FLEXIBLE CONTRACT
FlexMSA 0.1 (UK)

An open-source, outcome-based contract



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**OVERVIEW**

**WHAT IS A FLEXIBLE CONTRACT?**

A ‘flexible contract’ is an adaptive, outcome-based contract, which is intended to maximize the delivery of customer value. It achieves this in several ways:

* The contract focuses on outcomes (that is, business objectives), which are less susceptible to change than output (such as features). By focusing on outcomes the contract also creates shared goals between the customer and supplier, which helps to align their interests and motivation.
* The supplier is given the freedom to achieve the target outcomes in any way it deems effective as long as it honours the terms of the contract and stays within any constraints specified by the customer.
* The fees (or at least part of the fees) should be payable on the achievement of target outcomes. The supplier is incentivized to achieve the target outcomes in the most cost-effective way, which is also of benefit to the customer.
* The contract is structured as a master services agreement for the full version, or the ‘lite’ version using the Terms and Conditions, under which short-term statements of target outcomes (SOTOs) are called off. SOTOs work in the same way as a Statement of Work, but instead of ‘work’ in the form of outputs and activities, we measure outcomes achieved. The parties can respond to acquired knowledge and changes in the environment in subsequent SOTOs.
* In respect of each SOTO the supplier addresses each target outcome by means of short feedback cycles. So the parties can learn rapidly what works and what doesn’t by measuring outcomes achieved progressively.
* The contract adopts lightweight contractual provisions. This is made possible because the parties only commit to one SOTO at a time, so the financial exposure of the customer to the supplier is minimized. This in turn means that the contract is easier to understand and requires less administrative cost, both to create and to manage.The contract is deliberately NOT focused on the activities of the supplier or the technical processes by which this value is delivered.

**WHY HAVE A FLEXIBLE CONTRACT?**

Many traditional contracts fail to focus on the main reason why the customer engages the supplier – to create value by achieving business results. Many traditional contracts focus on the activities of the supplier, or the delivery of features, with little attempt to link these to the delivery of real value. Far too often, despite the fact that the supplier is diligent and the resulting system is feature-rich, the system is already out of date by the time that it is delivered and it doesn’t actually do what the customer needs it to do. We have developed the flexible contract model to minimize the risk of this happening.

**THE FLEXIBLE CONTRACT IS A *‘MINIMUM VIABLE CONTRACT’***

We have tried to draft the flexible contract in plain English and in as short a form as possible to give effect to its provisions. There may be other issues which you also wish to cover in the contract that can be added to it.

**HOW TO USE THE FLEXIBLE CONTRACT MODEL**

The initial SOTOs can be used as an exploratory mechanism. They can set out target outcomes with a view to identifying problems and potential paths to solve them. These are known as ‘options’ as they are optional rather than required. This is useful if the supplier has significant domain expertise which it can apply to help define the target outcomes. Subsequent SOTOs can be commissioned to achieve specific target outcomes.

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*We also encourage feedback to the community and welcome any questions or suggestions. For additional help in building a flexible contract, please contact us via the website at* [*www.flexiblecontracts.com*](http://www.flexiblecontracts.com)*.*

**FLEXIBLE CONTRACT
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**FLEXIBLE CONTRACT
FLEXMSA 0.1 (UK)**

**THIS AGREEMENT** is made on \_\_\_\_\_\_\_\_\_\_\_\_\_

**BETWEEN**

1. \_\_\_\_\_\_\_**,** a company incorporated under the laws of England and Wales with registered number ­­­­­­\_\_\_\_\_\_ and having its registered office at \_\_\_\_\_\_\_\_\_\_ (the "**Supplier**"); and

2. \_\_\_\_\_\_\_**,** a company incorporated under the laws of England and Wales with registered number ­­­­­­\_\_\_\_\_\_ and having its registered office at \_\_\_\_\_\_\_\_\_\_ (the "**Customer**").

