


## SHARED SERVICES TEAM

Document Name: “Public Sector Flex” CONTRACT GUIDE

### Usage Guidance

Toolkit materials should only be used with due consideration to the context and requirements of the programme in question. Materials should not be directly applied ‘off the shelf.’

#### CATEGORY DESCRIPTION

<p>1. <i>Example material</i> –The tool has been provided by a single public or private sector organisation, or an external forum that has not been moderated by the Shared Services Team. It represents one possible approach to a given shared service activity, and can be used by Toolkit users as an example / reference aid.</p>	
<p>2. <i>Co-developed material</i> – The tool has been produced through the collaboration of the Shared Services Team and one or more public sector organisations and / or private sector organisations. This tool Provides a jointly developed approach to a given shared services activity, and can be used by Toolkit users as an example / reference aid.</p>	
<p>3. <i>Output Templates</i> – These set out what is typically included in an output of this name. They have been created as part of the development of the toolkit based on experience and best practice from other programmes and project methodologies. However, your organisation may already have a set format and template for you to use.</p>	

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## ***“Public Sector Flex”* CONTRACT GUIDE**

This document highlights key service, charge and contractual features of the *Flex* framework for ICT services. It is intended to serve as a guide to potential customers interested in receiving services under the *Flex* framework. Interested parties should refer to the *Flex* Framework Agreement and Pro-forma Customer Contract for more detailed information.

This guide contains the following sections:

1. **The *Flex* Vision**
2. **Services**
3. **Performance Management**
4. **Pricing**
5. **How Customer Join *Flex***
6. **Participating In Shared Services**
7. **Employment and Pensions**
8. **Key Contractual Terms**
9. **Termination and Exit**
10. **Further Information Contact Details**

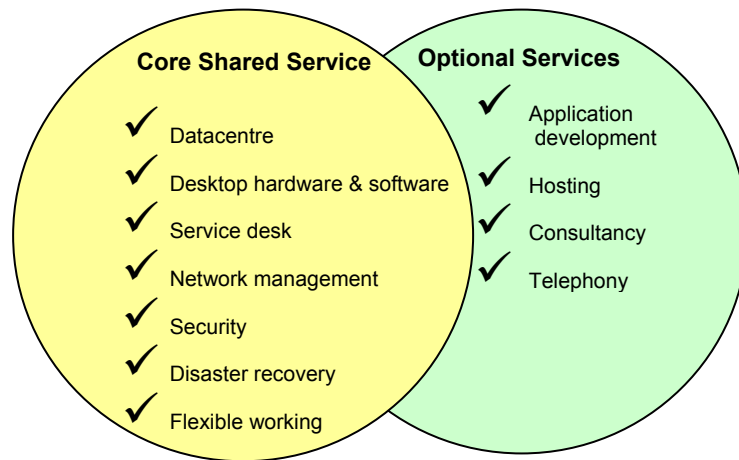
## 1. THE *Flex* VISION

*Flex* will deliver a shared technology service with the potential to serve multiple public sector organisations, going live in June 2007. *Flex* aims to reduce costs, leverage investment in ICT services across the public sector, promote joined-up government, and improve the service experienced by users. The vision of *Flex* is to delight customers with great technology and communications services which are seen to be properly managed, professionally delivered, represent true value for money and are a platform for modern working across the public sector.

## 2. Services

Organisations joining *Flex* will benefit from a “Core Shared Service” intended to offer the best value for money service available to the public sector, as well as a range of optional services. The Core Shared Service comprises a security accredited service (Confidential or Restricted) delivering office productivity applications from a shared data centre facility, through a fully managed infrastructure. Users will have access to ITIL compliant support accessible through a shared service desk.

The component services of the Core Shared Service are described in a Services Catalogue which is a Framework Agreement Contract Controlled Document. The Services Catalogue also describes a range of optional services, from which *Flex* Customers can draw to meet their specific requirements, such as legacy application support, bespoke development and consultancy.



To enable Customers to migrate from their existing ICT service arrangements to the Shared Service the *Flex* Service Provider (“Service Provider”) also provides the following services:

- Transition - to support the orderly transfer and handover of services from existing in-house teams or incumbent outsource service providers;
- As-Is – to maintain continuity by delivering ICT services on a “business as usual” basis prior to;
- Transformation – set-up of capacity to deliver enhanced or additional customer-specific services and migration of services to the Shared Service.

## 2.1 Flex – Core Services

The following table sets out the services that all Customers will receive when taking the *Flex* Core Shared Service (and which are included in the *Flex* Core Shared Services Charge of £1,212.50 per Registered User per Annum):

Service Area	Key Details of <i>Flex</i> Core Service
Service Desk	<p>Support for Applications and Services within the framework (Customer specific applications or services are additional). Working hours are:</p> <ul style="list-style-type: none"> <li>• Priority 1 calls – 24x7</li> <li>• Other Priorities – Core Service working hours (08:00 to 18:00 during Working Days)</li> </ul>
Service Management	<p>Service Management for the Applications and Services within the framework (Customer specific applications or services are additional). Includes Incident Management, Problem Management, Change Management, Release Management, Configuration Management, Capacity Management, Service Level Management, Financial Management, Service Reporting and Management Information and License Management</p>
Governance and Assurance	<p>Includes Governance, Relationship Management (Commercial and Business User), ICT Strategy, Service Architectures, Policies and Standards, Quality Assurance, Technical Assurance, Security Operations and Service &amp; Product Catalogue.</p>
Data Centre Services	<p>Provision, Hosting and Management of Servers and Storage for:</p> <ul style="list-style-type: none"> <li>• Exchange 2007, 100Mbytes of storage per user;</li> <li>• Sharepoint 2007, 500Mbytes of storage per user (some of the storage allowance will be required for Sharepoint overheads);</li> <li>• Live Communication Server 2005;</li> <li>• Enterprise and other Management Servers;</li> <li>• Directory Services;</li> <li>• Thin Client Servers.</li> </ul> <p>Full disaster recovery facility for the Data Centre including:</p> <ul style="list-style-type: none"> <li>• 48 Hour Fail Over following disaster;</li> <li>• 24 Hour Maximum Data Loss;</li> <li>• 100% of Services supported at DR Site;</li> <li>• 100% Capacity at DR Site.</li> </ul>
Network Management Services – Central Services	<p>Provision and Management of:</p> <ul style="list-style-type: none"> <li>• Data Centre LAN Environment including switches firewalls and IDS;</li> <li>• Data Centre RAS Components.</li> <li>• GSI Connection for Internet Access and Email at main and DR site;</li> <li>• GSI Connection for RAS Access at main and DR site;</li> <li>• Network Between Fujitsu Data Centres;</li> <li>• Network from Service Provider Data Centres to Service</li> </ul>

