



NEC4 Y(IR)1 Clause

Optional contract clause and guidance for the **Professional Service Subcontract** for use in Ireland on contracts which are subject to the Construction Contracts Act 2013

Clauses and guidance are also provided for other NEC4 contracts which may be subject to the Construction Contracts Act 2013. These are available for download from necontract.com.

Acknowledgements

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Guidance

If incorporated, this Option is used to supplement the core clause payment provisions and amend the dispute resolution provisions in order to ensure that they comply with the Construction Contracts Act 2013 (the Act). The effect of this Option is to keep all the payment and dispute resolution terms expressly within the subcontract and avoid additional terms being implied or imposed by the Act.

Y1.1 deals with definitions, and particularly dates for communications within the Option. In the Professional Service Subcontract, this will affect things like payment dates, the date when any payment responses may be issued, dates for triggering dispute resolution or suspension and so on.

Y1.2 In order to comply with Sections 3 and 4 of the Act, this clause introduces a process that allows the *Subcontractor* to make payment applications later than permitted by clause 51, and allows the *Contractor* to react to them within the contractual framework.

The provisions in clause 51 dealing with the date payment is due and notice of payment requirements are unchanged. Clauses 50 and 51 require that all certificates or assessments that form the notice of payment need to show the basis upon which any payment has been calculated.

Y1.3 deals with the requirements of the Act for a specific response to be given where the reason for the reduction is due to a claim for loss or damage resulting from the *Subcontractor's* breach of contract. These additional express requirements add to those of clause 51.

Y1.4 Under Sections 5 and 7 of the Act the *Subcontractor* has the right to suspend performance if it is not paid in full the amount due under the contract, unless payment is subsequently made or the matter is referred to dispute resolution. The Option provides that suspension is a compensation event if suspension is made in accordance with the Act.

Y1.5 The Act is prescriptive about the system of adjudication that it allows and the enforcement regime in the Courts anticipates only Act compliant adjudication. Therefore, the Option incorporates the rights to adjudication and the procedures in the Act. It preserves the approach to dispute resolution in Option W2 otherwise.

NEC4 Y(IR) CLAUSE

Y(IR)1 Construction Contracts Act 2013

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| Definitions | Y1.1 | Any communication in this Option which is to be made on a Saturday, Sunday or public holiday (within the meaning of Organisation of Working Time Act 1997) may be made on the next day which is not one of these. |
| Application for payment | Y1.2 | <p>If an application for payment is submitted by the <i>Subcontractor</i> within 5 days after the assessment date which otherwise complies with the subcontract</p> <ul style="list-style-type: none"> • the <i>Contractor</i> considers it in assessing the amount due, • the <i>Contractor</i> delays certifying payment and issues the certificate within two weeks of the date of the submission and • the amount certified by the <i>Contractor</i> is the amount due and not any lesser amount because the <i>Subcontractor</i> failed to submit an application before the assessment date. |
| Contractor's response | Y1.3 | <p>If the reason for a reduction in the amount the <i>Subcontractor</i> considers is due is attributable to a claim for loss or damage arising from a breach of any contractual or other obligation by the <i>Subcontractor</i>, the <i>Contractor's</i> certificate specifies</p> <ul style="list-style-type: none"> • when the loss was incurred or the damage occurred or how the other claim arose, • the particulars of the loss, damage or claim and • the portion of the reduction that is attributable to each such particular |
| Suspension of performance | Y1.4 | If the <i>Subcontractor</i> exercises its right under the Construction Contracts Act 2013 to suspend performance, it is a compensation event. |
| Disputes | Y1.5 | <p>Option W2 is included in the subcontract with the following amendments.</p> <p>Any dispute is a payment dispute.</p> <p>Clauses W2.2 and W2.3 are deleted and replaced with:</p> <ul style="list-style-type: none"> • W2.2 Either Party may refer a payment dispute for adjudication in accordance with s6 of the Construction Contracts Act 2013 at any time. • W2.3 Not used |