**BACKGROUND**

1. The Customer is a ***[brief description of the business of the Customer]***.
2. The Supplier is a provider of software development consulting, outsourcing and organisation transformation services and has experience in ***[domain]***.
3. The Customer wishes to appoint the Supplier to provide the Services to achieve the Target Outcomeson the terms and conditions as set out in this Agreement.

**OPERATIVE PROVISIONS**

1. Definitions
	1. In this Agreement the following words shall have the following meanings:

|  |  |
| --- | --- |
| **Agreement** | this agreement, including the clauses and schedules and all other written annexes, attachments and amendments which are made a part of this agreement in accordance with clause 12.2; |
| **Business Objective** | the business objectives for each SOTO as set out in a SOTO; |
| **Constraints** | the constraints which impose restrictions on a SOTO as set out in a SOTO; |
| **Customised Software** | any new computer programs and any enhancements to existing computer programs which are to be developed by the Supplier under this Agreement; |
| **Deliverable** | a tangible object that is to be delivered to the Customer as part of the Outcome Delivery and which may take the form of a report, a document or any other material; |
| **Documentation** | all documents and other written material describing, explaining or assisting in the use of the Software, including user manuals relating to the Software; |
| **DPA** | Data Protection Act 1998; |
| **Insolvency Event** | occurs with respect to a party if (a) the party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; (b) a proposal is made with (or for the benefit of) the creditors of the party to reschedule any of its debts or to enter into any compromise or scheme of arrangement with its creditors (except for the purpose of a bona fide scheme for a solvent amalgamation or reconstruction); (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the party (except for the purpose of a bona fide scheme for a solvent amalgamation or reconstruction); (d) a court application or order is made or a notice of intention is given, for the appointment of an administrator, an administrative receiver or a receiver over the party; or an administrator, an administrative receiver or a receiver is appointed over the party; (e) a creditor or encumbrancer of the party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, any part of the party's assets and such attachment or process is not discharged within fourteen (14) days; or (f) any event occurs which is the equivalent of or similar to (a) to (e) in any jurisdiction to which the party is subject; |
| **Intellectual Property Rights** | all patents, trade marks, service marks, copyright and related rights, domain names, rights in get-up, design rights, database rights, topography rights, and all other similar proprietary rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| **Open Source Software** | any software licensed under any form of open source licence meeting the Open Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at http://www.gnu.org/licenses/gpl.html), or anything similar, included or used in, or in the development of, the Software, or with which the Software is compiled or to which it is linked; |
| **Option** | an approach which may be used by the Supplier to achieve a Target Outcome; |
| **Outcome Delivery** | what the Supplier actually delivers, and such delivery may include Software, Deliverables and/or Documentation; |
| **Outcome Measure** | the quantification and/or qualification of how the Outcome Delivery will be measured; |
| **Outcome Tracker** | a visual, numeric or text indicator to track how the Outcome Delivery is progressing towards the Target Outcomes as measured against the Outcome Measure; |
| **Outcome Value** | the forecasted positive impact on the Customer of meeting the Target Outcomes; |
| **Services** | the services to be performed by the Supplier under this Agreement; |
| **Software** | the computer programs to be supplied by the Supplier in the course of the performance of the Services, and shall comprise the Supplier Software, the Customised Software, the Third Party Software, the Open Source Software and the Tools; |
| **SOTO** | a statement of target outcomes as agreed by the parties in accordance with clause 2; |
| **Supplier Software** | the computer programs which are to be supplied by the Supplier under this Agreement, and in which the Intellectual Property Rights are owned by the Supplier; |
| **Target Outcome** | the outcome-based business results, aligned with the Business Objective, that the Customer wishes to achieve and which, if achieved, will deliver the Outcome Value; |
| **Third Party Software** | the computer programs, which are to be supplied by the Supplier under this Agreement, and in which the Intellectual Property Rights are owned by third parties. |

