate Contract (DBO) and the consultative NEC4 Alliance Contract (ALC).

Overall they will explain how the changes have been driven by user feedback and changing user requirements, while still ensuring NEC principles of clarity, flexibility, collaboration and fairness remain intact.

The 1 hour webinar is free for all to join and participants can raise questions with the presenters. The event will be available for free from the NEC website at a later date.

22 June 2017: 'NEC3 to NEC4: from partnership to collaboration' – NEC Users' Group Annual Seminar

The NEC Users' Group Annual Seminar in London on 22 June 2017 will incorporate the formal launch of the new NEC4 suite of contracts. Entitled 'NEC3 to NEC4: from partnership to collaboration', the event will take place in County Hall, rather than One Great George Street to provide greater capacity.

The annual seminar is the biggest event in the NEC calendar and this year is expected to be larger than ever. As in previous years, the seminar is designed to bring together NEC users from around the world to share their experiences, discuss best NEC practice and get the latest insights on using the contracts to deliver successful outcomes.

The focus of many of the presentations this year will be on NEC4 contracts and how they differ from NEC3. Topics will include the improved flexibility in NEC4 contracts, key changes to NEC4 for tier 2 subcontractors and the new NEC4 Design, Build and Operate Contract and consultative NEC4 Alliance Contract.

Expert speakers from government and industry will also cover the latest perspectives and developments regarding NEC use in the UK and internationally. Speakers already confirmed include

- Nick Baveystock, Director General, Institution of Civil Engineers
- Tim Broyd, President, Institution of Civil Engineers
- Beth West, Commercial Director, HS2 and Chair, NEC Users' Group
- Rudi Klein, Chief Executive, Specialist Engineering Contractors' Group and President, NEC Users' Group
- Peter Higgins, Chair, NEC4 Contract Board
- John Hughes-D'Aeth, Partner, Berwin Leighton Paisner
- Matthew Garratt, Commercial Director, Costain
- Ian Heaphy, Consultant, NEC
- Tim Knee-Robinson, Consultant, NEC
- Barry Trebes, Consultant, NEC.

Breakout sessions will enable attendees to take part in interactive discussions led by NEC experts and contract drafters. With the opportunity to discuss and ask questions, attendees will gain the first detailed insight into the new NEC4 contract suite and see how it has evolved from NEC3 so that it continues to address users' needs and drive industry behaviours.

In addition, a series of workshops will allow attendees to improve their practical knowledge of the NEC contracts. The seminar will conclude with the NEC 'Clause 10.1' awards, celebrating how users have successfully delivered NEC projects using the clause 10.1 'spirit of mutual trust and cooperation'.

The delegate cost is £399. NEC Users' Group members are entitled to free or discounted place depending on their membership level and availability of spaces.

For further information and to register please visit necontract.com/revealing-ec4 for the webinar and necontract.com/events for the seminar.

NEC Users' Group members

A warm welcome is extended to all new members, highlighted in **bold** in the membership category lists below.

