



preparing a professional  
service short contract  
volume 2



June 2017

Expires 14/09/22

For use on Foreign, Commonwealth, and Development Office projects only

Expires 14/09/22



PREPARING A

# Professional Service Short Contract

VOLUME 2

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This document provides guidance on the preparation of the contract documents for an NEC4 Professional Service Short Contract

**An NEC document**

June 2017

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**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.

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**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.

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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.

This is a User Guide for the NEC4 Professional Service Contract.

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# Foreword

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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

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# 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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# Acknowledgements

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The original NEC was designed and drafted by Dr Martin Barnes then of Coopers and Lybrand with the assistance of Professor J. G. Perry then of the University of Birmingham, T. W. Weddell then of Travers Morgan Management, T. H. Nicholson, Consultant to the Institution of Civil Engineers, A. Norman then of the University of Manchester Institute of Science and Technology and P. A. Baird, then Corporate Contracts Consultant, Eskom, South Africa.

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

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CEMAR  
Costain plc  
Mott MacDonald Ltd

# How to use the NEC4 user guides

The NEC4 User Guides have been designed to support users as they select the most appropriate NEC contract strategy, prepare the contract, select a supplier and manage the contract to deliver the *Client's* or *Purchaser's* objectives. The guides and the corresponding flow charts are not contract documents. They should not be used for legal interpretation of the meaning of the contracts.

They include a step-by-step process for setting up an NEC contract and managing it through to completion. The starting point assumes that the *Client* has resolved the following:

- the business case and project objectives,
- the risk profile has been analysed and an overall management strategy established including, in broad terms, decisions made with regard who is best placed to manage the risks and
- a decision has been made to use the NEC, but the contract strategy has not been determined.

Users should work through the following sections of guidance in the logical sequence provided.

**Volume 1 – Establishing a Procurement and Contract Strategy:** guides users in identifying the best way of achieving the *Client's* or *Purchaser's* objectives through the selection of the most appropriate procurement route, NEC contract and main and secondary Options. This document applies across all contracts.

**Volume 2 – Preparing an NEC Contract:** guides users in preparing the particular NEC contract including Contract Data and other the documents required, ready for supplier selection to commence. There is a version of this document for each contract, except the subcontracts. For the subcontracts, the guidance is included in the relevant main contract version of the document.

**Volume 3 – Selecting a Supplier:** guides users through the supplier selection process including, where necessary, tendering, issuing an invitation to tender and subsequent evaluation and assessment. This document applies across all contracts.

**Volume 4 – Managing an NEC Contract:** guides users in managing the relevant contract correctly after it comes into existence. Detailed guidance is provided which explains the content of each NEC contract and its Options and how to operate them to achieve a successful outcome. There is a version of this document for each contract, except the subcontracts. For the subcontracts, the guidance is included in the relevant main contract version of the document.

Due to their size, Volume 2 and 4 have been combined into one book for both the Dispute Resolution Service Contract and the Framework Contract.

## CHAPTER 1

## Contract documents

The purpose of this guide is to explain the constituent parts of a Professional Service Short Contract (PSSC) and provide guidance on drafting and assembling them correctly.

The convention of using italics for terms which are identified in the Contract Data of the PSSC and capital initials for terms defined in the PSSC has been used in this guide.

Good quality contract documents are vital to achieving better outcomes for projects and reducing misunderstandings and disputes. Contract documents should be prepared with individual project requirements and the operation of the PSSC in mind. The *Client's* objectives (refer to Volume 1 - Establishing a Procurement and Contract Strategy) for the project should be fully understood and the consequences of potential scenarios addressed e.g. if the *Consultant* achieves Completion early or late. It is also important that the documents are logically structured and risk is clearly allocated.

The diagram below shows the relationship between the constituent parts of the PSSC. Contract Data identifies the documents forming the contract. The *conditions of contract* refers to each constituent part and requires information to be stated in them. A form of agreement is included in Contract Data to record the agreement between the Parties.

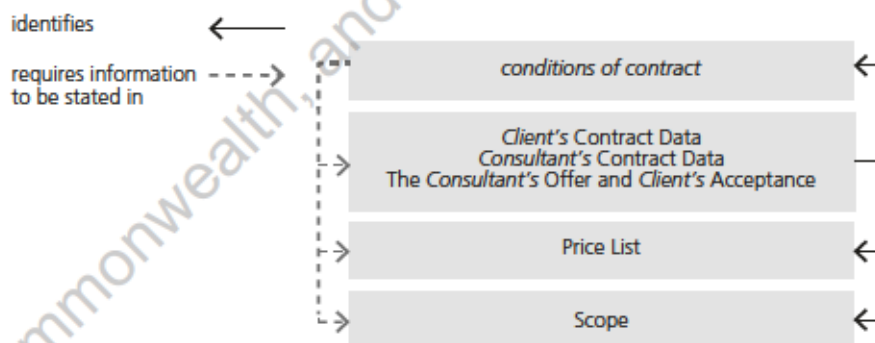


Figure 1 PSSC documents

Information and documents required for the contract must be in the right part of the contract. If documents are located in the wrong place, it may cause confusion and risk that the documents are not properly incorporated. For example, the *conditions of contract* require that information which describes the *service* and states constraints must be identified in the *Scope*. The diagram shows that *Scope* is identified in *Contract Data*. Therefore, all documents and information which describes the *service* and states constraints must be identified as *Scope*. *Scope* will often consist of multiple documents and sections, in which case a contents list should be included in the *Scope*.

The clarity achieved by this contract structure and the separation of its parts is helpful to users and significantly reduces ambiguity and the potential for disputes.

The requirement for good 'information' describing the work or services to be provided applies to all contracting systems. It is an objective of NEC to provide a contract which is clear and simple and promotes effective management and delivery of the *service*.

## CHAPTER 2

# Contract Data

## 2.1 INTRODUCTION

Contract Data contains information which is necessary to operate the contract and is specific to a particular contract. Contract Data is the type of information often described in other forms of contract as the contract particulars or appendix. There are two parts. The *Client's* Contract Data identifies the information provided by the *Client* and the *Consultant's* Contract Data identifies information provided by the *Consultant*. Clause 11.1 states that the terms in italics in the *conditions of contract* must be identified in Contract Data.

Completion of Contract Data in full is essential to create a complete contract. The information set out in Contract Data is not Scope, but Contract Data identifies the document which contains the Scope. Where information is in non-documentary form such as models, wthey should be identified and their availability and location stated.

In the *conditions of contract*, the term Contract Data refers to the data which existed on the date of the *Client's* Acceptance. Unless changes have been agreed, confirmed in writing and signed by the Parties in accordance with clause 12.3, the *conditions of contract* limit the provisions for making changes to Contract Data to changing:

- the Completion Date,
- Scope and
- the Prices.

In order to avoid lengthy entries for certain statements, it may be convenient to reference a separate document in the relevant Contract Data entry.

The offered total of the Prices must be entered. This will be the figure transferred from the grand total of the Price List.

Contract Data is available, from NEC, in digital format and this can be used when preparing contracts.

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Contract Data is available, from NEC, in digital format and this can be used when preparing contracts.

## 2.2 CONTRACT DATA CHECKLIST

The checklist below follows the order in which entries appear in Contract Data. The purpose of each entry is defined followed by guidance and an example of the entry required.

Most optional entries have been completed with an example so that compilers can see what type of entry should be made. The example entries and data are imaginary and should not be taken as typical and certainly do not have the status of a recommendation. The entry examples are not necessarily consistent throughout.

A full worked example of Contract Data is given in Appendix 1.

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
<b>THE CLIENT'S CONTRACT DATA</b>			
The <i>Client</i> is Name Address for communications Address for electronic communications	Identifies the <i>Client</i> .	State the <i>Client</i> 's legal name. State the address to be used for communications, which may not be the <i>Client</i> 's registered office address, including an email address if necessary.  Refer to Volume 1: Establishing a Procurement and Contract Strategy for further guidance on the role of the <i>Client</i> .	Name <b>Museum of Industrial History</b>  Address for communications <b>Lilac Road, Old Town, Scotland, OT5 5AZ</b>  Address for electronic communications: <b>john.smith@industrialhistory.com</b>
The <i>service</i> is	Identifies the overall scope of works. The term is referenced throughout the <i>conditions of contract</i> .	Describe the <i>service</i> clearly but briefly. The description should enable the <i>service</i> to be identified but should not go into details; details will be included in the Scope.	<b>Undertake an asset survey and provide remedial specification of buildings on the site of the Industrial History Museum</b>
The <i>starting date</i> is	Identifies date the contract starts.	The <i>starting date</i> is the earliest date from which the <i>Consultant</i> starts Providing the Service.  It may not be possible to identify the <i>starting date</i> as a calendar date due to the uncertainties in the time it will take to complete the <i>Consultant</i> selection process. In that case the date can be fixed by stating the number of days after the date of the <i>Client</i> 's Acceptance.	<b>5 June 2017</b>
The <i>completion date</i> is	Identifies the <i>completion date</i> .	State the <i>completion date</i> for the whole of the <i>service</i> .  It may not be possible to identify the <i>completion date</i> as a calendar date due to the uncertainties in the time it will take to complete the <i>Consultant</i> selection process. Consequently, the date can be fixed by stating the number of days after the <i>starting date</i> .	<b>21 August 2017</b>
The <i>delay damages</i> are..... per day	Identifies the amount per day to be paid by the <i>Consultant</i> .	State the amount per day from the Completion Date until Completion is achieved that the <i>Consultant</i> pays the <i>Client</i> .  Typically, the delay damages reflect the likely costs the <i>Client</i> will incur. When determining the amount to be stated, any requirements of the local jurisdiction should be followed.	The <i>delay damages</i> are <b>£100</b> per day
The <i>law of the contract</i> is	Identifies applicable law and jurisdiction.	It is possible for the law of one country to be applied in the courts of another. Thus the place of jurisdiction should be stated here as well as the law that is to apply to the contract.	is the law of Scotland subject to the jurisdiction of the courts of Scotland



CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The <i>period for reply</i> is .....weeks	Identifies the default period of time within which the <i>Client</i> and <i>Consultant</i> reply to a communication unless one is stated in the relevant clause.	The <i>period for reply</i> must be sufficient for the parties to respond, but should be sufficiently brief to maintain the principle of dealing with problems as or before they arise.	The <i>period for reply</i> is <b>one</b> weeks
The <i>defects date</i> is..... weeks after Completion.	Identifies the period within which the <i>Consultant</i> is required to correct Defects.	The period starts from Completion of the whole of the <i>service</i> .	The <i>defects date</i> is <b>52</b> weeks after Completion.
The <i>assessment day</i> is..... of each month	Identifies the <i>assessment day</i> .	The contract requires the amount due to be assessed on a monthly basis. This entry establishes which day of the month the <i>assessment day</i> occurs on. This is typically the first or last day of each month.	The <i>assessment day</i> is the <b>first day</b> of each month
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does / does not</b> apply?	Identifies whether the United Kingdom Housing Grants, Construction and Regeneration Act (1996) applies.	This optional entry is only applicable if the <i>service</i> are subject UK legislation.  If necessary the <i>Client</i> should obtain legal advice to establish whether the United Kingdom Housing Grants, Construction and Regeneration Act (1996) applies.	The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply
The <i>Adjudicator</i> is  Name  Address for communications  Address for electronic communications	Identifies the person who will be <i>Adjudicator</i> .	It is important that both Parties have full confidence in the <i>Adjudicator's</i> impartiality, and for that reason it is preferable that the appointment is mutually agreed. There are a number of ways of doing this:  Normally the <i>Client</i> would nominate an individual for agreement by the <i>Consultant</i> , and confirm the appointment in awarding the contract.  <ul style="list-style-type: none"> <li>Alternatively, the <i>Client</i> would identify a number of individuals from which the <i>Consultant</i> decides the appointment of one in awarding the contract.</li> <li>The Parties delay selecting the <i>Adjudicator</i> until a dispute has arisen, although this frequently results in a disagreement over who should be the <i>Adjudicator</i>.</li> </ul> <p>The selection of the <i>Adjudicator</i> is important, and it should be recognised that a failure to agree an adjudicator means that the <i>Adjudicator nominating body</i> will make the selection without consulting the Parties.</p> <p>State the name of the <i>Adjudicator</i> and the address to be used for communications, including an email address if necessary. Care should be taken when choosing the adjudicator to ensure it has relevant qualifications and experience in the type of work included in the contract and is able to understand the viewpoint of both Parties.</p> <p>Refer to Volume 1: Establishing a Procurement and Contract Strategy for further guidance on the role of the <i>Adjudicator</i>.</p>	Name <b>Mr I Judge</b> .  Address for communications <b>Test House, Michelmersh, Perthshire</b>  Address for electronic communications: <b>ijudge@testhouse.com</b>

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The interest rate on late payment is..... % per complete week of delay	Identifies the interest rate on late payment per week	<p>State the interest rate which is to be used if the default rate of interest of 0.5% per complete week is not going to be used.</p> <p>The interest rate stated should be a commercial rate applicable to the jurisdiction in which the work is to be done. Local legislation may constrain what interest rate can be stated.</p>	The interest rate on late payment is <b>0.25%</b> per complete week of delay
The <i>Client</i> provides this insurance	Identifies any insurance provided by the <i>Client</i>	<p>Only enter details if the <i>Client</i> is to provide insurance.</p> <p>Typically the <i>Consultant</i> provides the three insurances stated in the Insurance Table. Sometimes it may be better value for the <i>Client</i> to provide one or more of these insurances or because the <i>Client</i> is already providing the insurance.</p> <p>In the UK the <i>Consultant</i> is obliged to hold the second and third insurance. It is possible that the <i>Client</i> may have a global project insurance so does not require the first, but that would be unusual for this contract.</p> <p>Unless the <i>Client</i> has its own insurance department or access to insurance specialists, it is sensible to get advice on whether the <i>Client</i> should provide any of the insurances stated in the Insurance Table.</p>	
<p>The <i>Consultant</i> provides the following insurance cover</p> <p>Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i></p> <p>Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the <i>Service</i>.</p> <p>Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract</p>	Identifies the minimum amount and period of cover for insurance	<p>Unless the <i>Client</i> has its own insurance department or access to insurance specialists, it is sensible to get advice on the figure to be stated here.</p>	<p><b>£250,000, six years</b></p> <p><b>£100,000, one year</b></p> <p><b>£100,000, one year</b></p>

