

### Background and scope

1. How was the market engaged with in order to inform the new contract form?

NEC and IWFM worked together on a Facilities Management Box Set for the NEC3 contracts and delivered some successful joint events on the use of NEC contracts within the FM sector. This was formalised by a Memorandum of Understanding in 2016. The new NEC4 FM suite is the latest piece of work to stem from this collaboration and consultation with the sector, which included workshops at the IWFM Procurement Special Interest Group Conference in September 2018, FM Industry presentations in February 2019 and at the NEC User Group Conference in June 2019.

IWFM's NEC Steering Group, drawn from members of our Procurement and International SIGs (ISIG), alongside some key players within the sector, has demonstrated genuine commitment to get this contract as right as possible for the sector.

2. Has CPD NI been involved/informed of the new suite.

The Construction and Procurement Delivery department of the Northern Ireland Government were not specifically involved in the drafting of the new suite, but as noted in the response to question 1, the wider FM industry was consulted as part of the drafting process.

3. One of the key reasons for the need for an FM specific legal contract, was the recognition of the fundamental differences between construction contracts and FM contracts. However, the NEC4 FM Contract appears to "tweak" the other NEC4 form of contracts, to try and make FM fit a construction style contract, rather than create something bespoke for FM. Was there a reason that an FM specific contract wasn't developed?

The FM contracts were developed as entirely new contracts, but used the format of existing NEC contracts as a template. We also adopted positive concepts from other NEC contracts, such as early warnings etc., where they added to, and did not detract from, the aims of the FM contracts. The FM contracts were developed with input and oversight from IWFM representatives from the very first stage of the drafting process through to publication.

4. As most parties in the FM industry consider that legal contracts are "dragged" out when something goes wrong, and rely on the technical documents (Specification, KPIs, Pricing Schedules etc) for the day to day delivery, was there a reason that a more streamlined FM contract was not considered, such as was developed in the Irish market?

Simple FM services agreements with limited risk on both sides should use the NEC4 FM Short Contract. Both versions of the contract and subcontracts are intended as a basis for collaborative FM services agreements, limiting potential for dispute and resort to contract technicalities wherever possible.

5. How scalable is this agreement? Can it operate across countries? have larger IFM providers commented / consulted? I think it will be refreshing to move away from some of the consultant driven contracts that exist.

The new contract is suitable to use for both single and multiple site services contracts. It is also suited for use in contract agreements covering multiple geographies. The use of the contract in an international context is elaborated upon in User Guidance and Practice Notes.

By their nature, contracts across different geographies, with the potential of different legal requirements on the supply chain, need careful drafting. The new contract gives the framework for this, but legal advice should always be considered in these complex arrangements.

## Content and use of contract

6. How easy will it be for an FM to put together a contract for bundled services/outsourcing for a small business using this contract form.

The standard terms within the NEC4 FM Contract will make this easier, however, as with any contract, the key will be ensuring that a robust Scope and Performance Table are defined. The guidance notes (User Guides) published as part of the FMC are aimed at helping those approaching the new contracts for the first time.

7. As FM services vary hugely in size, for the FMSS what do you see as typically the maximum yearly value (appreciate complexity and risk are always relevant factors too)

There is no value given as to when to change from the short to full FM contracts as this decision should be driven more by the risk and complexity of the service and the amount of active management required.

8. How does the contract deal with different legal requirements across multiple jurisdictions?

The new contract is suitable to use for both single and multiple site services contracts. It is also suited for use in contract agreements covering multiple geographies. The use of the contract in an international context is elaborated on in the User Guidance (part of the FMC) and Practice Notes (to be published).

9. Change in Law - There doesn't appear to be a mechanism to transfer risk to the FM Contractor for foreseeable legislative risk e.g. changes in minimum wage, landfill tax etc, which would be a standard expectation for a best practice FM Contract. Is there a reason for this not being an option?

The core clauses of the FMC make a change in law after the Contract Date the risk of the Service Provider. If the Client wishes to retain this risk, it can select secondary Option X2 changes in the law. The effect of this secondary Option will be to make any change in law after the Contract Date a compensation event

10. Works Projects are commonly procured through an FM provider/contract as a variable service, but the contract terms are not always entirely aligned/appropriate to this service. How does the new FM contract handle Works Projects?