Service Area	Key Details of <i>Flex Core Service</i>
	Provider Support Sites.
Network Management – Office LAN	Management of Office LAN <i>Note does not include provision of the LAN itself which is a Customer specific option.</i>
Network Management – Office WAN	Management of WAN connection to office sites. <i>Note does not include provision of the WAN itself which is a Customer specific option.</i>
Desktop Support	Support of the desktop applications and hardware provided for the framework (see Desktop Software) including software updates as required.
Desktop Hardware	Provision and maintenance of hardware, refreshed every 4 years: <ul style="list-style-type: none"> <li>• Thin Client Device;</li> <li>• 17” TFT Screen;</li> <li>• Keyboard and Mouse.</li> <li>• End-of life disposal of core hardware</li> </ul>
Desktop Software	Purchase and annual maintenance charges (where applicable) for software. <ul style="list-style-type: none"> <li>• Microsoft Office 2007 Professional Plus</li> <li>• Microsoft Exchange CAL (Client Access Licence)</li> <li>• Microsoft Windows Server CAL</li> <li>• Microsoft Terminal Server CAL</li> <li>• Microsoft Sharepoint CAL</li> <li>• Microsoft Live Communication Server CAL</li> <li>• Citrix Presentation Server Enterprise Edition</li> <li>• Citrix Password Manager Enterprise Named User (including self service password reset).</li> <li>• Sanctuary Device Control (USB Control Software)</li> <li>• Softgrid (Application Virtualisation)</li> <li>• Enterprise Management Client</li> </ul> <p>Software included at no additional cost:</p> <ul style="list-style-type: none"> <li>• Windows XPe (Embedded) (included in hardware purchase);</li> <li>• Adobe Acrobat Reader 8 (freeware).</li> </ul> <p><i>Note: Price does not take into account any existing licenses held by the joining body.</i></p>
MFD/Printer Support and Maintenance	Assumes 1 device per 20 users in a standard configuration. Specific configuration for Customers may result in different device ratios.
MFD/Printer Hardware Purchase	Assumes 1 device per 20 users in a standard ratio. Specific configuration for Customers may result in different device ratios.
Particular Needs software and hardware	Provision, support and maintenance of software and hardware to support users with particular needs as required.

Service Area	Key Details of <i>Flex</i> Core Service
Install, Move, Add, Changes (IMACS)	Maximum of 10 IMACS per working day per 2,000 users. Assumes IMACS are done during working hours (out of hours provision possible at additional cost).
User Induction Training	Provision and maintenance of Online User Induction Training. Allowance for in-situ training to support this as agreed with the customer (allowance of 3 days per month for a 2,000 user department).

## 2.2 *Flex* – Core Service Options

*Flex* Customers will generally contract to transform their As-Is Service and move to adopt the Core Shared Service. However, in negotiating their individual Customer Contracts *Flex* Customers may take advantage of the following options at an additional charge per Registered User:

- **Variant A – Lotus Notes** - substitute Lotus Notes for Outlook Exchange as e-mail and calendar platform (additional £69.03 per Registered User per annum)
- **Variant B - Open Source** - Substitute open source software for Microsoft Office products (no additional charge)
- **Variant C - Lotus Notes with Open Source** - substitute Lotus Notes for Outlook Exchange as e-mail and calendar platform and open source software for Microsoft Office products (additional £69.03 per Registered User per annum)
- **Variant D - Fat Client** - Registered Users provided with a "Fat Client" Standard Device (with core software deployed on "Thin Client" basis). NB The additional charge for this option does not cover support for any local applications on Desktop - other than software to enable thin client delivery of core software suite (additional £101.16 per Registered User per annum).

If Customers require it, further flexibility can be achieved by variation of the following:

- For each Registered User using a legacy or alternative end-user access device the Core Shared Service Charge is reduced by £110.22 per user per annum to reflect the saving to the Service Provider from not having to purchase the standard end user access device hardware. (However, there are additional support charges that will apply as part of the Customer Specific Service Charges.)
- If a legacy or alternative printer/MFD solution is adopted, then the Core Shared Service Charge is reduced by £61.95 per user per annum - reflecting the saving to the Service Provider from not having to provide standard MFD solution
- If it is more economic for the Customer to purchase the core software licences than the Core Shared Service Charge is reduced by £122.82 per user per annum - reflecting the saving to the Service Provider from not having to purchase Microsoft Office Professional Plus 2007, Exchange CAL and Server 2003 CAL licences.

## 2.3 *Flex* – Optional Services

In addition to the Core Service, Customers may agree, within the overall scope of the Services Catalogue, with the Service Provider specific supplementary services/service variations to meet additional business requirements. Such requirements can include:

- Higher levels of security – e.g. the Cabinet Office service is provided at a CONFIDENTIAL High level of security

- Enhanced Service Delivery – e.g. premium service levels providing 24/7 and/or “VIP” support for designated groups of Registered Users
- Applications Development – either called off as bespoke development projects or provided through a Minor Applications Development team. The full development cycle from requirements analysis to support is covered
- Applications Support and Maintenance – the scope of the Core Shared Services can be extended to cover non-core legacy or business applications (whether based on proprietary or bespoke software)
- Data Management
- Bespoke Hosting - for applications and/or information and data repositories that are not within the scope of the Core Shared Services
- Wide Area and/or Local Area Network installation and maintenance - the installation, extension, reconfiguration and operational maintenance of Network services between and/or within any of the Customer’s premises or in a new building that the Customer has not yet occupied. This may include installing a WAN and/or LAN where none exists.
- Telephony - provision, maintenance and support for the technology and infrastructure for electronic transmission of voice, facsimile or other information – including voicemail, secure telephony, audio-conferencing and other functional services
- Television and Video-conferencing services
- ICT Continuity - support for Business Continuity contingency plan requirements
- Enhanced Business Continuity and Disaster Recovery – faster recovery times – e.g. the Cabinet Office Customer Contract provides that in the event that the primary data centre is unable to function, the Service Provider should switch operations relating to up to 250 designated Registered User to a secondary data centre within one (1) hour, resuming a full service with no loss of data.
- Product catalogue – “whole-life” service for provision, support, maintenance and disposal of variety of desktop, laptop and other end-user access devices including legacy hardware); range of end-user peripheral and security devices; television, audio and video-conferencing equipment; printers and printing, photocopying, scanning and IT based facsimile multi-functional devices
- Loading of printing consumables
- Install, move and change projects (over and above de-minimis IMACs included within the scope of the Core Shared Services Charge)
- Software Licence Management
- ICT Procurement
- Disposal of legacy ICT equipment
- Business Services – a full range of business analysis and consultancy; programme and project management, business change management, specialist and technical consultancy, ad-hoc support and ICT training services can be provided on a call off basis.

