

Library of Standard Amendments to NEC3 PSC Standard Documents (As at 1.4.2023 January 2024)

NEC3 PSC Clause No.	Action	Details	Rationale	Related GCE/ SCE/ TC/ Memo	To be applied to the stated main Option(s), unless otherwise specified below or vetted by LAD(W) and commented/endorsed by the Inter-departmental Working Group and/or the Steering Committee
11.2(13)	Add	<p>the following to the end of the clause:</p> <p>"Staff time which is not properly spent on work in this contract and which does not form part of the Time Charge includes but is not limited to</p> <ul style="list-style-type: none"> • staff time spent correcting Defects after Completion, • staff time incurred only because the <i>Consultant</i> did not follow a procedure or similar stated in this contract or otherwise binding on the <i>Consultant</i>, • staff time incurred only because the <i>Consultant</i> did not comply with a constraint on how he is to Provide the Services stated in this contract or otherwise binding on the <i>Consultant</i>, • staff time incurred only because the <i>Consultant</i> did not give an early warning which this contract requires him to give, and • staff time spent by a Subconsultant which the <i>Consultant</i> should not have paid or is not liable to pay under the terms of the subcontract with the Subconsultant." 	To ensure that payment is only made against specific progress or deliverables being achieved and to avoid paying for time incurred only as a result of a failure to comply with the required procedures and constraints or time incurred for correcting defects after Completion or time spent by Subconsultant which the <i>Consultant</i> would not be contractually liable to pay for.	N.A.	Options A and C
11.2(16)	Replace	"completed" with "undertaken".	To ease concerns from the consultants regarding possible confusion about the term "completed", in particular, on whether the payment would be linked to the completion of activities.	N.A.	Option C
13.6	Replace	"the Scope" with "this contract".	To ensure that the <i>Consultant</i> is obliged to provide the <i>services</i> in accordance with all provisions in the contract.	N.A.	Options A and C
16.1	Replace	<p>the entire clause with the following:</p> <p>"Any provision or document prepared by or on behalf of the <i>Consultant</i> forming part of this contract and contained or referred to in the Contract Data Part two purporting to impose an obligation on the <i>Employer</i> or <i>Employer's Agent</i> which is not their obligation under the other provisions or documents forming part of this contract is of no effect and is not binding on the <i>Employer</i> or <i>Employer's Agent</i>."</p>	To avoid potential additional obligation on the <i>Employer</i> or <i>Employer's Agent</i> due to provisions or documents prepared by or on behalf of the <i>Consultant</i> forming part of the contract.	N.A.	Options A and C
16.2	Add	<p>a new clause 16.2 after clause 16.1 as follows:</p> <p>"Where there is any ambiguity or inconsistency between any provision or document prepared by or on behalf of the <i>Consultant</i> forming part of this contract and contained or referred to in the Contract Data Part two and any other part of this contract then the former prevails if (and only if) it imposes higher standards for the <i>services</i> or more onerous requirements on the <i>Consultant</i> than provided by the other documents forming part of this contract and is not treated as giving rise to an ambiguity or inconsistency."</p>	To specify that the <i>Consultant's</i> documents would take precedence only where that will be more advantageous for the <i>Employer</i> .	N.A.	Options A and C
16.3	Add	<p>a new clause 16.3 after new clause 16.2 as follows:</p> <p>"The <i>Employer</i> or the <i>Consultant</i> notifies the other as soon as either becomes aware of any ambiguity or inconsistency in or between any provisions or documents prepared by or on behalf of the</p>	To elaborate the provision in core clause 16.1 that the <i>Employer</i> will resolve ambiguities and inconsistencies of the contract documents.	GCE 7	Options A and C

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		<i>Consultant</i> forming part of this contract and contained or referred to in the Contract Data Part two or and the <i>Consultant</i> notifies the <i>Employer</i> of his proposed amendment to remove the ambiguity or inconsistency or non compliance within one week or within any shorter period notified <u>agreed</u> by the <i>Employer</i> <u>in writing</u> . Whether the <i>Consultant</i> notifies a proposed amendment or not the <i>Employer</i> may give an instruction to resolve the ambiguity or inconsistency or accept the <i>Consultant</i> 's proposed amendment (if made) and the <i>Consultant</i> complies with the <i>Employer's</i> instruction or implements the accepted proposal and no compensation event arises unless the instruction or accepted proposal changes the Scope and will reduce the total Time Charge and under no circumstances will the <i>Consultant</i> be entitled to any change to the Completion Date or increase to the Prices. "			
