

PRACTICE NOTE FM NUMBER 5
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Including climate change requirements in the NEC4 Facilities Management Contract (FMC)

OVERVIEW

The impact of, and adaptation to, climate change is a challenge to the facilities management (FM) sector as much as to any other. When establishing contracts to provide FM services, clients and service providers alike need to consider how they might measure the impact of that provision on climate change. The January 2023 version of the NEC4 Facilities Management Contract (FMC) has included a new secondary Option, X29 climate change, to allow clients to set objectives for the parties in the contract and manage the processes needed to measure how well the objectives are being achieved. This practice note is written to explain how this might be included in an FMC, and what issues the parties, and especially the client, should consider.

The NEC has provided guidance notes to assist clients in using the Option¹. They provide guidance on the processes included in the Option, but they do not give guidance on the underlying issues that need to be considered. That is more the purpose of this guidance note.

The Institute of Workplace and Facilities Management (IWFM) has produced guidance on the inclusion of climate change considerations in UK FM contracts, particularly where government policy makes such inclusion mandatory². They have also produced guidance on the categorisation of climate change management in terms of the organisational structures to which they relate, for example scope 1 (direct,) scope 2 (indirect³), or scope 3 (supply chain⁴) emissions. Clients and service providers alike may find this helpful in understanding how the FMC and X29 fit into this agenda.

Climate change affecting existing buildings is categorised as a significant risk and also an opportunity by the Intergovernmental Panel on Climate Change (IPCC). Some examples of how climate change will affect the FM services are:

- Consistent high temperatures affecting the ability to perform outdoors work and increasing health and safety risks. This may affect security teams and cleaning teams, outdoor events, and grounds management.
- Variable temperatures across the globe affecting the provision and prices of food (for example, India not exporting rice increased global prices significantly). This will impact upon the ability for fixed priced or discounted contracts to operate and may necessitate a revision in terms.

¹ "Guidance notes on the Facilities Management Contract - Option X29 Climate Change". Published in July 2022, these can be downloaded from NEC website at <https://www.neccontract.com/news/final-version-of-x29-released>. X29 was included in the January 2023 version of the FMC and guidance included in the January version of the user guide; see "NEC user guide 2 – Preparing a facilities management contract"

² "Contract and supplier management for facilities managers". Guidance note published 26 July 2023. See <https://www.iwfm.org.uk/resource/contract-and-supplier-management-for-facilities-managers.html?parentId=4450579B-41B1-452B-98851409E1AA7B2C> For further reading on the "National TOMs Facilities Management Plug-In: framework, guidance and support" see <https://www.iwfm.org.uk/insight/sustainability.html#Social%20Value>

³ Scope 2 emissions are those produced on behalf of an organisation, but not directly by that organisation

⁴ Further information on the Corporate Value Chain (Scope 3) Standard that accompanies the Greenhouse Gas Protocol can be found at <https://ghgprotocol.org/corporate-value-chain-scope-3-standard>.

- Known forecasting of temperatures to be incorporated in asset replacement to meet future heating and cooling demands. Additional data points and information will need to be captured by FM to enable this option to be evaluated.
- Increased prevalence for significant rainfall events and also periods of drought will lead to higher potential for flooding, subsidence and deterioration of the external facades of buildings. Additional scrutiny and checks to the building will need to be included across all teams working in the buildings or estate included in the contract.

Where terms used in this guidance refer directly to the terminology in the FMC, the NEC approach to the use of capitals and italicisation is adopted. While this practice note describes the requirements in relation to an NEC4 FMC, the principles are applicable to other NEC contract forms.

WHAT IS OPTION X29

The FMC, whilst a standard form contract, offers *Clients* considerable flexibility when determining the contract strategy they want to adopt. In part it achieves this through the use of extra sections, called Option clauses, which incorporate clauses for the purpose of that Option. For example, Option X1 provides for the adjustment of a price list during the contract period (the Service Period) because of inflation.