* 1. In interpreting the obligations under this Agreement, they should be construed such that the Customer is responsible for the domain expertise and the Supplier is responsible for the technical expertise.
	2. The following expressions shall be construed as follows: (a) the terms "**data controller**", "**personal data**", "**process**" and "**processing**" have the meaning given to those terms in the DPA, or where any Act is silent as to such terms, as generally and readily understood and accepted within the software community; (b) any phrase introduced by the term "**including**" shall be construed as illustrative and shall not limit the sense of the words proceeding such term.
	3. In interpreting this Agreement (unless the context requires otherwise) any reference to any statute or statutory provision including any subordinate legislation includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
1. the Statements of TARGET OUTCOMES
	1. This Agreement governs the overall relationship between the Customer and the Supplier with respect to the Services.
	2. The Customer is not obliged to purchase any Services from the Supplier but if it wishes to do so then the Customer and the Supplier shall enter into a SOTO, which shall be substantially in the form set out in the schedule. Neither party shall have any rights or obligations in respect of any SOTO, including the provision of the Services, unless and until each of the parties has signed the SOTO.
	3. Each SOTO shall be governed by the terms and conditions of this Agreement. Following the execution of a SOTO by the parties, it shall be automatically incorporated into and form part of this Agreement.
	4. In the event of any conflict or inconsistency between, on the first part, the clauses and schedules of this Agreement and, on the other part, a SOTO, the SOTO shall prevail to the extent of such conflict or inconsistency and for the purposes of the SOTO only.
2. THE services
	1. In respect of each SOTO the Supplier shall use reasonable endeavours to deliver the Target Outcomes within the Constraints to achieve the Business Objective.
	2. For each Target Outcome the Supplier shall create Options that have the potential to achieve the Target Outcome. In respect of each Option the Supplier shall provide a forecast in terms of the estimated value, costs, risks and expiry date (if any) for that Option and shall inform the Customer of any requirements for execution of the Option and any circumstances in which the Option may expire.
	3. The Supplier shall be entitled to use any design, strategy, method or process to create the Outcome Delivery, provided that:
		1. the Outcome Delivery is within the parameters of the Constraints and has the objective of achieving the Target Outcomes; and
		2. if the Outcome Delivery is abandoned pursuant to clause 3.5(a), this will not adversely affect any Outcome Delivery that has been accepted by the Customer pursuant to clause 3.6 prior to that date.
	4. Following the creation of each Outcome Delivery the Supplier shall invite the Customer to inspect the Outcome Delivery and shall report to the Customer on the following (such report to be made accessible to the Customer at all times during the SOTO):
		1. an assessment of the impact (negative or positive) of the Outcome Delivery on the Target Outcomes, based upon the measurement of the Outcome Delivery against the Target Outcomes;
		2. the updated Outcome Tracker;
		3. any risks and learning arising from the Outcome Delivery which may impact on the Target Outcomes;
		4. the remaining resources allocated for the current SOTO against the progress of the Target Outcomes to date.
	5. On the basis of the report pursuant to clause 3.4, the Supplier shall, in consultation with the Customer, decide:
		1. whether to adopt or abandon the Outcome Delivery;
		2. which Target Outcome(s) to focus on next.
	6. If the Supplier, in consultation with the Customer, decides to accept the Outcome Delivery, the Customer shall be deemed to have accepted the Outcome Delivery, and the Supplier shall give the Customer access to all work products related to the on-going operation and maintenance of the Outcome Delivery.
	7. The Customer may require the Supplier to abandon any Outcome Delivery if:
		1. it is outside the scope of the Constraints; or
		2. it has a negative impact on other Target Outcomes or on other systems of the Customer.
	8. The Supplier shall provide the resources as set out in a SOTO.
3. FEES AND PAYMENT ARRANGEMENTS
	1. In consideration of the provision of the Services by the Supplier, the Customer shall pay the fees in the amount and on the dates or with the frequency as set out in each SOTO. Payment is due within thirty (30) days from the date of each invoice.
	2. All sums payable under this Agreement are exclusive of any taxes, charges or duties to which the supply of goods or services may be subject or give rise.
4. CUSTOMER RESPONSIBILITIES
	1. The Customer shall co-operate with the Supplier in its performance of the Services and shall provide such support, facilities and information, including any requirements for execution of the Options, as set out in a SOTO.
	2. The Customer shall ensure that the Supplier has access to a representative of the Customer as identified in a SOTO who:
		1. can fully articulate the business objectives, expectations and constraints of all stakeholders who have an active interest in the success of the Target Outcomes, are actively involved in the Outcome Delivery, or may exert influence over the Outcome Delivery, including the end users, purchaser, managers and executives responsible for the funding of the Target Outcomes;
		2. is fully authorised to make decisions on behalf of all of such persons;
		3. provides feedback in a timely manner as set out in each SOTO to all requests from members of the Supplier and in relation to the Outcome Delivery and the progress towards the Target Outcomes; and
		4. identifies any changes in external factors that will impact on the Target Outcomes.
5. OWNERSHIP AND LICENSING
	1. All right, title and interest in the Customised Software shall, on the date of this Agreement or (if later) on creation of such Intellectual Property Rights, vest in the Customer. The Supplier hereby assigns with full title guarantee by way of present and future assignment to the Customer all right, title and interest in the Customised Software.
	2. The Customer hereby grants to the Supplier a non-exclusive, non-transferable, royalty-free, perpetual licence to use the Customised Software to fulfil any on-gong obligations of the Supplier under this Agreement.
	3. Subject to the licence in clause 6.4, all Intellectual Property Rights in the Supplier Software, any associated Documentation and the Deliverables shall remain in the Supplier or its licensors. However, ownership of the media on which the Documentation and Deliverables are supplied by the Supplier shall vest in the Customer upon acceptance thereof.
	4. The Supplier hereby grants (or shall procure that the owner of the Intellectual Property Rights therein shall grant) to the Customer a non-exclusive, non-transferable, royalty free, perpetual licence to use the Supplier Software, any associated Documentation and the Deliverables as necessary to enable the use of the Customised Software.
	5. In respect of:
		1. Third Party Software, the Customer shall, at its own expense, enter into a licence directly with the owner or authorised licensor of such Third Party Software; and
		2. Open Source Software, the Customer shall comply with the terms and conditions of the specific licence under which such Open Source Software is made available;

