



dispute resolution service contract



June 2017

For BCP council use only to expire February 2024.



Dispute Resolution Service Contract

This contract should be used for the appointment of an adjudicator or dispute avoidance board member to resolve disputes under an NEC4 contract

An NEC document

June 2017

(with amendments January 2019)

The Government Construction Board, Cabinet Office UK

The Government Construction Board (formerly Construction Clients' Board) recommends that public sector organisations use the NEC contracts and in particular the NEC4 contracts where appropriate, when procuring construction. Standardising use of this comprehensive suite of contracts should help to deliver efficiencies across the public sector and promote behaviours in line with the principles of the Government Construction Strategy.

The Development Bureau, HKSAR Government

The Development Bureau recommends the progressive transition from NEC3 to NEC4 in public works projects in Hong Kong. With suitable amendments to adapt to the Hong Kong local environment, NEC4 is expected to further enhance collaborative partnering, unlock innovations and achieve better cost management and value for money in public works projects.



NEC is a division of Thomas Telford Ltd, which is a wholly owned subsidiary of the Institution of Civil Engineers (ICE), the owner and developer of the NEC.

The NEC is a suite of standard contracts, each of which has these characteristics:

- Its use stimulates good management of the relationship between the two parties to the contract and, hence, of the work included in the contract.
- It can be used in a wide variety of commercial situations, for a wide variety of types of work and in any location.
- It is a clear and simple document – using language and a structure which are straightforward and easily understood.

NEC4 Framework Contract is one of the NEC suite and is consistent with all other NEC4 documents. Also available are User Guides and Flow Charts.

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Foreword

Continuous improvement in project delivery is required to build confidence in the UK construction sector so that we can attract more investment. The Infrastructure and Projects Authority (IPA) is the government's centre of expertise for infrastructure and major projects. We sit at the heart of government, reporting to the Cabinet Office and HM Treasury.

The application of the right contract is central to the success of the overall project delivery system. The NEC suite of contracts has been in existence for over the 20 years and has linked the projects, people and processes together to create the correct environment for successful delivery.

This new and updated NEC4 contract embraces the digital changes that are happening in the construction industry, especially around BIM, which I believe will be central to creating a step change in performance. Whilst looking forward it also builds on the fundamentals required for an effective contract.

The use of NEC4 on public sector projects will help to deliver the Government Construction Strategy as we seek to improve central government's capability as a construction client to deliver further savings in the order of £1.7bn across the Government estate. The IPA looks forward to collaborating with industry to make the delivery of projects more efficient and effective.

Tony Meggs, Chief Executive, Infrastructure and Projects Authority



Infrastructure
and Projects
Authority

Reporting to Cabinet Office
and HM Treasury

Preface

NEC was first published as a new and innovative way of managing construction contracts in 1993 – some 24 years ago. It was designed to facilitate and encourage good management of risks and uncertainties, using clear and simple language.

The NEC approach to managing contracts was endorsed in “Constructing the team – The Latham Report”, which was a government/industry review of procurement and contractual arrangements in the UK construction industry. This led to a second edition in 1995 incorporating the further recommendations of that review. This contract was used increasingly in the UK and overseas, and a major revision was made with the third edition in 2005.

NEC has played a part in helping the industry do things differently and better. It has done so by introducing effective project management procedures into the contract itself. These require pro-active management of risk and change, and the day-to-day use of an up-to-date programme. The range of pricing options has given Clients flexibility in the allocation of risk and the ability to share risk and manage it, collaboratively.

The NEC suite has evolved over three decades, embedding consultation responses and user feedback, and reflecting industry development, including new procurement approaches and management techniques such as alliances, management of information (BIM) and supply chain engagement. This feedback and the new procurement approaches formed the driver for the development of the next generation contracts and the launch of NEC4.

There were three key objectives in drafting NEC4:

- provide greater stimulus to good management
- support new approaches to procurement which improve contract management and
- inspire increased use of NEC in new markets and sectors.

It was to be evolution, not revolution.

Some features of NEC4 include:

- a new design build and operate contract to allow flexibility between construction and operational requirements in timing and extent
- a new multi-party alliance contract based upon an integrated risk and reward model
- new forms of subcontract to improve integration of the supply chain.

Further enhancements include:

- finalising cost elements during the contract
- incorporating a party-led dispute avoidance process into the adjudication process
- increasing standardisation between contracts and
- providing enhanced guidance to give greater practical advice to users.

