

An explanation of main changes

INTRODUCTION

The NEC4 suite of contracts was published in June 2017. Following publication there has been discussion of and feedback from users and industry experts on the new features, forms and changes which were introduced. This feedback has been extremely positive overall and has provided many constructive suggestions as to how the contracts could be further enhanced.

The NEC very much welcomes user feedback as part of the ongoing process to develop the contracts, user guides and practice notes to better support users in the successful delivery of works, services and supply.

To build on the constructive feedback and further improve the contracts the NEC has published a set of amendments.

This paper explains the most significant amendments that have been made.

Due to the consistency of NEC contracts, drafting changes often affect more than one contract within the NEC4 suite. The approach in this paper is to explain the main amendments being made to the Engineering and Construction Contract, and to state which other contracts they apply to. Then specific changes being made to contracts other than the ECC are explained.

A schedule of amendments is available for each contract on the NEC contract web-site www.neccontract.com. The schedules detail all amendments being made except minor typographical amendments which do not affect the interpretation or application of the contracts. New contracts are printed with the amendments included. Updated versions of the User Guides have also been produced to reflect the amendments made to the contracts.

ECC CLAUSE 63.5: ASSESSMENT OF DELAY DUE TO A COMPENSATION EVENT

A change has been made to clause 63.5 to embed good practice and provide further clarity.

NEC published 'Practice Note 1' in October 2017 which is a practical guide for users on how to assess delays due to compensation events (CE's). Feedback on this note was very positive, however users said we could do more with the contract drafting to embed the good practice contained in the practice note.

The practice note explains that the assessment of delays due to a CE should take into account events which have happened between the date of the Accepted Programme and the dividing date for the CE being assessed. This includes for example, other CEs and other causes of delay which happened prior to the CE being assessed. It also clarifies that any delay caused by the CE which is already in the Accepted Programme, is taken into account in the assessment. Some of this detail was not explicitly covered in the existing wording of clause 63.5 and so to address this the following amendment has been made to clause 63.5:

Delete third paragraph and substitute

"The assessment takes into account

- any delay caused by the compensation event already in the Accepted Programme and
- events which have happened between the date of the Accepted Programme and the dividing date."

This change also applies to the equivalent clauses in DBOC, ECS, PSC, PSS, SC, TSC and TSS.

ECC CLAUSE 90.2 – TERMINATION TABLE

A minor change has been made to the procedures that apply in the event of termination by the *Client* due to reasons R17 and R20. This provides consistency with the procedures that apply in the event of termination by the *Contractor* due to the same 'no fault' reasons. No changes have been made to the amounts due as stated in the Termination Table.

This change also applies to DBOC, ECS, PSC, PSS and SC.

ECC OPTIONS C, D, E AND F CLAUSE 50.9 – AGREEMENT OF DEFINED COST

Two minor drafting improvements have been made to clause 50.9 to clarify that the finalisation is for the Defined Cost for a part of the *works* giving closure to both the *Client* and *Contractor* in relation to these costs.

This change also applies to the equivalent clauses in DBOC, ECS, PSC, PSS, TSC and TSS.

ECC OPTIONS W1 AND W2 – SENIOR REPRESENTATIVES

A sentence has been added to Clauses W1.1(1) and W2.1(1) which allows either Party to replace their *Senior Representative* after notifying the other Party of the name of the replacement. This provides a formal process under the contract to change the *Senior Representatives*, which otherwise would require the mutual agreement of the Parties.

This change also applies to the equivalent clauses in DBOC, ECS, PSC, PSS, SC, TSC and TSS.

PSSC – THE CONSULTANT'S CONTRACT DATA – PEOPLE RATES

A number of changes have been made to the PSSC to clarify the difference between work undertaken on a time charge basis as opposed to rates and lump sums. The first change is to clarify that the *Client* has to select one of these options as the contract does not provide for a mixture of time charge and rates and lump sums to be used.

The contract also makes it clear that where work is to be carried out on a time charge basis the *Consultant* includes *people rates* for its own people and people provided by a subcontractor and that these rates should be exclusive of the Fee.

Where work is undertaken on a time charge basis the fourth bullet of clause 53.3 has been changed to make these rates subject to the addition of the Fee, which is in keeping with how compensation events are assessed using *people rates* when rates and lump sums are being used.

This change does not apply to any other contracts.

SC, ECS, PSS, TSS – PROJECT BANK ACCOUNT

In the SC and the main forms of subcontract (ECS, PSS and TSS) the form of Trust Deed and Joining Deed for secondary Option Y(UK)1 Project Bank Account has been removed. This is because the *Supplier* or *Subcontractor* will become a member of a Project Bank Account created under a main contract and so the Trust Deed and Joining Deed for that contract will be used. In the SC and the subcontracts entries are now provided in the Contract Data to identify the applicable Trust Deed and Joining Deed.

ACRONYMS USED IN THIS PAPER TO REFER TO NEC4 CONTRACTS

ECC – Engineering and Construction Contract

ECS – Engineering and Construction Subcontract

PSC – Professional Services Contract

PSS – Professional Services Subcontract

PSSC – Professional Services Short Contract

SC – Supply Contract

TSC – Term Service Contract

TSS – Term Service Subcontract

DBOC – Design Build Operate Contract