The new contract provides for the Service Provider undertaking project works in addition to and outside the original scope of the FM contract.

11. How are minor works projects dealt with under the FMC and FMSC?

All the FM contracts provide for work to be instructed by Service Orders. The main FM contracts also include secondary Option X27 project orders which can be used to order more complex works for which a programme is required. The FMSC does not envisage it will be used to instruct complex works.

12. Are the PSA schedule of rates utilised or an alternative for reactive works?

The contract provides a mechanism for agreeing the basis of cost for reactive works (e.g. schedule of rates, comprehensive or semi-comprehensive pricing models), but does not prescribe what the rates will be.

13. Performance Table - The standard clauses requires the FM Contractor to provide a proposal for improving performance to be submitted and reviewed if KPI's (targets) are not achieved. As a normal monthly performance review would naturally expect some KPIs to be failed e.g. a PPM activity being undertaken a few days late, or a waste bin being failed to be emptied on a specific day, does this formal requirement not seem excessive?

The improvement requirement is intended to address sustained contractual under performance, rather than individual KPI failures. The contract terms allow both parties to mutually agree trigger points for such remedial action at the start of the contract term.

14. Does it incorporate crossover with manufacturing functions? I see particularly in HVAC an interface between the equipment that is classed as FM, and what would be considered manufacturing. Is there anything in the suite which would have protection for us on impacts in the manufacturing environment?

The FM contracts are designed to be entirely flexible over the service to be provided and any specific interface requirements can be included within the Scope. There is also a Supply Contract and Short Supply Contract in the NEC suite which be used by the Client or Service Provider to purchase Plant and Materials.

15. Does the contract recognise FM as being under the construction act with respect to payment provisions?

If the service being provided falls under the Housing Grants Construction and Regeneration Act 1996, secondary Options are provided to ensure compliance with the requirements of the Act.

16. Does the contact address sustainability at all? Do the panel have any thoughts on how to embed sustainability into an fm contract to support net zero ambitions on the client?

Sustainability, CSR and social value will be addressed in the Scope which allows the requirements to be tailored to meet a client's particular needs. Improved performance against these targets can be incentivised in the Performance Table. The FM contract promotes a collaborative approach to good practice in each regard

17. Insurance Table - Typically FM Contracts require PL/EL and PI insurances, however the table description don't seem to align with these terms. Was there a reason that more standard terminology wasn't used?]

The FM contracts address the requirement for each of these insurances and provides flexibility over which party is required to provide them. The liabilities the insurances are to cover for are detailed in the contract. Professional Indemnity insurance is an optional requirement and included by selection of secondary Option X15.

PL/EL and PI insurance terminology is 'standard' in the UK, but as an international contract the insurance table describes what is required rather than uses terminology which may be country specific.

18. How does FMC/FMSS deal with insurance of the property. Many clients expect the FM service supplier to be responsible for 'specified perils' (flood, fire, etc) resulting in damage to the building. Is there recognition of joint names policies? (like Option C under a JCT building contract).

The FM contracts provide flexibility in respect of the allocation of risk and the requirement to provide insurance for loss or damage to property. Where such insurance is to be provided by the Client this will be in their own name, where it is provided by the Service Provider it

will have to be in joint names. Each party is responsible for their own business insurances, e.g. EL, PL, PI etc.

19. Insurances - The inclusion of joint names on insurance policies is a known issue for FM Contractors, as FM Contractors can't usually obtain this from their insurers. This seems to have been retained for this contract. What was the reason for this?

The FM contracts provide flexibility in respect of the allocation of risk and the requirement to provide insurance for loss or damage to property. Where such insurance is to be provided by the Client this will be in their own name, where it is provided by the Service Provider it will have to be in joint names.

Each party is responsible for their own business insurances, e.g. EL, PL, PI etc. In the event that a Service Provider cannot obtain a 'joint names' insurance, the parties are free to agree an equivalent approach in discussion with insurance providers.