X29 is the latest of these Options, especially written to allow *Clients* and *Service Providers* to consider and highlight the impact of climate change caused by both the contract and the operation of the asset, and set targets for reducing that impact. Like all the Options, Option X29 is incorporated into the contract through the Contract Data, and the Contract Data is part of the tender and included in the final contract documentation.⁵ Option X29 then also allows the *Client* to incentivise the parties involved in the contract through a pain or gain approach – usually a financial reward or deduction.

IMPLEMENTING THIS IN THE FACILITIES MANAGEMENT CONTRACT

There are four principal components in the contract relating to Option X29. These are the “Climate Change Requirements”, the “Climate Change Plan”, the “Climate Change Partners” and the “Performance Table”.

The Climate Change Requirements are stated in the Scope, and are the requirements the *Client* wants to achieve. These requirements will include an absolute figure which the *Client* expects the *Service Provider* to achieve. Examples may be to report the greenhouse gases (GHG) emissions of the *service* in line with the Scope 3 Framework; or outcome on energy efficiency savings.

The Climate Change Plan is the plan provided by the *Service Provider* which demonstrates how the *Service Provider* proposes to achieve (at the least) the performance required. For example, the Climate Change Plan may show how the *Service Provider* will work with the supply chain (Subcontractors and suppliers) to meet the *Client’s* net zero targets.

Climate Change Partners are any people or organisations which can contribute to this achievement. The *Client* and *Service Provider* will both be Climate Change Partners, but other ones may include, for example, principal Subcontractors.

The Performance Table already exists in the FMC. It “states the targets the *Service Provider* is to achieve in Providing the Service and sets out the adjustment to payment if a measured performance is higher, the same or lower than its target⁶”. It may also state the actions the *Client* requires in the event that a *Service Provider* is not going to achieve a performance

⁵ For further guidance on how to determine the contract strategy and include Option X29 into the Contract Data, see “NEC user guide 2 – Preparing a facilities management contract”; June 2021 (with amendments January 2023); Thomas Telford Ltd; especially chapter 3, pp 75ff

⁶ The “Facilities Management Contract”; June 2021 (with amendments January 2023); Thomas Telford; clause 11.1(10), page 3

target – though that may be in the Scope. If Option X29 is included in the contract, then the relevant targets and adjustments for the Climate Change Requirements will be included.

Clients need to consider two important points when developing their Client Change Requirements and completing the Performance Table. First, there is a contractual obligation on the *Service Provider* to Provide the Service as stated in the Scope; there is no similar obligation to achieve the targets stated in the Performance Table. If there is an absolute value for any Client Change Requirement which a *Client* requires its *Service Provider* to achieve, this needs stating in the Scope. But second, *Clients* cannot expect the *Service Provider* to achieve these requirements without recognising that achieving these requirements will need the *Client* and *Service Provider* to work together. *Service Providers* should not be held accountable for requirements they cannot influence.

FACTORS TO CONSIDER

Clarity

When including Option X29 climate change, the Parties should ensure that there is clarity over the context of Climate Change Requirements and how they apply in practical terms to either Party. The Requirements should be drafted so that they are relevant to both Parties in the contract, whilst ensuring they do not assign responsibility to any Party where they could not be adequately fulfilled.

Requirements within the *Service Provider's* control

Applied to factors influencing climate change within the direct control of the *Service Provider*, Climate Change Requirements may be relatively uncomplicated to document. Due to the nature and limited extent of factors within the direct control of the *Service Provider*, the Climate Change Requirements are also likely to be of limited impact.

While there will be factors impacting climate change which are within the direct control of the *Service Provider*, and they may have significant influence on the *Client*, they will generally be few in comparison to those of the *Client*, or the Affected Property (the estate including buildings) to which the FM contract relates. At an operational level, the *Service Provider* can control the use of vehicles and fuel, the type and quantity of chemicals or other materials utilised in Providing the Service and similar sourcing and consumption decisions, plus elements of general performance which may be under their influence, such as energy efficiency and responsible waste management.