### **3. Performance Management**

The Services Catalogue also specifies service levels for each service and describes three Key Performance Indicators:

- Critical Services Availability
- Incident Resolution
- Customer Satisfaction.

It should be noted that a failure to meet any service level represents a contractual breach (for which contractual damages may be recoverable) but only breaches of the KPIs are linked to the payment of service credits by the Service Provider.

The *Flex* Framework has selected only three KPIs in order to simplify the operation of the service credit regime, as described further below. The use of a Customer Satisfaction KPI is intended to provide the Service Provider with incentive to ensure good performance of all aspects of the services that are important to end-users and to avoid focusing too narrowly on managing performance against only service specific KPIs.

### 3.1 Critical Services Availability KPI

With respect to the Critical Services Availability KPI – the following are defined as critical services:

- log on to the network;
- issue and receipt of both internal and external email (limited to the operation of and connections to the proxy server);
- access to and use of office automation facilities, including the facility to create, manipulate, and save files;
- access to and use of files on central storage;
- access to and use of the Authority's intranet and the internet; and
- access to critical applications as specified in the applicable Customer Contract.

The Critical Services Availability KPI is calculated as a percentage:

$$\frac{((\text{Total Registered Users} \times \text{Service Hours in the Contracting Period}) - (\text{Weighted Downtime Hours} \times \text{Affected Registered Users})) \times 100}{(\text{Total Registered Users} \times \text{Service Hours in the Contracting Period})}$$

Where:

- Service Hours in respect of Registered Users to whom the Premium 24/7 support services are being provided will be twenty four (24) hours per day
- each incident of Downtime hours will be weighted according to its duration using the following multipliers
  - Greater than 1 hour – multiplied by 1.5
  - Greater than 4 hours – multiplied by 2
- Downtime shall mean any period during Service Hours when a single Incident causes one or more Critical Services to be unavailable to more than one Registered User.
- Downtime to the extent solely attributable to any one of a number of specified causes that are recognised to be outside the Service Provider's control shall be disregarded from the computation of the Critical Services Availability KPI.

The Service Level for the Critical Service Availability KPI is 99.5% during Service Core Time.

### 3.2 Incident Resolution KPI

The Incident Resolution KPI is expressed as a percentage of Incidents resolved within the target timescale for each of the Incident priority levels set out in the table below:

Priority Level	Description	Response Times
Priority 1 (critical)	Loss of service due to complete or partial failure of a server or network component within or connecting to the Service Provider's data centre. Loss of service to 50 or more Registered Users due to a LAN component failure. Security Incident.	Call the Registered User (or the Customer's representative where not related to a particular Registered User) within fifteen (15) minutes.

Priority 2 (high)	Complete failure of Registered User's equipment, where that equipment is either a desktop device within the Authority's premises or is a laptop with docking station within the Customer's premises that is considered to be the Registered User's primary network device. Loss of service to 49 or fewer Registered Users due to a LAN component failure.	Call the Registered User (or the Customer's representative where not related to a particular Registered User) within thirty (30) minutes.
Priority 3 (medium)	Partial failure of Registered User's equipment or functionality. Complete failure of Registered User's laptop that is being used away from the Customer's premises or is not considered to be the Registered User's primary network device.	Call the Registered User within one (1) hour.
Priority 4 (low)	Failure that has no immediate business impact or request for information	Call the Registered User within one (1) hour.
Priority 5 (scheduled)	Calls related to hardware and software products not in the Technical Infrastructure	

Any Incident resolutions blown as a result of circumstances which the Service Provider considers were legitimately outside of their control or responsibility may at the reasonable discretion of the Customer be excluded from Service Credit calculation.

The service levels for the Incident Resolution KPI for each Priority Level are set out in the following table.

Priority Level	Target Resolution Period	Service level re % Incidents resolved or workaround provided within target period
1	2 hours	97.5%
2	4 hours	97.5%
3	24 hours	99%
4	48 hours	99%
5	None	Restoration of Service within agreed and planned hours

### 3.3 Customer Satisfaction

The aim of the Customer Satisfaction KPI is to provide the Service Provider with an incentive to deliver a well rounded service rather than focusing narrowly on the achievement of only service specific KPI service levels. Each *Flex* Customer can tailor the specific questions of the Customer Satisfaction survey to measure of the level of satisfaction of Registered Users with different aspects of the Services that reflect local priorities.

A customer satisfaction survey of Registered Users will be conducted every three months, over a survey period of not less than two weeks. The Customer and the Service Provider will agree a set of up to 10 statements reflecting Registered User satisfaction with different aspects of the Services. Registered Users participating in the survey will be invited to score each statement using the scale shown in the table below.

Strongly Agree	Agree	Disagree	Strongly Disagree
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The Operating Service Level for the Customer Satisfaction KPI shall be achieved where the percentage of statements scored “Strongly Agree” or “Agree” is greater than or equal to 65%.

### 3.4 Service Credits

The Customer Contract incorporates a service credit mechanism to provide the Service Provider with a clear financial incentive to meet key contracted service levels and maintain high levels of overall performance. Failure to meet the KPI service levels will cause the Service Provider to accrue Service Points. Every 3 months (a “Contracting Period”), any Service Points will be converted to Service Credit percentages by which the “Operational Charges” (i.e. the charges excluding any one-off or project based charges) payable to the Service Provider will then be reduced. In the Proforma Customer Contract, the KPIs against which Service Points can accrue are the Critical Service Availability, the Incident Resolution and Customer Satisfaction Survey KPIs described above. However, Customer have scope to agree different KPIs and corresponding variations to the Service Credit regime to better reflect the specific circumstances of their business. For example, an organisation that has contracted the Service Provider to host and/or support business critical systems may wish to define KPIs and associated Service Points relating to the performance of this specific service.

If the Service Provider fails to achieve any Service Level in respect of the Incident Resolution KPI or for the Critical Service Availability KPI during two or more consecutive Contracting Periods the second and later such failures are deemed to be “Repeat Failures”. The Service Points accrued for a Repeat Failure are multiplied by a multiplier which increases with the number of consecutive Repeat Failures.

The maximum value for all Service Credits accrued in any period will not exceed 20% of the Operational Charges for that period.

The Customer Contract also provides the right for a Customer to terminate the Customer Contract in event of a Critical Services Failure. A Critical Services Failure is any of the following events:

- Performance below the Service Threshold for the Incident Resolution KPI and/or Critical Service Availability KPI during any Contracting Period. The Service Thresholds for the:
  - Critical Service Availability KPI for any Contracting Period is 95%.
  - Incident Resolution KPI (all elements) is 90% of incidents resolved or workaround provided within target period.
- Accrual by the Service Provider of more than three thousand (3,000) Service Points for any Contracting Period (to put this in context, performance at the Service Threshold on either KPI would result in 1,800 Service Points being accrued);
- Accrual by the Service Provider of three Severe Service Failures in any rolling twelve month period (whether or not for the same Service Level). A Severe Service Failure will occur during a Contracting Period when
  - Critical Service Availability KPI falls below 98%; or
  - The percentage of Priority 1 and/or Priority 2 Incidents resolved (or a workaround provided) within the period specified in the Service Level falls below 95%; or
  - The percentage of Priority 3 and/or Priority 4 Incidents resolved (or a workaround provided) within the period specified in the Service Level falls below 96%.