16.4	Add	a new clause 16.4 after new clause 16.3 as follows: "Where there is any ambiguity or inconsistency which is not resolved by one of the preceding provisions between, on the one hand, any of the Memorandum of Agreement, the Contract Data Part one, the PSC core clauses as amended, the PSC main Option [insert Option reference] clauses as amended, the secondary Option clauses as amended and/or the <i>additional conditions of contract</i> , and on the other hand any other parts of this contract, the former prevails and is not treated as giving rise to an ambiguity or inconsistency to which this clause applies. Otherwise, the <i>Employer</i> or the <i>Consultant</i> notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between any documents forming part of this contract. The <i>Employer</i> gives an instruction to resolve the ambiguity or inconsistency. "	To incorporate a hierarchy of documents provision for the resolution of ambiguities and inconsistencies of the contract documents.	GCE 7	Options A and C
18.1	Replace	"the <i>Employer</i> gives an instruction to the <i>Consultant</i> stating how he is to deal with the event" at the end of clause 18.1 by "the <i>Consultant</i> and the <i>Employer</i> notify the other as soon as either becomes aware of such event. Either the <i>Employer</i> or the <i>Consultant</i> may instruct the other to attend a risk reduction meeting normally arranged under NEC Clause 15.2. Each of them may instruct other people to attend if the other agrees. At the meeting, those who attend co-operate in making and considering proposals for how the effects of the event can be reduced, seeking solutions that bring advantage to all those who will be affected, and deciding on the proposed actions which will be taken and who, in accordance with this contract, will take to deal with the event. The <i>Employer</i> provides the decision to the <i>Consultant</i> within six weeks after the meeting, or a longer period to which the <i>Consultant</i> has agreed. "	To encourage the <i>Consultant</i> to resolve the problems rather than automatically looking to the <i>Employer</i> for an instruction.	N.A.	Options A and C
21.1	Replace	"the Scope" with "this contract".	To ensure that the <i>Consultant</i> is obliged to provide the <i>services</i> in accordance with all provisions in the contract.	N.A.	Options A and C
21.2	Replace	"skill and care" with "skill, care and diligence".	To ensure the <i>Consultant</i> has obligation to act with diligence.	GCE 22	Options A and C
21.3	Replace	" <i>expenses</i> " with " <i>Time Charge and expenses</i> " in the first sentence of the clause.	To suit the forecast requirement.	N.A.	Option A
22.1	Replace	"each <i>key person</i> " with "each of the <i>key people</i> ".	To eliminate the use of the term " <i>key person</i> " which has not been identified in the standard Contract Data in NEC3 PSC (April 2013 Edition).	N.A.	Options A and C

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24.2	Replace	the entire clause with the following: "The <i>Consultant</i> only appoints a Subconsultant named in the Contract Data or a Subconsultant who is proposed to and accepted by the <i>Employer</i> . A reason for not accepting the proposed Subconsultant is that his appointment will not allow the <i>Consultant</i> to Provide the Services or that the proposed Subconsultant's relevant qualifications and experience (or those of his relevant staff) are not as good as those of the <i>Consultant</i> or any existing Subconsultant being replaced."	To reflect the intention that Subconsultants will be named in the Contract Data Part two but recognise that there may be proposals for replacement.	GCE 38 GCE 39	Options A and C
25.4	Replace	"the Scope" with "this contract".	To ensure that the <i>Consultant</i> is obliged to comply with health and safety requirements in accordance with all provisions in the contract.	N.A.	Options A and C
30.2	Replace	"one week" with "three weeks".	To allow more time to the <i>Employer</i> for discharging some of their duties and obligations. The Project Office may amend the period to suit the specific project situation.	N.A.	Options A and C
<u>31.2</u>	<u>Replace</u>	<u>"Others" with "the Employer and Others" in the 3rd sub-bullet point under the 7th bullet point.</u>	<u>To make clear that Employer's approval is required.</u>	<u>N.A.</u>	<u>Options A and C</u>