At corporate level, the *Service Provider's* undertakings could also be extended to their head office operations, policies and processes. As this will not impact the climate change performance of the contracted Parties directly where the service is provided, this requirement will be an evidential undertaking, intended to demonstrate the alignment of the *Service Provider's* climate change commitments with those of the *Client* organisation and the potential contribution of the *Service Provider* to the total scope 3 emissions associated with the *Client* organisation.

Of these *Service Provider* climate change impacts, the direct climate change factors at operational level can be specified by the *Client* in the contractual Climate Change Requirements. As the climate change impacts at the outset of the contractual relationship will be negligible, or the legacy of an incumbent outgoing service provider, the requirements stated in relation to X29 should establish a baseline and set targets for reduction, either on a year by year or contract term basis.

Whilst the *Service Provider* head office and policy/process climate change factors are typically a tender submission requirement and supplier evaluation metric, the contract can provide for a periodic requirement that evidence be provided of compliance with the accepted climate change regime.

For both *Service Provider* scenarios, the Climate Change Plan should be sufficiently realistic, acknowledging that the factors which are within the power of the *Service Provider* to

influence in a meaningful way are limited in number and scope. The Climate Change Plan may reference corporate level commitments from the *Service Provider*, or contract/site level commitments (as appropriate to the specific contract) to manage or mitigate the climate change impacts involved.

Requirements within the *Client's* control

X29 is likely to have greater impacts in limiting climate change when applied to the *Client's* climate change factors. The *Client* owns and is responsible for these factors, which arise from their core business or associated support functions. Unless substantial control of its core business is placed under the control of the FM *Service Provider*, it is unlikely that total responsibility for managing these factors can be assigned outright to the *Service Provider*. However, the *Service Provider* could be contractually required to make specific commitments to support the *Client* in managing their climate change impacts.

Behaviours

Influencing behaviours is a key element in reducing climate change impacts, for instance through reducing the use of energy in its various forms, utilising greener sources of energy, use of planting to reduce heat gain and improve air quality, re-use and recycling, and responsible handling of waste materials. Behaviours in this context are both in terms of the operational behaviours of the *Service Provider's* team; and also the behaviours to innovate and address the challenges posed by climate change and engage with the *Client*. It may be considered unreasonable to link a *Service Provider's* revenue to the successful influencing of the behaviours of operatives who do not work for them. However, in implementing X29 and requiring a Climate Change Plan, the *Client* can require that the *Service Provider* documents its intentions and actions indicating how it proposes to achieve specific targets. The *Client* may elect to add an element of commercial incentive to such commitments through applying a revenue bonus mechanism to the contract for successful completion of such objectives, either on an annual basis, or on a basis of achievements delivered on a whole contract term basis. This is the purpose of the Performance Table.

In general, successful FM relationships are built upon collaboration and sharing of reward and risk between *Client* and *Service Provider*. This approach should be applied to drafting the X29 requirements and intentions where it is used, ensuring that the requirements of X29 and the Climate Change Plan implemented align with the wider requirements of the NEC4 FMC.

CONCLUSION

The impact of climate change is ever increasing, and adopting X29 in the FMC means that *Clients* (particularly) and *Service Providers* work together to establish ways that the impact of climate change is effectively addressed with risks minimised and opportunities developed. Many of the climate change requirements may only be achievable through the *Client* and *Service Provider* working together, given the variability of issues. The essential elements of this are establishing realistic and measurable Climate Change Requirements and developing a risk/reward approach that is appropriate.

However the Climate Change Requirements are applied to the *Service Provider* under the NEC4 FMC Option X29, they should align with the climate change policy and statement of the *Client* organisation. It is important that X29 should not be used as a mechanism for offsetting the *Client* organisation's carbon impacts through delegating that reduction to their *Service Provider*. Similarly, the X29 requirements should not be so vague or unsubstantial to render compliance by the *Service Provider* an automatic consequence of service delivery: there should be some climate positive action required of both Parties.

Acknowledgements

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