## 4. PRICING

*Flex* pricing comprises the following components:

- Framework Agreement:
  - Core Shared Services Charge
  - Contract Term Discount
  - Shared Service Volume Discount
  - Schedule of Rates
  
- Customer Contract:
  - Transition, Transformation and Exit Charges
  - As-Is Services Charges
  - Core Shared Services Charges
  - Customer Specific Services Charges
  - Applications Development, Business Change, Consultancy and Training Projects.

### 4.1 Framework Agreement Pricing

Certain components of *Flex* pricing are held at the level of the Framework Agreement. They are therefore not negotiable, except at that level. These Framework Agreement prices are used to price elements of the Customer Contract Pricing Workbook described below.

#### ***Core Shared Services Charge***

A key feature of the *Flex* Framework is a set Core Shared Service Charge, common to all *Flex* Customers, that is chargeable per annum on a per Registered User basis for provision of the Core Services described above. The Core Shared Service Charge is £1,212.50 per annum per Registered User.

As described earlier, Customers may select one of the three variants of the Core Shared Service, or can elect for the Service Provider to support alternative solutions for end-user access devices, printing/copying/scanning/facsimile or core software licensing.

#### ***Contract Term Discount***

In consideration of a contract term (excluding any optional extension period) greater than 4 years in length, the Service Provider will apply the following discounts to the ongoing “Operational Charges” (i.e. the aggregate of the As-Is, Core Shared Services and Customer Specific Services Charges).

Contract Term (excluding optional extension period)	5 years	6 years	7 years
% Discount on Total Ongoing Services Charges	1%	1%	3%

In the event of a Customer exercising an option to extend the term of its Customer Contract, the discount rate applicable to the full extended term would be applied to the ongoing services charges for the remainder of the Customer Contract term.

### Shared Services Volume Discount

As *Flex* grows and the number of Registered Users of the Shared Service increases, a Shared Services Volume Rebate of the Core Shared Services charges will be distributed by way of service credits to the Shared Services Customer base. The rebate will be determined by a sliding scale. The table below illustrates how the Core Shared Service Charge, net of the Volume rebate, will fall as aggregate Registered User numbers across the *Flex* Customers increase.

User Volume Bands	Net Core Shared Service Charge per User	Average Volume Discount
	£	%
up to 2,000	£1,212.50	0.00%
2,001 to 4,000	£1,060.57	12.53%
4,001 to 6,000	£1,036.40	14.52%
6,001 to 8,000	£964.94	20.42%
8,001 to 10,000	£914.93	24.54%
10,001 to 15,000	£898.89	25.86%
15,001 to 20,000	£897.94	25.94%
20,001 to 25,000	£896.88	26.03%
25,001 to 30,000	£891.89	26.44%
30,001 to 40,000	£886.80	26.86%
40,001 to 50,000	£881.86	27.27%
50,001 to 60,000	£876.97	27.67%
60,001 to 70,000	£872.10	28.07%
70,001 to 80,000	£867.11	28.49%
80,001 to 90,000	£862.15	28.90%
90,001 to 100,000	£857.22	29.30%

### Schedule of Rates

The Schedule of Rates comprises three worksheets setting out schedules of daily charge rates for the following categories of staff: Consultancy; Applications Development; and Service Delivery & Support. Within each category Daily rates are provided for different grade and types of consultant, technical or service delivery personnel. The rates are competitive, comparing favourably with daily rates that are available from service providers listed under the Catalist Framework for Specialist Solutions.

The Schedule of Rates is used by the Service Provider to price the Transition, Transformation and Exit Charges, as well as Major Projects called off by Customers. In applying the Schedule of rates the uplifts set out in the following table apply for out of hours, weekend or Bank Holiday working.

	Overtime *	Saturdays	Sundays	Bank Holidays
Uplifts to be applied for weekend and Bank Holiday working	50%	50%	100%	150%

\* Overtime uplift applies to Service Delivery Staff only.

Discounts set out in the following table would be applied to larger work orders. (These rates of discount, at a given value, would apply to the whole value of the work order, not just to the excess over the threshold.)

Work orders in excess of :  
Discount applicable to SoR rates daily charge rates for work orders with a (pre-discount) value in excess of the thresholds specified above

£100,000	£300,000	£1,000,000
0%	1%	3%

## 4.2 Customer Contract Pricing Workbook

For each Customer, the Service Provider will prepare a Customer Contract Pricing Workbook to set out the cost of providing services under the *Flex* Framework to that Customer. The Customer Contract Pricing Workbook forms the basis for developing the Pricing Annex to Customer Contract Schedule 14 (Charges & Invoicing).

To facilitate comparison with the cost of existing services and Business Case development the Customer Contract Pricing Workbook also includes sections to capture Third Party Contract and Customer retained costs.

The different elements of the Customer Contract Pricing Workbook are described below.

### ***Transition, Transformation and Exit Charges***

Using the Schedule of Rates, the Service Provider will provide separate costings for their estimated level of effort to undertake planned transition, transformation and exit activities respectively. The cost of materials (including the provision and set up of any additional hardware in the Service Provider's data centre that may be required to deliver Customer Specified Services) will also be estimated. These costings form the basis for quoting fixed milestone payments to be paid on the achievement of key project deliverables or outcomes.

### ***As-Is Services Charges***

The Service Provider will quote separate "As-Is" service charges for providing the existing service at existing service levels during the "Transformation Period" when the Service Provider and the Customer will work together to transform and migrate the services fully to the Shared Services and Service Provider's data centre. The "Transformation Period" is expected to last from 6-18 months depending on the scale, scope and complexity of the Transformation project.

The breakdown and pricing bases for the As-Is Charges are, due to the differing Customer 'starting points', entirely flexible and are subject to agreement between the Service Provider and the Customer. However, given the expected comparatively short duration of the Transformation period it would normally be appropriate to agree to invoice the As-Is Services Charges as a fixed periodic charge.

### ***Core Shared Service Charges***

The Core Shared Services Charge is a variable charge calculated on a per Registered User basis. In the Customer Contract Pricing Workbook, the Core Shared Services Charge and applicable adjustments are extended by the planned number of Registered Users to compute the expected Core Shared Services Charges payable over the term of the Contract.