NEC has always been known for its innovative approach to contract management, and this revision continues that approach. No other contract suite has had such a transformative effect on the built environment industry as NEC. It has put the collaborative sharing of risk and reward at the heart of modern procurement. It is also unique in providing a complete, back-to-back procurement solution for all works, services and supplies in any sector and any country.

NEC4 continues to set the benchmark for best practice procurement worldwide.

Peter Higgins BSc (Hons), CEng, FICE
Chair of NEC4 Contract Board

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

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Amendments

JANUARY 2019

The following amendments have been made to the June 2017 edition.

Page	Clause/location	Amendments
3	3.8	Clause amended
6	Contract Data Part one: General	Preamble amended

Full details of these amendments can be found at www.neccontract.com.

Conditions of Contract

1. GENERAL

Actions	1.1	The <i>Parties</i> and the <i>Dispute Resolver</i> shall act as stated in this contract and in the <i>contract between the Parties</i> .
	1.2	The <i>Dispute Resolver</i> acts impartially.
	1.3	The <i>Dispute Resolver</i> notifies the <i>Parties</i> as soon as a matter which may present a conflict of interest arises.
Identified and defined terms	1.4	In these <i>conditions of contract</i> , terms identified in the Contract Data are in italics and defined terms have capital initials.
	1.5	Expenses are the costs incurred by the <i>Dispute Resolver</i> for <ul style="list-style-type: none"> • printing, reproduction and purchase of documents, drawings, maps, records and photographs, • telephone calls, internet and data charges, • postage and delivery charges, • travelling, hotel and similar expenses, • room charges and • charges by others for help.
Interpretation and the law	1.6	In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round.
	1.7	The contract is governed by the <i>law of the contract</i> .
	1.8	If a conflict arises between this contract and the <i>contract between the Parties</i> then this contract prevails.
Communications	1.9	Each communication which the contract requires is in a form which can be read, copied and recorded. Writing is in the <i>language of the contract</i> .
	1.10	A communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data.
Corrupt acts	1.11	The <i>Dispute Resolver</i> and the <i>Parties</i> do not <ul style="list-style-type: none"> • offer, promise, give, accept or solicit an advantage as an inducement for an action which is illegal, unethical or a breach of trust or • abuse any entrusted power for private gain.

2. ADJUDICATION

Adjudication	2.1	This clause only applies if the Contract Data states that the <i>Dispute Resolver</i> acts as an Adjudicator.
	2.2	The <i>Dispute Resolver</i> does not decide any dispute that is the same or substantially the same as one that the <i>Dispute Resolver</i> or its predecessor has previously decided.
	2.3	The <i>Dispute Resolver</i> decides a dispute referred under the <i>contract between the Parties</i> . The <i>Dispute Resolver</i> makes a decision and notifies the <i>Parties</i> of it in accordance with the <i>contract between the Parties</i> .
	2.4	After notifying the <i>Parties</i> , the <i>Dispute Resolver</i> may obtain from others help that it considers necessary in reaching a decision. Before making a decision, the <i>Dispute Resolver</i> provides the <i>Parties</i> with a copy of any information or advice from others and invites their comments on it.
	2.5	The <i>Parties</i> co-operate with the <i>Dispute Resolver</i> and comply with any request or direction made in relation to the dispute.
	2.6	The <i>Parties</i> and the <i>Dispute Resolver</i> keep the <i>Dispute Resolver's</i> decision and information provided for an adjudication as confidential to those who have a proper interest in them.
	2.7	After a decision has been made, the <i>Dispute Resolver</i> keeps documents provided by the <i>Parties</i> for the <i>period of retention</i> .
	2.8	If as a result of the <i>contract between the Parties</i> another party has become a party to a dispute which is to be decided by the <i>Dispute Resolver</i> , references to <i>Parties</i> in the contract include the other party.
Advanced payment	2.9	If the Contract Data includes an advanced payment, each time a dispute is referred to the <i>Dispute Resolver</i> the <i>Party</i> referring the dispute pays to the <i>Dispute Resolver</i> the amount stated.
		An advanced payment is repaid to the referring <i>Party</i> as stated in the <i>Dispute Resolver's</i> decision. The repayment is included in the amount due assessed after the decision on the dispute has been notified.
Payment	2.10	An invoice is issued <ul style="list-style-type: none"> • each time a dispute is referred to the <i>Dispute Resolver</i> if an advanced payment is stated in the Contract Data, • after each decision on a dispute has been notified to the <i>Parties</i> and • after termination.
	2.11	Unless otherwise agreed, the <i>Parties</i> pay the <i>Dispute Resolver</i> the amount due in equal shares.