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with this contract is limited to.....	Identifies the total liability to the <i>Client</i>	The <i>Consultant's</i> total liability to the <i>Client</i> can be limited to the amount stated.	£500,000
The <i>Adjudicator nominating body</i> is	Identifies the body that will choose the adjudicator,	<p>A nominating body is required in case the Parties are unable to jointly agree an adjudicator. This entry identifies the person or organisation who will, in that case, choose an adjudicator. Check that the nominating body can choose an adjudicator within 4 days.</p> <p>The nominating body should also be able to choose an adjudicator who can act on a dispute in the local jurisdiction.</p> <p>Several organisations, both international and UK based maintain list of people who can act as an adjudicator. The Institution of Civil Engineers maintains a list of suitably qualified and experienced people to act as adjudicators. Several other organisations maintain similar lists.</p>	<b>President of the Royal Institution of Chartered Surveyors.</b>
The <i>tribunal</i> is	Identifies the tribunal.	Unless the local jurisdiction has alternatives, the choice is usually between arbitration and litigation.	<b>arbitration.</b>
If the <i>tribunal</i> is arbitration The <i>arbitration procedure</i> is	Identifies the <i>arbitration procedure</i> .	<p>State the <i>arbitration procedure</i>.</p> <p>Check that this is the latest version of the procedure.</p>	<b>the Construction Industry Model Arbitration Rules 1998 or any amendments or modifications to it in force when the arbitrator is appointed.</b>
The <i>conditions of contract</i> are the NEC4 Professional Service Short Contract June 2017 and the following additional conditions.	Identifies any additional conditions of contract.	<p>Only enter details if additional conditions are required.</p> <p>Refer to section 2.3 for guidance on drafting additional conditions of contract.</p>	<b>1. A change in the law is a compensation event if it occurs after the date of the <i>Consultant's</i> Offer.</b>
THE CONSULTANT'S CONTRACT DATA			
<p>The <i>Consultant</i> is</p> <p>Name</p> <p>Address for communications</p> <p>Address for electronic communications</p>	Identifies the <i>Consultant</i> .	<p>State the <i>Consultant's</i> legal name. State the address to be used for communications, which may not be the <i>Consultant's</i> registered office address, including an email address if necessary.</p> <p>Refer to Volume 1: Establishing a Procurement and Contract Strategy for further guidance on the role of the <i>Consultant</i>.</p>	<p>The <i>Consultant</i> is</p> <p>Name <b>Dudleyavon Consultants LLP</b></p> <p>Address for communications <b>Coronation Avenue, Avonmouth, Perthshire, AV12 1XX</b></p> <p>Address for electronic communications: <b>consult@dudley.org.uk</b></p>

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The <i>fee percentage</i> is	Identifies the <i>fee percentage</i> .	<p>The Fee includes all costs the <i>Consultant</i> may incur that are not included in Defined Cost (11.2(5)), which may include its overheads, profit, insurance premiums, bank charges, and any allowance for its risks.</p> <p>The Fee is calculated by applying the <i>fee percentage</i> to the Defined Cost (clause 11.2(6)).</p>	<b>15%</b>
The <i>people rates</i> are: category of person unit rate	Identifies the <i>people rates</i> .	<p>State the <i>people rates</i> (clause 11.2(8)), including a full description of the category of person, unit (hour or day) and rate.</p> <p>Typically the <i>Client</i> completes the description of the category of person, particularly if the selection process involves tendering, so the categories are the same for all tenderers.</p> <p>The <i>people rates</i> are used to assess the amount due, if the work is to be carried out on a time charge basis, and in the assessment of compensation events in accordance with clause 11.2(6). The <i>people rates</i> are exclusive of the Fee which is added separately.</p> <p>If the work is to be carried out on a time charge basis the <i>Consultant</i> includes <i>people rates</i> for its own people and for people provided by a subcontractor</p>	<p>The <i>people rates</i> are:</p> <p><b>Partner, £85 per hour</b></p> <p><b>Other consultant, £70 per hour</b></p> <p><b>Technician, £50 per hour</b></p> <p><b>Administrative assistant, £30 per hour</b></p>
The <i>key persons</i> are (1) Name Job Responsibilities Qualifications Experience	Identifies the <i>Consultant's key persons</i>	<p>State the names, job title, responsibilities, qualifications and experience of the <i>key persons</i> of the <i>Consultant</i>.</p> <p>It is essential that the people chosen are sufficiently experienced in the type of work and have the time to carry out their duties effectively.</p> <p>The <i>Client</i> may state roles for which <i>key persons</i> are to be provided by the <i>Consultant</i> that are relevant to the type of service. The roles identified should be relevant to the type of service included in the contract.</p>	<p>Name <b>Mr I Design</b></p> <p>Job <b>Partner</b></p> <p>Responsibilities <b>Overall responsibility for commission</b></p> <p>Qualifications <b>BSc(Hons), RIBA</b></p> <p>Experience <b>15 years in civil engineering design – see CV in Volume 5</b></p> <p>Name <b>Mr M.E. CAD</b></p> <p>Job <b>CAD designer</b></p> <p>Responsibilities <b>Development of the CAD design</b></p> <p>Qualifications <b>BSC, CEng, FStructE</b></p> <p>Experience <b>20 years in civil engineering design – see CV in Volume 5</b></p>

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
<b>THE CONSULTANT'S OFFER AND CLIENT'S ACCEPTANCE</b>			
The <i>Consultant</i> offers to Provide the Service in accordance with these <i>conditions of contract</i> for an amount to be determined in accordance with these <i>conditions of contract</i> .		A contract can be created in a number of different ways and further guidance is provided in Volume 3 – Selecting a Supplier.  This section of Contract Data includes a form of agreement that enables the contract to be executed as a simple contract.	
The offered total of the Prices is	Identifies the offered total of the Prices.	Enter the total of the Prices from the Price List.	<b>£22,350</b>
Signed on behalf of the <i>Consultant</i> Name Position Signature Date	Identifies the person signing on behalf of the <i>Consultant</i> .	Refer to the guidance above.	
The <i>Client</i> accepts the <i>Consultant's Offer to Provide the Service</i> Signed on behalf of the <i>Client</i> Name Position Signature Date	Identifies the person signing on behalf of the <i>Client</i> .		
<b>PRICE LIST</b>			
Refer to Chapter 4 for guidance on preparing the Price List			
The method and rules used to compile the Price List are	Identifies the method of measurement or rules used to compile the Price List.	The Price List can be used as an activity schedule, lump sum price approach or a measured quantity approach as with a schedule of rates. When used as a schedule of rates it is necessary to state the method of measurement or rules that have been used in compiling the Price List, if any.	
<b>SCOPE</b>			
Refer to Chapter 3 for guidance on drafting Scope			

## 2.3 ADDITIONAL CONDITIONS OF CONTRACT

Additional conditions should be used only when absolutely necessary to accommodate special needs, such as those specific to the jurisdiction in which the work is to be done. Additional conditions should never be used to limit how the *Consultant* is to do the work in the contract as this is part of the function of the Scope.

If the *Client* wishes to include additional conditions, the following checklist may be used when drafting them.

Why	<ul style="list-style-type: none"> <li>• Why is the clause needed?</li> <li>• What is the issue that the standard contract does not deal with or not deal with adequately?</li> <li>• Is this something that should be included in the Scope?</li> <li>• Prepare a "brief statement" – specification for and justification of additional provision.</li> </ul>
What	<ul style="list-style-type: none"> <li>• What is needed by way of additional provisions?</li> <li>• The drafter must understand the contract as a whole and recognise how the new provision will affect/ be affected by other clauses</li> <li>• Prepare a "clause function statement" – what the clause is required to achieve</li> </ul>
How	<ul style="list-style-type: none"> <li>• Maintain NEC key principles:           <ul style="list-style-type: none"> <li>– Flexibility - the contract should be as flexible as possible. It should be capable of being used for any type of work in any legal jurisdiction.</li> <li>– Clarity - the contract should be written in ordinary language, using as far as possible words which are in common use, to make it easier to understand by people who are not used to using formal contracts or whose first language is not English.</li> <li>– Stimulus to good management - every procedure should contribute to, rather than detract from, the effectiveness of management of the work. Clear division of function and responsibility helps accountability and motivates people to play their part.</li> </ul> </li> <li>• Follow NEC style:           <ul style="list-style-type: none"> <li>– Use the same NEC language and style - further guidance on this is included in section 3.2 sub-section on general drafting advice.</li> <li>– Use the same defined and identified terms.</li> <li>– Adopt NEC text when possible – e.g. "a reason for not accepting ... is ..."</li> <li>– Avoid cross references.</li> <li>– Add to existing conditions, avoid amending them.</li> <li>– Carefully checked for consistency and compatibility with other conditions.</li> </ul> </li> </ul>
Review	<ul style="list-style-type: none"> <li>• Are the additional clauses helpful to all of the parties involved, are they understandable, and easy to use?</li> <li>• Verify that the needs have been met by referring back to the brief statement.</li> <li>• Test by flow charting.</li> </ul>

## CHAPTER 3

# Scope

### 3.1 THE STATUS OF THE SCOPE

#### The function of the Scope

NEC contracts identify the Scope as the document which sets out what the Parties are required to do under the contract. The obligation to work in accordance with that Scope is set out in the *conditions of contract*.

Scope is defined as:

#### **"11.2(11) Scope is information which**

- **specifies and describes the service or**
  - **states any constraint on how the Consultant Provides the Service**
- and is either**
- **In the document called Scope or**
  - **In an instruction given in accordance with this contract."**

Scope should be a complete and precise statement of the *Client's* requirements. Subjective terms should be avoided. If it is not there is a risk that the *Consultant* will interpret it differently to the *Client's* intention.

Scope provided by the *Client* includes:

- technical information, specifications and drawings describing the service,
- constraints on how the *Consultant* Provides the Service, including specific safety requirements, and
- requirements for the programme.

The *Consultant's* primary obligation under PSSC is stated in clause 20.1.

#### **"20.1 The Consultant Provides the Service in accordance with the Scope."**

When this clause is read in conjunction with clause 11.2 (11), and the following clauses, the importance of Scope is clear.

#### **"11.2 (1) Completion is when the Consultant has completed the service in accordance with the Scope....."**

#### **"11.2 (4) A Defect is a part of the service which is not in accordance with the Scope....."**

#### **"60.1 The following are compensation events.**

- (1) The Client gives an instruction changing the Scope unless the change is in order to make a Defect acceptable."**

The *conditions of contract* make frequent reference to Scope as illustrated above and detailed later in section 3.3. Scope is therefore central to the operation of the contract.

Scope should be drafted in accordance with the three key objectives of NEC, namely flexibility, clarity and stimulus to good management (refer to Volume 1 Establishing a Procurement and Contract Strategy).

Only the *Client* can instruct a change to the Scope – the power to do this is stated in clause 14.2. Such an instruction is a compensation event unless the exception mentioned above in clause 60.1(1) applies.

#### The relationship between Scope and Contract Data

Scope should not contain information which repeats, contradicts or creates an ambiguity with any information contained within Contract Data or with the *conditions of contract*.

A further distinction is that the *Client* can instruct a change to Scope but cannot change Contract Data once the contract is formed.

#### The relationship between Scope and the Price List

A clear distinction exists between Scope and the Price List. Information in the Price List includes a description of items of work necessary to Provide the Service, but it is not Scope.

The *Consultant's* obligation is to Provide the Service in accordance with the Scope, and information contained in the pricing documents does not change this obligation.

Statements about pricing of work should not be included in the Scope, as they neither specify or describe the *service*, nor are they constraints.

#### Scope as a contract document

Some forms of contract use provisions creating a hierarchy or priority of documentation as a means of resolving ambiguities and inconsistencies in or between documents. This is not the approach taken by NEC.

Priority clauses can interfere with the natural interpretation of documents as intended by the Parties. Such an indiscriminate approach to resolving ambiguities and inconsistencies can cause problems.

As explained in Chapter 1, the PSSC describes the function of each document forming part of the contract. This provides clarity as to the relevance and purpose of each document in the contract. The *conditions of contract* then deal with any remaining ambiguity or inconsistency in or between the documents.

The PSSC deals with ambiguities or inconsistencies in the Scope as follows at clause 63.8.

**"A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the Consultant."**



## 3.2 DRAFTING SCOPE

**Incorporation of standard specifications**

Scope often consists of several documents drafted by different contributors. Typically in preparing the contract, and in particular Scope, it may be helpful to identify an individual who is responsible for ensuring all documents are drafted in a coherent and consistent way and who checks and resolves any ambiguities or inconsistencies before the contract is issued.

Standard specifications or descriptions of services published by relevant representative professional organisations in the part of the world where the *service* is provided, drafted for use on previous projects or with other standard forms of contract should be reviewed and amended as appropriate prior to incorporation.

The terminology used in such documents is often inconsistent with the *conditions of contract*. For example, the 'acceptance' of a communication by the *Client* may differ from an 'approval' given by the *Client* in other contracts. This is important as PSC clause 14.4 states:

**"The *Client's* acceptance of a communication from the *Consultant* or acceptance of the work does not change the *Consultant's* responsibility to Provide the Service."**

Hence the word 'acceptance' rather than 'approval' must be used throughout.

Each reference should be checked for correct use in relation the duties and responsibilities of the *Client*, and *Consultant*.

Standard specifications should be checked to ensure consistency with other parts of the contract. For example, risk allocation varies from contract to contract and references to the *Client's* and *Consultant's* responsibilities within standard specifications need to be checked. These may conflict with the *conditions of contract* and would need to be removed.

Examples of specification ambiguity are included below.