### ***Customer Specific Services Charges***

The Customer Specific Services Charges cover the optional services (described above) that have been selected by the Customer. The breakdown and pricing bases for the Customer Specific

Charges is flexible and are subject to agreement between the Service Provider and the Customer.

Typically, Customer Specific Services would be charged as fixed periodic charges – i.e. the charges are independent of the number of Registered Users. However, the following services are exceptions to this rule:

- Premium 24/7 and VIP support – periodic charge per group of, say, 100 users
- Ad hoc 24/7 support – charge per group (of agreed size) of users per day
- Product Catalogue items – “whole life” price per period per device in service
- Telephony – periodic charge per telephone number
- Replenishment & Loading of printing consumables – charge per sheet printed in excess average consumption per user allowance
- ICT Procurement – % commission on value of goods procured on behalf of Customer.

### ***Applications Development, Business Change, Consultancy and Training Projects***

When required by the Customer, any major Applications Development, Business Change, Consultancy or Training projects would be priced by the Service Provider using the Schedule of Rates (applying any applicable volume discount). The basis of charging (including any milestone or outcome related payments) would be as agreed in the Major Project terms and conditions. Smaller work orders would be priced and invoiced in a similar manner.

## **4.3 Affordability – Smoothing of Charges**

To facilitate the affordability of joining *Flex* and receiving its services, Customers may negotiate with the Service Provider adjustments in the profile of charges so that up-front costs relating to transformation and transition can be smoothed over time.

## **4.4 Indexation**

*Flex* prices are subject to indexation as follows:

- each year, the Service Provider shall be entitled to increase their charges in line with the increase in the UK RPIX published by the Office of National Statistics minus one percent, except that the:
- Schedules of Rates set out in the Framework Pricing Workbook will increase in line with the increase in the UK RPIX published by the Office of National Statistics plus one percent.

## **4.5 Value for Money**

In line with OGC best practice, the *Flex* Framework and Pro-forma Customer Contract includes a full range mechanisms to provide assurance of continued Value for Money:

- Open Book Accounting;
- Gain Sharing;
- Benchmarking;
- Market Testing; and
- Continuous Service Improvement.

It should be noted that only benchmarking exercises conducted collectively by the Customers will automatically result in an adjustment to service standard and/or charges for services being

received by more than one Customer. A Customer may still use its own benchmarking exercises to adjust the service standard and/or charges for its customer specific services.

## **5. HOW CUSTOMERS JOIN *Flex***

The following section describes how a public sector body contractually joins the *Flex* framework as a Customer. It is not an overall description of the public body's decision making and procurement processes. Instead this section focuses on the specific contracting process agreed with the Service Provider (see Schedule 2 (Ordering Procedure) to the Framework Agreement).

### **5.1 Expressing an Interest**

A party is under no obligation to buy services simply by engaging in discussions with the Cabinet Office and/or the Service Provider regarding the *Flex* framework. Even if the parties engage in a process of developing requirements and proposals, it is expressly confirmed in the Framework Agreement that potential Customers are free to withdraw from the 'on-boarding' process at any time without obligation, up to the point of signing a Customer Contract (see Para. 1.3 of Schedule 2 (Ordering Procedure) to the Framework Agreement).

While the on-boarding process may commence in a variety of different ways, the common starting point for potential Customers is to discuss the features and nature of the *Flex* framework with the Cabinet Office. If, following such discussions, the *Flex* framework appears a viable option (even if other options remain under consideration), potential Customers may then wish to start discussions with the Service Provider regarding requirements, costings, timeframes etc. The potential Customer and the Service Provider will enter into a non-disclosure agreement to protect each other's confidential information exchanged during the engagement process (see Paragraph 3 of Schedule 2 (Ordering Procedure) to the Framework Agreement).

### **5.2 Proposals**

To enable the Service Provider to develop an initial Services proposal, it will usually be necessary for the potential Customer to provide certain information, including (see Paragraph 3 of Schedule 2 (Ordering Procedure) to the Framework Agreement):

- An outline of the specific service requirements.
- The business objectives and goals of the potential Customer.
- Any known technical, time or any other constraints.
- Any applicable dependencies (e.g. in respect of other government programmes).
- Due diligence information.
- Subject to any applicable confidentiality arrangements, details of the party's existing arrangements relating to the supply of ICT services.
- Other information reasonably requested by the Service Provider necessary to determine the Customer proposition.

That said, in practice the Service Provider is likely to provide preliminary basic proposals based on more limited information sets.

If the potential Customer remains interested following review of the Service Provider's initial proposal, the parties will engage in a series of meetings and exchanges to further develop the Customer's requirements and the Service Provider's corresponding *Flex* proposal. Should the potential Customer require substantial assistance in developing its detailed requirements, business case or other significant work activity (outside of what would normally be expected from a bidding supplier), the Service Provider can provide supplementary assistance on a chargeable basis (applying the *Flex* schedule of day rates). Any such arrangements would be specifically agreed between the parties in advance of the work being conducted (a set of terms and

conditions are available for such use – see Contract for Business Services CCD to the Framework Agreement). In all other circumstances, each party meets its own costs associated with the on-boarding process (see Paragraph 6 of Schedule 2 (Ordering Procedure) to the Framework Agreement).

### **5.3 Agreeing the Customer Contract**

Agreement for the provision of *Flex* Services to a new Customer requires the completion of a Customer Contract between the Service Provider and that Customer. This will be primarily based on the Pro-Forma Customer Contract (which is held as a controlled document set at the framework level), the Services Catalogue and the framework pricing in the Framework Pricing Workbook CCD. The Pro-Forma Customer Contract provides a fully detailed set of services Ts & Cs and related schedules, together with an asset transfer agreement where existing ICT assets are to be transferred to the Service Provider. The main tasks for the Service Provider and joining Customer will be, (i) to develop and agree the contract controlled documents which form part of the binding Customer Contract, setting out such Customer specific matters as the Transition Plan, Transformation Plan and Customer Selected Services; and (ii) finalise certain elements of the Pro-Forma Customer Contract relating to Customer applicable charges, asset/staff arrangements and other matters.

*Flex* is based on the provision of services through a framework agreement. Accordingly, to comply with procurement law (in particular the requirements set out in The Public Contracts Regulations 2006 – the "**Regulations**"), the parties are not permitted to agree wholesale changes to the Customer Contract Pro-Forma when producing a new Customer Contract. If changes are required due to the particular circumstances of the potential Customer, these must be evaluated to ensure they do not comprise, "*contract terms that are substantially amended from the terms laid down in the framework agreement*" (quoting from the Regulations). This would have to be assessed on a case by case basis, considering such matters as the relative importance of the provisions being amended and the necessity for such changes.

