Crown Commercial Service: Model Services Contract Guidance

May 2016
# Model Services Contract Guidance

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Overview
This Guidance accompanies Model Services Contract v1.0 (the Model Contract) issued on 1 April 2014. It has been developed by the Cabinet Office and a Cross Government Lawyers Group led by CO. This Model Contract is intended for business services contracts with Total Contract Value greater than £10m. It draws precedents from a number of proven Government contracts, including the OGC Model Services Contract (Version 2.3), the Home Office ‘Baseline’ contract, MoD ‘Defcons’ and others. The Model Services Contract is managed and published by the Crown Commercial Service (CCS).

This Model Contract supports the Government’s LEAN sourcing approach\(^1\) and is intended to be used by Central Government Contracting Authorities and their Senior Responsible Officers (SROs) as a template to provide robust standardised terms which will aid faster completion of agreements. It reflects mandated policy (for example on tax compliance) although it is not itself mandated. Central Government Contracting Authorities are, however, strongly encouraged to use this form of contract for relevant procurements, recognising that these procurements will be subject to Cabinet Office controls. The Cabinet Office assumes that SROs will further develop the agreements to suit their projects by taking professional advice where necessary. To help SROs make this decision the Guidance below describes the significant commercial positions outlined within the Model Contract.

All sections of the Model Contract have been examined to check for consistency with current legislation and recent case law at the date of issue. This document will be reissued as and when new law and feedback from those using the contract indicates that amendment is required. We encourage users to give feedback on the commercial principles and the drafting to:

Info@ccs.gsi.gov.uk

Elements of the Model Contract may be relevant for many types of services but these terms were drafted for use with IT and BPO transactions specifically.

Introduction
This Guidance is intended as a ‘reader’s guide’ to the Model Service Contract giving context to the structures used, quick reference to applicable subject matter clauses or schedules and the commercial intent behind the drafting. Like any contract, this one addresses risks, rewards and remedies. The changes we have made simplify the management of risk, allow a wider choice of reward structures and make the remedies available in the event of default clearer and easier to use.

\(^1\) See https://www.gov.uk/government/publications/lean-sourcing-guidance-for-public-sector-buyers
This Guidance is not intended as a substitute for appropriate legal and commercial expertise required to conclude contracts of this scale and complexity. Contracting Authorities should seek legal advice from their legal department before commencing any legal and/or commercial negotiation.

This is not a negotiating guide, although it includes some recommended commercial positions and helpful hints. Our intention is that these positions are reflective of current market practices and expectations, and Suppliers should be able to price competitively within the parameters given.

CO and CCS have aimed to create a Model Contract that is user friendly by:

- removing square brackets where possible to create a default position and moving less common optional wording (where still required) into the guidance;
- providing further precedent drafting for the schedules; and
- consolidating clauses which require commercial input into annexes for ease of completion.

We have aimed to address issues that have arisen in the past with similar contracts and also include a number of ‘new ways of doing business’ including the sharing of performance data, the wider licensing of IPR and the use of new commercial structures.

CCS is continually taking feedback from parties that have used or intend to use the Model Contract in their procurement. This feedback will inform future versions of the Model Contract and the Guidance which will be revised and re-issued as required.

**Changes from previous version**

We have updated the Model Contract to ensure compliance with current statutes, case law, industry practice and guidance – for example:

- new anti-bribery provisions inserted following the introduction of the Bribery Act 2010;
- insolvency events expanded to deal with alternative business structures (such as LLPs);
- confidentiality provisions revised to permit the publishing of contracts and sharing of performance data in government in line with the government’s transparency agenda (see procurement policy notes referenced on the [WWW.GOV.UK](http://WWW.GOV.UK) under ‘Government efficiency, accountability and transparency’);
- equality provisions updated following the introduction of the Equality Act 2010; and
● Entire Agreement clause updated to ensure it is robust following recent cases such as Axa Sun Life v Campbell Martin Ltd (2011) and BSkyB Ltd & v HP Enterprise Services UK Ltd (2010).

As part of the revision we have tackled some specific issues and concerns. These include providing greater supply chain protection to sub-contractors where the Contracting Authority may now ‘name and shame’ suppliers that do not pay their sub-contractors within 30 days (see Clause 15.12 and also Procurement Policy Note 03/15) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/405020/PPN_reforms_to_make_public_procurement_more_accessibile_to_SMEs.pdf

We have opted for a shorter form version of financial distress schedule, omitting the escrow provision that withheld funds from companies deemed to be in financial distress, even if they were providing the services. We have amended the insurance provisions to recognise use of corporate policies and current market practice, and incorporated TUPE/pensions drafting for use where services transfer on commencement.2

We have amended the due diligence provisions to recognise that there may be a need for post-contract validation of certain commercial assumptions; creating a list of ‘Allowable Assumptions’ and bounding the extent of any price variation that may be necessary.

To promote tax compliance we have included a warranty and duty to notify any occasion of non-compliance (see Clause 10.10).3

We have clarified Government’s position on IPR within service contracts. The default position is that ownership of specially written software lies with the Crown, with the intent that it will be published as open source material, to encourage innovation by the market. There are also options for ownership, for example in situations where joint teams are undertaking the development of new software on Government’s behalf.

We have provided a standard position on exclusions and limits of liability. This consolidates most liabilities into a single ‘pot’ and provides a formula for calculation based on 150% of one year’s revenue (see Clause 25). This rises to 200% when the losses incurred by the Authority are due to the Supplier’s wilful actions (see Clause 25.4, final paragraph)

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2 This drafting is compliant with current (April 2014) HR policies and pensions legislation.
3 Severe examples of non-compliance can result in termination; see ‘Supplier Termination Event’ definition within the Model Services Contract
Open Book Contract Management and transparency will be developed in future versions of the contract. We have simplified open-book arrangements, doing away with overly complex financial models and introduced a range of informative summary financial reports based on MoD practice. In addition overall contract performance will be reported regularly and will be open to public scrutiny. Balanced scorecards will be features of all contracts and may be published on departmental websites (see Schedule 2.2, Part B, paragraph 1.3).

Contracting Authorities have a ‘toolkit’ of pricing mechanisms available to them (see Schedule 7.1). For the first time a new payment mechanism has been introduced, Guaranteed Maximum Price with Target Cost (GMPTC). Under GMPTC, the more the customer pays, the lower the margin earned by the Supplier. Similarly if the customer pays less the Supplier earns a higher margin. GMPTC pricing allows us to incentivise the Supplier to contain the budget, and incentivise the Authority to keep the Supplier’s costs down. Whatever the pricing mechanism, a renegotiation of the Charges will be triggered if the Supplier is making ‘excessive profits’ (See Schedule 7.1 Part D).

We’ve also rationalised the rights that the Authority has in case of performance failures. A simpler Service Level/Service Credit regime incentivises good performance and yet should be easier to administer and operate. A single Rectification Plan Process allows the Supplier to improve poor performance, re-plan a programme in the event of delay and remedy some defaults. The Authority have rights to approve any Rectification Plan put forward (see Clause 27).

We have consolidated the set of remedies and reliefs available to the parties and they are now grouped together in the contract. There are also new remedies in recognition of the fact that termination is a last resort (see Section H Clauses).

We have created a standard, robust position on voluntary termination (Termination for Convenience). Any payments due to the Supplier will be determined using open book and the financial reports, and the authority has clear rights to acquire assets if it believes this to be necessary (see Schedules 7.2 and 8.5).

There is now a clear statement regarding the Authority’s responsibilities, and these should be agreed prior to contract award and specifically stated within Schedule 3.

Overall, the Model Contract is shorter than the one it replaces yet it contains almost all the drafting necessary to prepare a comprehensive service agreement. Clearly the Contracting Authority has to write its own requirements, define security and service levels and set timescales, but most of the remaining work has already been completed.

In conclusion, we have set out to build a contract that is usable and practical. A contract, after all, is more than just a point of negotiation during the procurement; it frames a multi-year relationship and should allow both the Supplier and the Authority to work together effectively, solve problems
quickly when they arise and enable the delivery of important public services in a value for money manner.

**Structure**

The Guidance is set out in six sections:

1.1 Before the contract is signed – Due Diligence
2.1 Building the Services
3.1 Service Operation
4.1 Paying for the Services and securing Value for Money
5.1 Ending the Contract
6.1 Other Operational Clauses
1 Before the contract is signed – Due Diligence

1.1 Introduction

Due Diligence refers to discovery activities by the Supplier which are undertaken before the contract is signed. Ideally, when the Authority lets a new contract, it would want Suppliers to understand everything about the services that are requested, what constraints other contracts or the environment places on them and what people or equipment which are currently available to perform those services.

Full understanding would allow the Supplier to bid a price for the services that has no risk allowances for these components. In reality, there are always some gaps in the information provided. The Due Diligence clause makes any risk allowances transparent, ensures that the contract price changes only if a risk materialises and requires the Supplier to notify the Authority if the operating environment is not suitable. The relevant sections of the Model Contract that are covered by due diligence are:

Model Services Contract

Section B

1. Due Diligence (Clause 2)

Schedules to the Model Services Contract

- Schedule 7.1 (Charges and Invoicing)

1.2 Guidance

Clause 2, and the Due Diligence process, removes the need for the Authority to give any warranties or assurances with respect to information supplied and/or the Operating Environment. The Authority should expressly avoid giving any such warranties, as it cannot know what information the bidder requires in the formulation of its bid and, while there is no intention to present false information, some of the information may come from third parties over whom the Authority has no control. It can also be the case that the Authority does not have or cannot guarantee to have access to all of the required information (for example where there are gaps in records and data is missing).

Due Diligence information is often collated in a ‘data room’ (this can be the repository within any e-sourcing portal in use by Government departments; BravoSolution, Emptoris, etc.) to which all bidders are given equal access. The Authority will place relevant information in the ‘data room’. Some information about the existing services will be necessary, in particular if the contract requires
these to be run by the incoming supplier. Often obligations are placed on current suppliers to provide such information in the exit provisions of their contracts. Special consideration should be given to employment information regarding staff that may be eligible for TUPE – either Authority staff or Supplier staff. This subject is dealt with at greater length in Section 6.2.

Clause 2 places a clear responsibility on the bidder/Supplier to ensure that the Operating Environment (all sites and systems) in which the Services are to be implemented and operated is understood and fit for purpose. Where this is not the case, the Supplier is required to specify, price for and timetable the necessary changes. Additionally, the tendency for Suppliers to price risk invisibly within their bids, due to incomplete information, is replaced by a requirement to price risk transparently as Allowable Assumptions. This ensures that the contract price will only change if the risk materialises, we know how much it will change by and we know what triggers the change. Schedule 7.1, Part C, Paragraph 6 covers the procedures for agreeing these Allowable Assumptions and dealing with instances where the assumptions are wrong.

The Authority must fully support the Supplier to carry out its Due Diligence activity in terms of allowing sufficient and appropriate time, providing access (e.g. to sites, data, etc.), information and reasonable assistance. It is incumbent upon each Government department to agree what constitutes ‘appropriate time’. This will be determined by the complexity of the requirement and in all cases should be agreed with the Supplier.

Bidders should be encouraged to produce a list of their Due Diligence requirements as soon as reasonably practical in support of their solution design, specifically identifying the Due Diligence items that impact materially on price. The Authority may prepare many of the items in advance of bidders producing lists as this will expedite the process; typical Due Diligence requires details of 3rd party contracts, asset registers, building rental agreements and comprehensive staff information.

1.3 Key Negotiation Issues

Impairment of the Due Diligence process due to incomplete information lengthens contract negotiation times, or produces cost escalation and leads to commercial disputes post contract signing. The Model Contract is designed to mitigate these issues through the use of Allowable Assumptions.

