

## **NEC3 vs NEC4**

12 years after the release of the highly credible NEC3 a new NEC contract was formed. In March 2017 the new NEC4 contract was announced, with usage starting from June 2017. In this document we will try and break down some of the key changes NEC4 bring and show how the changes introduced aim to simplify processes, reduce disputes and make things easier to understand.

Some of the key changes include:

- New terminology
- New contracts
- New secondary options
- New features

### **Terminology**

NEC4 made some changes to the terminology used. Aiming to make things more up-to-date and understandable.

- “Employer” is now “Client
- “Works Information” is now “Scope”
- No more “him” or “his” – all new contracts are gender neutral
- “Risk Register” now becomes “Early Warning Register” making clear differentiation between project risk management and early warning management.
- “Employers Risks” are now “Clients Liabilities”

### **New contracts**

Professional Services Subcontract (PSS) – the PSC in subcontract format

Term Service Subcontract (TSS) – The TSC in subcontract format

Design Build and Operate Contract

Dispute Resolution Services Contract

### **New secondary options**

X Clauses – there have been many changes to NEC4 X clauses. A

NEC4 introduces some new dispute resolution features for optional W clauses.

A new concept called “Senior Representatives” is introduced. The Senior Representative would meet parties and try to resolve disputes prior to adjudication – applying to both W1 and W2. It should be noted the NEC does not make conditions for this route to be followed. Under UK law parties may refer to a dispute adjudication at any point.

W3 (ECC only) – Is a new dispute resolution and avoidance option clause targeted at the international market.

### **New features**

Value Engineering (VE): Under NEC3 there was an incentive for contractors to propose value engineering under target cost options. The incentive being, gain share. However, this incentive did not extend to option A & B. In NEC4 this changes. With the introduction of “value engineering percentage”. A percentage is agreed by parties at contract draft, that if a price is reduced due to contractors value engineering, an agreed percentage will be retained in the price.

Programme Acceptance: Unlike Compensation Events, under NEC3 there was no provision for a programme being accepted in the absence of a response from the Project Manager. This is corrected under NEC4 – after 2 weeks of no response the contractor may issue a prompt notice. Consequently the programme is deemed acceptable a week after the prompt if no response is given.

Fee percentage – there is now only one fee, with no separate fee for subcontract works

Payments – The contractor must submit an Application for Payment and the Project Manager is not obliged to submit an assessment if they don't.

Defined cost – there is now a clear time-based process for defined cost to be agreed under cost based contracts. This will avoid the scenario of Client's looking to claim back some disallowed cost from years before the present date. This should result in a more respectfully mutual and collaborative approach.

Final Account: There is now a time-based process for achieving conclusive evidence for a Final Account. This should make the process more clear for both sides.