PLATINUM	WYG Management Services	Capture Green Limited	APM (HK)
AAWE Plc	YGC	Castle Hayes Pursey LLP	Aradig Consultancy Hong Kong Limited
Cambridgeshire County Council	SILVER	CEMAR	Atkins China Ltd
Dounreay Site Restoration Ltd	Aberdeenshire Council	Centre for Business Research	Beria Consultants Ltd
Geoffrey Osborne Ltd	Anglian Water Services Ltd	Chandler KBS	BK Surco Ltd
High Speed Two (HS2)	Angus Council	Conject	Black & Veatch Hong Kong Ltd
Highways England Co Ltd	Aquila Nuclear Engineering Ltd	Construction Dispute Resolution	Chavelier (Envirotech) Ltd.
Lafarge Tarmac	Balfour Beatty	Contract Controls Ltd	Chinese University of Hong Kong
Magnox Limited	Barhale Plc	Cripps LLP	Chun Wo Construction & Engineering Co Ltd
Northern Ireland Water	BEP Delivery Team	Crummock (Scotland) Limited	Civil Engineering & Development Department, HKPSAR
Parliamentary Estates Directorate	Bezzant Ltd	CTori Construction Consultants Limited	CLP Power Hong Kong Ltd
Pinsent Masons LLP	Borough of Poole	Deane Public Works Ltd	Clyde & Co
RWE Innogy UK Limited	Bourentrading Borough Council	Department of Health Procure22	Contract Communicator Systems
Sellafield Ltd	Brink Management & Advice	Docté Consulting	Descors
Southend Borough Council	Built Intelligence Ltd	Doig & Smith Ltd	Development Bureau, HKSAR
Southern Water	Cambridge City Council	Doncaster Metropolitan Borough Council	Dragages Hong Kong Ltd
Surrey County Council	Cambridgeshire County Council	Dumfries & Galloway Council	Drainage Services Department
Transport for London	CH2M Hill UK	dunstan-consulting Ltd	Gammon Construction Ltd
West Yorkshire Councils	CNS Planning Ltd	East Lothian Council	Highways Department, HKSAR
GOLD	Colas Ltd	Engineering Contract Strategies	Hill International (HK) Ltd
AECOM Professional Services LLP	Connect Plus (M25) Ltd	Fulkers	Hogan Lovells (Hong Kong)
Aggregate Industries UK	Corrwall Council	Fundamentals Ltd	Hong Kong Construction Industry Council
Amec Foster Wheeler Nuclear UK Ltd	Dee Valley Water Plc	George Corderoy & Co	Hsin Chong Group
Areva SA	Defence Science & Technology Laboratory	GHA Livignum Ltd	Holdings Limited
Atkins Limited	East Ayrshire Council	Glanville Projects Ltd	Institution of Civil Engineers (Hong Kong)
Atkins UK	East Riding of Yorkshire Council	Glasgow City Council	KCI Management Consultancy Ltd
Balfour Beatty Group Limited	Eastern Solent Coastal Partnership	Hanley Pepper Ltd	Kum Shing (KF) Construction Co Ltd
Balfour Beatty Major Civil Engineering	Environment Agency	Hanover Housing Association	Leighton Contractors (asia) Ltd
Balfour Beatty Utility Solutions	Faithful+Gould	Haskoning DHV UK Ltd	Mace Limited (Hong Kong)
BAM Construct UK Ltd	Fife Council	HLG Associates Limited	Mannings (Asia) Consultants Ltd
BAM Nuttall Ltd	First Choice Homes Oldham	Hydro International (Wastewater) Limited	Mayer Brown JSM
Barnsley Metropolitan Borough Council	George Leslie Ltd	Ironside Farrar Ltd	Meinhardt Infrastructure & Environment Ltd
Belfast City Council	Glaxo Smith Kline	J Breheny Contractors Ltd	Mog MacDonalDong Kong Ltd
Bell Contracts & Co Ltd	GMH Planning	JIL Consultancy Ltd	Mong Ltd
Bolton Metropolitan Borough Council	Graham Construction	John F Hunt Demolition	MY Cheng & Co (Engineering) Ltd
Bracknell Forest Borough Council	GVE Commercial Solutions	John Papworth Ltd	Navigant Consulting (Hong Kong) Ltd
Bristol City Council	Heathrow Airport Holdings Ltd	Lancaster City Council	Paul Y Construction Company, Limited
Campbell Reith Hill LLP	Hill & Smith Ltd T/A Techspan Systems	Leicestershire County Council	Pinsent Masons
Carillion Plc	IPP Contracting Ltd	London Borough of Hillingdon	Sum Kee Construction Ltd
Cavendish Nuclear Ltd	Jacobs UK Ltd	Mangotree Kent Limited	The Contracts Group Ltd
CCS Group PLC	Jersey Electricity Co Ltd	McAdam Design	Turner & Townsend (HK)
Central Procurement Directorate	JN Bentley Limited	Met Office	URS Hong Kong Ltd
City of Edinburgh Council	John Sisk & Son Ltd	MM Miller (Wick) Ltd	Vasteam Construction Limited
Cubic Transportation Systems ITS	Leading Edge Projects Consulting Ltd	Natural Resources Wales	VSL Intrafor (HK)
Currie & Brown UK Ltd	MacKenzie Construction Limited	Newcastle City Council	Water Supplies Department, HKSAR
Defence Infrastructure Organisation (DIO)	Management Process Systems Ltd	Novi Projects	AUSTRALASIA