Where it becomes clear that either:

- The Authority is unable to provide reasonable access to reasonably requested sites/information, or
• It is unreasonable to expect the Bidders to take the risk that the provided Due Diligence information which is critical to solution design and/or delivery costs is accurate (e.g. because the information may have been produced by a third party), then

The parties should agree Allowable Assumptions to cover these gaps in the due diligence information. Bidders should be asked to identify the specific Allowable Assumptions in the format provided. The price-variation mechanism for Allowable Assumptions should include a time-limited resolution period - typically a few weeks, though more time may be required for complex issues - during which any required price adjustment must be made in accordance with the provisions of Schedule 7.1. This period should be agreed between the Supplier and the Authority. All Allowable Assumptions are negotiable, so the Authority should only accept them when they can be justified; there is also the option of providing further information to remove or mitigate the impact of an Allowable Assumption.
2 Building the Services

2.1 Introduction

All contracts with a new supplier will require that the services/solutions are either built from scratch or as an adaptation of existing services. The Model Contract sets out the process and controls for building or adapting and implementing the services along with remedies for Suppliers who fail to meet their obligations. The process and controls are set out in a logical sequence with the outline implementation plan(s) and key milestones being described in the Schedules before contract signature and detailed plans, tests and acceptance criteria being developed after. The relevant sections that address this are:

Model Services Contract

Section B

2. Implementation (Clause 6)

Section H

3. Rectification Plan Process (Clause 27)

4. Delay Payments (Clause 28)

Section J

5. Disputes (Clause 45)

Schedules to the Model Services Contract

- Schedule 6.1 (Implementation Plan)
- Schedule 6.2 (Testing Procedures)
- Schedule 7.1 (Charges and Invoicing)
- Schedule 8.2 (Change Control Procedure)
- Schedule 8.3 (Dispute Resolution Procedure)

2.2 Guidance

OUTLINE IMPLEMENTATION PLAN

An Outline Implementation Plan (OIP) is developed and agreed prior to contract signature; it will then be inserted into Annex 1 of Schedule 6.1. While the Supplier may choose to develop the plan using a recognised Project Management tool or spreadsheet, it is important to capture key milestones in the format described in Annex 1; more detail will mitigate the risk of disputes later. In particular, the Authority should agree what dependencies the Supplier has on the Authority and the list of deliverables, including testing deliverables, which will be included in the milestones. Some
milestones will also be triggers for payment or for services to move from implementation into operation (known as ‘Authority to Proceed’ (ATP) milestones). Others may be check points that allow for continuing payments for services and/or rebates on payments if performance has not got to the desired level (known as ‘Contract Performance Points’ (CPP)). These will be identified in the OIP. When setting out the OIP milestones both the Authority and the Supplier should understand that a milestone will not be judged to be complete until all deliverables, including acceptable test results, are produced.

Note that some service contracts can be complex and it would introduce too much risk for all parties if all the services were to be implemented simultaneously. In these cases, the implementation plans may be broken down into service lines with each having their own milestones, ATPs and CPPs.

DETAILED IMPLEMENTATION PLAN

Within 20 days of the contract being signed, the supplier is obliged to work up a Detailed Implementation Plan (DIP) and submit it in draft form to the Authority. The content and process for approving the DIP is described in Schedule 6.1 at paragraph 3. Note that any key element (e.g. dates or deliverables) described in the OIP may not be changed without the Supplier submitting it through the Change Control Procedure unless it is due to an Authority Cause, which is defined in Clause 31 of the contract. The DIP may be an expansion of the table in Annex 1 but should also be set out using a recognised Project Management tool agreed by the Authority with the Supplier. While the Authority has the ability to disagree with the DIP and reject it, the Authority should act reasonably in exercising this right as the remedy for a disagreement between both parties will be to follow the Dispute Resolution Process, which can prove to be onerous and time consuming, so should be the last resort (see Section 3.2 – Governance).

The DIP will be an important working document throughout the implementation of the services. The milestone deliverables, including test deliverables, must all be completed before a milestone is achieved. Achievement of a milestone will be marked by a ‘Milestone Completion Certificate’, as described in paragraph 13 of Schedule 6.2. Where milestones have been designated as ATP or CPP (see above), the Authority will agree the success criteria and any pre-conditions with the Supplier and list these in the table at Annex 4 of Schedule 6.2

TESTING

Testing is a sub-set of the implementation plan, but nevertheless an extremely important aspect especially where system development is concerned. The Model Contract is designed to progressively
specify the testing, and reporting of testing, in increasing levels of detail as the need to test a particular system/service nears.

**Test Strategy**
Within 20 days of contract signature, the Supplier is obliged to produce the Test Strategy document that will provide the high level process for how testing is to be done, who will represent the Supplier, what will be required to conduct the tests and how they will be reported. This strategy document may have been requested as part of the bidding process, so it would be finalised and agreed soon after the contract is signed. The requirements for the Test Strategy are set out at paragraph 4 of Schedule 6.2.

**Test Plans**
At least 20 days before any specific test is due to be conducted (dates specified in the DIP), the Supplier must submit a Test Plan for approval. The Test Plan will have more detail with the minimum requirements as set out in paragraph 5 of Schedule 6.2. The Authority has the right to reject the Test Plan but should always act reasonably as its recourse in a disagreement will be the Dispute Resolution Process.

**Test Specifications**
Test specifications are the lowest level of detail, including test scripts, test data requirements and resources for the tests. These specifications must be provided to the Authority for acceptance at least 10 days prior to the test date. The requirements for the Test Specifications are set out at paragraph 7 of Schedule 6.2. Again, the Authority should act reasonably when agreeing these.

**Testing and Reporting**
The Supplier will normally carry out the testing, although the Authority may participate in certain parts, which will be agreed in the plans. Prior to submitting any deliverables from the testing, which will be part of a milestone, the supplier should check those deliverables using its own QA processes. Paragraph 8 of Schedule 6.2 specifies each party’s obligations for testing and the minimum content of a Test Report while paragraph 9 deals with how issues should be logged and reported.

Note: Authority representatives have the right to witness any of the tests and review documentation without having to participate in the test itself. The Authority also has the right to perform a Test Quality Audit subject to what was agreed in the Quality Plan (see paragraphs 10 & 11 of Schedule 6.2)
When testing has been completed satisfactorily, a Test Certificate will be issued and, if the successful testing completes the deliverables for a milestone, a Milestone Achievement Certificate may also be issued.

Note: there is a subtle difference between ‘acceptance’ of a service and Authority to Proceed (ATP); the ATP ensures that the supplier retains the risk of failing to meet the agreed specification (see Schedule 6.2, paragraph 2), so the Authority should never ‘accept’ a service.

**REMEDIES**

Should the Supplier fail to meet a key milestone date, the Authority remedy will be financial via a Delay Payment, which is covered by Clause 6.6 and Clause 28 of the Model Contract with the detail of the payment being set out in paragraph 1 of section C, Schedule 7.1. The Supplier is entitled to claim that the Authority caused the delay but must be able to prove it. If the Authority is entirely or partially at fault, then Clause 31 will apply and it will either get no Delay Payment or a reduced payment.

All disagreements associated with obligations to ‘sign off’ certain documents would have to be settled through the Dispute Resolution Process if they cannot be settled without escalation. Schedule 8.3 would then be followed. For more detailed information on the Dispute Resolution Procedure, see Section 3.2 Governance.

### 2.3 Key Negotiation Issues

The most important document to get right before contract signature will be the Outline Implementation Plan, OIP. Many suppliers tend to keep this to a minimum level as it costs them less for bid preparation and allows more flexibility once the contract has been signed. The Authority should resist this tendency and get as much commitment to detail as it can, ensuring that it is satisfied there is sufficient detail to hold the Supplier to account once the contract is in place. This should also include agreeing detail of the acceptance criteria and pre conditions for ATPs and CPPs.

While it is not stated as a pre-contractual requirement, requiring or negotiating the Test Strategy and, possibly, some elements of the Test Plans as part of the bid process will both help to evaluate the Supplier’s credibility and will provide a sound base for finalising these documents once the contract has been signed.
3 Service Operation

3.1 Introduction

Good service operation requires four important elements:

- Clear and unambiguous service requirement definitions
- Robust mechanisms and controls for managing performance
- A mechanism for changing or modifying the services over time
- Governance

All of these elements are defined in the Model Contract before it is signed but then need to be managed carefully through the governance structures and contract management processes to ensure that the services meet the original expectations. The relevant sections of the contract are:

Model Services Contract

Section B

6. Services (Clause 5)
7. Quality Plans (Clauses 6.1 to 6.3)
8. Performance Indicators (Clause 7)
9. Services Improvement (Clause 8)
10. Governance (Clause 11)

Section H

- Rectification Plan Process (Clause 27)
- Delay Payments (Clause 28)

Schedules to the Model Services Contract

- Schedule 2.1 (Services Description)
- Schedule 2.2 (Performance Levels)
- Schedule 2.3 (Standards)
- Schedule 2.4 (Security Management)
- Schedule 4.1 (Supplier Solution)
- Schedule 7.1 (Charges and Invoicing)
- Schedule 8.1 (Governance)
- Schedule 8.2 (Change Control Procedure)
- Schedule 8.4 (Records Provisions)
3.2 Guidance

CLEAR & UNAMBIGUOUS SERVICE REQUIREMENT DEFINITIONS

Experience shows that the Supplier’s misinterpretation of the Authority’s requirement is sometimes a contributing factor to problems developing, resulting in poorly performing contracts. Occasionally the Supplier is forced to offer a service based on scant information because the Authority cannot accurately and comprehensively articulate the requirement for a variety of reasons, some reasonable and others perhaps less so. Avoid this scenario, as it will always give rise to difficulties in managing the performance later.

In order to help define the services required, guidance has been published, especially for IT. Since April 2014 digital services from the government must meet the new Digital by Default Service Standard, which is available for use on GOV.UK. This document complements the service standard; it describes the key process to go through in order to mitigate unknowns and baseline the service and sets out the performance levels with performance indicators explaining what remedies are available if performance failures occur.

The initial procurement process sets the baseline for the resulting contractual relationship. In the procurement the Authority should ensure that a draft Services Description setting out the Authority’s detailed description of the requirements is made available to Suppliers. The Services Description should articulate between the different types of Services the Authority may require (e.g. Implementation Services, Operational Services, Interface requirements, Security Requirements, Other Authority Requirements and any Optional Services). This is populated in Schedule 2.1 and may consist of several documents detailing each requirement.

In the procurement, the Authority should also set out its expectations on performance indicators. Part A of Schedule 2.2 explains how performance indicators will be used to calculate Service Points, which are subsequently used to generate the financial remedies for inadequate performance through Service Credits; worked examples are provided. Part B of Schedule 2.2 describes the Supplier’s obligations to monitor and report on performance. The tables set out in Annex 1 Part I of this schedule should be completed with all the relevant indicators and operating levels for each service requirement taking note of the definitions in Part II of the Annex. The KPIs and Subsidiary PIs are set out in this Annex and have been based on Industry Standards, which ensures that the reporting mechanism applied by Suppliers is not outside their normal practice as this would otherwise add costs. When agreeing KPIs, the Authority should:

- Obtain accurate and realistic information regarding the actual needs of the users of the
Service and the underlying business as overly onerous KPIs will drive costs upwards

- Consider any available historic information regarding the Authority’s requirements for the Service
- Consider any available projections for the use of the Service to ensure that it is both scalable (whether or not over pre-determined phases) and that the KPIs and associated Service Points and Service Credits can be adjusted in a pre-agreed manner to reflect anticipated changes in the usage of the Service. For example, different KPIs can be set to reflect different service complexities during a phased implementation and/or different demand profiles. Note that pre-agreed Service Credits should not be set at punitive levels.
- Understand the impact of volume and workloads on service quality. Volume requirements may vary during any particular month or, between months. It is necessary to consider average and peak volumes for e.g. data storage and processing
- Consider whether or not there should be any initial period during which KPIs are only monitored for information purposes. This may be appropriate in exceptional circumstances. The decision should take account of the transfer of risk and how much post acceptance ‘bedding in’ is acceptable. In any event, it is recommended that recording and reporting of KPIs commences immediately following service commencement
- Consider how many KPIs are set, how readily KPIs can be measured and the degree to which this can be automated. Consideration should also be given to the balance between selecting KPIs that are representative of the performance across several aspects of the Service and the need for measures and incentives to apply to specific individual aspects of the Service. In addition the contract allows the Authority to rebalance the KPIs if there is a change in its business requirements. The Authority can do this by reclassifying the KPIs (using clause 7), but must remain aware that such a change comes at no charge only if it does not exceed the limit on the number of KPIs.

Before signing the contract the Supplier should produce a description of the solution (Schedule 4.1) that sets out how the Services will be provided in sufficient detail so that evaluators can be sure that Authority requirements have been understood. This suite of documents will form the basis of the technical relationship between the parties and allow suppliers to bid from a position of knowledge.

Following contract signature, the Supplier should produce a Quality Plan within a number of days that the Authority specifies. It is advisable that this plan is produced before the Detailed Implementation Plan, DIP (see above), as all deliverables should be designed to comply with it. Within 20 days of contract signature, the Supplier will also need to provide a Security Management Plan in the level of detail set out in paragraph 4 of Schedule 2.4 and will need to produce a tested Information Security Management System as set out in paragraph 3 of the same Schedule by the date agreed in the DIP.
ROBUST MECHANISMS AND CONTROLS FOR MANAGING PERFORMANCE

The controls for implementing the services are described in detail in Section 2.2. of this document.