3. DISPUTE AVOIDANCE BOARD

Dispute Avoidance Board	3.1	This clause only applies if the Contract Data states that the <i>Dispute Resolver</i> acts as a Dispute Avoidance Board member.
	3.2	The Dispute Avoidance Board is the Dispute Avoidance Board in the <i>contract between the Parties</i> .
	3.3	The <i>Dispute Resolver</i> undertakes the duties of a Dispute Avoidance Board member in accordance with the <i>contract between the Parties</i> . The <i>Parties</i> co-operate with the <i>Dispute Resolver</i> .
	3.4	The <i>Dispute Resolver</i> collaborates with other members of the Dispute Avoidance Board.
	3.5	The <i>Parties</i> and the <i>Dispute Resolver</i> keep information provided or obtained in connection with the Dispute Avoidance Board as confidential to those who have a proper interest in them.
	3.6	After termination the <i>Dispute Resolver</i> keeps documents provided by the <i>Parties</i> for the <i>period of retention</i> .
Advanced payment	3.7	If the Contract Data includes an advanced payment, the <i>Parties</i> pay to the <i>Dispute Resolver</i> the amount stated in the Contract Data before each site visit. An advanced payment is repaid to the <i>Parties</i> by the <i>Dispute Resolver</i> . The repayment is included in the amount due assessed after the site visit.
Payment	3.8	An invoice is issued <ul style="list-style-type: none"> • each time a site visit is required if an advanced payment is stated in the Contract Data, • after each site visit and • after termination.
	3.9	The <i>Parties</i> pay the <i>Dispute Resolver</i> the amount due in equal shares.

4. PAYMENT

Assessing the amount due

- 4.1 The *Dispute Resolver* assesses the amount due and submits an invoice to each *Party* for that *Party's* share of the amount due.
- 4.2 The first invoice is for the amount due. Other invoices are for the change in the amount due since the previous invoice.
- 4.3 The amount due is
 - the *Dispute Resolver's* fee multiplied by the total of the time worked on the contract and the time spent travelling,
 - the Expenses,
 - other amounts to be paid to the *Dispute Resolver* less amounts to be paid by the *Dispute Resolver*.

Any tax which the law requires the *Parties* to pay to the *Dispute Resolver* is included in the amount due.

Payment of the amount due

- 4.4 An advanced payment is made within one week of receiving the *Dispute Resolver's* invoice. Other payments are made within three weeks of receiving the *Dispute Resolver's* invoice or, if a different period is stated in the Contract Data, within the period stated.
- 4.5 Payments are in the *currency of the contract*.
- 4.6 If a payment is late, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made. Interest is calculated on a daily basis at the *interest rate* and is compounded annually.
- 4.7 If one of the *Parties* fails to pay, the other *Party* pays the *Dispute Resolver* the amount due with interest. The defaulting *Party* repays to the other *Party* the amount paid to the *Dispute Resolver* together with interest.

5. TERMINATION

- 5.1 The *Parties* may, by agreement, terminate the appointment of the *Dispute Resolver* for any reason. They notify the *Dispute Resolver* of the termination.
- 5.2 The *Dispute Resolver* may, by notifying the *Parties*, terminate the appointment if an advance payment has not been made or if the *Dispute Resolver*
- cannot act because of a conflict of interest,
 - is unable to fulfil the role of *Dispute Resolver*,
 - has not been paid an amount due within five weeks of the date by which payment should have been made.
- 5.3 Unless the *Dispute Resolver* or the *Parties* have terminated the appointment, the *Dispute Resolver's* appointment terminates on the date stated in the Contract Data.

Contract Data

The *conditions of contract* are the NEC4 Dispute Resolution Service Contract June 2017 (with amendments January 2019) and any *additional conditions of contract*

The *Parties* are

Name

Address for communications

Address for electronic communications

and

Name

Address for communications

Address for electronic communications

The *Dispute Resolver* is

Name

Address for communications

Address for electronic communications

The *Dispute Resolver* acts as an **Adjudicator / Dispute Avoidance Board member** (delete as applicable)

The *contract between the Parties* is

The *period of retention* is

The *law of the contract* is the law of

The *language of the contract* is

The amount of the advanced payment is

The *Dispute Resolver's fee* is

 per

The *interest rate* is

 % per annum above

The *currency of the contract* is

The *Dispute Resolver's appointment terminates on*

If the period in which
payments are made is not
three weeks

The period within which payments are made is

If *additional conditions of
contract* are required

The *additional conditions of contract* are

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