Dover Harbour Board	Medway NHS Foundation Trust	Nuvia Limited	4Site Limited
Driving & Vehicle Standards Agency	Mott MacDonald Limited	Orkney Islands Council	Advisian Pty Ltd
East Sussex County Council	Mouchel Group Plc	Palbro Consulting Limited	Aquanta Consulting Pty Ltd
Eurovia Group Ltd	MWH UK Ltd	Pat Munro (Alness) Ltd	Auckland International Airport Limited
Farrans (Construction) Ltd	NBS Services	patConsult	BIMS Group Services
FTI Consulting	Nexus Rail	Peter Brett Associates	Broadspectrum (New Zealand) Limited
Fugro Geoservices Ltd	North Ayrshire Council	Peter Cousins & Associates	Christchurch City Council
Galliford Try	Northern Ireland Housing Executive	Portsmouth City Council	Civmec Construction & Engineering
Gleeds Corporate Services Ltd	Northumberland County Council	Pro Eng	Constructing Excellence NZ
Guys and St Thomas NHS Trust	Osborne Clarke	Procom-IM Ltd	Cuesko Limited
Interserve (Facilities Management) Ltd	PD Group Management	Pyments Ltd	Hawkins
Interserve Construction Ltd	Palm Commercial Services Ltd	RA Gerrard Ltd	MACSA Civil Pty Ltd
J Murphy & Sons Ltd	Pick Everard	Ramboll	Marc Palmer
Jackson Civil Engineering Group Ltd	Playle & Partners LLP	Ramskill Martin	Meridian Energy Limited
Kings College London	Prysman Cables & Systems Ltd	Rex Procter & Partners	New Plymouth District Council
Laing O'Rourke	R G Carter Technical Services Ltd	Reynolds Porter Chamberlain LLP	New Zealand Defence Force
Lend Lease Consulting (EMEA) Limited	R J McLeod (Contractors) Ltd	Ridge & Partners	PBA Ltd
Lincolnshire County Council	Renfrewshire Council	Royal Holloway, University of London	PowerNet
LLW Repository Ltd	Resolute Project Services Ltd	RSK Environment Ltd	RICS Oceania
Mace Group	SemLogistics Milford Haven Ltd	Russell Scott Ltd	Watercare Services Limited
Ministry of Justice	South East Water Ltd	RWJP Ltd	REST OF WORLD
Moreton Haywood Limited	South Lanarkshire Council	Salvation Army	Benson Consultancy (HK) Limited
MW High Tech Projects UK Limited	South West Water Ltd	Shropshire County Council	Cementation Canada Inc
National Grid Plc	States of Jersey	Solomons Europe Ltd	ConsulCAD
NG Bailey	Telford & Wrekin Council	Specialist Engineering Contractor's Group	Eggs Road & Tunnel Operation Ireland
Norfolk County Council	The Capita Group PLC	SQOS Associates Ltd	Fulton Hogan Limited
Northumbrian Water Limited	The Orange Partnership	States Property Services	K21 CAPITAL
Ove Arup & Partners Ltd	Topcon	Summers-Inman LLP	Nuclear Consultants International
Oxfordshire County Council	Turner & Townsend	Sutton & East Surrey Water Plc	Thurlow Associates
Perth and Kinross Council	University of Glasgow	Synergie Training	ACADEMIA
QinetiQ Ltd	Volker Rail Ltd	Sypro Management Ltd	Anglia Ruskin University
RPS Consulting Engineers	Walter Thompson (Contractors) Ltd	T & N Gilmartin	Conventry University
RWE Technology UK Limited	Wardell Armstrong LLP	Tanner Project Management Ltd	Glasgow Caledonian University
Schofield Lothian Limited	Worcestershire County Council	Taylor Wessing LLP	Kingston University, UK
Siemens	Yorkshire Water Services Ltd	The Big Red Apple Company Ltd	Leeds Beckett University
Skanska Construction UK Limited	BRONZE	The Highland Council	Loughborough University
Springfields Fuels Ltd	Amaro Signalling Limited	The Scottish Government	Nottingham Trent University
SS Plc	AMEC Foster Wheeler Environment & Infrastructure	Trebes Consulting Limited	Robert Gordon University
Tarmac Trading Limited	Arney Black & Veatch JV	Trowers & Hamsling	Aberdeen
The British Museum	Andrew Sinclair Ltd	Veale Wasbrough Vizards LLP	The College of Estate Management
UK Power Networks Ltd	Anthony Collins Solicitors LLP	VHE Construction Plc	University of Central Lancashire
United Utilities Water Plc	Arden Consulting Ltd	Via East Midlands	University of Greenwich
Vinci Construction UK Limited	Beattie Communications	Viridor Waste Management Ltd	University of the West of England
Volker Wessels UK Ltd	Bennetts Associates	Viridor Waste Management Ltd	University of Ulster
VPI Immingham LLP	Bilfinger Industrial Services UK Ltd	Wallace Stone LLP	Wolverhampton
Warwickshire County Council	Caledonian Maritime Assets Limited (CMAL)	WDR & RT Taggart	
WSP UK Ltd		Wrekin Consulting Limited	
		ASIA-PACIFIC	
		Airport Authority Hong Kong	

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