During operation, the performance of the services is controlled via the obligations set out in Clause 7 together with Schedule 2.2. The required performance levels will have been established prior to contract signature (see above). Note that these performance levels may be changed to reflect new priorities during operation but this may be done only once per year and the Supplier must be given 3 months’ notice; this is set out in Clauses 7.7 & 7.8. The Model Contract has a single rectification process that applies in the event of:

- Delay (actual or anticipated);
- Material Default;
- Material Failure of Key Performance Indicators (KPIs);
- Material Failure of Performance Indicators (PIs).

Figure 1 below illustrates that process. The process and the obligations on the supplier to produce a Rectification Plan are set out in Clause 27.
Figure 1: Rectification Process

It should never be the intention of either party when entering into a contract to fail to meet performance obligations. However, it is not uncommon that, in contracts of the nature contemplated in the Model Contract, performance problems do arise from time to time. Neither party should consider the whole contract to have failed as a result of the emergence of performance issues. On the contrary, the execution of a contract can be considered a success provided that, where performance has dropped below the contractually defined levels, the tools provided in the contract have been used effectively to bring the Supplier’s performance back in line quickly and with minimum disruption.

Service points and credits are accrued when the Supplier’s performance in the service period is below the Target Performance Level and result in a reduction of the Service Charges payable. Service Credits are capped at the commencement of the Operational Service and are the exclusive financial
remedy for a KPI failure. However, there are exceptions when a KPI failure breaches the relevant KPI Service Threshold (see Clause 7) and other remedies become available.

Figure 2 below illustrates the rights that the Authority has in case of performance failures with Table 1 and Table 2 describing the available remedies and the triggers for them respectively:

*Where the Service Threshold is not met for 50%+ of KPIs

**Where the Service Threshold is not met for 25%+ of the PIs or the Target Performance Levels for 50%+ of the PIs

Figure 2: Authority rights due to performance failure
### Authority's remedy

- Milestone payment not payable until Milestone ‘Achieved’
- May incur Delay Payments
- Rectification Plan
- Possible termination (if the Delay continues for 100+ days)
- Supplier bears costs of re-testing
- Ability to appoint Remedial Adviser

### Supplier relief if caused by the Authority

- Extension of time
- No breach
- No Delay payments
- Compensation for losses
- Additional costs

### Table 1: Remedies associated with performance breaches

<table>
<thead>
<tr>
<th>Delay in implementation period</th>
<th>Authority's remedy</th>
<th>Supplier relief if caused by the Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>● Milestone payment not payable until Milestone ‘Achieved’</td>
<td>● Extension of time</td>
</tr>
<tr>
<td></td>
<td>● May incur Delay Payments</td>
<td>● No breach</td>
</tr>
<tr>
<td></td>
<td>● Rectification Plan</td>
<td>● No Delay payments</td>
</tr>
<tr>
<td></td>
<td>● Possible termination (if the Delay continues for 100+ days)</td>
<td>● Compensation for losses</td>
</tr>
<tr>
<td></td>
<td>● Supplier bears costs of re-testing</td>
<td>● Additional costs</td>
</tr>
<tr>
<td></td>
<td>● Ability to appoint Remedial Adviser</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Default in operational period</th>
<th>Authority's remedy</th>
<th>Supplier relief if caused by the Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>● May incur Service Credits or compensation for Unacceptable KPI failure</td>
<td>● Treated as if met Performance Indicators</td>
</tr>
<tr>
<td></td>
<td>● Rectification Plan if material</td>
<td>● No breach</td>
</tr>
<tr>
<td></td>
<td>● Possible termination</td>
<td>● No Service Credits</td>
</tr>
<tr>
<td></td>
<td>● Possible damages</td>
<td>● Full payment of Service Charges</td>
</tr>
<tr>
<td></td>
<td>● Ability to appoint Remedial Adviser</td>
<td></td>
</tr>
</tbody>
</table>
### Remedy

<table>
<thead>
<tr>
<th>Remedy</th>
<th>Trigger</th>
<th>Summary of remedy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compensation for unacceptable KPI failure</td>
<td>● Failure to achieve the Service Threshold for 50% of the KPIs in any month</td>
<td>● Authority is entitled to keep 100% of the Service Charges due for that month</td>
</tr>
<tr>
<td>Remedial Adviser</td>
<td>● A Default that would give rise to a termination event (other than insolvency)</td>
<td>● Authority may require the appointment of an independent Remedial Adviser to monitor the Supplier and report to it on recommendations to tackle service issues</td>
</tr>
<tr>
<td></td>
<td>● A Default that is materially preventing / delaying the performance of the Services / a material part of the Services</td>
<td>● Costs of Remedial Adviser to be borne by the Supplier</td>
</tr>
<tr>
<td></td>
<td>● A Default amounting to 75% of the ‘Critical Performance Failure’ trigger</td>
<td>● Suspends Authority’s right to terminate for three months</td>
</tr>
</tbody>
</table>

*Table 2: Triggers for remedies*

### A MECHANISM FOR CHANGING OR MODIFYING THE SERVICES OVER TIME

Schedule 8.2 sets out the process where either party requests a Contract Change. Contract Change can take place for a number of reasons, which are dealt with in the following contract clauses:

- *Optional Services* (Clauses 5.10 to 5.12)
- *Quality Plans* (Clause 6.3)
- *Services Improvement* (Clause 8)
- *Change in Law* (Clauses 13.2 to 13.3)
- Change in *Service Charge* (Clause 15.15)
- *Authority Cause* (Clause 31)
- *Partial Termination* (Clauses 33.4 to 33.5)
- *Operational Change* (Schedule 8.2)

The Authority must monitor change as it may impact on cost and time. Under normal circumstances contract and/or operational change should be agreed at senior level within the project/programme...
to ensure that any impact as a result of the change is understood; a requirement for a Change Management Board is articulated in Schedule 8.1.

The Supplier also has an on-going obligation to identify new or potential improvements to the Services (see Clause 8). Any agreed improvements will be managed under a Change Request as per the Change Control Procedure in Schedule 8.2

**Contract Changes**

Contract Changes are changes that affect the baseline agreed by the parties at the date of signing the contract. They will have an impact on the costs or the risk profile of either party. As such, the parties will need the right to approve, reject and request amendments to proposed Contract Changes, subject to the qualifications set out below.

A Contract Change proposed by the Authority can only be rejected by the Supplier if the Supplier can show that either:

1. The proposed change would materially and adversely affect the health and safety of any person
2. The proposed change would cause the Services to infringe the law
3. It is technically impossible to perform the change

In contrast, the Authority should always have the right to reject a Contract Change, unless the proposed change is as a result of a Change in Law.

Either party has the right to request a change and initiate the Change Control Procedure. The party requesting it must send the other party a ‘Change Request’ setting out the following information:

- A full description of the proposed Contract Change with a brief analysis of the perceived advantages (and, if appropriate, disadvantages) of the Contract Change
- The likely costs of the Contract Change
- The target date for implementing it
At the time of issuing the Change Request (or within 10 working days following such issue), the Supplier will research and produce an ‘Impact Assessment’. The Impact Assessment must set out full details of the proposed change including:

- Technical specifications of the change
- Reasons for the change and the projected impact on the Authority, its business and IT systems
- The impact on the Supplier’s level of performance and achievement of the Service Levels
- Impact on other systems or processes which are outside the Supplier’s responsibility, but which interface with or are reliant on the infrastructure or processes governed by the contract
- Details of any increase (or reduction) to the Charges using the existing pricing mechanisms
- Identification of the level of on-going resources which will be required if the change is executed
- Impact on the Authority and the Services if the change is not executed
- A plan, which sets out how, the Supplier will implement the change including, if appropriate, a timetable and/or milestones.

With regard to the Impact Assessment itself, the cost of the assessment will be borne by the party requesting the change; however, there will be no charge if the impact assessors are already employed on the account and their time is charged through other mechanisms (e.g. service charges or milestones) and there will be no charge for Impact Assessments less than a threshold (e.g. £5,000).

Where the Supplier issues the Change Request then, following receipt of the Supplier’s Impact Assessment, the Authority can either accept the proposed change, request amendments, request further information or reject it. The Change Control Procedure only permits the Supplier to implement a Contract Change once it has been authorised by the Authority.

Great care needs to be given to the issue of revisions to the charges under the contract as a result of acceptance of a proposed change by the Authority. Historically, this has been the main source of variations to the cost of such contracts, and has been the cause of programmes going “off the rails”, and sometimes being terminated as a result. Any additional charges the Authority agrees should be in line with the already agreed charging mechanism in the contract for the relevant type of work or deliverable. Final approval to a
variation to the charges should be subject to the same governance processes as for the original letting of the contract, unless there are strong reasons not to do so, which themselves have been documented, and approved at the highest level in the governance hierarchy.

Depending on the complexity and the Term of the Contract, the Authority may wish to use the Governance Boards to authorise changes according to a hierarchy of delegated authority. This would allow the Change Control Procedure to provide for certain Contract Changes to be authorised by more senior signatories within the Authority.

**Operational Changes**

There are likely to be a number of technological and business changes during the Term of the Contract that the Supplier must effect to continue providing the Services effectively and efficiently. If these do not otherwise impact the cost or risk of delivering the Services or the provisions contained in the contract, they are managed through an Operational Change process. Either party may raise a Request For Operational Change (RFOC), which will be completed by the Supplier and submitted to the Authority’s Change Manager for approval. Where the change will impact the Charges or if either party believes that the change set out in the RFOC does not comply with the definition of Operational Change (above) then it will be handled through the Change Control Procedure.

The Operational Change process is closely tied to other relevant management processes (depending on the Service) such as Capacity Management, Configuration Management and Release Management as well as Incident and Problem Management. For reference, these management processes are defined in the ‘IT Infrastructure Library’ (ITIL) published by AXELOS Ltd, a joint venture between HM Cabinet Office and Capita Plc.

**Change in Law**

There may be occasions where changes in law (including statutory or regulatory changes) come into effect. The Supplier’s ability to adjust the contract Charges will depend on whether these changes would apply to the population in general, or could have been reasonably anticipated prior to contract signature.

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The Authority representative should have written delegated authority originating from the department’s Permanent Secretary. Without such written delegation any decisions accepting or rejecting change requests will be invalid.
Figure 3 below illustrates the decision tree to follow in order to determine the charging outcome for a Change in Law.

<table>
<thead>
<tr>
<th>Effect of a Change in Law</th>
</tr>
</thead>
<tbody>
<tr>
<td>Change in Law</td>
</tr>
<tr>
<td>General Change in Law</td>
</tr>
<tr>
<td>Specific Change in Law</td>
</tr>
<tr>
<td>No right to increase charges</td>
</tr>
<tr>
<td>Could reasonably foresee impact before Effective Date</td>
</tr>
<tr>
<td>Supplier must:</td>
</tr>
<tr>
<td>➢ Notify the Authority of effects of the change; and</td>
</tr>
<tr>
<td>➢ Provide evidence:</td>
</tr>
<tr>
<td>• that the Supplier has minimised any increase / maximised reduction in costs;</td>
</tr>
<tr>
<td>• As to how the change in law has affected cost; and</td>
</tr>
<tr>
<td>• Demonstrate expenditure required under clause 8 (Improvement) has been taken into consideration</td>
</tr>
<tr>
<td>Change to costs / services / Agreement made through Change Control Procedure</td>
</tr>
</tbody>
</table>

**Definitions:**

**General Change in Law** - a change in law where the change is of a general legislative nature (including taxation or duties of any sort affecting the Supplier) or which affects or relates to a Comparable Supply.

**Specific Change in Law** – a change in law that relates specifically to the business of the Authority and which would not affect a Comparable Supply.

**Comparable Supply** - the supply of services to another customer of the Supplier that are the same or similar to any of the Services.

**Figure 3: Charging decision tree for Change in Law**

**Optional Services**

Where Optional Services are required these shall be provided as per Clause 5.10 and will have been included in Schedule 2.1 & Schedule 2.2 along with prices in Schedule 7.1. In effect, Clauses 5.10 to 5.12 allow the Authority to request optional services which are additional to the core Services. (Note that the Optional Services must have been expressly included in the original OJEU Notice, and described and priced in the contract schedules). Whenever adding Optional Services, the parties should follow the Change Control Procedure.

Figure 4 below illustrates how the change control process works in general.
GOVERNANCE

Governance is the process by which the Authority and the Supplier oversee and regulate their relationship. Schedule 8.1 outlines the framework for how governance will work, including different types of governance Boards; Clause 11 signposts the detail in Schedule 8.1 and sets out each party’s obligations.

For the greatest majority of projects all aspects of the governance framework will be fully developed and set out when the contract is signed. The type of governance provisions required, and the level of detail will depend upon:

- The level of co-operation required between the Authority and the Supplier if the project is to be successful
- The term of the contract
- The level of innovation in the Services

*Unless:
- the operational changes impact on the Authority;
- require changes to the Agreement or have a direct impact on the services; or
- involve the Authority paying additional charges or costs

Figure 4: Change Control Procedure
The financial size and level of risk of the contract - the more that the Authority is paying for the project the more likely it is to require a close working relationship with the Supplier.