## **FMC and other standards**

20. How do these contracts relate to the FM standard?

The NEC4 FM contract is intended to align to the ISO41001 series of standards, applying terminology used in those standards wherever possible.

21. Will the new simplified Service order process comply with public contract regs?

The work that can be instructed via the Service Order process is set out in the Scope, which will also contain any constraints necessary to comply with any relevant public contract regulations.

22. Where does this leave the NEC3 & NEC4 Service Contracts

Contracts already underway using earlier NEC3 or NEC4 contract terms remain valid. The new NEC4 FM contract provides an improved basis for contracting for FM services going forward.

23. Are the pricing options the same as for NEC ECC etc?

The pricing options are similar to the NEC ECC, but more closely aligned to FM practice. Option A is a priced contract with a price list. The price list can operate on a fixed price or remeasurement (schedule of rates) basis, or a combination of the two. Option C is a target cost contract which also uses a price list to set the target. Option E is a cost reimbursable contract.

24. Going forward, in what circumstances is the TSC preferable to the FMC?

Users have a choice over whether to use the TSC or the FMC and both will continue to be supported by the NEC. Details of the differences between the TSC and FMC can be found in the NEC white paper - NEC4 Facilities Management Contracts May 2021 - which can be found [here](#).

25. Is this new FM contracts aligned with the language and terms used in ISO 41000

Yes

26. How exactly is it aligned with ISO 41001?

The NEC4 FM contract is intended to align to the ISO41001 series of standards, applying terminology used in those standards wherever possible.

27. Does terminology of the FM contract align with ISO 41001 terminology?

The NEC4 FM contract is intended to align to the ISO41001 series of standards, applying terminology used in those standards wherever possible.

28. How does the new FMC relate to BS 11000 (embedding collaboration through standards)?

All NEC contracts are drafted to encourage collaborative behaviours and require the parties to operate in a spirit of mutual trust and cooperation. There is also a secondary Option X12 multiparty collaboration to encourage different members of the supply chain to work together.

29. Is there any alignment to standard specifications e.g sfg20 etc or is there an intention to replace that with this?

SFG20 is a maintenance specification and scheduling standard. If appropriate, SFG20 or an alternative maintenance specification can be included as a requirement of contracts using the NEC4 FM contract form.

## General/admin

30. I'm confused. Sorry. I thought the actual NEC contract was filled out and used as the contract. I don't understand how you can have just one copy?

The NEC contract itself is not filled out and issued as part of the contract, instead the Contract Data (which is available as a Word document) is completed and this references the contract conditions applicable to the contract.

31. When you buy a copy of the contract, does it come with the user guidance document as well, or are these purchased separately?

The documents can be purchased separately, or as a contract bundle with all the documents together. Full details can be found on the [NEC website](#).

32. Will the guidance notes and their updates be available free?

The guidance notes, known as User Guides, are not provided free – they are separate documents which may be purchased if required. The contracts are occasionally updated, and the amendments are published free of charge on the NEC website. Generally, the User Guides are not updated. The NEC and IWFM are in the process of developing Practice Notes, which will also be available on both the NEC and IWFM websites; these can be easily updated if the need arises.

33. Updates - As with any new contract, there will be feedback from the market on areas that would benefit from adopting, what is the expected process for engaging with the market to obtain feedback and updating the document.

The NEC has a constant programme of capturing feedback from users and its training consultants. Anyone using the new contracts is encouraged to feed back any comments to the NEC.

34. How will the success and quality of the new contracts be measured over time per contract type?

Measuring the success of a contract form is an interesting concept! Much of it will be evidenced by its take-up – if the FM sector finds this contract useful and adopts it, it can be fairly said to be successful. It was very clear from the initial research that the sector suffers from an over-abundance of bespoke contracts, which is not efficient in the time taken and costs incurred by clients and suppliers to produce and manage them. If the FMC contracts

begin to standardise the sector's approach to procurement, then they will have achieved one of their principal objectives.

In reality, the quality of the FM contracts has as much to do with the quality of the specification and attention to detail in the documentation (price list, incentivisation, etc) as it does with the quality of the contract form itself. This is in the hands of the FM sector: the NEC and IWFM hope that these contracts may play their part in this.