



## NEC4 Y(IR)1 Clause

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Optional contract clause and guidance for the **Alliance Contract** for use in Ireland on contracts which are subject to the Construction Contracts Act 2013

Clauses and guidance are also provided for other NEC4 contracts which may be subject to the Construction Contracts Act 2013. These are available for download from [necontract.com](http://necontract.com).

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# Acknowledgements

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The fourth edition of the NEC suite was produced by the Institution of Civil Engineers through its NEC4 Contract Board.

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# Guidance

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If incorporated, this Option is used to supplement the core clause payment provisions and amend the dispute resolution provisions in order to ensure that they comply with the Construction Contracts Act 2013 (the Act). The effect of this Option is to keep all the payment and dispute resolution terms expressly within the contract and avoid additional terms being implied or imposed by the Act.

Y1.1 deals with definitions, and particularly dates for communications within the Option. In the Alliance Contract, this will affect things like payment dates, the date when any payment responses may be issued, dates for triggering dispute resolution or suspension and so on.

Y1.2 In order to comply with Sections 3 and 4 of the Act, this clause introduces a process that allows the Alliance Manager to make payment applications later than permitted by clause 51, and allows the *Client* to react to them within the contractual framework.

The provisions in clause 51 dealing with the date payment is due and notice of payment requirements are unchanged. Clauses 50 and 51 require that all assessments that form the notice of payment need to show the basis upon which any payment has been calculated.

Y1.3 and Y1.4 To comply with Section 4(3) of the Act, these clauses set out the requirement for advising the Alliance Manager of any amount to be withheld and the date by which such advice is to be issued. In the Act this is described as a response to a payment claim. Y1.4 deals with the requirements of the Act for a specific response to be given where the reason for the reduction is due to a claim for loss or damage resulting from breach of contract by a Partner. These additional express requirements add to those of clause 51.

Y1.5 Under Sections 5 and 7 of the Act the Partners have the right to suspend performance if they are not paid in full the amount due under the contract, unless payment is subsequently made or the matter is referred to dispute resolution. The Option provides that suspension is a compensation event if suspension is made in accordance with the Act.

Y1.6 The Act provides the right to adjudication of a payment dispute. Therefore, the Option incorporates the right to adjudication and the procedures in the Act. It preserves the approach to dispute resolution in clauses 95–97 otherwise.



## NEC4 Y(IR) CLAUSE

# Y(IR)1 Construction Contracts Act 2013

<b>Definitions</b>	Y1.1	Any communication in this Option which is to be made on a Saturday, Sunday or public holiday (within the meaning of Organisation of Working Time Act 1997) may be made on the next day which is not one of these.
<b>Application for payment</b>	Y1.2	If an application for payment is submitted by the Alliance Manager within 5 days after the assessment date which otherwise complies with the contract it is considered by the <i>Client</i> in deciding whether the Alliance Manager has correctly assessed the amount due.
<b>Client's response</b>	Y1.3	<p>If the <i>Client</i> decides not to pay the amount due, the <i>Client</i> responds to the Alliance Manager's application. The response is within 21 days of the assessment date and includes</p> <ul style="list-style-type: none"> <li>• the amount the <i>Client</i> proposes to pay,</li> <li>• the reasons for the difference from the application,</li> <li>• the basis on which the amount proposed to be paid is calculated and</li> <li>• any other information that this contract requires.</li> </ul> <p>The <i>Client</i> pays the sum stated in its response at the date for payment of amounts due.</p>
	Y1.4	<p>If the reason for a reduction in the amount the Alliance Manager considers is due is attributable to a claim for loss or damage arising from a breach of any contractual or other obligation by a Partner, the <i>Client's</i> response specifies</p> <ul style="list-style-type: none"> <li>• when the loss was incurred or the damage occurred or how the other claim arose,</li> <li>• the particulars of the loss, damage or claim and</li> <li>• the portion of the reduction that is attributable to each such particular.</li> </ul>
<b>Suspension of performance</b>	Y1.5	If the Partners exercise their right under the Construction Contracts Act 2013 to suspend performance, it is a compensation event.
<b>Disputes</b>	Y1.6	A member of the Alliance may refer a payment dispute for adjudication in accordance with s6 of the Construction Contracts Act 2013 at any time.