**Examination of typical traditional requirements**

(a)	The <i>Consultant</i> will Provide the Service in accordance with industry best practice. For the avoidance of doubt this will also include all updates and changes to such best practice as occur during the currency of the contract.
	What industry? And what is 'best practice'?
(b)	The <i>Consultant</i> shall use its 'best endeavours' to undertake the services.
	The law in this area is still evolving but this could require investigating an indefinite number of options to solve a problem and may not be limited by any reasonableness of cost – 'reasonable endeavours' is more reasonable.
	Clause 20.2 of the conditions of contracts includes 'The <i>Consultant's</i> obligation is to use the skill and care normally used by professionals providing services similar to the services.' If this needs to be changed, it should be changed via an additional condition of contract rather than in the Scope.
(c)	The <i>Consultant</i> will attend all meetings as necessary to Provide the Service.
	How can the <i>Consultant</i> price this requirement?
(d)	The <i>Consultant</i> will Provide the Service to the satisfaction of the <i>Client</i> .
	What will 'satisfy' the <i>Client</i> ? This may lead to disputes. It is much better to provide objective requirements that the <i>Consultant</i> can understand and price. Then, if required, an <i>Adjudicator</i> would be able to make a decision.
(e)	The <i>Consultant</i> shall assist the <i>Client</i> with the liaison with and management of the project stakeholders.

	The word 'assist' is not helpful and the requirement cannot be priced. The actual obligation of the <i>Consultant</i> should be defined.
(f)	The <i>Consultant</i> shall do everything necessary to provide the brief.
	This is not necessary: the <i>Consultant</i> is required to 'Provide the Service in accordance with the Scope' (clause 20.1).
(g)	The <i>Consultant</i> shall provide all necessary copies of the drawings and specifications as required.
	How can the <i>Consultant</i> price this requirement? State the number of copies required, or state an assumption about the number to be required, or let the <i>Consultant</i> price these as expenses.
(h)	The <i>Consultant</i> shall check and approve the work of others.
	The Scope should set out exactly what the <i>Consultant</i> is required to check and when and by whom the work to be checked will be carried out.
(i)	The <i>Client</i> shall provide data for the use of the <i>Consultant</i> in Providing the Service.'
	The Scope should be clear on what data the <i>Client</i> is to provide to the <i>Consultant</i> and when. It should also be clear whether the <i>Consultant</i> is required to check this data and to what extent.

### Assumptions

All effort should be made to make the Scope a specific and complete description of the service required. However, there may be requirements that the *Client* cannot define properly in advance when drafting the Scope but wants the *Consultant* to allow for them. The recommended approach is to state in the Scope clear assumptions about those requirements. The *Consultant*, when planning and pricing the service then has a clear understanding of what should be allowed for in terms of time, cost and quality. If the assumptions prove to be incorrect, the *Client* changes the Scope to reflect the real situation. This will be a compensation event which will compensate the *Consultant* for any effects on time and/or cost of the change to the assumption.

### Interfaces

The Scope must clearly define the interfaces between the service provided by the *Consultant* and that of all other organisations.

#### Interfaces with other organisations working on the same project for the *Client*

Some projects may require the appointment of a combination of consultants and contractors (some of whom may be providing a service as part of their service contracts) each under separate contracts.

In such circumstances it is very important that the Scope documents for each appointment define clearly the interfaces between those organisations and the role of any 'lead consultant'. Those drafting the Scopes for each contract may find it useful to put together a matrix of services and interfaces against which to check that the service required has been covered in the appropriate Scope. It may be appropriate and possible to develop an 'interface schedule' in a way that it can be included in the Scope for each consultant.

#### Other interfaces and liaison with third parties

It is important that the Scope clearly defines the *Consultant's* responsibility in relation to communications with third parties:

- For some contracts, *Clients* require that all liaison and communication with third parties be conducted through the *Client*.

- For other contracts, *Clients* require the *Consultant* to liaise directly with the third party. The *Consultant* may or may not be required to keep the *Client* informed of such liaison.

The Scope should clearly set out the *Client's* requirements in relation to the management of interfaces with third parties.

### Health and safety information

The *Client* should consider how to deal with health and safety requirements and documentation carefully when preparing Scope. The Scope should set out any requirements for the *Consultant* to comply with the *Client's* own safety procedures (if any). Any such requirements must be included in the Scope (or incorporated by reference from the Scope). These are additional to any obligations the *Consultant* may have under the particular jurisdiction where the *service* is being provided or the *law of the contract* or both.

Many jurisdictions require health and safety risks to be evaluated by the *Client* and then communicated to the *Consultant* as part of the selection process. It may not be necessary to include the risk evaluation as a contract document, but it is necessary to check for consistency between the health and safety information and Scope.

#### UK specific illustration:

Whilst the Scope should not repeat the law, it is sometimes necessary to state clearly whether the *Consultant* is to carry out particular roles defined by the law. For example, in construction in the UK the Construction Design and Management (CDM) Regulations 2015 may apply to a project that is the subject of a consultancy contract. The Regulations set out obligations on anyone carrying out design for a construction project. There is no need to repeat or refer to these requirements in the Scope unless the *Client* wants these to be carried out or reported in a particular way. However, the CDM Regulations also require the appointment of a Principal Designer. Clearly, if a *Consultant* is to be appointed as the Principal Designer, then this requirement should be included in the Scope.

### General drafting advice

The following description of NEC drafting style will help compilers draft Scope and other contract documents clearly.

1. A basic objective of NEC contracts is that they should be clear and simple. The drafting delivers clarity and simplicity of language. Simplicity also follows from the design of the management processes in the contracts.
2. One of the objectives of using simple language in the Scope is that it should be easy for people whose first language is not English to use. A further advantage is that the Scope can be translated into other languages accurately.

### Vocabulary

3. Use the simplest possible words. Simple words have few syllables.
4. Don't use words which are not needed.

### Sentences

5. Sentences should be as short as possible. Twenty words is fine. Never have more than forty. Use several short sentences instead of one sentence with several connectors.
6. Many statements are conditional. 'If this happens, the *Consultant* does this'. Put the condition first, not last, and use 'if', not 'when'. 'If this happens, the *Consultant* does this.' [not: 'The *Consultant* does this when this happens.'] Use 'when' only if timing is implied as in clause 13.1.
7. Use commas properly. The pause which a comma creates can help understanding.

### Bullets

8. Bullets are used when a sentence includes a list. Don't use bullets for short lists with short descriptions. The following does not need to be bulleted:

**'The Consultant arranges for 'Hail to the Chief' to be played by a brass band outside the Client's office at 9 a.m. on**

- **Mondays,**
  - **Wednesdays,**
  - **Fridays and**
  - **Its birthday.'**
9. A useful check is that punctuation of bulleted sentences should work if the bullets are removed. Bullets end with a comma except the last but one which ends with 'and' or 'or' and the last which ends with a full stop. Do not put a comma before 'and'. 'And' replaces the comma before the last item on a list as above.
10. Whenever possible, put bullets at the end of a sentence. Having a bit more of the sentence after a bulleted list is clumsy as the reader does not expect the text and the sentence can become very long and not easy to understand.
11. Bullets are indented. Bullets within bullets should be avoided if possible. If used, as in clause 63.7, use a double indent.

### Adjectives and Adverbs

12. Old-fashioned contracts use a lot of adjectives and adverbs. NEC contracts use the absolute minimum, which is hardly any. This is perhaps the most important drafting convention for NEC. Use an adverb or adjective only if it is really unavoidable.
13. Verbs and nouns are usually precise, adverbs and adjectives are usually imprecise. 'The Consultant does all urgent work quickly' is easy to understand. Unfortunately, you can argue about the meaning of 'urgent' (adjective) and 'quickly' (adverb). 'The Consultant' (noun), 'does' (verb) and 'work' (noun) are precise. To make the point absurdly, 'George ate a hefty meal unhurriedly' is vague but not meaningless. 'George ate a meal of 42 mouthfuls in 21 minutes' is boring but precise. The Scope is not intended to be a good read. It has to state what is required in words of unarguable precision and clarity.
14. Some adverbial phrases are as imprecise as adverbs, e.g. 'quickly' in 'come quickly' is obviously an adverb. So, in effect, is 'as soon as you can' in 'come as soon as you can'.
15. This text, for example, about extension of time, comes from clause 44(1) of the ICE conditions fifth edition, adverbs and adjectives in italics.
- '..... or exceptional adverse weather conditions or other special circumstances of any kind ..... be such as fairly to entitle the Contractor to an extension of time .....the Contractor shall within 28 days after the cause of the delay has arisen or as soon thereafter as is reasonable in all the circumstances deliver to the engineer full and detailed particulars of any claim to extension of time.....'**
16. It is impossible to decide whether an extension of time should be given and, if so, for how much, when and how described until the courts have decided what the adjectives and adverbs mean.
17. NEC drafting requires the absolute minimum of adverbs and adjectives. Some are innocuous as in clause 62.1 which uses the adjective 'wrong' as in 'wrong assessment'.

### Statements

18. Statements should be as short as possible with no more than two sentences. They should cover only one subject.

**Tenses**

19. Use the present tense for all statements of what somebody must do or not do. It is seldom necessary to use another tense. 'If the sky has fallen down, the *Client* decides what the *Consultant* will do' uses three tenses. 'If the sky falls down, the *Client* decides what the *Consultant* does' uses only the present.

**Capitals**

20. Capital initials show that a term is defined in the contract. When drafting, test that a definition is right by putting it into the sentences where the defined term is used. These definitions are only abbreviations and must only be abbreviations. If there is anything to say about the defined term, it has to be in the sentence.
21. There are exceptions. *Client* and *Consultant* have capital initials but are not defined.

**Particular words**

22. 'May' in NEC means 'is allowed to' as in 'the *Client* **may** instruct.....' Do not use it to mean that something might happen.
23. 'Any' can usually be deleted.

**Multiple Alternatives**

24. *a, b, c* or *d*. Bullet the alternatives if they are phrases of some length.

**Gender**

25. Use gender neutral words and phrases.

### 3.3 PSSC REFERENCES TO SCOPE

The following table identifies where the *conditions of contract* refer to Scope. Scope should provide the information required by the contract and identify project specific requirements.

The references are in the order that they appear in the *conditions of contract* and cross referenced to the example structure provided in section 3.4.

CLAUSE REF.	SECTION 3.4	CLAUSE DESCRIPTION	GUIDANCE ON WHAT SHOULD BE INCLUDED IN THE SCOPE
11.2 (1)	S 620	Completion is when the <i>Consultant</i> has completed the <i>service</i> in accordance with the <b>Scope</b> except for correcting notified Defects which do not prevent the <i>Client</i> from using the <i>service</i> or others from doing their work.	In order for the <i>Client</i> to decide that Completion has occurred, the Scope must state clearly and unambiguously what work is to be done before Completion.
11.2 (4)		A Defect is a part of the <i>service</i> which is not in accordance with the <b>Scope</b> or the applicable law.	Refer to section 3.1.
11.2 (11)		<b>Scope</b> is information which <ul style="list-style-type: none"> <li>• specifies and describes the <i>service</i> or</li> <li>• states any constraints on how the <i>Consultant</i> Provides the <i>Service</i> and is either               <ul style="list-style-type: none"> <li>• in the document called <b>Scope</b> or</li> <li>• in an instruction given in accordance with the contract.</li> </ul> </li> </ul>	Refer to section 3.1.
14.2		The <i>Client</i> may give an instruction to the <i>Consultant</i> which changes the <b>Scope</b> .	
16.1	S 705	The <i>Client</i> provides information and other things which the contract requires the <i>Client</i> to provide by the dates stated in the <b>Scope</b> or a later date if agreed.	State the services and other things and the dates by which they are to be provided by the <i>Client</i> .
20.1		The <i>Consultant</i> Provides the <i>Service</i> in accordance with the <b>Scope</b> .	Refer to section 3.1.
30.4		The <i>Client</i> may instruct the <i>Consultant</i> to stop or not to start any work. The <i>Client</i> subsequently gives an instruction to the <i>Consultant</i> to <ul style="list-style-type: none"> <li>• re-start or start the work or</li> <li>• remove the work from the <b>Scope</b>.</li> </ul>	
31.1	S 605, 610, 615	The <i>Consultant</i> submits programmes to the <i>Client</i> as stated in the <b>Scope</b> .	State requirements for providing a programme including any information that the <i>Consultant</i> is to show on the programme, how often the programme is submitted and the format of the programme.
42.1		The <i>Consultant</i> and the <i>Client</i> may each propose to the other that the <b>Scope</b> should be changed so that a Defect does not have to be corrected. If the <i>Consultant</i> and the <i>Client</i> are prepared to consider the change, the <i>Consultant</i> submits a quotation for reduced Prices or an earlier Completion Date or both to the <i>Client</i> for acceptance. If the <i>Client</i> accepts the quotation, it changes the <b>Scope</b> , the Prices and the Completion Date accordingly.	

CLAUSE REF.	SECTION 3.4	CLAUSE DESCRIPTION	GUIDANCE ON WHAT SHOULD BE INCLUDED IN THE SCOPE
60.1(1)		The <i>Client</i> gives an instruction changing the <b>Scope</b> unless the change is in order to make a Defect acceptable.	
60.1(4)	S 705	The <i>Client</i> does not work within the conditions stated in the <b>Scope</b> .	State what work the <i>Clients</i> does and the conditions within which it works.
63.8		A compensation event which is an instruction to change the <b>Scope</b> in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the <i>Consultant</i> .	
70.1	S 565	The <i>Client</i> has the right to use the material provided by the <i>Consultant</i> , for the purpose stated in the <b>Scope</b> . The <i>Consultant</i> obtains from a subcontractor equivalent rights to use material prepared by a subcontractor.	State the purposes that the <i>Client</i> may use the material provided by the <i>Consultant</i>
70.3	S 570	The <i>Consultant</i> may use the material provided by it under the contract for other work unless stated otherwise in the <b>Scope</b> .	State any constraints on the ways in which the <i>Consultant</i> may reuse its material.
90.4		<p>The <i>Consultant</i> may terminate if</p> <ul style="list-style-type: none"> <li>the <i>Client</i> has not paid an amount due under the contract within thirteen weeks of the <i>assessment day</i> which followed receipt of the <i>Consultant's</i> invoice (Reason 5) or</li> <li>the <i>Client</i> has instructed the <i>Consultant</i> to stop or not to start any substantial work or all work for a reason which is not the <i>Consultant's</i> fault and an instruction allowing the work to re-start or start or removing work from the <b>Scope</b> has not been given within eight weeks (Reason 6).</li> </ul>	

### 3.4 CLIENT'S SCOPE

The PSSC provides an outline structure for the Scope and divides it into seven sections. The content of each section will vary because the PSSC can be used for a wide range of works procured domestically or internationally.