in each case regardless of whether the Supplier has sourced or made such software available to the Customer or the Customer has procured such software itself.

* 1. Nothing in this Agreement shall be construed so as to prevent the Supplier from using any techniques, methods, ideas and other know-how gained during the performance of this Agreement in the further of its own business to the extent that such use does not result in a disclosure of confidential information in breach of clause 10 or any infringement of any Intellectual Property Rights of the Customer (or its licensors), and provided that the Supplier shall not use any know-how which is specific to the business of the Customer or has been developed specifically for use in or for the business of the Customer.
1. REPRESENTATIONS AND WARRANTIES
	1. Each party represents and warrants to the other party in respect of each SOTO that it shall perform its obligations under this Agreement in good faith and in a timely and professional manner by using at all times appropriately experienced, knowledgeable, qualified and trained staff exercising reasonable care and skill.
	2. The Supplier represents and warrants to the Customer in respect of each SOTO that:
		1. the performance of the Services and the Outcome Delivery will not in any way constitute an infringement or other violation of any Intellectual Property Right of any third party; and
		2. the Supplier owns or has obtained valid licences of all Intellectual Property Rights which are necessary to the performance of any of its obligations hereunder.
	3. Any unauthorised modifications or use of the Software or any installation of the Software otherwise than in accordance with the Supplier’s instructions (provided that such instructions are sufficiently detailed to enable any person reasonably skilled in the relevant programming language to follow them) by, or on behalf of, the Customer shall render the Supplier's warranties in clause 7.2 null and void.
	4. Any Third Party Software and any Open Source Software which is sourced, or made available by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant software is made available, but is provided "as is" and expressly subject to the disclaimer in clause 7.5.
	5. Except as expressly stated in this Agreement, all other warranties and conditions, whether expressed or implied by statute, common law or otherwise, are hereby excluded.
2. LIMITATION OF LIABILITY
	1. Nothing in this Agreement excludes or limits the liability of either party (including their employees, agents and subcontractors) for:
		1. death or personal injury caused by its negligence;
		2. 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; or
		3. fraud or fraudulent misrepresentation.
	2. Subject to clause 8.1, the aggregate liability of each party to the other party under or in connection with this Agreement and arising during each year, whether arising from tort (including negligence), breach of contract or otherwise, shall in no event exceed the aggregate amount of the fees paid and payable by the Customer to the Supplier under this Agreement during the year in which such liability arises. For the purposes of this clause a year shall commence on the Effective Date or a subsequent anniversary thereof.
	3. Subject to clause 8.1, neither party shall be liable for any loss of profits, loss of business or goodwill, interruption of business or any type of special, indirect or consequential loss, even if such loss was reasonably foreseeable or such party has been advised of the possibility of incurring the same.
3. data protection
	1. The parties acknowledge and agree that in relation to personal data, the Customer is acting as a data controller, and, to the extent that the Supplier processes such personal data on behalf of the Customer, the Supplier shall:
		1. only process personal data in accordance with the instructions and directions that are received from the Customer in relation to that processing and to the extent necessary to comply with its obligations under this Agreement;
		2. have in place, appropriate technical and organisational measures which ensure an appropriate level of security for the processing of personal data and protect personal data against accidental or unlawful destruction or accidental loss or alteration or unauthorised disclosure access or processing as necessary to comply with the seventh data protection principle of the DPA;
		3. not transmit or otherwise process personal data outside the EEA except in compliance with the eighth data protection principle of the DPA.
4. confidentiality
	1. Neither party shall disclose or allow to be disclosed any confidential information relating to the business or affairs of the other party other than to the extent necessary for the performance of its obligations under this Agreement and only to its employees, officers, directors, agents, legal advisors, auditors and sub-contractors who have signed an appropriate undertaking of confidentiality.