### **5.4 Role of Cabinet Office**

The Cabinet Office's role in the on-boarding process for new Customers is principally facilitative. The Cabinet Office may attend some engagement sessions with the potential Customer and the Service Provider where this will assist, subject to available Cabinet Office ICF resources.

The Cabinet Office also has a key role in maintaining the practical and legal integrity of the *Flex* framework. It may be necessary to impose certain conditions on the entry of a particular Customer (e.g. if a number of Customers are wishing to join at the same time, the Cabinet Office might seek to stagger such entry to avoid 'over-stretching' Service Provider resources). Crucially, the Cabinet Office may prohibit entry into a new Customer Contract where it believes the contractual changes to the pro-forma agreed by the Service Provider and potential Customer breach the Regulations and thereby threaten the legal integrity of the framework arrangement (see Para 1.4 of Schedule 2 (Ordering Procedure)). It is emphasised that the Cabinet Office would only take such actions where it had serious concerns and in the interests of HMG overall.

## **6. PARTICIPATING IN SHARED SERVICES**

Participating in the sharing of services through *Flex* has a number of benefits for individual Customer, for HMG and for citizens. However, due to the shared nature of the Services, factors arise which require contractual provisions which may differ from those found in a simple bilateral provision of services.

## 6.1 Core Shared Services

Save in exceptional circumstances, Customers will be required to contract for the Core Shared Services set (together with any optional services they require) - see Para 4.2.3 of Schedule 2 (Ordering Procedure). Any variations to the Core Shared Services which in any way threaten the standard or reliability of service provision to other Customers will not be permitted.

## 6.2 Exercising Rights with Other Customers

In some circumstances the Customer shall not be entitled to exercise rights under the Customer Contract unless it acts in unison with other Customers. One example is a limitation on benchmarking regarding adjustments to the pricing/standard of services actively shared with other *Flex* Customers (see Paragraph 11.5 of Schedule 15 (Value for Money) to the Customer Contract and Paragraph 3 of Schedule 6 (Value for Money) of the Framework Agreement). Only where all the relevant Customers receiving those services participate in the benchmarking will the results of that benchmark automatically compel the Service Provider to make pricing/standard improvements (a different position applies for Customer specific services or where there is only a single Customer receiving the Services concerned). Limitations such as these are intended to maintain the overall unity of service delivery (in the example given, the limitation also drives potentially more cost effective collective benchmarking).

## 6.3 Potential Liability Where Act Unilaterally

Customers may be required to assume a degree of liability for their actions in the event they elect to exercise certain rights independently from other Customers. A key example is that under Paragraph 15.2 of Schedule 5 (Security) the Customer has a right to compel the Service Provider to suspend service delivery due to security concerns. If the suspension of shared services has an impact on other Customers and the Service Provider is found not to have been in contractual default, the Customer may be liable to the other Customers for the impact on their businesses (in such circumstances the Customers would ideally act in unison).

## 6.4 Change Control and Governance

As noted above, it is crucial that individual Customers and the Service Provider do not agree changes to the shared services, underlying infrastructure or contract terms that undermine the realisation of shared service benefits or the legal integrity of the *Flex* framework. Accordingly, where a change to the services or contract terms may have an impact on more than one Customer, it will be necessary to obtain the agreement of the Framework Manager in respect of such changes (see Paragraph 11.2 of Schedule 10 (Change Control Procedure) to the Framework Agreement and Paragraph 1.2 of Schedule 20 (Change Control Procedure) to the Customer Contract). This may involve consultation with and obtaining the agreement of the impacted Customers.

In order to facilitate the agreement of changes such as those noted in the paragraph above and to enable proper utilisation of the *Flex* framework, a governance regime will be operated allowing Customers to participate in key decision making processes conducted at a Framework Agreement level (see Framework Governance CCD). The overall management and participation in *Flex* will be supported by an 'Access Agreement' between the Cabinet Office and each Customer, under which the parties will set out operational rules allowing smoother running of the framework and resolution of any conflicts of interest.

## 7. EMPLOYMENT AND PENSIONS

Set out below are some key employment and pension related considerations. These are focussed on completion of the Customer Contract, rather than wider HR issues associated with outsourcing.

### 7.1 Employment and Staff Transfer

The parties will need to identify whether staff transfers may occur upon commencement of the Customer Contract pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("**TUPE**") and which employees are likely to be affected. Schedule 21 (Employment and Staff Transfer) to the Pro-Forma Customer Contract sets out various provisions dealing with the possibility of staff transfers from, (i) the Customer; and/or (ii) any existing ICT service provider of the Customer.

The provisions (in respect of both types of staff transfer) provide a reasonably fair delineation of responsibility between the Customer and the Service Provider, in that the Customer retains responsibility for pre-transfer costs and claims in relation to transferring staff and the Service Provider assumes such responsibility in relation to the period post transfer.

There are also provisions in the Pro-Forma Customer Contract in relation to supply of employee information and other provisions in order to ensure a smooth handover of staff to any new replacement service provider upon exit.

Other key provisions in the Pro-Forma Customer Contract include the following (see Schedule 21 (Employment and Staff Transfer)):

- The Customer should note that there are various restrictions that will be placed upon it in the period leading up to the staff transfer date, so that it does not, for example, artificially increase the number of employees who are wholly or mainly assigned to the relevant ICT services or make material changes to conditions of employment so that employment costs become more expensive following a staff transfer to the Service Provider.
- If there is a staff transfer from the Customer, i.e. a transfer of public sector employees, the Service Provider must comply with the Code of Practice on Staff Transfers in the Public Sector (2005) ("**Code**"), which provides that the Service Provider must ensure that any new recruits who work alongside those employees are appointed on overall no less favourable terms and conditions and that they are offered membership of a good quality employer pension scheme (there are various options within this obligation). The Service Provider is also required to provide information and co-operation to the Customer as and when required so that the Customer is able to monitor Code compliance by the Service Provider. All of these obligations derive from the Code itself.
- There are various provisions in relation to the conduct of Service Provider staff, admission to Customer sites, resources and training and the requirement for the Service Provider to maintain certain personnel policies and procedures, as well as provisions relating to promotion of racial equality.

Key activities for the Customer and Service Provider will be:

- Populating a schedule of employee information – this is for the benefit of the Service Provider, so that it knows what staff are transferring and details of their terms and conditions; and
- Information and consultation with transferring staff – this will be mainly the responsibility of the current employer (i.e. the Customer and/or the existing service provider), pursuant to information and consultation obligations under TUPE as well as the Pro-Forma Customer Contract.

## 7.2 Pensions

The protections afforded to employees with public sector pension benefits are very complex and this section does no more than set out a high level overview of these matters and where they are dealt with in the Customer Contract. A more detailed briefing note is available for distribution to those responsible for human resource and pension functions within potential Customers.