31.3	Replace	"two weeks" at the first sentence with "three weeks".	To allow more time for the <i>Employer's</i> response to submission of a programme by the <i>Consultant</i> . The Project Office may amend the period to suit the specific project situation.	N.A.	Options A and C
<u>40.1</u>	<u>Replace</u>	<u>"the Scope" with "clauses B13 and B14 of the additional conditions of contract".</u>	<u>To ensure that the Consultant is obliged to comply with the quality management system in accordance with the additional conditions of contract.</u>	<u>N.A.</u>	<u>Options A and C</u>
50.3	Move and insert	move the third bullet point to become a new fourth bullet point and insert a new third bullet point as follows: "• the amounts to be paid to the <i>Consultant</i> as reimbursement and/or remuneration for recruitment, employment and management of Resident Site Staff in accordance with clause C2 of the <i>additional conditions of contract</i> and"	To maintain the current arrangements for payment for RSS.	RSS Management Handbook (Appendices 7.1 and 7.1A)	Options A and C if RSS is required
50.3	Delete	the following wording in the [new fourth / third] bullet point: "less amounts to be paid by or retained from the <i>Consultant</i> ".	To avoid overpayment to the <i>Consultant</i> by allowing interim payments to be adjusted for pain share assessed.	N.A.	Option C
50.3	Add	a new [fifth/ fourth] bullet point as follows: "• less amounts to be paid by or retained from the <i>Consultant</i> including the <i>Employer's</i> interim assessment of the <i>Consultant's</i> share of the excess if the <i>Employer's</i> forecast of the final Price for Services Provided to Date is greater than his forecast of the final total of the Prices."			

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<u>50.3</u>	<u>Add</u>	<u>a new [fifth / fourth] bullet point as follows:</u> <u>"• less any sum deductible by the Employer under this contract."</u>	<u>To allow payments to be adjusted for sum deductible by the Employer.</u>	<u>N.A</u>	<u>Option A</u>
51.1	Replace	the first word "Each" with "Subject to the Employer's rights of set-off or deduction whether arising under this contract, at common law or otherwise, each"	To make clear that the Employer's rights of set off are not prejudiced and to provide an express right of set off between different contracts.	SCE "Setting off money due to the Government from defaulting Consultants"	Options A and C
51.4	Delete	the words "or has been delayed because of a disagreement"	To avoid the Consultant to argue for interest after a period of dispute.	N.A.	Options A and C
51.5	Replace	the entire clause with the following: "Interest is calculated on a simple interest basis at the interest rate. "	To follow GCE 31 that the interest to be paid by the Employer on any late payment should be on simple interest basis. Also, the High Court Ordinance (Cap. 4) Section 49 stipulates that judgment debts shall carry simple interest.	GCE 31	Options A and C
51.6	Add	a new clause 51.6 as follows: "Assessments and payments by the Employer do not change the Consultant's responsibility to Provide the Services nor represent the Employer's agreement that any work or services to which they relate are agreed as being in accordance with the Scope or the this contract, and assessments and payments may be changed and corrected by the Employer."	To put beyond doubt the Employer's right to adjust assessments and payments and to challenge defective work/services even if they have already been paid for.	N.A.	Options A and C
52.1	Add	"Time Charge and" after "and records of his" and "and other documents stated in this contract" after "expenses".	To suit the requirements regarding the retention of documents and inspection	ETWB TC(W) No. 30/2004	Option A
52.2	Add	"and other documents stated in this contract" after "his Time Charge and expenses".	To suit the requirements regarding the retention of documents and inspection	ETWB TC(W) No. 30/2004	Option C
54.2A	Add	a new clause 54.2A after clause 54.2 as follows: "The Employer makes interim assessments of the Consultant's share on appropriate interim assessment dates using the Employer's forecast of the final Price for Services Provided to Date and his forecast of the final total of the Prices. The Employer informs the Consultant of his interim assessment of the Consultant's share. The first interim assessment date is three months after the starting date. Later interim assessment dates occur at every three months interval. "	To assess the Consultant's share at every three months interval.	N.A.	Option C
54.3	Replace	"preliminary" with "further interim".			

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60.1(13)	Add	the following new clause 60.1(13) after clause 60.1(12) "An instruction by the <i>Employer</i> to carry out a comprehensive review of the Traffic Impact Assessment."	To treat the review of accepted traffic impact assessment of a major transport infrastructure project as compensation event in view of the uncertainty of its need and scope.	DEVB's memo ref. DEVB(PS) 106/43 dated 19 December 2022	Options A and C for major transport infrastructure projects
61.3	Add	"or of becoming aware of the expectation of the event" after "If the <i>Consultant</i> does not notify a compensation event within eight weeks of becoming aware of the event".	To bolster the condition precedent effect of the standard notice provision and to provide more clarity and certainty of when the eight weeks period for the notification of compensation events should commence.	N.A.	Options A and C
61.4	Replace	"one week" at the first bullet point of the second paragraph with "three weeks".	To allow more time for the <i>Employer's</i> response to notification of compensation event by the <i>Consultant</i> .	N.A.	Options A and C
	Replace	"within two weeks of this notification" at the second sentence of the third paragraph with "-within two weeks of this notification or a longer period to which the <i>Consultant</i> has agreed".			
62.3	Replace	"within two weeks of the submission" in the second line of the first paragraph with "within three weeks of the submission" .	To allow more time for the <i>Employer's</i> response to quotations for compensation event provided by the <i>Consultant</i> .	N.A.	Options A and C
70.1	Delete	the clause in its entirety.	To adopt the standard provisions on confidentiality and exclusive ownership <u>in clauses B15 and B17 of the additional conditions of contract.</u>	SCE "Confidentiality" and "Exclusive ownership"	Options A and C
70.2	Delete	the clause in its entirety.			
70.3	Delete	the clause in its entirety.			
70.4	Delete	the clause in its entirety.			
71.2	Add	a new clause 71.2 as follows: "In cases where notices or display boards are erected on the site for any works covered by this contract the <i>Consultant</i> may elect to have his name, role and address inscribed on such notices or display boards."	To incorporate the requirements regarding publicity relating to contract work	GCE 40	Options A and C if construction stage is involved
80.1	Replace	the entire clause with the following: "The <i>Consultant</i> indemnifies and keeps indemnified the <i>Employer</i> against all claims, damages, losses or expenses arising out of, or in connection with, any breach of contract or negligence in or about the conduct <u>of</u> and performance by the <i>Consultant</i> , its servants <u>directors, employees, agents</u> or Subconsultants <u>or suppliers</u> of the <i>Consultant's</i> obligations under this contract."	To provide for a general indemnity for any claims arising out of the <i>Consultant's</i> conduct and performance.	GCE 22(C)	Options A and C
81.1	Replace	the entire clause with the following:	To adopt the standard provision on professional	SCE	Options A and C

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		"The <i>Consultant</i> provides professional indemnity insurance in accordance with Clause [clause B12] of the <i>additional conditions of contract</i> and the Contract Data Part one."	indemnity insurance	"professional indemnity insurance"	
81.2	Delete	the clause in its entirety.			
82.1	Delete	the clause in its entirety.			
82.2	Delete	the clause in its entirety.			
90.2	Add	"which the <i>Employer</i> has assessed" after "the <i>Employer</i> has not paid an amount due to the <i>Consultant</i> " and "or such extended period as agreed by the <i>Employer</i> and the <i>Consultant</i> " at the end of the sentence ...	To avoid the <i>Consultant</i> arguing that it is entitled to terminate in respect of a disputed claim for payment and to allow more time for the <i>Employer</i> 's response.	N.A.	Options A and C
90.5	Add	the following new clause 90.5 after clause 90.4 "The <i>Employer</i> may terminate the <i>Consultant</i> 's obligation to Provide the Services by notifying the <i>Consultant</i> if the <i>Consultant</i> has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security, or the continued engagement of the <i>Consultant</i> or the continued performance of the contract is contrary to the interest of national security."	To allow termination of the contract in the interest of national security in accordance with SPR 109A(b).	DEVB's memo ref. DEVB(W) 510/30/01 dated 31 August 2022	Options A and C
92.2	Replace	the whole clause 92.2 by the following new clause 92.2: "If the <i>Employer</i> terminates because of the <ul style="list-style-type: none"> • insolvency of the <i>Consultant</i>, • substantial failure of the <i>Consultant</i> to comply with his obligations, or • the reason stated in clause 90.5, the amount due on termination includes a deduction of the forecast of the additional cost to the <i>Employer</i> of completing the whole of the <i>services</i> ."	To allow termination of the contract in the interest of national security in accordance with SPR 109A(b).	DEVB's memo ref. DEVB(W) 510/30/01 dated 31 August 2022	Options A and C
92.4	Add	a new clause 92.4 after 92.3 2 as follows: "Termination is without prejudice to any other rights and remedies of the Parties."	To maintain the rights of both the <i>Employer</i> and the <i>Consultant</i> to contend for repudiation and/or damages for breach of contract under common law in the event of termination.	N.A.	Options A and C

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X1.1	Replace	the first paragraph with the following new paragraph: "On the first and every subsequent anniversary of the date on which this contract is due to commence, the <i>Consultant</i> calculates a price adjustment factor equal to (L - B)/B, where L is the latest value of the <i>index</i> on the concerned anniversary of the date on which this contract is due to commence and B is the latest value of the <i>index</i> on the date on which this contract is due to commence."	To avoid ambiguity on the price adjustment factor adopted and align with the current practice.	N.A.	Options A and C
X1.6	Replace	"Contract Date" by "date on which this contract is due to commence".	To align with the current practice.	N.A.	Options A and C
X10.1	Replace	"with the authority set out in the Contract Data." at the end of the clause with "in relation to all matters under this contract including without limitation receiving all notifications, submissions and other communications from the <i>Consultant</i> and providing the <i>Employer's</i> instructions, agreements, acceptances, assessments and decisions and similar and the <i>Consultant</i> makes all such notifications, submissions and other communications and takes instructions and receives the <i>Employer's</i> agreements, acceptances, assessments and decisions and similar only through the <i>Employer's Agent</i> ."	To provide beneficial clarity and to reflect the standard provisions in GCE 16.	GCE 16	Options A and C
X10.2	Add	Re-number existing clause X10.2 as X10.3 and add a new clause X10.2 after clause X10.1 as follows "The <i>Employer's Agent</i> , after notifying the <i>Consultant</i> , may delegate any of his powers and may cancel any delegation. A reference to an action of the <i>Employer's Agent</i> in this contract includes an action by his delegates."	To allow further delegation beyond a single representative.	GCE 16	Options A and C
X11.1	Add	the following to the end of the clause: "The <i>Consultant</i> is entitled to a final payment calculated in accordance with NEC Clause 92.1 and for the avoidance of doubt is not entitled to recover any amounts for loss of profits or loss of any other benefits which might have been earned from completion of the <i>services</i> ."	To reflect existing policy not to pay for additional sums over and above, simply compensating the <i>Consultant</i> for costs incurred.	GCE 41 and SCE "Suspension, resumption or termination"	Options A and C
X11.2	Replace	the entire clause with the following: "If the <i>Consultant</i> appoints a Subconsultant using the NEC PSC as a subcontract, he uses Option X11 with the same amendments as in this contract. Otherwise the <i>Consultant</i> includes similar terms and rights to terminate (or equivalent as may be appropriate) the Subconsultant's obligations to provide work or services under the subcontract in the event of the termination of the <i>Consultant's</i> obligation to Provide the Services under this contract by the <i>Employer</i> under this provision. The <i>Consultant</i> is not entitled to recover any amounts resulting from any failure to comply with this clause."	To require back-to-back arrangement in the subcontract.		