Guidance is provided for each Scope section. This includes a checklist of topics to help compilers prepare a complete statement of the *Client's* requirements, to meet project specific needs. The checklist provides a list of things which might need to be included – most projects will not use all items.

#### Example Scope structure

The numbering system used below is indicative.

SECTION	SCOPE
S 100	Purpose of the <i>service</i>
S 200	Description of the <i>service</i>
S 300	Existing information
S 400	Specifications and standards
S 500	Constraints on how the <i>Consultant Provides the Service</i>
S 600	Requirements for the programme
S 700	Information and other things provided by the <i>Client</i>

#### Guidance and checklist

This relates to the example Scope structure shown above. Guidance relating to each Scope section is provided in the first grey box of each section. A checklist of optional topics is also provided.

#### S 100 Purpose of the *service*

Provide a brief summary of why the *service* is being commissioned and what it will be used for

CHECKLIST	EXPLANATION
S 105 <i>Client's</i> objectives	Explain "why" the <i>service</i> is required. Specific objectives may include outcomes on safety, quality, time and functionality.
S 110 Background	<p>Provide a brief summary of why the <i>service</i> is being commissioned. Set out the background to and the context in which the <i>service</i> will be carried out. Include relevant information which helps the <i>Consultant</i> plan the delivery of the <i>service</i>. This should be as concise as possible, may answer such questions as:</p> <ul style="list-style-type: none"> <li>• What is the objective of the <i>Client's</i> overall project of which the <i>service</i> is a part?</li> <li>• Why is the <i>service</i> being carried out?</li> <li>• How does the <i>service</i> fit into a project or programme?</li> <li>• Where is the project located?</li> <li>• What are the types of activities required to be carried out?</li> </ul> <p>A detailed description of the <i>service</i> is contained within section S 200.</p>



### S 200 Description of the service

Include here a detailed description of the service. Guidance for including standard descriptions of service is provided in section 3.2.

CHECKLIST	EXPLANATION
S 205 Description of the service	<p>Provide a complete and precise description of what the <i>Consultant</i> is required to do to Provide the Service including any deliverables. The description should be consistent with the description in Contract Data part one.</p> <p>This may include a schedule or list of activities or tasks to be carried out or a detailed description of the service. Depending on the complexity of the service, it may be necessary to include the information in separate parts of the Scope and/or in appendices to the Scope.</p> <p>Clearly state what deliverables are to be submitted for acceptance by the <i>Service Manager</i>.</p> <p>Issues relating to the timing of the service are included in S 700.</p>

### S 300 Existing Information

CHECKLIST	EXPLANATION
S 305 Existing information	<p>List existing information which is relevant to the service. The information itself might be best provided by inclusion in appendices to the Scope. The listed documents should include details for each document stating the author, the unique reference number, date and revision.</p> <p>If part of service is to develop this information, that should be stated in S 200.</p>

### S 400 Specifications and standards

CHECKLIST	EXPLANATION
S 405 Specifications and standards	<p>List any specifications and standards which apply. Such documents are likely to include both requirements and constraints and so they should be checked to ensure they are consistent with other parts of the Scope.</p> <p>Guidance for including specifications and standards is provided in section 3.2</p>

### S 500 Constraints on how the *Consultant* Provides the Service

State any general constraints on how the *Consultant* Provides the Service, which are not included in other sections of the Scope.

Constraints may include the checklist topics listed below. Constraints are restrictions on how the *Consultant* Provides the Service, not issues related to cash flow, funding or other requirements which conflict with the *conditions of contract*.

Set out any requirements for a quality management system.

Include a dispute resolution procedure if required.

CHECKLIST	EXPLANATION
S 505 Project team - others	<p>The Contract Data identifies the <i>Client</i> and <i>Consultant</i> and the <i>conditions of contract</i> states what each is required to do. It is important, in using this section, not to contradict these obligations and duties. If any of the duties are delegated to others, the extent of the delegation should be set out.</p> <p>Explain how other organizations will be involved in the <i>service</i> or the same project for which the <i>service</i> relates to.</p> <p>Clearly define the interfaces between organisations. Consider the use of a chart setting out the roles and responsibilities of the various parties involved.</p> <p>Further guidance on defining interfaces is in section 3.2.</p>
S 510 Communication system	<p>Detail the communication system to be used. Consider the use of the following:</p> <ul style="list-style-type: none"> <li>• Internet based collaboration tool.</li> <li>• Electronic mail system or</li> <li>• Standard forms and templates.</li> </ul>
S 515 Management procedures	<p>State any management procedures which the <i>Consultant</i> is required to follow. Consider the following:</p> <ul style="list-style-type: none"> <li>• Meetings, attendees and meeting records.</li> <li>• Reporting formats and requirements (e.g. progress reports).</li> <li>• Format of information or deliverables to be provided.</li> <li>• Information security.</li> </ul> <p>Environmental requirements.</p>
S 520 Interfaces with third parties	<p>Clearly set out the <i>Client's</i> requirements in relation to the management of interfaces with third parties who are not directly involved in the <i>service</i> or the same project for which the <i>service</i> relates to.</p> <p>State the requirements for communicating with third parties including whether such liaison and communication is conducted through the <i>Client</i> or directly with the third party. For example communication with a statutory authority.</p> <p>Further guidance on defining interfaces is in section 3.2.</p>
S 525 Co-ordination and co-operation	<p>State the requirements for, and constraints with regard to, the <i>Consultant</i> co-ordinating and co-operating with others, including when preparing any deliverables. For example, co-ordinating the preparation of a design.</p> <p>State any requirements for submitting information to statutory authorities or other similar organisations.</p>
S 530 Submission procedures	<p>State any requirements and procedures for submitting deliverables. State any acceptance criteria for any deliverables which the <i>Client</i> is required to accept.</p>
S 535 Quality management system	<p>State any specific requirements for the <i>Consultant's</i> quality management system, including accreditations or legislative standards.</p>
S 540 Health and safety requirement	<p>Detail health &amp; safety requirements which the <i>Consultant</i> is to comply with, in addition to the requirements of law, which may include:</p> <ul style="list-style-type: none"> <li>• <i>Client's</i> safety requirements.</li> <li>• Reporting requirements.</li> <li>• Safety management, supervision and qualifications.</li> <li>• Management of Subcontractors.</li> <li>• Drug and alcohol policy.</li> <li>• Site induction procedures.</li> </ul>

S 545 Legal requirements	If any health and safety duties are required by law, state who will perform them.
S 550 Disclosure	Detail any procedures for obtaining agreement from the <i>Client</i> to disclose information about or obtained in connection with the <i>service</i> .
S 555 Form of retained documents	State the form in which documents are retained.
S 560 <i>Consultant's</i> invoice	State any specific requirements of the <i>Client</i> for the format and details to be included in the <i>Consultant's</i> invoice.
S 565 <i>Client</i> use of materials <b>PSSC 70.1</b>	State the purposes for which the <i>Client</i> intends to use the material provided by the <i>Consultant</i> .
S 570 <i>Consultant</i> use of the material <b>PSC 70.3</b>	State any restrictions on the <i>Consultant</i> using material provided under this contract for other work.
S 575 Record of expenses	Detail the records, invoices, receipts and other supporting documentation for all expenses incurred that are to be kept.

### S 600 Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

The PSSC require the *Consultant* to submit a forecast of the date of Completion each week from the *starting date* until Completion (clause 30.2). If the *Client* requires more detail in support of the *service* then this should be identified in the Scope.

CHECKLIST	EXPLANATION
S 605 Programme <b>PSSC 31.1</b>	<p>State whether a programme is required and, if so, its form. For example, whether it is to be a gantt chart or schedule of tasks and dates or combination of both.</p> <p>State requirements for the format of the programme, including the use of specific software (if necessary) and the requirement for hard or electronic copies.</p>
S 610 Information to be shown on the programme <b>PSSC 31.1</b> <b>PSSC 50.8</b>	<p>If a programme is required, state what information is to be shown on the programme. These may include:</p> <ul style="list-style-type: none"> <li>• The <i>starting date</i> and Completion Date.</li> <li>• The order and timing of the operations which the <i>Consultant</i> plans to do in order to Provide the Service.</li> <li>• The order and timing of work of the <i>Client</i> and others as last agreed with them by the <i>Consultant</i> or, if not so agreed, as stated in the Scope.</li> <li>• Provisions for float and procedures set out in this contract.</li> <li>• The dates when, in order to Provide the Service in accordance with its programme, the <i>Consultant</i> will need acceptances, material and other things to be provided by the <i>Client</i> and information from others.</li> <li>• Information to be provided, who it is to be provided by, and the date by which it is to be provided.</li> </ul>

<p>S 615 Submitting the programme</p> <p><b>PSSC 31.1</b></p>	<p>If a programme is required, state when the first programme is to be submitted and, if revised programmes are required, how often they are to be submitted.</p> <p>State any requirements for the <i>Client</i> to accept the programme.</p> <p>State any information to be shown on revised programmes such as:</p> <ul style="list-style-type: none"> <li>• An explanation of changes.</li> <li>• Actual progress achieved for each operation and the effect upon the timing of the remaining work.</li> <li>• How the <i>Consultant</i> plans to deal with any delays and to correct notified Defects.</li> </ul>
<p>S 620 Completion requirements</p> <p><b>PSSC 11.2(1)</b></p>	<p>Work to be done by the Completion Date. If required, state which parts of the works can remain incomplete.</p>

### S 700 Information and other things provided by the *Client*

Describe what information and other things the *Client* is to provide and by when. Information is that which is not currently available, but will become available during the contract. Other things could include access to a person, place (such as office space or a site) or the *Client's* information technology systems.

CHECKLIST	EXPLANATION
<p>S 705 Services and other things to be provided by the <i>Client</i></p> <p><b>PSSC 16.1</b></p> <p><b>PSSC 60.1(4)</b></p>	<p>Detail what information and other things the <i>Client</i> is to provide. If necessary tabulate the information and refer to information detailed elsewhere in the Scope.</p> <p>Refer as necessary to S 610 where the timing of when the information and other things are to be provided can be stated.</p>

## CHAPTER 4

# Price List

The work done by the *Consultant* may be on a priced basis or on a time charge basis using the *people rates*. The contract does not provide for the *Consultant* to be paid on a mixture of time charge and Prices and one or the other must be selected.

For a priced approach, depending upon how the Price List is to be used, there are two ways of completing each item.

If the *Consultant* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the *Consultant* enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank. Entries in the first two columns are made either by the *Client* or *Consultant*.

The *Consultant* is responsible for calculating quantities from the Scope where it needs to know a quantity in order to estimate the cost of the work. For some contracts this is a significant task. For regularly occurring costs (e.g. for submitting a monthly report) an activity for each assessment interval should be included.

Using the Price List in this way is similar to how the *activity schedule* under Option A of the Professional Services Contract (PSC) is used. Note, there is no requirement for the items in the Price List to relate to the operations on the programme, if one is required.

If the *Consultant* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the *Consultant* enters the rate which is multiplied by the expected quantity to produce the Price, which is also entered. Entries in the first four columns in this Price List are made either by the *Client* or the *Consultant*. When this option is used, the method and rules used to compile the Price List needs to be identified by the *Client*. Irrespective of who completes each entry, the *Client* is responsible for its accuracy, and must check that they are correct and consistent with the method and rules used to compile the Price List.

Using the Price List in this way, is similar to how the schedule of rates is used under other contracts.


The Price List may include both of the above ways of pricing an item in the same contract.

The *Consultant* may be paid for expenses separately. If so, these are stated in the second section of the Price List. Either the *Client* states what expenses it is prepared to pay, or the *Consultant* states what expenses it wishes to recover.

If the *Consultant* is to be paid on a time charge basis only the expenses section of the Price List is completed. The *people rates* for the *Consultant's* and any subcontractor's people which are used for assessing the amount due, are stated in the Contract Data by the *Consultant*.

## APPENDIX 1

# Contract Data – Worked Example



## Professional Service

# Short Contract

**A contract between**

Museum of Industrial History

**and**

Dudleyavon Consultants LLP

**for**

asset survey and remedial specification

Contract Forms

Contract Data

The *Consultant's Offer* and the *Client's Acceptance*

Price List

Scope

# Contract Data

## The *Client's* Contract Data

The *Client* is

Name

Address for communications

Address for electronic communications

The service is

The starting date is

The completion date is

The delay damages are  per day

The law of the contract is

The period for reply is  weeks

The defects date is  weeks after completion

The assessment day is the  of each month

All work **is not** to be carried out on a time charge basis (delete as applicable)

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does** apply (delete as applicable)

The *Adjudicator* is

Name

Address for communications

Address for electronic communications

The interest rate on late payment is  % per complete week of delay.

# Contract Data

## The *Client's* Contract Data

The *Client* provides this insurance

not applicable

The *Consultant* provides the following insurance cover

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OR EARLIER TERMINATION
Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service.	£250,000 in respect of each claim, without limit to the number of claims	six years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i> ) arising from or in connection with the <i>Consultant</i> Providing the Service.	£100,000 in respect of each event, without limit to the number of events	one year
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	£100,000 in respect of each event, without limit to the number of events	one year

The *Consultant's* total liability to the *Client* which arises under or in connection with the contract is limited to

£500,000

The *Adjudicator nominating body* is

President of the Royal Institution of Chartered Surveyors

The *tribunal* is

arbitration

If the *tribunal* is arbitration, the arbitration procedure is

the Construction Industry Model Arbitration Rules 1998 or any amendments or modifications to it in force when the arbitrator is appointed.