HMG (through Civil Service Pensions, a division of the Cabinet Office) has agreed certain protections that must be provided in respect of outsourcing transactions, to preserve the pension benefits enjoyed by employees of a public sector body with membership of a civil service pension arrangement. Broadly, those transferring employees must be offered:

- membership of a pension arrangement offered by the Service Provider that is "broadly comparable" with the civil service pension arrangement;
- the right to transfer historic accrued pension benefits from the civil service pension arrangement to the pension arrangement offered by the Service Provider, generally on a day for day service credit basis; and
- equivalent protections to those noted in the above two bullet-points on any subsequent (second generation) transfer.

Consequently, the contractual provisions agreed with the Service Provider (see Schedule 22 (Pensions) to the Customer Contract) require the Service Provider to have a pension scheme that is broadly comparable with the Principal Civil Service Pension Scheme, set out a detailed mechanism for calculating and paying the transfer value required to secure day for day service credits in the Service Provider's pension scheme and provide equivalent protections for subsequent transfers.

Generally, employees of an existing Service Provider are not given the same level of pension protection, although there are certain statutory requirements which have to be satisfied by the Service Provider in any event. The contractual provisions agreed with the Service Provider (see Schedule 22 (Pensions) to the Customer Contract) cover these statutory requirements.

So that pension matters do not hold up progress late in the on-boarding process, at an early stage, a potential Customer should:

- identify how many employees of the public sector body will be transferred as part of the outsourcing deal and which of these transferring employees have membership of a public sector pension scheme; and
- explore whether the transfer amount paid by the civil service pension arrangement is adequate to secure day for day service credit in the Service Provider's pension arrangement. If it is not, the Service Provider is likely to request either a lump sum payment from the Customer or a price adjustment. Depending on other matters, a lump sum payment and/or a price adjustment may affect the financial viability of the proposed outsourcing.

## 8. KEY CONTRACTUAL TERMS

The *Flex* Customer Contract terms were developed using OGC standard form documents and other contracting good practice. Much of their content will be very familiar to those who regularly review and negotiate contracts for ICT supply and services (e.g. warranty, indemnity, confidentiality, intellectual property, data protection, freedom of information provisions etc).

A full review and explanation of the *Flex* Customer Contract terms is outside the scope of this guide. Set out below is a summary of a number of key contract terms, an early appreciation of

which is considered useful. It is recommended that potential Customers review the full contract set as soon as reasonably practical during their process of considering the *Flex* framework, especially given the limited scope for variation of those terms.

## **8.1 Term**

Customer Contracts may run for up to 7 years in duration (see Paragraph 4.2.2 of Schedule 2 (Ordering Procedure) to the Framework Agreement). The Customer may commit to a shorter period and/or incorporate agreed extension points, but taken together the overall term may not exceed 7 years from signature of that Customer Contract.

Given the time required for transition and transformation, the parties' investment in on-boarding a new Customer and other practical factors, it is unlikely that Customer Contracts with a contracted term of less than 4 years will be permitted. This is not to say a contract cannot be terminated at an earlier date (although termination for convenience will not usually be permitted during the first two years, save in certain circumstances) but termination charges will apply unless terminating for cause (e.g. material breach).

It is noted that the Framework Agreement itself will have a shorter lifespan than most anticipated Customer Contracts. On expiry or termination of the Framework Agreement the relevant provisions concerning charges, discounts, value for money and other 'framework level' mechanisms are automatically incorporated into each Customer Contract, ensuring those rights are not lost (see Clause 5 of the Customer Contract Ts & Cs). In such circumstances it may be agreed that one or more Customers or a third party could provide a continuing management role to oversee the exercise of the framework mechanisms.

See Termination and Exit section below for further details regarding termination and expiry of a Customer Contract.

## **8.2 Due Diligence**

Due diligence provisions in the Pro-Forma Customer Contract place a responsibility on the Service Provider to obtain all information necessary to properly scope and price the work (see Clause 4 of the Customer Contract Ts & Cs). These provisions aim to avoid post-Customer Contract signature claims by the Service Provider that there should be charging/responsibility changes as a result of information subsequently discovered.

The Pro-Forma Customer Contract due diligence provisions represent a contractual baseline. However, the Service Provider may seek variations to these provisions in the event that the due diligence information provided is limited and/or where it is otherwise difficult for it to assess details of the potential Customer and its ICT estate. Consequently, as a matter of good practice and to improve scope and price certainty going forward, potential Customers should provide as much accurate due diligence information as possible to the Service Provider.

## **8.3 Service Provider Performance and Relief Provisions**

The Customer Contract contains a number of provisions setting out the Service Provider's required performance levels (see the Customer Contract Ts & Cs and Schedules generally). Together, these requirements aim to ensure a high level of service delivery, while reducing risk to the Customer and associated staff etc. The performance standards include:

- specific service levels and KPIs, as discussed earlier;
- obligations to comply with applicable policies and standards (e.g. to operate ITIL compliant procedures); and
- general performance obligations.

This latter category of general requirement includes obligations to:

- meet delivery dates specified in the agreement (e.g. Transition milestone dates);
- ensure deliverables meet their specifications; and
- perform the Services in compliance with applicable laws, using all reasonable skill and care and in accordance with good industry practice.

Some aspects of delivery, in light of their complexity, have been assigned specific schedules setting out the related obligations in detail - for example see Schedule 5 (Security) to the Customer Contract.

In keeping with common contracting practice and in order to avoid significant risk pricing premiums, the Customer Contract contains provisions providing the Service Provider with relief from liability in specified circumstances. Such relief is provided to the extent the Service Provider's contractual failures arise from the Customer failing to meet its own contractual obligations (see Clause 40) and, subject to various restrictions and supplementary related obligations, where events occur outside of what could reasonably have been controlled by the Service Provider (see Clause 65). It should be noted that the Customer Contract will contain a number of obligations on the Customer, e.g. an obligation to provide access to delivery locations to carry out repair work. If the Customer defaults on any of these obligations this may entitle the Service Provider to recover for any resulting losses or, more likely, costs.

## **8.4 Limitation of Liability**

The limitation of liability provisions under the Customer Contract are, as might be expected for a substantial procurement, lengthy and detailed (see Clause 41 of the Customer Contract Ts & Cs). Set out below are some core features.

Neither party limits its liability under the Customer Contract for, death or personal injury, breach of statutory warranties of good title or fraudulent acts. The Service Provider's liability for certain matters is also unlimited, including loss of or damage to, (i) real and personal property; and/or (ii) data, as well as liability for matters including breaches of third party intellectual property and breach of security, confidentiality and data protection obligations.