The business criticality of the services being provided.

The degree to which the governance arrangements need to be compatible with existing Authority governance structures and processes.

Good governance will include records and reporting requirements. Schedule 8.4 (Records Provisions) details the reports to be kept and their contents. These will need to be agreed between the parties but should include records setting out the history of the performance of the Contract (such as Milestone Achievement Certificates) and periodic reports that indicate the Supplier's performance (such as Management Information). The principles underlying this schedule should be to facilitate:

- Public accountability; transparency of Service provision
- Compliance by the Authority with its legal informational and reporting obligations including those under the Data Protection Act and the Freedom of Information Act and the requirements of the Public Records Office
- Compliance with the Authority’s policies (including, in particular, security policies)

Membership of the Boards should be such that different stakeholder viewpoints are adequately represented. For example, the main Project Board should be chaired by the SRO and include senior User and Technical representatives. Supplier representatives should have appropriate seniority and expertise to enable effective decision-making.

Figure 5 below illustrates a schematic of how the Governance Boards interrelate:
Inter-relationship between the different Governance Boards

The Programme Board shall:
1. optimise the value for money and operational benefit derived by the Authority and the commercial benefit derived by the Supplier;
2. receive and review reports from the Service Management Board and review reports on technology, service and other developments that offer potential for improving the benefit that either Party is receiving;
3. determine business strategy and provide guidance on policy matters;
4. authorise the commissioning and initiation of, and assess opportunities for, Optional Services; and
5. provide guidance and authorisation to the Change Management Board on relevant Changes.

The Change Management Board shall assess the impact and approve or reject all Change Requests. Changes which will have a significant impact on the Services shall be escalated to the Programme Board.

The Risk Management Board shall identify and manage risks relating to the performance of the Services. It shall also provide an assessment of risks associated with any change request, which will be considered by the Change Management Board.

The Service Management Board shall be responsible for the executive management of the Services.

The Technical Board shall be accountable to the Programme Board for oversight of the technology used in the Supplier Solution and ensuring that technological choices are made to maximise the long term value of the Supplier Solution as a business asset of the Authority.

Figure 5: Example of Governance Organisation

Disputes

The Dispute Resolution Procedure in Schedule 8.3 (illustrated below in Figure 6 below) provides for an escalation of measures to handle a disagreement, including commercial negotiations through a number of executive levels, mediation and then either arbitration or litigation.
Figure 6: Dispute Resolution Procedure

The parties are required first to seek to resolve the dispute through commercial negotiations at an executive level. If the dispute cannot be resolved through commercial negotiations, either party can choose to refer the dispute to mediation. Any decision to refer to mediation has to be notified to the other party within 30 working days of serving a Dispute Notice. After mediation, either party may refer the dispute to the courts. In some contracts, it may be more appropriate to refer the dispute to arbitration rather than to the courts. This may be the case if:

- The subject matter is sensitive, as arbitration is private
- The subject matter is complex and would benefit from being heard by an expert in a particular field
- The Supplier is located in a different jurisdiction, as it can be easier to enforce arbitration awards overseas.
Under all circumstances Authorities conducting a dispute should seek legal advice, and if the dispute involves a CCS Strategic Supplier\(^5\), should also consult the Crown Representative in the Cabinet Office.

Points to note:

- Do not serve a Dispute Notice without having obtained appropriate legal advice. Also seek legal advice if a Dispute Notice is served on the Authority by the Supplier.
- Remember that correspondence/communications may have to be disclosed to the other party. If in doubt as to what to say/not say, seek legal advice.
- Consideration will need to be given as to whether to refer the dispute to mediation if commercial negotiations are unsuccessful. Appropriate legal advice should be sought beforehand.
- If a quick dispute resolution is necessary, both parties can agree to adopt an Expedited Dispute Timetable. If the parties disagree on the need for an accelerated timetable, the Authority will have full discretion on whether to use the Expedited Dispute Timetable or not. This decision-making approach is intended to reduce delay in case of emergency.
- It may be that, if the services are to be delivered within Scotland, and the Supplier is based in Scotland, that the Authority considers altering the provisions of section 7 of Schedule 8.3 to allow for arbitration in Scotland. Where this is being contemplated, the Authority should make sure to consult with appropriate legal advisers, including the Cabinet Office legal team.

### 3.3 Key Negotiation Issues

Prior to contracting, the Authority may be involved with negotiation/setting service requirements or desired performance levels with a Supplier either as part of a Competitive Dialogue or Negotiated procedure or through clarification questions. While it is perfectly acceptable to modify requirements based on improved knowledge, the Authority should be careful only to accept modifications that continue to be acceptable and that will not compromise the outcome that is needed. The Authority may also want to influence the technical solution that the Supplier is presenting; however, as far as practicable, the Authority should beware of over specifying a solution as the risk boundaries become less clear, so should stick to output based requirements where possible.

\(^5\) See [https://www.gov.uk/government/publications/strategic-suppliers](https://www.gov.uk/government/publications/strategic-suppliers) for the most recent list of Strategic Suppliers to the Government.
During operation of the contract, the Authority may need to add or modify services. As part of its proposal for new or modified services, it is possible that a Supplier will attempt to seek relief on certain KPIs or PIs that it is having difficulty meeting. The Authority should not allow the Supplier to negotiate lower performance if that does not make sense for the business. Additionally, whenever a lower performance threshold is being negotiated, the Authority should always seek to extract value from it via an improvement in another area, lower Charges or additional services.

When going through Change Control, the Authority may receive an Impact Analysis that is less desirable than expected. The Authority is entitled to modify its requirements and/or negotiate until reaching an agreeable position – it is not necessary to accept the first proposal.

4 Paying for the Services and securing Value for Money (VfM)

4.1 Introduction
This guidance document explains the ‘toolkit’ of pricing mechanisms that are now available for use and supports HMG’s drive to ensure that maximum value is extracted from every commercial relationship. Government lets contracts under the laws that govern public contracting, with competitions designed to ensure that best value is obtained at the time the contract is let. Authority representatives should also ensure value for money is being obtained under the contractual arrangements throughout the lifetime of the contract. The following sections within the Model Contract and Schedules set out the elements that support this requirement:

Model Services Contract
Section C
● Charges and Invoicing (Clause 10)

Schedules to the Model Services Contract
● Schedule 7.1 (Charges and Invoicing)
● Schedule 7.2 (Payments on Termination)
● Schedule 7.3 (Benchmarking)
● Schedule 7.4 (Financial Distress)
● Schedule 7.5 (Financial Reports and Audit Rights)
● Schedule 7.6 (Anticipated Savings)

4.2 Guidance

PRICING

A simplified set of pricing mechanisms has been included within Schedule 7.1 (Charges and Invoicing). These are applicable for all costs incurred, Milestone and Delay Payments and Service
Charges. When pricing the new requirement the Authority team should consider which of the following mechanisms is most relevant for the requirement, choosing the most appropriate pricing mechanism linked to the various stages of the contract:

1.2 Time and Materials
2.2 Fixed or Firm
3.2 Volume based
4.2 Guaranteed Maximum Price with Target Cost (GMPTC)

**Time and Materials**
The ‘Time and Materials’ (T&M) pricing mechanism is where the Supplier charges for all of the hours of work performed and material purchased. This pricing mechanism is used where the full scope of the project is not fully understood, but should always be linked to milestones for payment. It is best practice to move away from T&M pricing when the project is fully defined or when moving to Operational/Service delivery. It is normally acceptable to be charged different rates for the varying levels of experience of the team being provided, so the Authority must be able to track and manage progress accurately. The Authority should involve its contract finance team who will be able to provide the correct set of models for suppliers to use. Material costs are normally agreed as the Supplier’s actual cost plus an agreed fee for their overhead cost associated with supplying them, i.e. ordering, handling and holding the material in stock.

**Fixed or Firm**
Normally used at the design and development stage of a contract, the ‘Fixed’ pricing mechanism means that charges will be subject to indexation. For contracts of long-term duration Authorities should specify, or request and agree, the elements of the contract that will be subject to indexation during the tendering exercise to ensure transparency from the outset. Indexation will be based on the published Consumer Price Index; the government’s official source (see Schedule 7.1, part C, paragraph 5) can be found on the Office for National Statistics website. (Note also the points at (a) and (b) in Clause 2 of Schedule 7.1 where service charges are calculated and pro-rated depending upon when the service commences within a given month).

Using the ‘Firm’ pricing mechanism means that charges will NOT be the subject of increase due to indexation. Firm prices should be agreed during the tender process for those specific areas of non-variability from Implementation through to Service Delivery.
Volume Based
The ‘Volume based’ pricing mechanism is used for calculating service charges against a volume banding structure. For example, where the IT being implemented supports a public service for call handling, it is normal to agree volume bands with a reducing unit cost as the volume increases. The unit cost is subject to indexation on an annual basis (see Schedule 7.1, paragraph 6).

Guaranteed Maximum Price with Target Cost (GMPTC)
Using the GMPTC pricing mechanism allows the contracting Authority to incentivise the Supplier to contain the budget, and incentivises the Authority to keep the Supplier’s costs down. This type of pricing mechanism is typically introduced at the design and development phase of the contract where output requirements are known but the journey to achievement is not clearly defined. This pricing mechanism allows for sharing of savings between the Supplier and the Authority where the incurred costs are lower than the target cost for that milestone. (Note: in instances where the incurred costs are greater than the target cost, these ‘overspends’ are also shared between the Supplier and the Authority). Therefore, when pricing the contract, the Authority should ensure that all costs are assessed for realism and accuracy, for each relevant milestone activity, and that these costs are agreed during the tender phase. The use of Open Book Contract Management drives greater transparency of costs (see Schedule 7.5, Part A, paragraph 2) by stating at the outset the provisions to be included. The definition of Open Book Data provides a greater explanation.

GMPTC includes a percentage fee over and above the standard 100% payable in order to cover areas such as profit and risk etc. This ‘fee’ is expressed as a percentage (see the definition within Schedule 7.1).

The Guaranteed Maximum Price with Target Costing is described in Figure 7 below.
VALUE FOR MONEY

It is important to secure value for money to ensure the best result for the least outlay over the period of performance of the contract. It is not about minimising price to the detriment of the Supplier, which often leads to a failed service, which in the end may cost much more to the Contracting Authority in terms of time and value; it is instead about establishing a whole life cost which is fair and reasonable.

Within Schedule 7.5, the Contracting Authority sets out its objectives for Financial Transparency. This will include the need for the Supplier to cooperate with the Authority to understand the
payment breakdown, which will include an analysis of the costs, overhead recoveries (where applicable), the resources allocated to provide the service and the agreed profit margin.

**Supplier Profit**

The Supplier’s forecast profit margin will be set out in the Contract Inception Report, which is the initial Financial Model provided by the Supplier. At the end of each contract year, and for any contract amendment, the Supplier is required to issue an Annual Contract/Contract Amendment Report. This report will contain the Supplier’s Achieved Profit Margin. Paragraph 2, part B of Schedule 7.5 describes the process for approving or rejecting this report.

The Maximum Permitted Profit Margin is set as the Anticipated Contract Life Profit Margin plus 5%. The Supplier’s forecast Profit Margin is recorded in the Contract Inception Report/Financial Model. This is the baseline from which the build up to Maximum Profit is derived. Where the Annual Contract Report identifies that the Supplier has exceeded the Maximum Permitted Profit, there is a mechanism for the Supplier to undertake an adjustment to the charges. This will ensure that for the next Annual Contract Report, and over the life of the Contract, the Supplier will not exceed the Maximum Permitted Profit (see part D, Schedule 7.1).

Figure 8 below illustrates the process:
PAYMENT

The payment model, including accompanying milestone payments, should be agreed so as to minimise the cost to the Supplier of financing the project. If this is left unchecked the financing costs are likely to be passed on to the Authority. Where finance charges have been included by the Supplier, the Authority should ensure that the Supplier submits the detail within their Financial Model for approval when agreeing milestone payments.

Although trying to minimise finance charges, milestone payments should only be made when the Authority are in receipt of something of demonstrable business value and following the successful completion of relevant pre-agreed tests. In this context, ‘business value’ means something that the Authority would be able to gain benefit from in the event of the contract being terminated the day...
following the milestone. As far as possible, milestone payments should be defined to recognise progress towards the delivery of services.