	2. The obligations under clause 10.1 shall not apply to any confidential information which:
		1. must be disclosed by law; or
		2. was known to the recipient before its receipt from the disclosing party; or
		3. is lawfully in the public domain or in the possession of a third party other than by reason of breach of this Agreement; or
		4. is independently developed without access to the other party’s confidential information; or
		5. is authorised for release by the written consent of the disclosing party.
5. TERM AND termination OF THIS AGREEMENT
	1. This Agreement shall come into effect on the date of this Agreement and, unless terminated earlier, shall continue for a period of \_\_\_ years.
	2. Either party may terminate this Agreement at any time with immediate effect by written notice to the other party if:
		1. the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and, if such breach is capable of remedy, fails to remedy that breach within a period of thirty (30) days of being notified in writing to do so; or
		2. an Insolvency Event of the other party occurs; or
		3. the other party ceases or threatens to cease to carry on the whole or any material part of its business.
	3. Upon the expiry or termination for any reason of this Agreement:
		1. the rights and obligations of the parties in respect of all outstanding SOTOs shall automatically terminate;
		2. the Supplier shall give the Customer up to date digital copies of all the Supplier Software, Customised Software and Deliverables that have been delivered to the Customer and digital copies of all test data and test plans, to the extent that the Customer does not already have such copies in its possession;
		3. the Customer shall pay the fees to the Supplier for all Services provided until the date of expiry or termination (as applicable) of this Agreement;
		4. any and all amounts outstanding and any unpaid amounts due and owed under this Agreement shall become immediately due and payable; and
		5. neither party shall have any further right or obligation with respect to the other party except as set out in this clause 11 and in the following additional clauses which shall survive the expiry or termination of this Agreement: clause 1 (Definitions), clause 6 (Ownership and Licensing), clause 7 (Representations and Warranties), clause 8 (Limitation of Liability), clause 9 (Data Protection), clause 10 (Confidentiality), clause 12 (General).
	4. The expiry or termination for any reason of this Agreement shall not prejudice any right of action or remedy which has accrued or thereafter accrues to a party under this Agreement or at law.
6. general
	1. All notices required to be given under this Agreement shall be in writing and sent by email to the address of the other party as set out in each SOTO, or as otherwise notified in accordance with this clause.
	2. No amendment or variation to this Agreement shall be effective unless it is made by a written instrument which expressly purports to amend this Agreement and is executed by or on behalf of each party.
	3. A failure or delay by a party at any time or for any period to enforce any of its rights under this Agreement shall not constitute a waiver of such rights or the right at any time subsequently to enforce any provisions of this Agreement.
	4. If any provision of this Agreement is found to be invalid, unenforceable or illegal, then such provision shall be severed and the remainder of this Agreement shall continue with full force and effect.
	5. This Agreement is personal to the parties, and neither party shall assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
	6. Nothing contained in this Agreement is intended to, shall be deemed to, or shall create any agency relationship, partnership or joint venture between the parties. Neither party shall have authority to act in the name nor on behalf of otherwise to bind the other party in any way, save as specifically provided in this Agreement.
	7. Neither party shall be liable for delay or failure to perform any of its obligations under this Agreement to the extent that such delay or failure is caused by circumstances beyond its reasonable control, including a national emergency or war.
	8. No third party shall have any rights under, or be able to enforce, all or any part of this Agreement.
	9. This Agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this clause 12.9 shall limit or exclude any liability for fraud.
	10. This Agreement shall be governed by and construed in accordance with English law in every respect including its formation. The parties irrevocably submit to the exclusive jurisdiction of the courts of England regarding any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**THIS AGREEMENT** has been entered into on the date stated at the beginning of it.