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 and the following additional conditions

1. A change in the law is a compensation event if it occurs after the date of the *Consultant's* Offer.



# Contract Data

## The Consultant's Contract Data

### The Consultant is

Name

Address for communications

Address for electronic communications

The fee percentage is  %

### The people rates are category of person

category of person	unit	rate
Partner	hour	£85
Other consultant	hour	£70
Technician	hour	£50
Administrative assistant	hour	£30

### The key persons are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

# The Consultant's Offer and Client's Acceptance

The *Consultant* offers to Provide the Service in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices is £22,350

Signed on behalf of the *Consultant*

Name James Dudley

Position Partner

Signature

Date 12th May 2017

The *Client* accepts the *Consultant's* Offer to Provide the Service

Signed on behalf of the *Client*

Name John Smith

Position Director

Signature

Date 19th May 2017

## Price List

ITEM NUMBER	DESCRIPTION	UNIT	EXPECTED QUANTITY	RATE	PRICE
1	Site plan	Unit	1	£1,000	£1,000
2	1:50 building plans	Unit	10	£500	£5,000
3	Survey and report on equipment and condition	Unit	10	£1,500	£15,000
4	Meeting at Client offices	Unit	3	£450	£1,350

**The total of the Prices** £22,350

### EXPENSES

5	Car Travel	Mile	500 (estimate)	45p	£225
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**All other expenses are to be included in prices and rates**

The method and rules used to compile the Price List are

not applicable

# Scope

## 1 Purpose of the service

The asset survey and subsequent reports and specification is to form the basis of the specification for a future facilities maintenance contract for the management of the *Client's* buildings

## 2 Description of the service

Undertake a physical survey and full mechanical and electrical asset survey of the 10 buildings on the *Client's* site as shown on drawing 001.

Provide a 1:200 site plan, and 1:50 scale plans of each building.

Provide a report, for each building, on the state of that building, an asset register of all mechanical and electrical equipment in those building, and a report on the state of that equipment, the estimate of working life of the equipment and recommendations on the maintenance and replacement of the equipment.

Provide a single full asset register when these individual reports are complete.

The work will include meetings with the local managers of each building to understand the user requirements, constraints and expectations of operational efficiency. The *Consultant* is to arrange all meetings.

2 bound paper copies and an electronic copy in MicroSoft Word format are to be provided for all reports.

2 paper copies and electronic copies in PDF and DWG formats are to be provided for all surveys and drawings.

The senior manager/partner of the *Consultant's* team is to attend 3 half day meetings with the *Client*, one at the beginning, one to present and discuss the resulting reports and one progress meeting midway through the service.

## 3 Existing information

Existing drawings in schedule 1. These are not in electronic form.

Existing asset register of mechanical and electrical equipment in provided in schedule 2. This identifies the extent of the asset but should not be taken as an accurate or complete schedule. One of the deliverables is to provide this complete and in either the electronic form already in use or in another form proposed by the *Consultant* and agreed by the *Client*

# Scope

## 4 Specifications and standards

None

## 5 Constraints on how the *Consultant* Provides the Service

The buildings and building managers are only available to the *Consultant* Monday to Friday, 9.00am to 5.00pm. They are not available outside these hours.

## 6 Requirements for the programme

A programme is required to be submitted within 2 weeks of the *Client's* Acceptance showing as a minimum:

1. The start and finish dates of the service.
2. The dates for the proposed interview with each building manager and access dates for each building when the surveys will be undertaken.
3. The dates for submitting the reports for each building.

Updates, particularly showing progress and revised dates, together with revised interview and access dates, are required every two weeks until Completion.

## 7 Information and other things provided by the *Client*

ITEM	DATE BY WHICH IT WILL BE PROVIDED
Updated list of buildings	<i>starting date</i>
Current list of building managers and contact details	<i>starting date</i>
Meeting rooms for interviews with building managers will be supplied by the <i>Client</i>	As and when required as shown on the programme

## 2.2 CONTRACT DATA CHECKLIST

The checklist below follows the order in which entries appear in Contract Data. The purpose of each entry is defined followed by guidance and an example of the entry required.

Most optional entries have been completed with an example so that compilers can see what type of entry should be made. The example entries and data are imaginary and should not be taken as typical and certainly do not have the status of a recommendation. The entry examples are not necessarily consistent throughout.

A full worked example of Contract Data is given in Appendix 1.

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
<b>THE CLIENT'S CONTRACT DATA</b>			
The <i>Client</i> is Name Address for communications Address for electronic communications	Identifies the <i>Client</i> .	State the <i>Client</i> 's legal name. State the address to be used for communications, which may not be the <i>Client</i> 's registered office address, including an email address if necessary.  Refer to Volume 1: Establishing a Procurement and Contract Strategy for further guidance on the role of the <i>Client</i> .	Name <b>Museum of Industrial History</b>  Address for communications <b>Lilac Road, Old Town, Scotland, OT5 5AZ</b>  Address for electronic communications: <b>john.smith@industrialhistory.com</b>
The <i>service</i> is	Identifies the overall scope of works. The term is referenced throughout the <i>conditions of contract</i> .	Describe the <i>service</i> clearly but briefly. The description should enable the <i>service</i> to be identified but should not go into details; details will be included in the Scope.	<b>Undertake an asset survey and provide remedial specification of buildings on the site of the Industrial History Museum</b>
The <i>starting date</i> is	Identifies date the contract starts.	The <i>starting date</i> is the earliest date from which the <i>Consultant</i> starts Providing the <i>Service</i> .  It may not be possible to identify the <i>starting date</i> as a calendar date due to the uncertainties in the time it will take to complete the <i>Consultant</i> selection process. In that case the date can be fixed by stating the number of days after the date of the <i>Client</i> 's Acceptance.	<b>5 June 2017</b>
The <i>completion date</i> is	Identifies the <i>completion date</i> .	State the <i>completion date</i> for the whole of the <i>service</i> .  It may not be possible to identify the <i>completion date</i> as a calendar date due to the uncertainties in the time it will take to complete the <i>Consultant</i> selection process. Consequently, the date can be fixed by stating the number of days after the <i>starting date</i> .	<b>21 August 2017</b>
The <i>delay damages</i> are..... per day	Identifies the amount per day to be paid by the <i>Consultant</i> .	State the amount per day from the Completion Date until Completion is achieved that the <i>Consultant</i> pays the <i>Client</i> .  Typically, the delay damages reflect the likely costs the <i>Client</i> will incur. When determining the amount to be stated, any requirements of the local jurisdiction should be followed.	The <i>delay damages</i> are <b>£100</b> per day
The <i>law of the contract</i> is	Identifies applicable law and jurisdiction.	It is possible for the law of one country to be applied in the courts of another. Thus the place of jurisdiction should be stated here as well as the law that is to apply to the contract.	is the law of Scotland subject to the jurisdiction of the courts of Scotland

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The <i>period for reply</i> is .....weeks	Identifies the default period of time within which the <i>Client</i> and <i>Consultant</i> reply to a communication unless one is stated in the relevant clause.	The <i>period for reply</i> must be sufficient for the parties to respond, but should be sufficiently brief to maintain the principle of dealing with problems as or before they arise.	The <i>period for reply</i> is <b>one</b> weeks
The <i>defects date</i> is..... weeks after Completion.	Identifies the period within which the <i>Consultant</i> is required to correct Defects.	The period starts from Completion of the whole of the <i>service</i> .	The <i>defects date</i> is <b>52</b> weeks after Completion.
The <i>assessment day</i> is..... of each month	Identifies the <i>assessment day</i> .	The contract requires the amount due to be assessed on a monthly basis. This entry establishes which day of the month the <i>assessment day</i> occurs on. This is typically the first or last day of each month.	The <i>assessment day</i> is the <b>first day</b> of each month
The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does / does not</b> apply?	Identifies whether the United Kingdom Housing Grants, Construction and Regeneration Act (1996) applies.	This optional entry is only applicable if the <i>service</i> are subject UK legislation.  If necessary the <i>Client</i> should obtain legal advice to establish whether the United Kingdom Housing Grants, Construction and Regeneration Act (1996) applies.	The United Kingdom Housing Grants, Construction and Regeneration Act (1996) <b>does</b> apply
The <i>Adjudicator</i> is  Name  Address for communications  Address for electronic communications	Identifies the person who will be <i>Adjudicator</i> .	It is important that both Parties have full confidence in the <i>Adjudicator's</i> impartiality, and for that reason it is preferable that the appointment is mutually agreed. There are a number of ways of doing this:  Normally the <i>Client</i> would nominate an individual for agreement by the <i>Consultant</i> , and confirm the appointment in awarding the contract.  <ul style="list-style-type: none"> <li>Alternatively, the <i>Client</i> would identify a number of individuals from which the <i>Consultant</i> decides the appointment of one in awarding the contract.</li> <li>The Parties delay selecting the <i>Adjudicator</i> until a dispute has arisen, although this frequently results in a disagreement over who should be the <i>Adjudicator</i>.</li> </ul> <p>The selection of the <i>Adjudicator</i> is important, and it should be recognised that a failure to agree an adjudicator means that the <i>Adjudicator nominating body</i> will make the selection without consulting the Parties.</p> <p>State the name of the <i>Adjudicator</i> and the address to be used for communications, including an email address if necessary. Care should be taken when choosing the adjudicator to ensure it has relevant qualifications and experience in the type of work included in the contract and is able to understand the viewpoint of both Parties.</p> <p>Refer to Volume 1: Establishing a Procurement and Contract Strategy for further guidance on the role of the <i>Adjudicator</i>.</p>	Name <b>Mr I Judge</b> .  Address for communications <b>Test House, Michelmersh, Perthshire</b>  Address for electronic communications: <b>ijudge@testhouse.com</b>

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The interest rate on late payment is..... % per complete week of delay	Identifies the interest rate on late payment per week	<p>State the interest rate which is to be used if the default rate of interest of 0.5% per complete week is not going to be used.</p> <p>The interest rate stated should be a commercial rate applicable to the jurisdiction in which the work is to be done. Local legislation may constrain what interest rate can be stated.</p>	The interest rate on late payment is <b>0.25%</b> per complete week of delay
The <i>Client</i> provides this insurance	Identifies any insurance provided by the <i>Client</i>	<p>Only enter details if the <i>Client</i> is to provide insurance.</p> <p>Typically the <i>Consultant</i> provides the three insurances stated in the Insurance Table. Sometimes it may be better value for the <i>Client</i> to provide one or more of these insurances or because the <i>Client</i> is already providing the insurance.</p> <p>In the UK the <i>Consultant</i> is obliged to hold the second and third insurance. It is possible that the <i>Client</i> may have a global project insurance so does not require the first, but that would be unusual for this contract.</p> <p>Unless the <i>Client</i> has its own insurance department or access to insurance specialists, it is sensible to get advice on whether the <i>Client</i> should provide any of the insurances stated in the Insurance Table.</p>	
<p>The <i>Consultant</i> provides the following insurance cover</p> <p>Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the <i>service</i></p> <p>Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i>) arising from or in connection with the <i>Consultant</i> Providing the <i>Service</i>.</p> <p>Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract</p>	Identifies the minimum amount and period of cover for insurance	<p>Unless the <i>Client</i> has its own insurance department or access to insurance specialists, it is sensible to get advice on the figure to be stated here.</p>	<p><b>£250,000, six years</b></p> <p><b>£100,000, one year</b></p> <p><b>£100,000, one year</b></p>



CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The <i>Consultant's</i> total liability to the <i>Client</i> for all matters arising under or in connection with this contract is limited to.....	Identifies the total liability to the <i>Client</i>	The <i>Consultant's</i> total liability to the <i>Client</i> can be limited to the amount stated.	£500,000
The <i>Adjudicator nominating body</i> is	Identifies the body that will choose the adjudicator,	<p>A nominating body is required in case the Parties are unable to jointly agree an adjudicator. This entry identifies the person or organisation who will, in that case, choose an adjudicator. Check that the nominating body can choose an adjudicator within 4 days.</p> <p>The nominating body should also be able to choose an adjudicator who can act on a dispute in the local jurisdiction.</p> <p>Several organisations, both international and UK based maintain list of people who can act as an adjudicator. The Institution of Civil Engineers maintains a list of suitably qualified and experienced people to act as adjudicators. Several other organisations maintain similar lists.</p>	<b>President of the Royal Institution of Chartered Surveyors.</b>
The <i>tribunal</i> is	Identifies the tribunal.	Unless the local jurisdiction has alternatives, the choice is usually between arbitration and litigation.	<b>arbitration.</b>
If the <i>tribunal</i> is arbitration The <i>arbitration procedure</i> is	Identifies the <i>arbitration procedure</i> .	<p>State the <i>arbitration procedure</i>.</p> <p>Check that this is the latest version of the procedure.</p>	<b>the Construction Industry Model Arbitration Rules 1998 or any amendments or modifications to it in force when the arbitrator is appointed.</b>
The <i>conditions of contract</i> are the NEC4 Professional Service Short Contract June 2017 and the following additional conditions.	Identifies any additional conditions of contract.	<p>Only enter details if additional conditions are required.</p> <p>Refer to section 2.3 for guidance on drafting additional conditions of contract.</p>	<b>1. A change in the law is a compensation event if it occurs after the date of the <i>Consultant's</i> Offer.</b>
THE CONSULTANT'S CONTRACT DATA			
<p>The <i>Consultant</i> is</p> <p>Name</p> <p>Address for communications</p> <p>Address for electronic communications</p>	Identifies the <i>Consultant</i> .	<p>State the <i>Consultant's</i> legal name. State the address to be used for communications, which may not be the <i>Consultant's</i> registered office address, including an email address if necessary.</p> <p>Refer to Volume 1: Establishing a Procurement and Contract Strategy for further guidance on the role of the <i>Consultant</i>.</p>	<p>The <i>Consultant</i> is</p> <p>Name <b>Dudleyavon Consultants LLP</b></p> <p>Address for communications <b>Coronation Avenue, Avonmouth, Perthshire, AV12 1XX</b></p> <p>Address for electronic communications: <b>consult@dudley.org.uk</b></p>