Any single milestone payment should be, at a maximum, the input costs as set out in the Financial Model. The most significant payment milestone is likely to be that associated with the ‘Authority to Proceed’ – authorisation given by the Authority that the tests demonstrating readiness for service delivery have been successfully completed. There may be separate ‘Authority to Proceed’ for each discrete element of service, especially if individually these elements have distinct implementation programmes and/or provide meaningful service value or capability to Authority. Further information on the acceptance procedure associated with milestone achievements and payments is available in Section 2.2.

VOLUNTARY TERMINATION PAYMENTS

There is now a standard, robust position on breakage costs for voluntary termination:

- Payments will be determined using open book and the financial reports
- The Authority may request an estimate of these costs prior to exercising the Authority right to terminate
- Where appropriate, costs are capped at the higher of an amount agreed at contract signature or 120% of the Supplier’s pre-termination estimate
- Drafting has been enhanced to produce a list of allowable costs within each category

FINANCIAL MODELLING & REPORTING

The objective of financial modelling is to provide the Authority with full transparency of the costs associated with the required service. Financial modelling commences at the tender stage and continues through to the end of the contract. Inputs to the model are derived from the Supplier’s offer and this sets the baseline for the Contract Inception Report. The Authority and the preferred Supplier will work towards the final iteration on or before the Effective Date of the contract. This initial report will feed the financial report for Business Case approval and becomes the baseline to all further amendments. Figure 9 below shows the evolution process for the Financial Model.
Paragraph 1.2 of Schedule 7.5 describes the requirement for suppliers to provide Financial Reports using the software package, layout and format of the blank templates issued by the Authority prior to contract signature. The Authority’s finance team will provide an appropriate set for its requirements, but the sample template at Annex 1 provides an indication. It is preferable for the Authority to manage the creation of the reports so that tender returns are consistent and capable of being assessed in a like manner. The Authority should also ensure that the model is supported by instructions to complete and an explanation of its workings.

Figure 9: Evolution of the Financial Model
Open Book
Cost transparency throughout the delivery of the contract can be achieved via contract management using the ‘Open Book’ provisions. The need for open book on Supplier costs is especially important when using the GMPTC pricing mechanism. An Open Book Contract management approach will also provide the necessary detail to facilitate discussions on potential efficiency savings between the Authority and the Supplier to maximise value for money. In supporting the Authority’s aim to be better informed on the build-up of the supplier costs there is a strict requirement for suppliers to provide a complete and accurate report of their financial and non-financial information. This should be sufficiently clear to enable the Authority to verify the charges paid/payable and the charges forecast to be paid during the life of the contract. A comprehensive definition of Open Book Data can be found within paragraph 1 of Schedule 7.5.

Audit Rights
An audit can be undertaken for any reason (see paragraph 1, part C of Schedule 7.5.). When assessing the financial health of the project an open book audit is appropriate. It is the means through which the Authority itself, or by use of its appointed audit agents, audits the Supplier’s financial and non-financial records in order to verify the integrity and content of any Financial Report and to verify the costs.

4.3 Key Negotiation Issues
Payment mechanisms, milestones and financial models can be subject to negotiation in a Competitive Dialogue process. The Authority should therefore use the competitive tension to gain best value for money. Also, bear in mind that the Authority can set terms that are non-negotiable, so if the Authority has a preferred payment mechanism the Authority may stipulate this in the contract and inform Suppliers that it is non-negotiable.

Negotiations on costs/prices may also take place when the Change Control Process is triggered (see Section 3.2). Open book processes and/or the Financial Model should be used to assure value. Failing that, benchmarks or market analysis may be used to establish fair pricing.
5 Ending the Contract

5.1 Introduction

The key objective is to ensure that the provision of all or part of the Services moves from the incumbent Supplier either back to the Authority or to one or more replacement service providers with the minimum disruption possible on exit. Although the phrase ‘exit’ may convey what needs to be done towards the end of the contract, the Contracting Authority will need to consider the issues involved during any particular break of the commercial relationship. Consideration should also be given to how the exit is to be undertaken when the total requirement has not been satisfied. A range of different events can lead to early termination of the contract. Accordingly, the following termination events need to be borne in mind in designing the Authority exit provisions:

- Pre-contract award
- Following a VfM review
- Unacceptably poor service / performance
- Breach of a fundamental contract condition such as security, corrupt practices, etc.
- Frustration
- Bankruptcy
- Change of Requirement
- Change of Contractor’s Core Business
- Expiry of the contract period

The following sections within the Model Contract and Schedules set out the elements that support this requirement:

**Model Services Contract**

Section I

-Termination Rights (Clause 33)
- Consequences of Expiry or Termination (Clause 34)

**Schedules to the Model Services Contract**

- Schedule 8.5 (Exit Management)

5.2 Guidance

From the outset of any procurement it is essential that the provisions for exit are included, and that the contract sets out a clear Exit Plan. The Exit Plan will be developed within the first 3 months and
updated annually by the Supplier (see Schedule 8.5, paragraph 4). The Exit Plan (and its subsequent revisions) should be approved by the Authority, and so the Supplier should set up procedures and allow time to do this.

The Exit Plan accommodates Ordinary and Emergency Exit, which are essentially different points and speeds for exit. The Exit Plan must be finalised before it can be implemented (i.e. in the event of actual termination/expiry of the contract). This must be done within 20 working days of the serving a Termination Notice, or six months prior to the expiry of the contract. Until the final form of the plan is agreed, the Supplier must provide the Termination Services (see below).

In addition to an Exit Plan, the Authority should have in place its own exit strategy that documents the ways in which alternative support could be invoked in the event that a contract is terminated early for any reason. It will contain procurement options and set out the safeguards required within a contract to allow the alternative solution to be effected with least difficulty. Typically it will review and select relevant tools and contract conditions that can be used to ensure continuity of support. The exit strategy should be initiated in parallel with and be incorporated within the procurement strategy. It will evolve as the procurement process progresses.

The exit strategy should address the following high-level issues:

- Identifying assets - how will the parties determine what assets are to be transferred on exit
- Managing assets - how will assets (whether people, contracts, physical assets or intangibles such as IPR) be managed during the life of the contract
- Valuation - how will the parties determine the price to be paid for any assets on exit and the price to be paid for any transitional services
- Allocation of risk - what exposure each party should accept on the transfer of assets (e.g. through warranties about the condition of assets transferred)
- Transfer - how will the will assets be transferred or otherwise made available to the Authority or the replacement Supplier on exit
- Support - what extra transitional arrangements does the Authority require to ensure a smooth hand-over

**TREATMENT OF ASSETS**

There may be a variety of assets that need to be transferred to, or accessed by, the Authority or a replacement Supplier on exit. These could include: hardware, software, intellectual property rights, third party supply contracts and licences, other physical items of equipment, Government or similar licences or authorisations and data. It is often difficult or impossible to identify these in detail at the
time when the contract is being negotiated. The key is to establish the process for identifying the assets at the relevant time, anticipating how they will need to be transferred, any likely constraints on doing so and determining how they are to be valued.

To ensure that this works smoothly in practice, Schedule 8.5 requires the Supplier to create and maintain a register of all Assets that are required to deliver the services, to include details of their ownership and status as either Exclusive or Non Exclusive Assets. Additionally, the Supplier must create and maintain a register of all subcontracts required for the performance of the services. The Authority should review these registers with the Supplier on a regular basis to ensure that they contain all the necessary information.

Schedule 8.5 also deals with the right for any sub-contracts or other agreements with third parties to be assigned or novated to the Authority and/or a replacement Supplier and the appointment by each party of an Exit Manager. The third party contracts that may be transferred will normally only be those that relate exclusively to the Authority rather than shared contracts.

Once notified of termination, the Supplier cannot vary or cancel any contracts, nor dispose of any of the Assets and must provide up-to-date asset and sub-contract registers. Within 20 working days from receipt of the registers, the Authority must notify the Supplier of the assets and contracts the Authority requires (defined as Transferring Assets, Transferring Contracts). The Authority has to purchase the Transferring Assets from the Supplier, except where the cost of them is included in a Termination Payment, or has been paid either in full or in part through the Charges. In practice it will often be the case that the Authority will have paid for the assets through the Milestone Payments and the on-going Charges. Transferring Assets are defined only to include Exclusive Assets. For Non-Exclusive Assets the Authority should not expect to receive title on expiry of the contract. However, it may be appropriate to negotiate a requirement that the Supplier provides interim services using Non-Exclusive Assets until such time as the Authority or an alternative Supplier can replace the functionality provided by the Non-Exclusive Assets.

The Authority should consider whether the assets will have any significant economic value either at the expiry of the contract or when they are replaced through a technology refreshment programme. The relevant questions are:

- Is it likely that the equipment will be obsolete by the end of the contract (since IT equipment is likely to be obsolete before it wears out physically)?
- If not, do the assets have any economic value to a party other than the Authority? In most cases IT assets do not have significant residual value and this supports the approach that, in the absence of special circumstances, assets should be fully paid for through the Charges.
(with the bulk of the cost being paid through Milestone Payments) and then owned by the Authority at the end of the contract.

The Supplier must provide an on-going perpetual licence for both the Authority and the replacement Supplier to use any Assets requested or, if this is not possible, it must procure a suitable alternative. This latter option is more likely to apply for any Non Exclusive Assets that the Authority requires. This should be borne in mind when requesting these since the Authority, or the Authority’s replacement supplier, must bear the costs of procuring the suitable alternative. In some cases for example, it may be better value to seek new alternatives as part of the re-competition.

PAYMENT FOR RETAINED DELIVERABLES ON EARLY TERMINATION

The contract provides for the scenario where an early termination occurs for a Supplier Termination Event, one or more CPP Milestones have not been achieved, and the Authority wishes to retain deliverables which do not/will not meet their original specification. In such case, the Supplier will be required to repay the Authority part of the Milestones Payments which it received. This refund is called the Milestone Adjustment Payment Amount.

Figure 10 below summarises how the Milestone Adjustment Payment Amount is calculated:
SUPPLIER PERSONNEL

The Supplier’s staff who perform the services are also an ‘asset’ and will inherit rights under UK legislation. Paragraph 7 of Schedule 8.5 sets out some general obligations for the Supplier once an exit notice has been served. It also refers to the more detailed obligations in Schedule 9.1, which relate to the application of “TUPE”, and provide for all of the relevant indemnities or assurances. In general, the Supplier must not do anything either expressly or implicitly which dissuades or discourages its employees from transferring their employment and is not allowed, for a period of 12 months, to re-employ or ‘entice back’ any staff that have transferred.

ASSISTANCE ON RE-TENDERING THE SERVICES

Towards the end of the term of the Agreement the Authority will typically consider whether to do one, or a combination of, the following:
● Continue to source the Services from the incumbent Supplier on the same or renegotiated terms (contract extension, but only where the original contract and Cabinet Office Controls allow)
● Cease to require the Services (e.g. due to organisational or political change)
● Choose a replacement Supplier (re-procurement)
● Bring the provision of the services back in-house

In all but the first two of the above options the Authority must be able to obtain from the Supplier, and to give to any potential replacement Supplier, certain information and know-how relating to the current Service. For example, the Authority may want to refer to the current service description, performance against Service Levels or even pricing in its discussions with prospective bidders for a replacement contract. The Supplier’s obligations to assist are set out in Paragraph 3 of Schedule 8.5. The Authority should bear in mind that the level of co-operation given in practice by the Supplier is likely to depend on the reasons for termination of the contract.

**TERMINATION SERVICES**

The scope of the Termination Services is set out in Annex 1 of Schedule 8.5. Paragraph 5 of this Schedule deals with the Authority notifying the Supplier of when from and which Termination Services it requires, how long the Termination Assistance Period will last, and compliance by the Supplier with its obligations under the Exit Plan. Key Points are as follows:

● The Authority must give notice to the Supplier of its requirements through a Termination Assistance Notice at least four months prior to the date of termination or expiry and not later than one month following a Termination Notice being served by either party
● The Termination Services cannot continue for longer than 24 months after the Supplier ceases to provide the Services
● The Supplier must continue during the Termination Assistance Period to provide the Services (as well as the Termination Services)
● The Supplier must provide reasonable assistance as requested to allow the orderly transfer of the services and to avoid disruption to service continuity following termination
● The Supplier’s termination obligations include the return of the Authority’s data and deletion of data from storage and media devices, vacation of its premises, return of copies of Authority Software and other materials in which IPR is owned by the Authority
EXIT CHARGES & APPORTIONMENT

To avoid dispute, it is essential to be clear about which party pays the costs of exit. Paragraph 8 of Schedule 8.5 makes it clear that Charges are payable to the Supplier for the provision of the Termination Services as set out in the Exit Plan. Unless otherwise agreed, no charges are payable for the preparation and implementation of the Exit Plan, or for other activities mutually agreed, which continue beyond the Termination Assistance Period.