Subject to the above and the remainder of this paragraph, neither party is liable to the other for, (i) indirect or consequential loss or damage; and/or (ii) loss of profits, business, revenue or goodwill. However, a party can still claim for a number of related types of loss, including additional costs incurred in bringing in third parties to remedy matters and (in the case of the Customer) damages paid to third parties due to the Service Provider's contractual default (although the Service Provider has reserved the right to negotiate this last inclusion when agreeing each new Customer Contract).

Subject to the above, the Service Provider's liability is limited in each twelve month period during the contract term to 150% of the Charges paid, payable or due to be paid (being the Charges that would be paid if the full twelve (12) month period elapsed) in respect of the twelve (12) month period concerned. After expiry or termination, recovery for any subsequent breaches is limited to 150% of the Charges paid, payable or due to be paid for the final full period of twelve (12) months wholly during the term.

Subject to the above, the Customer's total aggregate liability, in addition to its obligation to pay the Charges, in respect of each twelve (12) month period during the contract term is limited to 50% of the Charges paid, payable or due to be paid (being the Charges that would be paid if the full twelve (12) month period elapsed) in respect of the twelve (12) month period concerned. After expiry or termination, recovery for any subsequent breaches is limited to 50% of the

Charges paid, payable or due to be paid for the final full period of twelve (12) months wholly during the contract term.

The Customer may recover from the Service provider for any loss, damage, cost and expense it suffers as a result of the Service Provider failing to properly perform its obligations under the Framework Agreement. However, such loss, damage, cost and expense shall be subject to the limits of liability set out in the Customer Contract.

## **8.5 Intellectual Property Rights**

The Customer Contract contains a number of provisions which aim to ensure the Customer has appropriate rights and licences in respect of intellectual property (see Clauses 27-31 of the Customer Contract Ts & Cs).

*Intellectual Property Rights (IPRs) in items specifically developed under the Customer Contracts*  
– Will be owned by HMG and licensed to all Customers via the Cabinet Office (for specific developments commissioned by a Customer it may be agreed that ownership is vested in that specific Customer).

*Service Provider IPRs and third party IPRs supplied or used in respect of the Customer Contracts*  
– Licences will be granted to cover the contractual term. Thereafter, the continued duration of the licences depend on the specific terms applicable to the deliverables concerned, although a minimum period of 12 months after contract termination/expiry is provided automatically without additional charge. Especially with regard to third party IPRs, licensing periods and the associated commercial arrangements may vary. However, the contract contains numerous safeguards to ensure Customer interests are not unduly compromised.

The contract provides for the deposit of source code into escrow where possible and/or the establishment of other arrangements, to ensure Customers remain able to maintain software comprised within deliverables or which is important to continued services delivery (see Clause 34 of the Customer Contract Ts & Cs).

## **8.6 Parent Company Guarantee**

The Customer Contract Pro-Forma includes a form of parent company guarantee (PCG) from the Service Provider's UK parent company (based on the standard PCG agreed between the OGC and Fujitsu Services Limited for use on such projects) – see Schedule 23 (Guarantee) to the Pro-Forma Customer Contract. This PCG provides the Customer with additional protection in the event that the Service Provider was to become insolvent or otherwise not be in a position to meet its obligations or settle any liability. In such circumstances, the Customer may look to the Service Provider's UK parent company to meet any such liability and/or, by agreement, assume performance obligations in place of the Service Provider.

Customers should consider whether they require a PCG to be provided (the default position is assumed to be 'yes') and, if so, whether they are satisfied with that being provided by the Fujitsu UK parent company, e.g. rather than the Japanese ultimate parent. The Customer's required PCG arrangements will be confirmed and agreed with the Service Provider during the on-boarding process leading to contract signature.

## 9. TERMINATION AND EXIT

The Customer Contract includes comprehensive provisions dealing with termination and expiry of that agreement.

### 9.1 Rights of Termination

A Customer may terminate its Customer Contract in the following circumstances (see Clauses 44-47 of the Customer Contract):

- material default by the Service Provider (this may include any material failure to comply with the Service Provider's obligations which is either irremediable or not remedied in accordance with the contract terms, a series of defaults which aggregated are material or any breach of certain specified obligations (e.g. any breach of confidentiality obligations) – the Customer may elect only to terminate that part of the Services provision which is in material default;
- the Service Provider goes into insolvency, administration or similar arrangement;
- failure to meet critical Transition and Transformation milestones;
- a 'change of control' of the Service Provider to which the Customer reasonably objects (e.g. hostile (to HMG) foreign power secures major shareholding); and
- termination for convenience (see below).

In the event of termination for convenience, the Customer will be obliged to pay certain termination charges (see Clause 50 of the Ts & Cs and Paragraph 14 of Schedule 14 (Charges and Invoicing) to the Customer Contract for further details). These termination charges would be calculated at the time of termination to reflect:

- the Service Provider's breakage and unrecoverable costs arising from the termination (the Service Provider must mitigate, avoid and reduce such costs as far as reasonably possible);
- ten (10) percent of the sum of any applicable Core Shared Service Charges which would have been payable over the subsequent twelve month period, in respect of the terminated services;
- an amount to reflect the differing Customer Contract term discount that would have been applicable by reference to the earlier termination date.

Termination payments are also due where there is an event of machinery of government change which reduces the Customer's Registered Users by more than 500 but only the first bullet point above would apply in such circumstances (see Clause 50.1.2 to the Customer Contract Ts & Cs).

The Service Provider's sole right of termination of the Customer Contract would arise in circumstances where the Customer is still in material breach of its obligation to pay undisputed Charges despite having been given 90 days written notice specifying the breach and requiring its remedy (see Clause 48 of the Customer Contract Ts & Cs).

### 9.2 Exit Arrangements

The Customer Contract obliges the Service Provider to supply a range of information to help prepare future tender invitations for replacement services and to facilitate related due diligence exercises (see Paragraph 3 of Schedule 12 (Exit Management) to the Customer Contract).

The Service Provider must also produce, agree with the Customer and maintain suitable exit plans, to be developed in further detail in the event of termination or where expiry of the contract term approaches (see Schedule 12 (Exit Management) generally). These plans will set out the

activities and processes required to enable the orderly migration of all or part of the Services. The Service Provider is then obliged to perform those exit activities as required by the Customer.

The exit plans will set out matters including (see Paragraph 4 of Schedule 12 (Exit Management) to the Customer Contract for further detail):

- Time and resource estimates for exit activities;
- Processes for transfer of data, documentation, contracts/licences and assets;
- Procedures for providing staff information and for dealing with staff transfers; and
- Supplementary exit management structures.

It is noted that assets (not already owned by the Customer) used exclusively in the provision of the Services may be purchased at net book value, with the purchase of other assets subject to reasonable agreement with the Service Provider (see Paragraph 6.6 of Schedule 12 (Exit Management) to the Customer Contract for further detail).

## **10. FURTHER INFORMATION CONTACT DETAILS**

If you require further information, please contact the following:

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