X14	Add	a new Secondary Option X14 as follows: "Option X14 Advance Payment to the <i>Consultant</i> Advance Payment X14 X14.1 Notwithstanding clauses 50 and 51 but subject to Clause X14.4 below, the <i>Consultant</i> may submit to the <i>Employer</i> a statement (the "Advance Payment	To enable proper implementation of the "payment upon signing of consultancy agreement" arrangement in NEC PSC (Option C) consultancies.	DEVB's memo ref. DEVB(PS) 106/43 dated 10 March 2022	Option C

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		<p>Request”) to apply for a one-off advance payment by the <i>Employer</i> in the amount of ten percent (10%) of the tendered total of the Prices stated in Contract Data Part two as at the date of this contract (the “Advance Payment”).</p> <p>X14.2 Subject to Clause X14.4 below, the <i>Employer</i> pays the Advance Payment to the <i>Consultant</i> within 【three weeks】 from the date of receipt of the Advance Payment Request. If the <i>Employer</i> is late in paying the Advance Payment, no compensation event arises and no interest is payable on such late payment.</p> <p>X14.3 The <i>Consultant</i> must submit with the Advance Payment Request a declaration signed by the <i>Consultant</i> in a form prescribed and accepted by the <i>Employer</i> to confirm compliance with the provisions on ethical commitment, conflict of interests and debarring in Clausesclauses B17, B18 and B21 of the <i>additional conditions of contract</i>. If the <i>Consultant</i> fails to submit the duly signed declaration with the Advance Payment Statement, the <i>Employer</i> is entitled to withhold payment of the Advance Payment until such declaration is submitted.</p> <p>X14.4 (1) Subject to Clauses X14.5 and X14.6 below, the amount of Advance Payment shall be fully accounted for and offset against payments due to the <i>Consultant</i> under this contract during the Deduction Period specified in sub-clause (2) below.</p> <p>(2) The Deduction Period is a period of 【six】 months commencing from the first assessment date after 【insert the date】 unless extended by the <i>Employer</i> in writing.</p> <p>(3) A deduction shall be made to the amount due at each assessment date during the Deduction Period by including the amount determined in sub-clause (4) (the “Deduction Amount”) in the amounts to be paid by or retained from the <i>Consultant</i> under the 【third】【fourth / fifth】 bullet of 【clause 50.3】. The total number of deduction shall be 【six】 unless otherwise approved by the <i>Employer</i>.</p> <p>(4) The Deduction Amount is (i) a fixed amount equals to the amount of the Advance Payment divided by 【six】 (the “Fixed Sum”); or (ii) if the deduction of the Fixed Sum in accordance with sub-clause (3) above will result in there being no payment being made to <i>Consultant</i> under 【clause 51.1】, an amount to be determined by the <i>Employer</i>. Provided always that the Deduction Amount for the final deduction shall be the balance of the Advance Payment not yet deducted from the amount due.</p> <p>X14.5 The <i>Consultant</i> shall pay the <i>Employer</i> the balance of the Advance Payment not yet deducted from the amount due immediately upon the expiry or earlier termination of this contract.</p> <p>X14.6 Notwithstanding Clauses X14.4 and X14.5 above, the <i>Employer</i> may at any time deduct all or any of the Advance Payment not yet repaid to it from any monies due to the <i>Consultant</i> under this contract and any other contract(s) between the</p>			

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		<i>Employer and the Consultant²²"</i>			