Paragraph 9 provides for any costs and expenses (e.g. rents, periodic payments etc.) for Transferring Assets to be apportioned between the parties in line with the date that the transfer has taken place. Effectively, the annual cost is divided by 365 and a daily cost used to calculate the amounts due, if any.

5.3 Key Negotiation Issues

While the contract anticipates agreeing the Exit Plan within the first 3 months, the Authority may seek to include a request for a draft Exit Plan and/or include requirements defined within its exit strategy during the procurement process. This will help the Authority to evaluate the full life costs associated with the services for inclusion in its business case.
6 Other Operational Clauses

6.1 Introduction

The contract also contains other operational clauses designed to clarify key roles/responsibilities, protect staff, protect the Authority commercial interests and protect the assets; all fall into the broad categories of:

- Supplier Personnel
- Data & Confidentiality, including Intellectual Property Rights (IPR)
- Software Escrow Arrangements
- Liabilities & Insurance

This section will provide guidance on each of the above categories. The following sections within the Model Contract and Schedules set out the elements that support this guidance:

Model Services Contract

Section E

- *Key Personnel* (Clause 14.3 to 14.6)
- *Employment Indemnity* (Clause 14.7)
- *Staff Transfer* (Clause 14.9)
- *Appointment of Sub-Contractors* (Clause 15.1 to 15.5)
- *Appointment of Key Sub-Contractors* (Clause 15.6 to 15.9)
- *Supply Chain Protection* (Clause 15.10 to 15.12)

Section F

- *Licenses Granted by the Supplier* (Clause 17)
- *Licenses Granted by the Authority* (Clause 18)

Section G

- *Limitations on Liability* (Clause 25)

Schedules to the Model Services Contract

- Schedule 2.5 (*Insurance Requirements*)
- Schedule 4.3 (*Notified Key Sub-Contractors*)
- Schedule 5 (*Software*)
- Schedule 9.2 (*Key Personnel*)
6.2 Guidance
SUPPLIER PERSONNEL

The Supplier has the obligation to ensure that appropriate companies and individuals are responsible for delivery of the services procured. The Authority also needs the right to veto the appointment of those that the Authority reasonably feels are inappropriate for the delivery of the services. Additionally, those who the Supplier sub-contracts to execute or deliver elements of the goods or services must have similar obligations to the ones imposed upon the Supplier itself.

For the sake of clarity, and to avoid confusion at later stages, key personnel on both sides must be identified. Schedule 9.2 lists the key roles, names with relevant responsibilities and anticipated durations set out in tabular form. Key Personnel will be those employees of the Supplier who are important or valuable to the contract because they hold a pivotal role. Changes to such personnel, particularly at certain critical points in the contract, will have a disproportionate effect on its success, so any changes to individuals listed should be reflected in an updated table. Both parties must be notified if any names on the list need to change. However, the Supplier shall only be able to make these changes if:

- Requested to do so by the Authority
- The person concerned resigns, retires, dies or is on maternity or long-term sick leave
- The person’s employment or contractual arrangement with the Supplier or a Sub-contractor is terminated for material breach of contract by the employee
- The Supplier obtains the Authority’s prior written consent (such consent not to be unreasonably withheld or delayed)

Clauses 14.3 to 14.6 set out the requirements on the Supplier to inform the Authority of changes, ensure that key posts are not vacant for any significant period and any leave or absence is appropriately covered.

Staff Transfers
The Model Contract wording assumes that the Authority is procuring a new service with the provisions contained in Clause 14.9 and Schedule 9.1; these anticipate the Employment Regulations applying on expiry or early termination (see guidance above in Section 5.2). If the Authority is transferring an existing service to the Supplier, or the Supplier is replacing an existing Supplier to whom the Authority had outsourced the Services previously, then the Employment Regulations will apply on commencement, so this clause and Schedule 9.1 should be modified accordingly. The Schedule will then need to set out the respective obligations of the parties to any transferring employees. This will need to ensure that the Authority complies with the Cabinet Office Statement.
Pensions Annex to Part A of Schedule 9.1
The pension provisions accommodate transferring staff that are in the principal civil service pension scheme prior to transfer. Different provisions will be required if transferring staff belong in other public sector schemes e.g. local government pension scheme. Pension provisions reflect new Fair Deal arrangements. The default position under a new Fair Deal is that the Supplier will seek admission to the principal civil service pension scheme. These provisions may need to change in line with any changes to Fair Deal policy or changes to Principal Civil Service Pensions Scheme (PCSPS) scheme rules. Again, the Authority should seek appropriate legal advice for drafting.

Sub-Contractors
Clauses 15.1 to 15.5 set out the Supplier’s obligations in relation to the sub-contracts, along with requirements to inform the Authority of the arrangements and provide a copy of any sub-contract if requested. The Authority has ten working days in which to reasonably object to any of the proposed sub-contractors. If any reasonable objections are raised, then the Supplier will have to find an alternative. The Authority may only object on the grounds listed in Clause 15.4.

The obligations in relation to key sub-contractors, who should be listed in Schedule 4.3, are set out in Clauses 15.6 to 15.9. Requirements of, and obligations on, the key sub-contractors are intentionally equally demanding as they are on the Supplier since key sub-contractors are delivering critical services for the Authority. Therefore, unless the Supplier has written consent from the Authority, key sub-contracts will include:

- a provision enabling the Authority to enforce the Key Sub-contract as if the Authority were the Supplier
- a provision enabling the Supplier to assign, novate or otherwise transfer any of its rights and/or obligations under the Key Sub-contract to the Authority
- obligations on:
  - Data protection

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6 Future versions of the Model Services Contract and Schedules may include revisions to reflect the staff transfer law prevailing at the time of issuance. The Contracting Authority should, in any case, ensure that it is suitably advised as to the next relevant changes in law and regulation.
Freedom of Information
Not embarrassing the Authority or otherwise bringing the Authority into disrepute
Keeping records for services provided – including Open Book Data
Complying with audit requirements
• provisions on termination that are no less severe than those imposed on the Supplier by the Authority
• a provision that Clause 29 and Clause 30 relating to Remedial Advisor and Step-in-Rights apply
• a requirement that the key sub-contractor must also seek the written consent from the Authority if it wishes to sub-contract all or any part of the services it has been contracted to supply
• an obligation to co-operate with the Supplier and the Authority in order to give full effect to the provisions of Schedule 7.4

It is also advisable to request an audit of the Key Sub-contractors at the start of the term of the Contract and to request a further audit 18-24 months into the Contract term.

Prompt Payment
Clauses 15.10 to 15.12 require the Supplier to flow down prompt payments terms to all sub-contracts, so paying any undisputed invoices to their sub-contractors within 30 days of receipt. The balanced scorecard produced by the Supplier should include a report on their record of payment within the 30-day period. Where Suppliers have breached this condition, the Authority has the right to publish the details of the late or missed payment, including on government websites and in the press. These provisions were included in anticipation of the Public Contract Regulations 2015.⁷

Employment Indemnity
Where Supplier personnel will work alongside the Authority’s employees, whether at the Supplier’s or the Authority’s premises, there is a possibility that any acts or omissions of the supplier or its employees could give rise to claims against the Authority and vice versa. Clause 14.7 is intended to ensure that responsibility for resolving such claims remains with the party who has responsibility for the staff who caused the claim. It is not intended to cover issues arising out of a transfer under the TUPE regulations, as these are dealt with in Clause 14.9 and Schedule 9.1 covered above.

⁷ Future versions of the Model Services Contracts and Schedules may include revisions in this area where required by these Regulations as finally implemented.
INTELLECTUAL PROPERTY RIGHTS and DATA & CONFIDENTIALITY

In every contract relating to the provision of goods or services where intellectual property rights (IPR) exist, the parties should look carefully at the issue of ownership and licensing of IPR in the items that are to be delivered under the contract. The overarching policy is to achieve value for money for the government. The guiding principle is that in each case the IPR should be owned by the party best able to manage and exploit them.

While the provisions around the disposition of IPR have been carefully drafted to represent a fair commercial position, exceptionally there may be some suppliers (e.g. those who have substantial investment in patents and their own COTS packages) with whom discussions on these provisions may be necessary. Suitable specialist legal advice should be taken in these circumstances.

Unless otherwise provided for in the contract, the IPR will vest in and remain the property of its recognised owner. In the Model Contract there is a distinction between existing IPR brought to the contract (referred to as ‘Background IPR’), and IPR generated under the contract (often referred to as ‘Foreground IPR’). The Foreground IPR in the contract is the Specially Written Software and the Project Specific IPR (see definitions below).

Ownership of IPR carries responsibility for its protection and the potential liabilities should there be a claim from a third party that the IPR infringes their own IPR. These responsibilities can have significant cost and risk implications. Exploitation of IPR, for example the charging and collection of associated ‘royalty’ payments, requires commercial skill and resource. Government departments often do not have this, nor is the commercial exploitation of IPR usually part of their core business.

Clause 17 specifically covers the IPR. The different categories of IPR are:

**Supplier Software:** owned by the Supplier and defined as:

- Software which is proprietary to the Supplier (or an Affiliate of the Supplier), including software which is or will be used by the Supplier for the purposes of providing the Services including the software specified as such in Schedule 5

**Supplier’s Background IPR:** owned by the Supplier and defined as:

- IPR owned by the Supplier before the Effective Date, for example those subsisting in the Supplier’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier’s know-how or generic business methodologies, and/or

- IPR created by the Supplier independently of the contract, but excluding IPR owned by the Supplier subsisting in the Supplier Software
Third Party Software: owned by the relevant third party and defined as:

- Software which is proprietary to any third party (other than an Affiliate of the Supplier) or any Open Source Software which is or will be used by the Supplier for the purposes of providing the Services, including the software specified as such in Schedule 5

Third Party IPR: owned by the relevant third party and defined as:

- IPR owned by a third party but excluding IPR owned by the third party subsisting in any Third Party Software

Specially Written Software: owned by the Supplier and defined as:

- Any software (including database software, linking instructions, test scripts, compilation instructions and test instructions) created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the contract

Project Specific IPR: owned by the Supplier and defined as:

- IPR in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of the contract and updates and amendments of these items including, but not limited to, database schema
- IPR arising as a result of the performance of the Supplier’s obligations under the contract, but which shall not include the Supplier’s Background IPR or the Specially Written Software

Authority Software: owned by the Authority and defined as:

- Software which is owned by or licensed to the Authority, other than under the contract, and which is or will be used by the Supplier for the purposes of providing the Services

Authority Background IPR: owned by the Authority and defined as:

- IPR owned by the Authority before the Effective Date, including IPR contained in the Authority's know-how, documentation, processes and procedures
- IPR created by the Authority independently of the contract, and/or
- Crown Copyright which is not available to the Supplier otherwise than under this Contract, but excluding IPR owned by the Authority subsisting in the Authority Software

Authority Data: owned by the Authority and defined as:
- the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - supplied to the Supplier by or on behalf of the Authority
  - which the Supplier is required to generate, process, store or transmit pursuant to this Contract, or
- any Personal Data for which the Authority is the Data Controller

Table 3 below shows how the Model Contract provides for each type of IPR:

<table>
<thead>
<tr>
<th>Type of IPR</th>
<th>Treatment</th>
<th>Clause Ref</th>
<th>Other Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplier Software &amp; Supplier’s Background IPR</td>
<td>Supplier licences to the Authority on a perpetual royalty free and non-exclusive basis.</td>
<td>17.3</td>
<td>Supplier has right to terminate if Authority commits material breach not remedied within 20 working days; Refer to Clauses 18.4 and 18.5 The Authority has limited rights to sub-licence these rights under Clause 18.7</td>
</tr>
<tr>
<td>Specially Written Software</td>
<td>Ownership of the IPR resides with the Crown, except for those pre-existing components where IPR resides elsewhere. Supplier required to deliver the source and object code and to provide updates / new releases.</td>
<td>17.1 (a)</td>
<td>The intention is to publish these as open source in order to encourage the widest possible scope for innovation and further development.</td>
</tr>
</tbody>
</table>
### Table 3: Summary IPR Treatment

<table>
<thead>
<tr>
<th>Type of IPR</th>
<th>Treatment</th>
<th>Clause Ref</th>
<th>Other Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Specific IPR</td>
<td>Treated in the same way as Specially Written Software.</td>
<td>17.1 (b)</td>
<td></td>
</tr>
<tr>
<td>Third Party Software</td>
<td>Supplier ‘procures’ a grant of direct licence from the owner of the software to the Authority, either under terms equivalent to Clause 17.3 or under the normal commercial terms (for COTS software).</td>
<td>17.11 and 17.12</td>
<td>If equivalent terms to Clause 17.3 cannot be procured, then the Authority may decide to accept the terms offered, or require the supplier to use an alternative software provider. The Authority will need to be realistic about the terms on which it will be able to obtain Third Party Software. The normal expectation is that for COTS software, the standard licence terms for the product will apply.</td>
</tr>
<tr>
<td>Authority Software, Authority Background</td>
<td>Authority licences to the supplier (during the Term of the contract only) on a royalty free, non-exclusive and non-transferable basis.</td>
<td>18.1</td>
<td>The supplier can sub-licence only if a confidentiality undertaking is signed by the subcontractor, and use is restricted to the purpose/benefit of the Authority – refer to Clause 18.1 a) and b).</td>
</tr>
<tr>
<td>IPR &amp; Authority Data</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Government now wishes to be responsible for the provision of Specially Written Software on an Open Source basis (see below). This is now the default position in the Model Services Contract. Therefore IPR ownership in such software will reside in the Crown, and in most cases the software will be published as open source. In some cases, such as for specific exploitation or security reasons, the software will not be published as open source.
Assignment & Novation

The Authority has the right under Clauses 17.8 to 17.10 to assign or novate the Authority usage rights in any of the Software or IPR (except Third Party COTS software, for which the vendor’s standard terms relating to assignment and novation will apply). This right is designed to cover situations such as those where the Authority has a change of legal status, or where the Authority’s functions are transferred to or taken over by another department, or by a private sector body (for example following a privatisation or outsourcing).