Signed for and on behalf of
**[the Customer]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signed for and on behalf of
**[the Supplier]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# THE SCHEDULEPro-forma for SOTO

|  |  |
| --- | --- |
| SOTO Reference No. |  |
| Date of SOTO |  |
| The Customer representative |  |
| The Supplier representative |  |
| Email address of the Supplier for service of notices under the Contract |  |
| Email address of the Customer for service of notices under the Contract |  |

This statement of target outcomes (“**SOTO**”) is entered into pursuant and subject to the flexible contract which was entered into between ***[name of the Customer]*** (the "**Customer**") and ***[name of the Supplier]*** (**the “Supplier”**) dated \_\_\_\_\_\_\_\_\_\_ (the "**Agreement**").

1. **DEFINITIONS**

1.1 Terms defined in the Agreement will have the same meaning in this SOTO unless otherwise defined in this SOTO.

1.2 If there is any inconsistency or conflict between, on the one part, this SOTO and, on the other part, the clauses and schedules of the Agreement, this SOTO shall prevail to the extent of such inconsistency or conflict and for the purposes of this SOTO only.

2. **FEES**

*NOTES:*

*NOTES: If Option A for the fees is selected, the fees are only payable to the extent to which the Target Outcomes have been delivered. In other words, the Supplier is only paid if it delivers measurable value.*

*If Option B for the fees is selected, the fees comprise two elements: the Service Fees which are the fees for the performance of the services, and the Outcome Fees which are only payable to the extent to which the Target Outcomes have been delivered.*

**Option A – Pure Outcome-based fees**

[INSERT MATRIX OF FEES PAYABLE TO THE EXTENT TO WHICH THE TARGET OUTCOMES HAVE BEEN DELIVERED. THERE ARE A NUMBER OF DIFFERENT APPROACHES FOR STRUCTURING THE FEES. OPTIONS COULD, FOR EXAMPLE, INCLUDE A SET FEE OR A PERCENTAGE OF ANTICIPATED SAVINGS / PROFITS / VALUE CREATED]

2.1 The fees shall be determined in accordance with the table set out above.

2.2 The fees are payable ***[frequency] [in advance / arrears]***.

**Option B – Hybrid Outcome-based fees**

[INSERT:

(1) SERVICE FEES. THERE ARE A NUMBER OF DIFFERENT APPROACHES FOR STRUCTURING THE SERVICE FEES. OPTIONS COULD, FOR EXAMPLE, INCLUDE TIME & MATERIALS, FIXED PRICE, COST PLUS, AND TARGET PRICE. THE SUPPLIER’S NOMINAL PROFIT MARGIN COULD BE LINKED TO THE OUTCOME FEES RATHER THAN BEING INCLUDED IN THE SERVICE FEES. THERE COULD ALSO BE A PENALTY IF THE SUPPLIER DOESN’T DELIVER.

(2) OUTCOME FEES PAYABLE TO THE EXTENT TO WHICH THE TARGET OUTCOMES HAVE BEEN DELIVERED. THERE ARE A NUMBER OF DIFFERENT APPROACHES FOR STRUCTURING THE OUTCOME FEES. OPTIONS COULD, FOR EXAMPLE, INCLUDE A SET FEE OR A PERCENTAGE OF ANTICIPATED SAVINGS / PROFITS / VALUE CREATED]

2.1 The fees shall comprise the following elements:

(a) the fees payable for the provision of the Services (the “**Service Fees**”); and

(b) the fees payable for the delivery of the Target Outcomes (the “**Outcome Fees**”).

2.2 The Service Fees are payable ***[frequency]*** ***[in advance / arrears]***.

2.3 The Outcome Fees are payable as and when, and to the extent to which, the Target Outcomes have been delivered.

3. **TERMINATION OF THIS SOTO**

3.1 Upon the expiry or termination of this SOTO for any reason:

* + 1. the Supplier shall give the Customer up to date digital copies of all the Supplier Software, Customised Software and Deliverables that have been delivered to the Customer and digital copies of all test data and test plans, to the extent that the Customer does not already have such copies in its possession;
		2. the Customer shall pay the fees to the Supplier for all Services provided until the date of expiry or termination (as applicable) of this SOTO; and
		3. any and all amounts outstanding and any unpaid amounts due and owed under this SOTO shall become immediately due and payable.

4. **SOTO SPECIFICS**

|  |  |
| --- | --- |
| SOTO Completion Date | *NOTE: Please state not applicable if this is not being used.* |
| The problem or opportunity to be addressed |  |
| The Business Objective |  |
| The Target Outcomes  | *NOTE: These should be in line with the Business Objectives. They should be bullet points only and listed in order of priority.* |
| The Constraints  | *NOTE: Examples include design constraints, minimum quality constraints, budget constraints, schedule constraints, resource constraints.* |
| Customer responsibilities | *NOTE: This should include any support, facilities and information, including any requirements for execution of the Options, which are to be provided by the Customer.* |
| Time frame for provision of feedback by the Customer |  |
| Resources to be provided by the Customer |  |
| Resources to be provided by the Supplier |  |

**Target Outcomes**

[COMPLETE THE FOLLOWING TABLE FOR EACH TARGET OUTCOME]

|  |  |
| --- | --- |
| Name of Target Outcome: | In the form Action Verb + Noun Phrase  |
| Outcome Value: | Time or money over a defined period |
| Outcome Measure: |  |
|

|  |  |
| --- | --- |
| * Unit of measure:
 | i.e. the metric used to measure e.g. time, percentage or number |
| * party responsible for conducting measurement:
 | i.e. a named person or group responsible for conducting the measurement e.g. the Customer |
| * Method for measurement:
 | i.e. the systems used to collect data or the tests that will be run e.g. data analytics report or usability tests for target users |
| * Frequency of measurement:
 | i.e. The period of time when measurements will be taken e.g. every ***[2 weeks]*** with their end-users |
| * Baseline (starting point):
 | i.e. the baseline that will be used as the starting point against which to compare results |

 |

Signed for and on behalf of

|  |  |
| --- | --- |
| [THE CUSTOMER] | [THE SUPPLIER] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |