

NEC Secondary Option X26 Programme of Work

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Contract Scope

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Definition

'A description of the work required to be undertaken'

This is usually defined and set out in particular documentation.

Under the NEC3 contracts this document was referred to as the following;

- Works Information – ECC, ECSC, ECS, ECSS,
- Scope – PSC, PSSC,
- Service Information – TSC, TSSC,
- Goods Information – SC, SSC.

Under NEC4 this information is now referred to as the Scope across all forms of contract.

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Scope changes



The NEC4 contracts provide for the giving of an instruction that changes the Scope, as follows;

- Sub-clause 14.3 – ECC, ECS, PSC, PSS, TSC, TSS, FMC, FMS, SC, DBOC,
- Sub-clause 14.2 – ECSC, ECSS, PSSC, TSSC, FMSC, FMSS, SSC,
- Sub-clause 21.7 – ALC.

Subject to specified conditions, this instruction is a compensation event, except under the ALC form of contract.

This is because the ALC contract operates on a contrasting basis and arrangement to the other forms, with a different allocation of risk.



NEC4 Alliance Contract

NEC4 ALC Contract



This is a multi-party contract, under which the alliance delivery team all signs up to a single set of terms.

The intention is that all parties in the alliance share in the financial outcome of the project and work together in a collaborative manner to achieve a 'best for project' result.

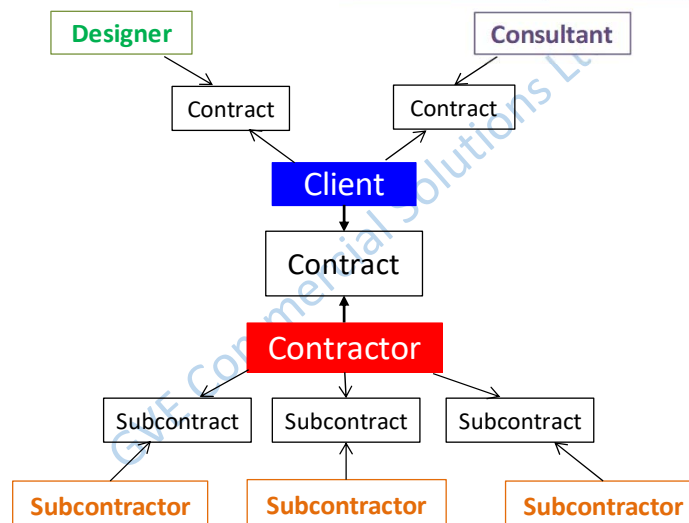
This form of contract would be suited to a project that is technically complex or where it is difficult to accurately define the end product.

NEC published a consultative version of an alliance contract in June 2017 with a formal publication edition following in June 2018.

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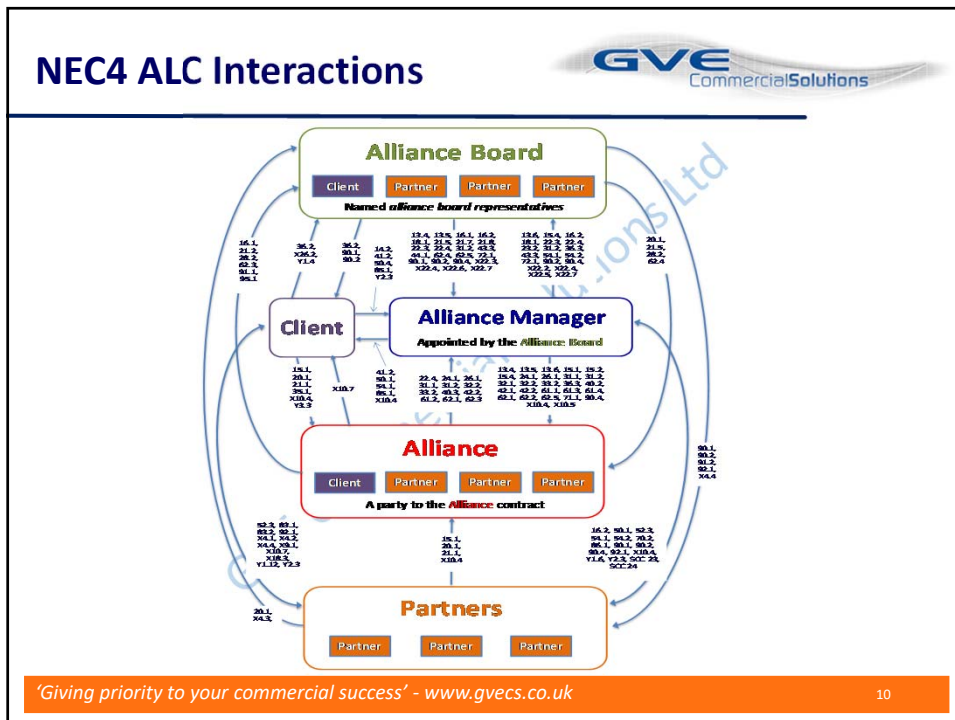
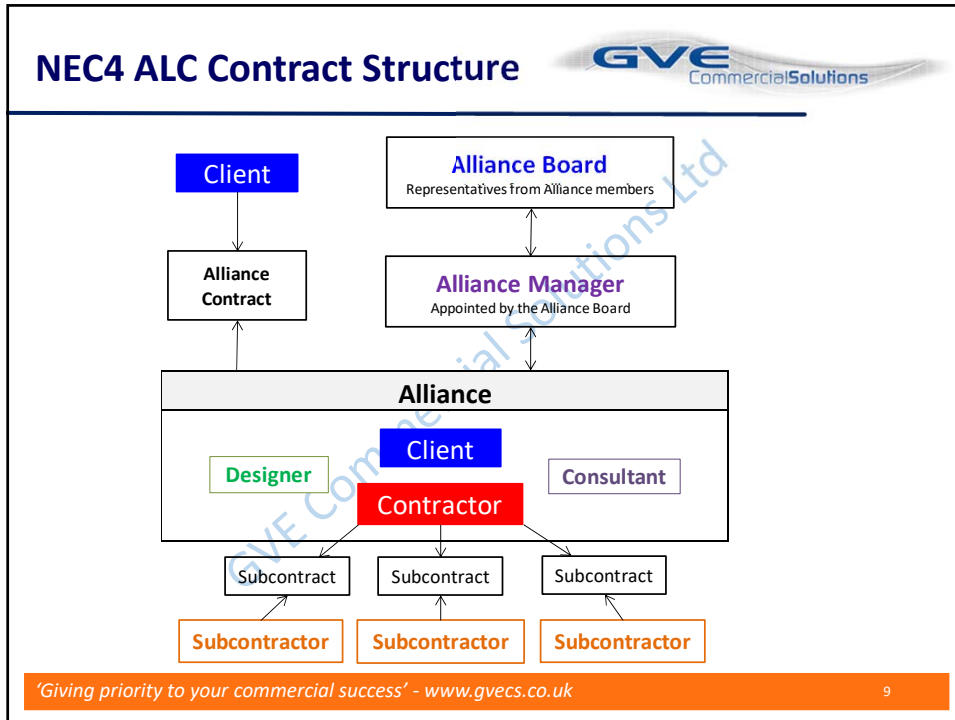
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Traditional Contract Structure



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NEC Suite

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NEC Suite

Secondary option X26 can be found in the following NEC forms of contract;


- Alliance Contract (ALC).

Option X26 did not appear in the consultative version of the ALC but was included in the formally published version in June 2018.

Due to the way in which additional Scope is added under Option X26 it would not be suitable for use in any other NEC form of contract.

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X26 Programme of Work

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NEC X26.1

‘In these conditions of contract, unless stated as the whole of the *works*, each reference and clause relevant to the *works* applies, as the case may be, to either the whole of the *works* or any *scheme* forming part of the *works*’.

This wording has been adapted from Option X5 Sectional Completion and in this context suggests that the conditions of contract apply to a *scheme*.

Contract Data Part 1 identifies a ‘*scheme*’ as follows;

If Option X26 is used	The <i>schemes</i> are
	<i>scheme</i>
	<input style="width: 100px; height: 15px; border: 1px solid black;" type="text"/> <input style="width: 100px; height: 15px; border: 1px solid black;" type="text"/>

The NEC User Guide states that the intention is to treat any added ‘*scheme*’ as a separate piece of work, although it is not clear how this is actually achieved in practice.

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NEC X26.2 – Contract Data



'If the *Client* proposes to add a *scheme* to the *works*, it issues to the Alliance Board

- the additional Contract Data to identify the *boundaries of the site* and *access dates* for the *scheme*, ... '

'*boundaries of the site*' is used to define 'Site' which in turn is used to define the 'Working Areas'.

'*access dates*' determines when work can commence and also obliges the Client to provide access to the relevant part of the Site from that date.

The NEC User Guide suggests that '*completion date*' also needs to be provided, in relation to the *scheme*, although the provisions in X26.2 don't expressly support this requirement.

NEC X26.2 – Alliance Objectives



- any additional Alliance Objectives and change to the Performance Table to meet the requirements of the *scheme* and ... '

An Alliance Objective is an aspect of performance which has a corresponding performance target stated in the Performance Table.

The process is similar in principle to a 'key performance indicator', although may provide for both positive and negative payments where measured performance is higher or lower than the stated target.

The targets for performance and corresponding adjustment to payment are set out in the Performance Table.

Clearly any such changes must 'meet the requirements of the *scheme*' and are not intended to amend any existing information.

NEC X26.2 – Scope



- additional Scope to add and define the scheme. The additional Scope complies with the constraints set out in the Scope ...

The additional information would specify and describe the *scheme*.

Although the additional Scope is intended to comply with the existing constraints set out in the Scope, what about any additional constraints required to facilitate and implement the *scheme*?

What if the *scheme* cannot comply with the existing constraints?

The Alliance Board may give an instruction to the Alliance Manager which changes the Scope, which the Alliance Manager puts into effect.

Any such instruction which changes the Scope, however, is not a compensation event under the NEC Alliance contract.

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NEC X26.3



'The Alliance Board assesses the change to the Scope, the Budget and Completion Date in accordance with the procedure stated in the Scope and decides whether to add the *scheme* to the *works*.'

The Scope is required to contain an assessment procedure where Option X26 is selected.

Following the stated procedure the Alliance Board assesses the associated Budget and change to the Completion Date.

It is assumed that 'change to the Scope' refers to revising the existing Scope by adding the 'additional Scope'.

The Alliance Board makes the decision whether to add the scheme to the works, which, of course, must be unanimous.

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NEC X26.4



'If the Alliance Board decides to add the *scheme* to the *works*, it adds the additional Contract Data and instructs the Alliance Manager to change the Scope, the Budget, the Completion Date, Alliance Objectives and Performance Table accordingly.'

It is assumed that the information to be changed is specifically in accordance with the proposal.

Should changes to the Contract Data also include the following;

- Revised description of the *works*,
- The *defect correction period* for specified *scheme* Defects,
- Any additional compensation events,
- Revised insurance requirements,
- Additional liabilities of the Client or a Partner,
- Application of any Option clauses,
- Data for the Schedule of Cost Components.



Things to Consider...

Things to Consider...



Consideration of the requirements of the Public Contracts Regulations 2015, where they apply, in compliance with the stated procedures.

If a *scheme* is to be 'treated separately' ensure that the contract provisions allow for this to occur.

Changes to Contract Data information not provided for within X26.

How is a 'revised' *scheme* proposal dealt with?

What if a *scheme* cannot comply with existing Scope constraints?

Any additional or revised Scope 'constraints' required to accommodate the *scheme* would not be a compensation event.

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