Open Source Software

Open Source Software is computer software with its source code made available subject to an open-source licence under which the copyright holder/ IPR owner provides free of charge the rights to use, study, change and distribute the software to anyone and for any purpose.\(^8\)

SOFTWARE ESCROW ARRANGEMENTS

Although the Model Contract does not specifically contemplate Software Escrow, it does not preclude Escrow Services either. Indeed, there may be certain scenarios where placing source or object code into Escrow is highly desirable. Ensuring access to the source code and associated materials is essential to ensure the ability to support, modify or upgrade software in the event that the licensor (most commonly the Supplier) is no longer in a position to provide these services. Understandably though, Suppliers are extremely reluctant to release source code except where the code relates to software which they have agreed to assign.

If IPR in Specially Written Software is to be retained by the Supplier (or a sub-contractor), the Authority should provide for the source code to such software to be placed with an independent third party Escrow Agent to be released only on certain trigger events (Release Events). Examples of Release Events are the bankruptcy or liquidation of the owner of the software, or the owner’s failure to meet contractual obligations to develop or maintain the software.

The Escrow Agreement should state how frequently the Supplier should place updated copies of source code with the Escrow Agent to ensure that an up-to-date version is available where on-going development occurs, as is normal. The Escrow Agreement should also set out the level of validation services that the Escrow Agent shall undertake to verify the quality and integrity of the deposited code, and which party should pay the costs of the Escrow Agent’s services. The Escrow Agreement

\(^8\) Guidance will be issued on this subject alongside future versions of the Model Contract and Schedules
should define version control and provide a framework for the Supplier to adhere to with regards to version release and EOL.

Table 4 below contains a Software Escrow Decision matrix that provides guidance on the suitability of different software types for Escrow. In the event of a ‘yes’ decision to place object or source code in Escrow then the guidance contained within the G-Cloud operating framework should be followed and a suitable vendor selected from the preferred list.

<table>
<thead>
<tr>
<th>NO</th>
<th>MAYBE</th>
<th>YES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercially available Off The Shelf (COTS) applications that are substantially non-customisable e.g. Microsoft Word</td>
<td>Non-COTS Source code / scripts / add-ins developed by third party that operate as a plug-in to a proprietary product e.g. an Excel macro developed for specific portfolio management functions</td>
<td>Proprietary software procured by a third party that is under financial stress with a significant risk of failure.</td>
</tr>
<tr>
<td>Proprietary End User operating systems e.g. Microsoft Windows, OSX</td>
<td>Bespoke applications written and/or developed at government direction to a defined specification</td>
<td></td>
</tr>
<tr>
<td>Customisations to Open Source code written by a third party to government specification.</td>
<td>Specially Written Software written under Authority direction where Authority is the best positioned party to gain value from the IPR</td>
<td></td>
</tr>
<tr>
<td>Supplier Software</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Third Party Software</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Table 4: Escrow Decision Matrix*

Where it has been agreed that IPR in Specially Written Software is to be assigned to the Authority, the Authority should ensure that the Supplier delivers the source code of that software directly to the Authority.

**LIABILITIES & INSURANCE**

The optimum allocation of risk and liability between the Authority and the Supplier is fundamental to any procurement and contracting process, so that risks and liabilities are placed where they can
be most effectively understood, managed and controlled. Once the contract is agreed, each party will be liable to the other for any failure to comply with its obligations. The extent of these liabilities can be a matter for dispute and legal argument in the event that either party makes a claim. In practice most contract failures or breaches are resolved through negotiation between the parties, or through more formal dispute resolution measures. It is only where this is not the case, and the parties become involved in legal action, that the principle of liability will apply. Of course, the possibility of litigation is always in the Authority’s mind during negotiations, so the financial limits contained in the contract are important so that both parties can clearly understand the financial risks they are taking on. Historically, the agreement of these limits has tended to be time consuming and a distraction.

Commercial organisations should only be expected to take on levels of liability that are reasonable and proportionate to the risks and potential financial returns of the contract. Setting liabilities that are disproportionate to the relevant risks and rewards of the contract will encourage excessive risk-taking, overly favour bidders with larger balance sheets and eventually reduce value for money. However, even with liability proportionate to the contract returns, the potential claims might cause financial failure for the Supplier.

Using insurance mitigates the issue of claims causing financial failure and provides the Authority certainty that at least the insurable risks are covered by the Supplier’s insurer. The Model Contract therefore enforces this risk transfer by (i) stipulating ‘Required Insurances’ against claims which may be incurred by the Supplier and (ii) prescribing how during the term of the contract the insurance policy mechanism will operate, including the insurance claims procedures.

**Liabilities**

The contract establishes a standard position on exclusions and limitation of liability which the Authority should use in most circumstances. If special circumstances apply, the Authority should seek legal advice before making changes.

Liability provisions can be found in Clause 25 of the Model Contract, supplemented by Schedule 7.1 (Charges and Invoicing), Schedule 7.2 (Payments on Termination) and Schedule 9.1 (Staff Transfer).
Liability provisions are not subject to Conditions Precedent. They are enforceable on contract signature (i.e. before the Effective Date) and survive the termination (or expiry) of the contract.

There is no longer any need to agree financial limits for insertion into the clause, nor are there square bracketed options which need to be resolved. Clause 25.1 sets out the circumstances in which the parties are not able to limit their liability by law. Clauses 25.2 to 25.8 cover the caps described in the table above. These clauses also deal with general exclusions for indirect, special or consequential loss and certain specified types of loss, usually seen as consequential losses that the Authority may recover. Deductions (e.g. Service Credits, Delay Deductions) are excluded from the calculation of the limits applicable to the Supplier’s liability, so the supplier cannot claim a reduced financial limit because it has paid or is due to pay Deductions under the contract. Note that all parties are required to use reasonable endeavours to mitigate their losses against any liability claim.

Both parties’ unlimited liabilities include:

a) death or personal injury caused by a party’s negligence, or that of its employees, agents or Sub-contractors (as applicable)
b) fraud or fraudulent misrepresentation by it or its employees
c) breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (i.e. the seller must have full title to the goods which should be sold free of encumbrance)
d) any liability to the extent it cannot be limited or excluded by Law

The Supplier’s unlimited liabilities include:

• indemnities in relation to VAT (Clause 10.5)
e) Employment Indemnity (Clause 14.7)
f) Income Tax and National Insurance Contributions (Clause 14.8)
g) IPRs Indemnity (Clause 19)
h) Staff Transfer (Schedule 9.1 and its Annexes)

The Authority’s unlimited liabilities include:

i) Employment Indemnity (Clause 14.7)
j) Staff Transfer (Schedule 9.1 and its Annexes)

Table 5 below sets out the Supplier’s capped liabilities.
<table>
<thead>
<tr>
<th>Event/Indemnity/Compensation</th>
<th>Period</th>
<th>Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loss of / damage to the Authority Premises or other property or assets of the Authority (excluding any loss or damage to the Authority's Data or any other data) caused by Supplier Default</td>
<td>Per contract year</td>
<td>£10m</td>
</tr>
<tr>
<td>Service Credits and Compensation for Unacceptable KPI Failure (in aggregate)</td>
<td>Per rolling 12 month period</td>
<td>Service Credit Cap (a pre-agreed percentage of the estimated or actual Service Charges)</td>
</tr>
<tr>
<td>Supplier Defaults occurring in the first Contract Year</td>
<td>First Contract Year</td>
<td>150%(^9) of the Estimated Year 1 Charges (calculated before Deductions are considered)</td>
</tr>
<tr>
<td>Supplier Defaults occurring during any subsequent Contract Year</td>
<td>Per Contract Year</td>
<td>150%(^{10}) of the preceding year’s Charges (calculated before Deductions are considered)</td>
</tr>
<tr>
<td>Supplier Defaults occurring after the end of the contract Term</td>
<td>Anytime after the end of the contract</td>
<td>150%(^{11}) of the Charges (calculated before Deductions are considered) for the 12 month period just prior to the end of the Term</td>
</tr>
</tbody>
</table>

Table 5: Supplier’s limited liabilities

Table 6 below sets out the Authority’s capped liabilities.

\(^9\) Increased to 200% if Authority’s losses are due to Supplier’s abandonment, wilful default, wilful breach of a fundamental term of the contract or wilful repudiatory breach of the contract.

\(^{10}\) Increased to 200% in circumstances listed above

\(^{11}\) Increased to 200% in circumstances listed above
<table>
<thead>
<tr>
<th>Event/Indemnity/Compensation</th>
<th>Period</th>
<th>Limit</th>
</tr>
</thead>
</table>
| Payment for early Termination – Breakage Costs Payment          | N/A         | Lower of:  
|                                                                |             | 1. 120% of the Breakage Cost element in the Termination Estimate provided by the Supplier; and  
|                                                                |             | 2. an absolute limit pre-agreed prior to contract signature          |
| Payment for early Termination – Unrecovered Payment             | N/A         | Lowest of:  
|                                                                |             | 1. 120% of the Unrecovered Payment element in the Termination Estimate provided by the Supplier;  
|                                                                |             | 2. an absolute limit pre-agreed prior to contract signature; and    |
|                                                                |             | 3. the Charges payable by the Authority if the contract was not terminated early |
| Payment for early Termination – Compensation Payment            | N/A         | Lower of:  
|                                                                |             | - 120% of the Compensation Payment element in the Termination Estimate provided by the Supplier; and  
<p>|                                                                |             | - an absolute limit pre-agreed prior to contract signature          |
| Authority Defaults occurring in the first Contract Year         | First Contract Year | Estimated Year 1 Charges |
| Authority Defaults occurring during any subsequent Contract Year| Per Contract | Preceding year’s Charges |</p>
<table>
<thead>
<tr>
<th>Authority Defaults occurring after the end of the contract Term</th>
<th>Year</th>
<th>The Charges for the 12 month period just prior to the end of the Term</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Anytime after the end of the contract</td>
<td></td>
</tr>
</tbody>
</table>

*Table 6: Authority’s limited liabilities*
Insurances

Insurable risks will arise out of the Supplier's legal duties as an employer and provider of services and/or goods. By specifying the Required Insurances for the desired insurable risks the Authority achieves:

- Protection of the Authority interests
- A higher level confidence in the continuity of service
- Clear Supplier responsibility for premiums, excesses and deductibles
- Assurance that the right cover is held, maintained and controlled correctly
- Assurance that insurance proceeds will be available to cover resultant losses or claims

The Required Insurances should represent only those insurances from which the Authority derives a direct benefit. The need for continuity of service often means that for the Required Insurances it is not appropriate for the Supplier to self-insure (although the Authority should consider appropriate deductible levels – see below).

The scope and level of Required Insurances to be set by the Authority in Annex 1 of Schedule 2.5 must balance HMG policy guidance, prevailing insurance market conditions and reflect the degree of risk transfer sought by the Authority to get best value for money. The key elements for consideration are:

- Setting limits of indemnity that reflect the underlying risk - see below
- Checking policy scope requirements cover the risk (i.e. the ‘interest’, territorial limits, term, features, extensions and principal exclusions)
- Maximum deductible thresholds
- Evaluation of the existing and future level of protection of the Authority's insurable and other interests (e.g. backing off the Authorities liability / indemnity obligations) ability of the Supplier to make the premium payments (relative to the size of the risks)
- Financial security of a Supplier’s proposed insurers
- Impact of requiring Project Insurance instead of using existing Supplier insurance

Project Insurance

It is possible to obtain specific ‘project insurance’ for the kind of IT and BPO services contract that the contract is meant to cover. This usually doesn’t represent best value for the Authority, as the full cost (which for a big project could be >£1m/yr.) will be included in the
price of the project. It makes more sense if the insurance requirements of the contract can be met by the existing corporate insurance policies already held by the Supplier. (Note: There may be instances when this is not possible e.g. a project with very unusual risks, like handling dangerous materials, or a contract with a Special Purpose Vehicle).

**Indemnity & Liability Limits**

By agreeing with the Supplier the minimum levels of Required Insurances, the Authority can be assured that a proportion of the liability is covered by insurance and can leave the supplier to decide whether the remaining liability should also be covered by insurance or whether that risk can be tolerated within its organisation.

In respect of insurable risks, there are two circumstances in which the Supplier may attempt changes to the limit of liability for those specific risks. In these circumstances the Authority needs to consider value for money and affordability as against the allocation of risk between the Authority and the Supplier, and cover levels:

- **Scope reduction**: A Supplier may seek to limit its liability for an insurable risk in the contract to match the scope of the cover provided by a Required Insurance. In this case the Authority needs to ensure the Required Insurance policy scope provisions are accurately reflecting the risk allocation between parties.

- **Value reduction**: A Supplier may seek to adjust the limit of its liability for an insurable risk in the contract to the value of the existing insurance for a Required Insurance. In this case the Authority needs to ensure that any basis of settlement, whether sum insured or limit of indemnity, is adequate to cover losses, so as not to expose the Authority to unacceptable risk above the contract insured limits, as well as being adequate to cover risks throughout the term.

The level of insurance protection is an important feature in determining value for money. If the limits of indemnity (the amounts covered) are set too high relative to the potential risk, insurance premiums are likely to be disproportionately high. However, if the limits are set too low the Authority could be in danger of not adequately having transferred insurable risk to the Supplier (e.g. (i) if the Supplier does not have the necessary financial strength to manage claims or (ii) that during negotiation these limits become linked to a capping of liability by the Supplier such that the basis of settlement will be inadequate). Limits of indemnity will therefore need to be reviewed against liability caps.

The optimum position is for limits of indemnity to be agreed commensurate with the potential losses that could occur in relation to an insured risk. The Authority will need to
assess the potential frequency and severity of any loss that could be caused by a Supplier for which it would be liable under the contract. Analysis (where required aided by insurance advisors) should take into account the potential that a Supplier’s actions may cause:

- Death/bodily injury
- Loss, damage or destruction to physical property
- Pecuniary or financial loss

This analysis should also include an assessment of the probability of the risk materialising and the proportionality of the risk to the contract value.

**Deductibles**

Insurance policies will contain deductibles/excesses where the Supplier pays the first tranche of any claim before the insurer pays the remainder. The contract makes sure that Supplier must remain liable for deductible related losses and shall not be able to recover any such deductible payments. Suppliers may have appropriate levels of financial tolerance (i.e. balance sheet strength) that would allow some prudent self-funding of part of the insurance risk. The Authority should consider setting the maximum deductible thresholds at reasonable levels, thereby achieving a balance with associated reduction in premium costs. The Authority only defines ‘Maximum deductible thresholds’, rather than specifying the actual deductible amount, leaving the Supplier to choose deductible levels that match their own risk tolerances and financial reserves.

The adequacy of insurance proposed by the Supplier will need to be assessed during the bidder selection process, taking account of both deductibles and limits of indemnity.

### 6.3 Possible Variations and Negotiation Issues

- **Unlimited indemnity.** These cannot be insured for. However the contract only requires this in very limited circumstances where it is absolutely necessary to protect the authority (e.g. for third party IPR claims where it is impossible to estimate the potential resultant costs and the responsibility lies properly entirely with the owner and licensor of the IPR.)

- **Self-insurance.** Some IT firms offer this as standard and it should be considered by the Contracting Authority because properly-sized self-insurance could improve the overall value-for-money of the contract. The Contracting Authority should consider carefully the risk attached to a self-insurance arrangement and take a decision based on the contract’s
circumstances (for example the Supplier’s financial robustness in relation to the size and probability of risk and the need for continuity of service in case of a major incident).

- **Variations to limits of liability.** This includes suppliers wanting to limit their liability to the contract value, authorities wanting to raise the limits or insist on unlimited liability for default. Extensive variations to limits of liability are usually not optimal. For example unlimited liability is disproportionate and can have the effect of deterring bidders and raising prices due to the inclusion of large risk premiums. It is unreasonable to argue for unlimited liability for general default, and runs contrary to government policy on growth and supporting business.
Appendix 1 - Illustrative templates for Financial Reporting
(Schedule 7.5, Part B, paragraph 1.2)

1. **Milestone Payments**

1.1 **Milestone Payments – Time & Material**

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Actual Delivery Date</th>
<th>Staff Grade</th>
<th>Day Rate(^{14})</th>
<th>Projected Days</th>
<th>Actual Days</th>
<th>Projected Charge (Days x Rate)</th>
<th>Actual Charge(^{15}) (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>A1</td>
<td>£500</td>
<td>20</td>
<td></td>
<td></td>
<td>£10,000</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>A2</td>
<td>£400</td>
<td>10</td>
<td></td>
<td></td>
<td>£4,000</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/02/2017</td>
<td>A1</td>
<td>£500</td>
<td>3</td>
<td></td>
<td></td>
<td>£1,500</td>
<td></td>
</tr>
</tbody>
</table>

\(^{12}\) Actual milestone payments should be net of Milestone Retention (10% of Milestone Charge or Target Cost) until release conditions have been met.

\(^{13}\) For Milestones not delivered on time due to a Supplier reason, the Supplier should pay a Delay Payment based on a pre-agreed Delay Payment Rate.

\(^{14}\) Rates at the date of contract signature. Rates are subject to indexation up to a cap.

\(^{15}\) Actual Charge might be different from Projected Charge due to different number of days, and caps applying to days and rates. Actual Charge should be net of Milestone Retention (usually 10% of the charge).
### 1.2 Milestone Payments – Guaranteed Maximum Price with Target Cost (GMPTC)

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Staff Grade</th>
<th>Day Rate</th>
<th>Projected Days</th>
<th>Actual Days</th>
<th>Incurred Cost (Days x Rate)</th>
<th>Incurred Cost (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>A1</td>
<td>£500</td>
<td>20</td>
<td></td>
<td>£10,000</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>A2</td>
<td>£400</td>
<td>10</td>
<td></td>
<td>£4,000</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/02/2017</td>
<td>A1</td>
<td>£500</td>
<td>3</td>
<td></td>
<td>£1,500</td>
<td></td>
</tr>
</tbody>
</table>

### Milestone Group

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Actual Delivery Date</th>
<th>Target Cost</th>
<th>Incurred Cost</th>
<th>Max Cost</th>
<th>Milestone Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/01/2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

---

16 Rates at the date of contract signature. Rates are subject to indexation up to a cap.
17 Not subject to indexation, but subject to variation if Milestone Delay is caused by Authority
18 Not subject to indexation
19 Net of Milestone Retention (usually 10% of the Charge); Excluding any Delay Payment
### 1.3 Milestone Payments – Fixed Price

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Actual Delivery Date</th>
<th>Fixed Price (un-indexed)(^{20})</th>
<th>Fixed Price (indexed)(^{21})</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td>£50,000</td>
<td>£52,000</td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td>£25,000</td>
<td>£26,000</td>
</tr>
</tbody>
</table>

\(^{20}\) Fixed Prices are subject to indexation.  
\(^{21}\) Net of Milestone Retention (usually 10% of the Charge); Excluding any Delay Payment
1.4 Milestone Payments – Firm Price

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Actual Delivery Date</th>
<th>Firm Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td></td>
<td>£50,000</td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/01/2017</td>
<td></td>
<td>£25,000</td>
</tr>
</tbody>
</table>

22 Not subject to indexation

1.5 Milestone Payments – Delay Payments (Supplier Cause)

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Actual Delivery Date</th>
<th>Delay Days</th>
<th>Delay Payment Rate (£/day)</th>
<th>Delay Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

23 Net of Milestone Retention (usually 10% of the Charge); Excluding any Delay Payment
## 1.6 Milestone Payments – Delay Payments (Authority Cause)

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Actual Delivery Date</th>
<th>Compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td></td>
</tr>
</tbody>
</table>

## 1.7 Milestone Payments – Retention Release and Financial Reporting Summary

<table>
<thead>
<tr>
<th>Milestone Group</th>
<th>Charge Number</th>
<th>Projected Delivery Date</th>
<th>Actual Delivery Date</th>
<th>Milestone Charge</th>
<th>Delay Payment/Compensation</th>
<th>Milestone Retention Release Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>Deliverable 1</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>Deliverable 2</td>
<td>1/01/2017</td>
<td>1/01/2017</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Service Charges

### Service Charges – Time & Material

<table>
<thead>
<tr>
<th>Charge Number</th>
<th>Service Period</th>
<th>Staff Grade</th>
<th>Day Rate(^{24})</th>
<th>Projected Days</th>
<th>Actual Days</th>
<th>Projected Charge (Days x Rate)</th>
<th>Actual Charge(^{25}) (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Charge 1</td>
<td>1/01/2017-1/02/2017</td>
<td>A1</td>
<td>£500</td>
<td>20</td>
<td></td>
<td>£10,000</td>
<td></td>
</tr>
<tr>
<td>Service Charge 1</td>
<td>1/01/2017-1/02/2017</td>
<td>A2</td>
<td>£400</td>
<td>10</td>
<td></td>
<td>£4,000</td>
<td></td>
</tr>
<tr>
<td>Service Charge 2</td>
<td>1/01/2017-1/02/2017</td>
<td>A1</td>
<td>£500</td>
<td>3</td>
<td></td>
<td>£1,500</td>
<td></td>
</tr>
</tbody>
</table>

\(^{24}\) Rates at the date of contract signature. Rates are subject to indexation up to a cap.

\(^{25}\) Actual Charge might be different from Projected Charge due to different number of days, and caps applying to days and rates.
### 2.2 Service Charges – Volume Based

<table>
<thead>
<tr>
<th>Charge Number</th>
<th>Service Period</th>
<th>Unit</th>
<th>Unit numbers</th>
<th>Charge per unit(^\text{26}) (£/u)</th>
<th>Charge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Charge 1</td>
<td>1/01/2017-1/02/2017</td>
<td>e.g. IT query</td>
<td>1 – 200</td>
<td>£40</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>201 – 400</td>
<td>£38</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>401 – 600</td>
<td>£35</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>601 – 800</td>
<td>£32</td>
<td></td>
</tr>
<tr>
<td>Service Charge 2</td>
<td>1/01/2017-1/02/2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

\(^{26}\) Price per unit is subject to indexation.
### 2.3 Service Charges – Fixed Price

<table>
<thead>
<tr>
<th>Charge Number</th>
<th>Service Period</th>
<th>Fixed Price (un-indexed)(^{27})</th>
<th>Fixed Price (indexed)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Charge 1</td>
<td>1/01/2017-1/02/2017</td>
<td>£50,000</td>
<td>£52,000</td>
</tr>
<tr>
<td>Service Charge 2</td>
<td>1/01/2017-1/02/2017</td>
<td>£25,000</td>
<td>£26,000</td>
</tr>
</tbody>
</table>

\(^{27}\) Fixed Prices are subject to indexation.
2.4 Service Charges – Service Credits

<table>
<thead>
<tr>
<th>Charge Number</th>
<th>Service Period</th>
<th>Service Points (A)</th>
<th>% Percentage deduction per Service Point (B)</th>
<th>Service Charge (prior to deduction) (C)</th>
<th>Service Credit = A x B x C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Service Charge 1</td>
<td>1/01/2017-1/02/2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Service Charge 2</td>
<td>1/01/2017-1/02/2017</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 3 Overall Summary

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Date/Period</th>
<th>Charge Type</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Milestone 1</td>
<td>1/02/2017</td>
<td>Milestone Charge</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>1/02/2017</td>
<td>Retention Release</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>1/02/2017</td>
<td>Delay Payment</td>
<td></td>
</tr>
<tr>
<td>Milestone 1</td>
<td>1/02/2017</td>
<td>Delay Compensation</td>
<td></td>
</tr>
<tr>
<td>Milestone 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>SC1</td>
<td>1/01/2017-1/02/2017</td>
<td>Service Charge</td>
<td></td>
</tr>
<tr>
<td>SC2</td>
<td>1/01/2017-1/02/2017</td>
<td>Service Charge Credit</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td>Reimbursable Expenses</td>
<td></td>
</tr>
</tbody>
</table>