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
The <i>fee percentage</i> is	Identifies the <i>fee percentage</i> .	<p>The Fee includes all costs the <i>Consultant</i> may incur that are not included in Defined Cost (11.2(5)), which may include its overheads, profit, insurance premiums, bank charges, and any allowance for its risks.</p> <p>The Fee is calculated by applying the <i>fee percentage</i> to the Defined Cost (clause 11.2(6)).</p>	<b>15%</b>
The <i>people rates</i> are: category of person unit rate	Identifies the <i>people rates</i> .	<p>State the <i>people rates</i> (clause 11.2(8)), including a full description of the category of person, unit (hour or day) and rate.</p> <p>Typically the <i>Client</i> completes the description of the category of person, particularly if the selection process involves tendering, so the categories are the same for all tenderers.</p> <p>The <i>people rates</i> are used to assess the amount due, if the work is to be carried out on a time charge basis, and in the assessment of compensation events in accordance with clause 11.2(6). The <i>people rates</i> are exclusive of the Fee which is added separately.</p> <p>If the work is to be carried out on a time charge basis the <i>Consultant</i> includes <i>people rates</i> for its own people and for people provided by a subcontractor</p>	<p>The <i>people rates</i> are:</p> <p><b>Partner, £85 per hour</b></p> <p><b>Other consultant, £70 per hour</b></p> <p><b>Technician, £50 per hour</b></p> <p><b>Administrative assistant, £30 per hour</b></p>
The <i>key persons</i> are (1) Name Job Responsibilities Qualifications Experience	Identifies the <i>Consultant's key persons</i>	<p>State the names, job title, responsibilities, qualifications and experience of the <i>key persons</i> of the <i>Consultant</i>.</p> <p>It is essential that the people chosen are sufficiently experienced in the type of work and have the time to carry out their duties effectively.</p> <p>The <i>Client</i> may state roles for which <i>key persons</i> are to be provided by the <i>Consultant</i> that are relevant to the type of service. The roles identified should be relevant to the type of service included in the contract.</p>	<p>Name <b>Mr I Design</b></p> <p>Job <b>Partner</b></p> <p>Responsibilities <b>Overall responsibility for commission</b></p> <p>Qualifications <b>BSc(Hons), RIBA</b></p> <p>Experience <b>15 years in civil engineering design – see CV in Volume 5</b></p> <p>Name <b>Mr M.E. CAD</b></p> <p>Job <b>CAD designer</b></p> <p>Responsibilities <b>Development of the CAD design</b></p> <p>Qualifications <b>BSC, CEng, FStructE</b></p> <p>Experience <b>20 years in civil engineering design – see CV in Volume 5</b></p>

CONTRACT DATA ENTRY	PURPOSE OF ENTRY	GUIDANCE	EXAMPLE ENTRY
<b>THE CONSULTANT'S OFFER AND CLIENT'S ACCEPTANCE</b>			
The <i>Consultant</i> offers to Provide the Service in accordance with these <i>conditions of contract</i> for an amount to be determined in accordance with these <i>conditions of contract</i> .		A contract can be created in a number of different ways and further guidance is provided in Volume 3 – Selecting a Supplier.  This section of Contract Data includes a form of agreement that enables the contract to be executed as a simple contract.	
The offered total of the Prices is	Identifies the offered total of the Prices.	Enter the total of the Prices from the Price List.	<b>£22,350</b>
Signed on behalf of the <i>Consultant</i> Name Position Signature Date	Identifies the person signing on behalf of the <i>Consultant</i> .	Refer to the guidance above.	
The <i>Client</i> accepts the <i>Consultant's Offer</i> to Provide the Service Signed on behalf of the <i>Client</i> Name Position Signature Date	Identifies the person signing on behalf of the <i>Client</i> .		
<b>PRICE LIST</b>			
Refer to Chapter 4 for guidance on preparing the Price List			
The method and rules used to compile the Price List are	Identifies the method of measurement or rules used to compile the Price List.	The Price List can be used as an activity schedule, lump sum price approach or a measured quantity approach as with a schedule of rates. When used as a schedule of rates it is necessary to state the method of measurement or rules that have been used in compiling the Price List, if any.	
<b>SCOPE</b>			
Refer to Chapter 3 for guidance on drafting Scope			

## 2.3 ADDITIONAL CONDITIONS OF CONTRACT

Additional conditions should be used only when absolutely necessary to accommodate special needs, such as those specific to the jurisdiction in which the work is to be done. Additional conditions should never be used to limit how the *Consultant* is to do the work in the contract as this is part of the function of the Scope.

If the *Client* wishes to include additional conditions, the following checklist may be used when drafting them.

Why	<ul style="list-style-type: none"> <li>• Why is the clause needed?</li> <li>• What is the issue that the standard contract does not deal with or not deal with adequately?</li> <li>• Is this something that should be included in the Scope?</li> <li>• Prepare a "brief statement" – specification for and justification of additional provision.</li> </ul>
What	<ul style="list-style-type: none"> <li>• What is needed by way of additional provisions?</li> <li>• The drafter must understand the contract as a whole and recognise how the new provision will affect/ be affected by other clauses</li> <li>• Prepare a "clause function statement" – what the clause is required to achieve</li> </ul>
How	<ul style="list-style-type: none"> <li>• Maintain NEC key principles:               <ul style="list-style-type: none"> <li>– Flexibility - the contract should be as flexible as possible. It should be capable of being used for any type of work in any legal jurisdiction.</li> <li>– Clarity - the contract should be written in ordinary language, using as far as possible words which are in common use, to make it easier to understand by people who are not used to using formal contracts or whose first language is not English.</li> <li>– Stimulus to good management - every procedure should contribute to, rather than detract from, the effectiveness of management of the work. Clear division of function and responsibility helps accountability and motivates people to play their part.</li> </ul> </li> <li>• Follow NEC style:               <ul style="list-style-type: none"> <li>– Use the same NEC language and style - further guidance on this is included in section 3.2 sub-section on general drafting advice.</li> <li>– Use the same defined and identified terms.</li> <li>– Adopt NEC text when possible – e.g. "a reason for not accepting ... is ..."</li> <li>– Avoid cross references.</li> <li>– Add to existing conditions, avoid amending them.</li> <li>– Carefully checked for consistency and compatibility with other conditions.</li> </ul> </li> </ul>
Review	<ul style="list-style-type: none"> <li>• Are the additional clauses helpful to all of the parties involved, are they understandable, and easy to use?</li> <li>• Verify that the needs have been met by referring back to the brief statement.</li> <li>• Test by flow charting.</li> </ul>

## CHAPTER 3

## Scope

## 3.1 THE STATUS OF THE SCOPE

**The function of the Scope**

NEC contracts identify the Scope as the document which sets out what the Parties are required to do under the contract. The obligation to work in accordance with that Scope is set out in the *conditions of contract*.

Scope is defined as:

**"11.2(11) Scope is information which**

- **specifies and describes the service or**
  - **states any constraint on how the Consultant Provides the Service**
- and is either**
- **in the document called Scope or**
  - **in an instruction given in accordance with this contract."**

Scope should be a complete and precise statement of the *Client's* requirements. Subjective terms should be avoided. If it is not there is a risk that the *Consultant* will interpret it differently to the *Client's* intention.

Scope provided by the *Client* includes:

- technical information, specifications and drawings describing the service,
- constraints on how the *Consultant* Provides the Service, including specific safety requirements, and
- requirements for the programme.

The *Consultant's* primary obligation under PSSC is stated in clause 20.1.

**"20.1 The Consultant Provides the Service in accordance with the Scope."**

When this clause is read in conjunction with clause 11.2 (11), and the following clauses, the importance of Scope is clear.

**"11.2 (1) Completion is when the Consultant has completed the service in accordance with the Scope....."****"11.2 (4) A Defect is a part of the service which is not in accordance with the Scope....."****"60.1 The following are compensation events.**

- (1) The Client gives an instruction changing the Scope unless the change is in order to make a Defect acceptable."**

The *conditions of contract* make frequent reference to Scope as illustrated above and detailed later in section 3.3. Scope is therefore central to the operation of the contract.

Scope should be drafted in accordance with the three key objectives of NEC, namely flexibility, clarity and stimulus to good management (refer to Volume 1 Establishing a Procurement and Contract Strategy).

Only the *Client* can instruct a change to the Scope – the power to do this is stated in clause 14.2. Such an instruction is a compensation event unless the exception mentioned above in clause 60.1(1) applies.

#### The relationship between Scope and Contract Data

Scope should not contain information which repeats, contradicts or creates an ambiguity with any information contained within Contract Data or with the *conditions of contract*.

A further distinction is that the *Client* can instruct a change to Scope but cannot change Contract Data once the contract is formed.

#### The relationship between Scope and the Price List

A clear distinction exists between Scope and the Price List. Information in the Price List includes a description of items of work necessary to Provide the Service, but it is not Scope.

The *Consultant's* obligation is to Provide the Service in accordance with the Scope, and information contained in the pricing documents does not change this obligation.

Statements about pricing of work should not be included in the Scope, as they neither specify or describe the *service*, nor are they constraints.

#### Scope as a contract document

Some forms of contract use provisions creating a hierarchy or priority of documentation as a means of resolving ambiguities and inconsistencies in or between documents. This is not the approach taken by NEC.

Priority clauses can interfere with the natural interpretation of documents as intended by the Parties. Such an indiscriminate approach to resolving ambiguities and inconsistencies can cause problems.

As explained in Chapter 1, the PSSC describes the function of each document forming part of the contract. This provides clarity as to the relevance and purpose of each document in the contract. The *conditions of contract* then deal with any remaining ambiguity or inconsistency in or between the documents.

The PSSC deals with ambiguities or inconsistencies in the Scope as follows at clause 63.8.

**"A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the Consultant."**

## 3.2 DRAFTING SCOPE

**Incorporation of standard specifications**

Scope often consists of several documents drafted by different contributors. Typically in preparing the contract, and in particular Scope, it may be helpful to identify an individual who is responsible for ensuring all documents are drafted in a coherent and consistent way and who checks and resolves any ambiguities or inconsistencies before the contract is issued.

Standard specifications or descriptions of services published by relevant representative professional organisations in the part of the world where the *service* is provided, drafted for use on previous projects or with other standard forms of contract should be reviewed and amended as appropriate prior to incorporation.

The terminology used in such documents is often inconsistent with the *conditions of contract*. For example, the 'acceptance' of a communication by the *Client* may differ from an 'approval' given by the *Client* in other contracts. This is important as PSC clause 14.4 states:

**"The *Client's* acceptance of a communication from the *Consultant* or acceptance of the work does not change the *Consultant's* responsibility to Provide the Service."**

Hence the word 'acceptance' rather than 'approval' must be used throughout.

Each reference should be checked for correct use in relation the duties and responsibilities of the *Client*, and *Consultant*.

Standard specifications should be checked to ensure consistency with other parts of the contract. For example, risk allocation varies from contract to contract and references to the *Client's* and *Consultant's* responsibilities within standard specifications need to be checked. These may conflict with the *conditions of contract* and would need to be removed.

Examples of specification ambiguity are included below.

**Examination of typical traditional requirements**

(a)	The <i>Consultant</i> will Provide the Service in accordance with industry best practice. For the avoidance of doubt this will also include all updates and changes to such best practice as occur during the currency of the contract.
	What industry? And what is 'best practice'?
(b)	The <i>Consultant</i> shall use its 'best endeavours' to undertake the services.
	The law in this area is still evolving but this could require investigating an indefinite number of options to solve a problem and may not be limited by any reasonableness of cost – 'reasonable endeavours' is more reasonable.
	Clause 20.2 of the conditions of contracts includes 'The <i>Consultant's</i> obligation is to use the skill and care normally used by professionals providing services similar to the services.' If this needs to be changed, it should be changed via an additional condition of contract rather than in the Scope.
(c)	The <i>Consultant</i> will attend all meetings as necessary to Provide the Service.
	How can the <i>Consultant</i> price this requirement?
(d)	The <i>Consultant</i> will Provide the Service to the satisfaction of the <i>Client</i> .
	What will 'satisfy' the <i>Client</i> ? This may lead to disputes. It is much better to provide objective requirements that the <i>Consultant</i> can understand and price. Then, if required, an <i>Adjudicator</i> would be able to make a decision.
(e)	The <i>Consultant</i> shall assist the <i>Client</i> with the liaison with and management of the project stakeholders.

	The word 'assist' is not helpful and the requirement cannot be priced. The actual obligation of the <i>Consultant</i> should be defined.
(f)	The <i>Consultant</i> shall do everything necessary to provide the brief.
	This is not necessary: the <i>Consultant</i> is required to 'Provide the Service in accordance with the Scope' (clause 20.1).
(g)	The <i>Consultant</i> shall provide all necessary copies of the drawings and specifications as required.
	How can the <i>Consultant</i> price this requirement? State the number of copies required, or state an assumption about the number to be required, or let the <i>Consultant</i> price these as expenses.
(h)	The <i>Consultant</i> shall check and approve the work of others.
	The Scope should set out exactly what the <i>Consultant</i> is required to check and when and by whom the work to be checked will be carried out.
(i)	The <i>Client</i> shall provide data for the use of the <i>Consultant</i> in Providing the Service.'
	The Scope should be clear on what data the <i>Client</i> is to provide to the <i>Consultant</i> and when. It should also be clear whether the <i>Consultant</i> is required to check this data and to what extent.

### Assumptions

All effort should be made to make the Scope a specific and complete description of the service required. However, there may be requirements that the *Client* cannot define properly in advance when drafting the Scope but wants the *Consultant* to allow for them. The recommended approach is to state in the Scope clear assumptions about those requirements. The *Consultant*, when planning and pricing the service then has a clear understanding of what should be allowed for in terms of time, cost and quality. If the assumptions prove to be incorrect, the *Client* changes the Scope to reflect the real situation. This will be a compensation event which will compensate the *Consultant* for any effects on time and/or cost of the change to the assumption.

### Interfaces

The Scope must clearly define the interfaces between the service provided by the *Consultant* and that of all other organisations.

#### Interfaces with other organisations working on the same project for the *Client*

Some projects may require the appointment of a combination of consultants and contractors (some of whom may be providing a service as part of their service contracts) each under separate contracts.

In such circumstances it is very important that the Scope documents for each appointment define clearly the interfaces between those organisations and the role of any 'lead consultant'. Those drafting the Scopes for each contract may find it useful to put together a matrix of services and interfaces against which to check that the service required has been covered in the appropriate Scope. It may be appropriate and possible to develop an 'interface schedule' in a way that it can be included in the Scope for each consultant.

#### Other interfaces and liaison with third parties

It is important that the Scope clearly defines the *Consultant's* responsibility in relation to communications with third parties:

- For some contracts, *Clients* require that all liaison and communication with third parties be conducted through the *Client*.



- For other contracts, *Clients* require the *Consultant* to liaise directly with the third party. The *Consultant* may or may not be required to keep the *Client* informed of such liaison.

The Scope should clearly set out the *Client's* requirements in relation to the management of interfaces with third parties.

### Health and safety information

The *Client* should consider how to deal with health and safety requirements and documentation carefully when preparing Scope. The Scope should set out any requirements for the *Consultant* to comply with the *Client's* own safety procedures (if any). Any such requirements must be included in the Scope (or incorporated by reference from the Scope). These are additional to any obligations the *Consultant* may have under the particular jurisdiction where the *service* is being provided or the *law of the contract* or both.

Many jurisdictions require health and safety risks to be evaluated by the *Client* and then communicated to the *Consultant* as part of the selection process. It may not be necessary to include the risk evaluation as a contract document, but it is necessary to check for consistency between the health and safety information and Scope.

#### UK specific illustration:

Whilst the Scope should not repeat the law, it is sometimes necessary to state clearly whether the *Consultant* is to carry out particular roles defined by the law. For example, in construction in the UK the Construction Design and Management (CDM) Regulations 2015 may apply to a project that is the subject of a consultancy contract. The Regulations set out obligations on anyone carrying out design for a construction project. There is no need to repeat or refer to these requirements in the Scope unless the *Client* wants these to be carried out or reported in a particular way. However, the CDM Regulations also require the appointment of a Principal Designer. Clearly, if a *Consultant* is to be appointed as the Principal Designer, then this requirement should be included in the Scope.

### General drafting advice

The following description of NEC drafting style will help compilers draft Scope and other contract documents clearly.

1. A basic objective of NEC contracts is that they should be clear and simple. The drafting delivers clarity and simplicity of language. Simplicity also follows from the design of the management processes in the contracts.
2. One of the objectives of using simple language in the Scope is that it should be easy for people whose first language is not English to use. A further advantage is that the Scope can be translated into other languages accurately.

### Vocabulary

3. Use the simplest possible words. Simple words have few syllables.
4. Don't use words which are not needed.

### Sentences

5. Sentences should be as short as possible. Twenty words is fine. Never have more than forty. Use several short sentences instead of one sentence with several connectors.
6. Many statements are conditional. 'If this happens, the *Consultant* does this'. Put the condition first, not last, and use 'if', not 'when'. 'If this happens, the *Consultant* does this.' [not: 'The *Consultant* does this when this happens.'] Use 'when' only if timing is implied as in clause 13.1.
7. Use commas properly. The pause which a comma creates can help understanding.

### Bullets

8. Bullets are used when a sentence includes a list. Don't use bullets for short lists with short descriptions. The following does not need to be bulleted:

**'The Consultant arranges for 'Hail to the Chief' to be played by a brass band outside the Client's office at 9 a.m. on**

- **Mondays,**
  - **Wednesdays,**
  - **Fridays and**
  - **Its birthday.'**
9. A useful check is that punctuation of bulleted sentences should work if the bullets are removed. Bullets end with a comma except the last but one which ends with 'and' or 'or' and the last which ends with a full stop. Do not put a comma before 'and'. 'And' replaces the comma before the last item on a list as above.
10. Whenever possible, put bullets at the end of a sentence. Having a bit more of the sentence after a bulleted list is clumsy as the reader does not expect the text and the sentence can become very long and not easy to understand.
11. Bullets are indented. Bullets within bullets should be avoided if possible. If used, as in clause 63.7, use a double indent.

### Adjectives and Adverbs

12. Old-fashioned contracts use a lot of adjectives and adverbs. NEC contracts use the absolute minimum, which is hardly any. This is perhaps the most important drafting convention for NEC. Use an adverb or adjective only if it is really unavoidable.
13. Verbs and nouns are usually precise, adverbs and adjectives are usually imprecise. 'The Consultant does all urgent work quickly' is easy to understand. Unfortunately, you can argue about the meaning of 'urgent' (adjective) and 'quickly' (adverb). 'The Consultant' (noun), 'does' (verb) and 'work' (noun) are precise. To make the point absurdly, 'George ate a hefty meal unhurriedly' is vague but not meaningless. 'George ate a meal of 42 mouthfuls in 21 minutes' is boring but precise. The Scope is not intended to be a good read. It has to state what is required in words of unarguable precision and clarity.
14. Some adverbial phrases are as imprecise as adverbs, e.g. 'quickly' in 'come quickly' is obviously an adverb. So, in effect, is 'as soon as you can' in 'come as soon as you can'.
15. This text, for example, about extension of time, comes from clause 44(1) of the ICE conditions fifth edition, adverbs and adjectives in italics.
- '..... or exceptional adverse weather conditions or other special circumstances of any kind ..... be such as fairly to entitle the Contractor to an extension of time .....the Contractor shall within 28 days after the cause of the delay has arisen or as soon thereafter as is reasonable in all the circumstances deliver to the engineer full and detailed particulars of any claim to extension of time.....'**
16. It is impossible to decide whether an extension of time should be given and, if so, for how much, when and how described until the courts have decided what the adjectives and adverbs mean.
17. NEC drafting requires the absolute minimum of adverbs and adjectives. Some are innocuous as in clause 62.1 which uses the adjective 'wrong' as in 'wrong assessment'.

### Statements

18. Statements should be as short as possible with no more than two sentences. They should cover only one subject.

**Tenses**

19. Use the present tense for all statements of what somebody must do or not do. It is seldom necessary to use another tense. 'If the sky has fallen down, the *Client* decides what the *Consultant* will do' uses three tenses. 'If the sky falls down, the *Client* decides what the *Consultant* does' uses only the present.

**Capitals**

20. Capital initials show that a term is defined in the contract. When drafting, test that a definition is right by putting it into the sentences where the defined term is used. These definitions are only abbreviations and must only be abbreviations. If there is anything to say about the defined term, it has to be in the sentence.
21. There are exceptions. *Client* and *Consultant* have capital initials but are not defined.

**Particular words**

22. 'May' in NEC means 'is allowed to' as in 'the *Client* **may** instruct.....' Do not use it to mean that something might happen.
23. 'Any' can usually be deleted.

**Multiple Alternatives**

24. *a, b, c* or *d*. Bullet the alternatives if they are phrases of some length.

**Gender**

25. Use gender neutral words and phrases.

### 3.3 PSSC REFERENCES TO SCOPE

The following table identifies where the *conditions of contract* refer to Scope. Scope should provide the information required by the contract and identify project specific requirements.

The references are in the order that they appear in the *conditions of contract* and cross referenced to the example structure provided in section 3.4.

CLAUSE REF.	SECTION 3.4	CLAUSE DESCRIPTION	GUIDANCE ON WHAT SHOULD BE INCLUDED IN THE SCOPE
11.2 (1)	S 620	Completion is when the <i>Consultant</i> has completed the service in accordance with the <b>Scope</b> except for correcting notified Defects which do not prevent the <i>Client</i> from using the service or others from doing their work.	In order for the <i>Client</i> to decide that Completion has occurred, the Scope must state clearly and unambiguously what work is to be done before Completion.
11.2 (4)		A Defect is a part of the service which is not in accordance with the <b>Scope</b> or the applicable law.	Refer to section 3.1.
11.2 (11)		<b>Scope</b> is information which <ul style="list-style-type: none"> <li>• specifies and describes the service or</li> <li>• states any constraints on how the <i>Consultant</i> Provides the Service and is either <ul style="list-style-type: none"> <li>• in the document called Scope or</li> <li>• in an instruction given in accordance with the contract.</li> </ul> </li> </ul>	Refer to section 3.1.
14.2		The <i>Client</i> may give an instruction to the <i>Consultant</i> which changes the <b>Scope</b> .	
16.1	S 705	The <i>Client</i> provides information and other things which the contract requires the <i>Client</i> to provide by the dates stated in the <b>Scope</b> or a later date if agreed.	State the services and other things and the dates by which they are to be provided by the <i>Client</i> .
20.1		The <i>Consultant</i> Provides the Service in accordance with the <b>Scope</b> .	Refer to section 3.1.
30.4		The <i>Client</i> may instruct the <i>Consultant</i> to stop or not to start any work. The <i>Client</i> subsequently gives an instruction to the <i>Consultant</i> to <ul style="list-style-type: none"> <li>• re-start or start the work or</li> <li>• remove the work from the Scope.</li> </ul>	
31.1	S 605, 610, 615	The <i>Consultant</i> submits programmes to the <i>Client</i> as stated in the <b>Scope</b> .	State requirements for providing a programme including any information that the <i>Consultant</i> is to show on the programme, how often the programme is submitted and the format of the programme.
42.1		The <i>Consultant</i> and the <i>Client</i> may each propose to the other that the <b>Scope</b> should be changed so that a Defect does not have to be corrected. If the <i>Consultant</i> and the <i>Client</i> are prepared to consider the change, the <i>Consultant</i> submits a quotation for reduced Prices or an earlier Completion Date or both to the <i>Client</i> for acceptance. If the <i>Client</i> accepts the quotation, it changes the <b>Scope</b> , the Prices and the Completion Date accordingly.	

CLAUSE REF.	SECTION 3.4	CLAUSE DESCRIPTION	GUIDANCE ON WHAT SHOULD BE INCLUDED IN THE SCOPE
60.1(1)		The <i>Client</i> gives an instruction changing the <b>Scope</b> unless the change is in order to make a Defect acceptable.	
60.1(4)	S 705	The <i>Client</i> does not work within the conditions stated in the <b>Scope</b> .	State what work the <i>Clients</i> does and the conditions within which it works.
63.8		A compensation event which is an instruction to change the <b>Scope</b> in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Completion Date were for the interpretation most favourable to the <i>Consultant</i> .	
70.1	S 565	The <i>Client</i> has the right to use the material provided by the <i>Consultant</i> , for the purpose stated in the <b>Scope</b> . The <i>Consultant</i> obtains from a subcontractor equivalent rights to use material prepared by a subcontractor.	State the purposes that the <i>Client</i> may use the material provided by the <i>Consultant</i>
70.3	S 570	The <i>Consultant</i> may use the material provided by it under the contract for other work unless stated otherwise in the <b>Scope</b> .	State any constraints on the ways in which the <i>Consultant</i> may reuse its material.
90.4		<p>The <i>Consultant</i> may terminate if</p> <ul style="list-style-type: none"> <li>the <i>Client</i> has not paid an amount due under the contract within thirteen weeks of the <i>assessment day</i> which followed receipt of the <i>Consultant's</i> invoice (Reason 5) or</li> <li>the <i>Client</i> has instructed the <i>Consultant</i> to stop or not to start any substantial work or all work for a reason which is not the <i>Consultant's</i> fault and an instruction allowing the work to re-start or start or removing work from the <b>Scope</b> has not been given within eight weeks (Reason 6).</li> </ul>	

### 3.4 CLIENT'S SCOPE

The PSSC provides an outline structure for the Scope and divides it into seven sections. The content of each section will vary because the PSSC can be used for a wide range of works procured domestically or internationally.

Guidance is provided for each Scope section. This includes a checklist of topics to help compilers prepare a complete statement of the *Client's* requirements, to meet project specific needs. The checklist provides a list of things which might need to be included – most projects will not use all items.

#### Example Scope structure

The numbering system used below is indicative.

SECTION	SCOPE
S 100	Purpose of the <i>service</i>
S 200	Description of the <i>service</i>
S 300	Existing information
S 400	Specifications and standards
S 500	Constraints on how the <i>Consultant</i> Provides the <i>Service</i>
S 600	Requirements for the programme
S 700	Information and other things provided by the <i>Client</i>

#### Guidance and checklist

This relates to the example Scope structure shown above. Guidance relating to each Scope section is provided in the first grey box of each section. A checklist of optional topics is also provided.

#### S 100 Purpose of the *service*

Provide a brief summary of why the *service* is being commissioned and what it will be used for

CHECKLIST	EXPLANATION
S 105 <i>Client's</i> objectives	Explain "why" the <i>service</i> is required. Specific objectives may include outcomes on safety, quality, time and functionality.
S 110 Background	<p>Provide a brief summary of why the <i>service</i> is being commissioned. Set out the background to and the context in which the <i>service</i> will be carried out. Include relevant information which helps the <i>Consultant</i> plan the delivery of the <i>service</i>. This should be as concise as possible, may answer such questions as:</p> <ul style="list-style-type: none"> <li>• What is the objective of the <i>Client's</i> overall project of which the <i>service</i> is a part?</li> <li>• Why is the <i>service</i> being carried out?</li> <li>• How does the <i>service</i> fit into a project or programme?</li> <li>• Where is the project located?</li> <li>• What are the types of activities required to be carried out?</li> </ul> <p>A detailed description of the <i>service</i> is contained within section S 200.</p>

### S 200 Description of the service

Include here a detailed description of the service. Guidance for including standard descriptions of service is provided in section 3.2.

CHECKLIST	EXPLANATION
S 205 Description of the service	<p>Provide a complete and precise description of what the <i>Consultant</i> is required to do to Provide the Service including any deliverables. The description should be consistent with the description in Contract Data part one.</p> <p>This may include a schedule or list of activities or tasks to be carried out or a detailed description of the service. Depending on the complexity of the service, it may be necessary to include the information in separate parts of the Scope and/or in appendices to the Scope.</p> <p>Clearly state what deliverables are to be submitted for acceptance by the <i>Service Manager</i>.</p> <p>Issues relating to the timing of the service are included in S 700.</p>

### S 300 Existing Information

CHECKLIST	EXPLANATION
S 305 Existing information	<p>List existing information which is relevant to the service. The information itself might be best provided by inclusion in appendices to the Scope. The listed documents should include details for each document stating the author, the unique reference number, date and revision.</p> <p>If part of service is to develop this information, that should be stated in S 200.</p>

### S 400 Specifications and standards

CHECKLIST	EXPLANATION
S 405 Specifications and standards	<p>List any specifications and standards which apply. Such documents are likely to include both requirements and constraints and so they should be checked to ensure they are consistent with other parts of the Scope.</p> <p>Guidance for including specifications and standards is provided in section 3.2</p>

### S 500 Constraints on how the *Consultant* Provides the Service

State any general constraints on how the *Consultant* Provides the Service, which are not included in other sections of the Scope.

Constraints may include the checklist topics listed below. Constraints are restrictions on how the *Consultant* Provides the Service, not issues related to cash flow, funding or other requirements which conflict with the *conditions of contract*.

Set out any requirements for a quality management system.

Include a dispute resolution procedure if required.

CHECKLIST	EXPLANATION
S 505 Project team - others	<p>The Contract Data identifies the <i>Client</i> and <i>Consultant</i> and the <i>conditions of contract</i> states what each is required to do. It is important, in using this section, not to contradict these obligations and duties. If any of the duties are delegated to others, the extent of the delegation should be set out.</p> <p>Explain how other organizations will be involved in the <i>service</i> or the same project for which the <i>service</i> relates to.</p> <p>Clearly define the interfaces between organisations. Consider the use of a chart setting out the roles and responsibilities of the various parties involved.</p> <p>Further guidance on defining interfaces is in section 3.2.</p>
S 510 Communication system	<p>Detail the communication system to be used. Consider the use of the following:</p> <ul style="list-style-type: none"> <li>• Internet based collaboration tool.</li> <li>• Electronic mail system or</li> <li>• Standard forms and templates.</li> </ul>
S 515 Management procedures	<p>State any management procedures which the <i>Consultant</i> is required to follow. Consider the following:</p> <ul style="list-style-type: none"> <li>• Meetings, attendees and meeting records.</li> <li>• Reporting formats and requirements (e.g. progress reports).</li> <li>• Format of information or deliverables to be provided.</li> <li>• Information security.</li> </ul> <p>Environmental requirements.</p>
S 520 Interfaces with third parties	<p>Clearly set out the <i>Client's</i> requirements in relation to the management of interfaces with third parties who are not directly involved in the <i>service</i> or the same project for which the <i>service</i> relates to.</p> <p>State the requirements for communicating with third parties including whether such liaison and communication is conducted through the <i>Client</i> or directly with the third party. For example communication with a statutory authority.</p> <p>Further guidance on defining interfaces is in section 3.2.</p>
S 525 Co-ordination and co-operation	<p>State the requirements for, and constraints with regard to, the <i>Consultant</i> co-ordinating and co-operating with others, including when preparing any deliverables. For example, co-ordinating the preparation of a design.</p> <p>State any requirements for submitting information to statutory authorities or other similar organisations.</p>
S 530 Submission procedures	<p>State any requirements and procedures for submitting deliverables. State any acceptance criteria for any deliverables which the <i>Client</i> is required to accept.</p>
S 535 Quality management system	<p>State any specific requirements for the <i>Consultant's</i> quality management system, including accreditations or legislative standards.</p>
S 540 Health and safety requirement	<p>Detail health &amp; safety requirements which the <i>Consultant</i> is to comply with, in addition to the requirements of law, which may include:</p> <ul style="list-style-type: none"> <li>• <i>Client's</i> safety requirements.</li> <li>• Reporting requirements.</li> <li>• Safety management, supervision and qualifications.</li> <li>• Management of Subcontractors.</li> <li>• Drug and alcohol policy.</li> <li>• Site induction procedures.</li> </ul>



S 545 Legal requirements	If any health and safety duties are required by law, state who will perform them.
S 550 Disclosure	Detail any procedures for obtaining agreement from the <i>Client</i> to disclose information about or obtained in connection with the <i>service</i> .
S 555 Form of retained documents	State the form in which documents are retained.
S 560 <i>Consultant's</i> invoice	State any specific requirements of the <i>Client</i> for the format and details to be included in the <i>Consultant's</i> invoice.
S 565 <i>Client</i> use of materials <b>PSSC 70.1</b>	State the purposes for which the <i>Client</i> intends to use the material provided by the <i>Consultant</i> .
S 570 <i>Consultant</i> use of the material <b>PSC 70.3</b>	State any restrictions on the <i>Consultant</i> using material provided under this contract for other work.
S 575 Record of expenses	Detail the records, invoices, receipts and other supporting documentation for all expenses incurred that are to be kept.

### S 600 Requirements for the programme

State whether a programme is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

The PSSC require the *Consultant* to submit a forecast of the date of Completion each week from the *starting date* until Completion (clause 30.2). If the *Client* requires more detail in support of the *service* then this should be identified in the Scope.

CHECKLIST	EXPLANATION
S 605 Programme <b>PSSC 31.1</b>	State whether a programme is required and, if so, its form. For example, whether it is to be a gantt chart or schedule of tasks and dates or combination of both.  State requirements for the format of the programme, including the use of specific software (if necessary) and the requirement for hard or electronic copies.
S 610 Information to be shown on the programme <b>PSSC 31.1</b> <b>PSSC 50.8</b>	If a programme is required, state what information is to be shown on the programme. These may include: <ul style="list-style-type: none"> <li>• The <i>starting date</i> and Completion Date.</li> <li>• The order and timing of the operations which the <i>Consultant</i> plans to do in order to Provide the Service.</li> <li>• The order and timing of work of the <i>Client</i> and others as last agreed with them by the <i>Consultant</i> or, if not so agreed, as stated in the Scope.</li> <li>• Provisions for float and procedures set out in this contract.</li> <li>• The dates when, in order to Provide the Service in accordance with its programme, the <i>Consultant</i> will need acceptances, material and other things to be provided by the <i>Client</i> and information from others.</li> <li>• Information to be provided, who it is to be provided by, and the date by which it is to be provided.</li> </ul>

<p>S 615 Submitting the programme</p> <p><b>PSSC 31.1</b></p>	<p>If a programme is required, state when the first programme is to be submitted and, if revised programmes are required, how often they are to be submitted.</p> <p>State any requirements for the <i>Client</i> to accept the programme.</p> <p>State any information to be shown on revised programmes such as:</p> <ul style="list-style-type: none"> <li>• An explanation of changes.</li> <li>• Actual progress achieved for each operation and the effect upon the timing of the remaining work.</li> <li>• How the <i>Consultant</i> plans to deal with any delays and to correct notified Defects.</li> </ul>
<p>S 620 Completion requirements</p> <p><b>PSSC 11.2(1)</b></p>	<p>Work to be done by the Completion Date. If required, state which parts of the works can remain incomplete.</p>

### S 700 Information and other things provided by the *Client*

Describe what information and other things the *Client* is to provide and by when. Information is that which is not currently available, but will become available during the contract. Other things could include access to a person, place (such as office space or a site) or the *Client's* information technology systems.

CHECKLIST	EXPLANATION
<p>S 705 Services and other things to be provided by the <i>Client</i></p> <p><b>PSSC 16.1</b></p> <p><b>PSSC 60.1(4)</b></p>	<p>Detail what information and other things the <i>Client</i> is to provide. If necessary tabulate the information and refer to information detailed elsewhere in the Scope.</p> <p>Refer as necessary to S 610 where the timing of when the information and other things are to be provided can be stated.</p>

## CHAPTER 4

# Price List

The work done by the *Consultant* may be on a priced basis or on a time charge basis using the *people rates*. The contract does not provide for the *Consultant* to be paid on a mixture of time charge and Prices and one or the other must be selected.

For a priced approach, depending upon how the Price List is to be used, there are two ways of completing each item.

If the *Consultant* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the *Consultant* enters the amount in the Price column only; the Unit, Quantity and Rate columns being left blank. Entries in the first two columns are made either by the *Client* or *Consultant*.

The *Consultant* is responsible for calculating quantities from the Scope where it needs to know a quantity in order to estimate the cost of the work. For some contracts this is a significant task. For regularly occurring costs (e.g. for submitting a monthly report) an activity for each assessment interval should be included.

Using the Price List in this way is similar to how the *activity schedule* under Option A of the Professional Services Contract (PSC) is used. Note, there is no requirement for the items in the Price List to relate to the operations on the programme, if one is required.

If the *Consultant* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the *Consultant* enters the rate which is multiplied by the expected quantity to produce the Price, which is also entered. Entries in the first four columns in this Price List are made either by the *Client* or the *Consultant*. When this option is used, the method and rules used to compile the Price List needs to be identified by the *Client*. Irrespective of who completes each entry, the *Client* is responsible for its accuracy, and must check that they are correct and consistent with the method and rules used to compile the Price List.

Using the Price List in this way, is similar to how the schedule of rates is used under other contracts.


The Price List may include both of the above ways of pricing an item in the same contract.

The *Consultant* may be paid for expenses separately. If so, these are stated in the second section of the Price List. Either the *Client* states what expenses it is prepared to pay, or the *Consultant* states what expenses it wishes to recover.

If the *Consultant* is to be paid on a time charge basis only the expenses section of the Price List is completed. The *people rates* for the *Consultant's* and any subcontractor's people which are used for assessing the amount due, are stated in the Contract Data by the *Consultant*.

## APPENDIX 1

# Contract Data – Worked Example


Professional Service

# Short Contract

**A contract between** Museum of Industrial History

**and** Dudleyavon Consultants LLP

**for** asset survey and remedial specification

Contract Forms

- Contract Data
- The *Consultant's Offer* and the *Client's Acceptance*
- Price List
- Scope

1

# Contract Data

## The *Client's* Contract Data

The *Client* is

Name

Address for communications

Address for electronic communications

The service is

The starting date is

The completion date is

The delay damages are  per day

The law of the contract is

The period for reply is  weeks

The defects date is  weeks after completion

The assessment day is the  of each month

All work **is not** to be carried out on a time charge basis (delete as applicable)

The United Kingdom Housing Grants, Construction and Regeneration Act (1996) **does** apply (delete as applicable)

The Adjudicator is

Name

Address for communications

Address for electronic communications

The interest rate on late payment is  % per complete week of delay.

# Contract Data

## The *Client's* Contract Data

The *Client* provides this insurance

The *Consultant* provides the following insurance cover

INSURANCE AGAINST	MINIMUM AMOUNT OF COVER	PERIOD FOLLOWING COMPLETION OR EARLIER TERMINATION
Liability of the <i>Consultant</i> for claims made against it arising out of the <i>Consultant's</i> failure to use the skill and care normally used by professionals providing services similar to the service.	£250,000 in respect of each claim, without limit to the number of claims	six years
Loss of or damage to property and liability for bodily injury to or death of a person (not an employee of the <i>Consultant</i> ) arising from or in connection with the <i>Consultant</i> Providing the Service.	£100,000 in respect of each event, without limit to the number of events	one year
Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with the contract	£100,000 in respect of each event, without limit to the number of events	one year

The *Consultant's* total liability to the *Client* which arises under or in connection with the contract is limited to

The *Adjudicator nominating body* is

The *tribunal* is

If the *tribunal* is arbitration, the arbitration procedure is

The *conditions of contract* are the NEC4 Professional Service Short Contract June 2017 and the following additional conditions

1. A change in the law is a compensation event if it occurs after the date of the *Consultant's* Offer.

# Contract Data

## The Consultant's Contract Data

The Consultant is

Name

Address for communications

Address for electronic communications

The fee percentage is  %

The people rates are category of person

	unit	rate
Partner	hour	£85
Other consultant	hour	£70
Technician	hour	£50
Administrative assistant	hour	£30

The key persons are

Name (1)

Job

Responsibilities

Qualifications

Experience

Name (2)

Job

Responsibilities

Qualifications

Experience

## The Consultant's Offer and Client's Acceptance

The *Consultant* offers to Provide the Service in accordance with these *conditions of contract* for an amount to be determined in accordance with these *conditions of contract*.

The offered total of the Prices is £22,350

Signed on behalf of the *Consultant*

Name James Dudley

Position Partner

Signature

Date 12th May 2017

The *Client* accepts the *Consultant's* Offer to Provide the Service

Signed on behalf of the *Client*

Name John Smith

Position Director

Signature

Date 19th May 2017



## Price List

ITEM NUMBER	DESCRIPTION	UNIT	EXPECTED QUANTITY	RATE	PRICE
1	Site plan	Unit	1	£1,000	£1,000
2	1:50 building plans	Unit	10	£500	£5,000
3	Survey and report on equipment and condition	Unit	10	£1,500	£15,000
4	Meeting at Client offices	Unit	3	£450	£1,350

**The total of the Prices** £22,350

### EXPENSES

5	Car Travel	Mile	500 (estimate)	45p	£225
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**All other expenses are to be included in prices and rates**

The method and rules used to compile the Price List are

not applicable

# Scope

## 1 Purpose of the *service*

The asset survey and subsequent reports and specification is to form the basis of the specification for a future facilities maintenance contract for the management of the *Client's* buildings

## 2 Description of the *service*

Undertake a physical survey and full mechanical and electrical asset survey of the 10 buildings on the *Client's* site as shown on drawing 001.

Provide a 1:200 site plan, and 1:50 scale plans of each building.

Provide a report, for each building, on the state of that building, an asset register of all mechanical and electrical equipment in those building, and a report on the state of that equipment, the estimate of working life of the equipment and recommendations on the maintenance and replacement of the equipment.

Provide a single full asset register when these individual reports are complete.

The work will include meetings with the local managers of each building to understand the user requirements, constraints and expectations of operational efficiency. The *Consultant* is to arrange all meetings.

2 bound paper copies and an electronic copy in MicroSoft Word format are to be provided for all reports.

2 paper copies and electronic copies in PDF and DWG formats are to be provided for all surveys and drawings.

The senior manager/partner of the *Consultant's* team is to attend 3 half day meetings with the *Client*, one at the beginning, one to present and discuss the resulting reports and one progress meeting midway through the service.

## 3 Existing information

Existing drawings in schedule 1. These are not in electronic form.

Existing asset register of mechanical and electrical equipment in provided in schedule 2. This identifies the extent of the asset but should not be taken as an accurate or complete schedule. One of the deliverables is to provide this complete and in either the electronic form already in use or in another form proposed by the *Consultant* and agreed by the *Client*

# Scope

## 4 Specifications and standards

None

## 5 Constraints on how the *Consultant* Provides the Service

The buildings and building managers are only available to the *Consultant* Monday to Friday, 9.00am to 5.00pm. They are not available outside these hours.

## 6 Requirements for the programme

A programme is required to be submitted within 2 weeks of the *Client's* Acceptance showing as a minimum:

1. The start and finish dates of the service.
2. The dates for the proposed interview with each building manager and access dates for each building when the surveys will be undertaken.
3. The dates for submitting the reports for each building.

Updates, particularly showing progress and revised dates, together with revised interview and access dates, are required every two weeks until Completion.

## 7 Information and other things provided by the *Client*

ITEM	DATE BY WHICH IT WILL BE PROVIDED
Updated list of buildings	<i>starting date</i>
Current list of building managers and contact details	<i>starting date</i>
Meeting rooms for interviews with building managers will be supplied by the <i>Client</i>	As and when required as shown on the programme