

21March 2023

Buying and Contracting for New Technologies

presentation for GSA

Contracting approach - best practice

- **Strategic planning** from the customer before engaging with service provider
- **“Buy-in” from senior stakeholders** and commitment from every level of the organisation before a strong working relationship can be established
- The customer will need to have the **right resources** available for its internal analysis and baseline of existing services
- **Invest** in the process at an early stage – project team (including legal) to spend time and effort in deal structuring
- Ensure legal understand the technology concerned and the **potential risks** within the business to then mitigate against them
- The contract has to be **fit for purpose** – does the supplier paper work?
- Clear **roles and responsibilities** are key
- In a disaggregated model make sure your supplier contracts **work in tandem** with each other
- **Outcome based approach** to contracting with a clear methodology
- **Strong governance** is critical - develop early in the relationship. Must be robust with the ability to flex over time
- **Traditional routes** to market unlikely to work – RFPs vs. negotiated terms

Contract considerations

Dependencies

- Clearly state what the dependencies are and who must deliver them
- Implication that you cannot carefully demarcate roles and responsibilities and then claim to take all of the profit and none of the risk and none of the control over delivery

Governance

- Important to document governance processes reflecting operational reality and risk profiles. Are governance processes and the description of roles more important than “legal” clauses?
- Lawyers must not define processes in a vacuum
- Properly thought through governance processes, which encourage collaboration and positive interaction between parties, can shape the success of a transformation process

KPIs

- Reports and key performance indicators may be used as part of progress checks but they should also be incorporated into the ongoing business as usual ways of working
- KPIs help track any value delivered through the programme and will also drive adherence to the new ways of working
- Shared and standard KPIs should be used by all parties to enable consistency across the organisation

Change management and progress checks

- Change management programme to include change champions, regular communications, inclusion and engagement activities and a focus on an open and collaborative culture
- Legal team can facilitate steering groups and governance activities to ensure that the new technology methods deliver value
- Consistent and standard progress checks to track planned progress against actual progress, and to help avoid common issues such as scope creep, costly delays, miscommunication and missed actions across the working group

Other key terms

- Fees – T&M / rate card, fixed, milestones, price increases
- AI – IP considerations
- Data protection
- IT security
- Insurance
- Ongoing supplier diligence
- SLAs and service credits – behaviour drivers, not penalties
- Availability – reporting periods, exclusions
- Limitation of liability – general caps, super-caps, exclusions
- Termination – service level triggers, reputational issues, termination for convenience and exit assistance



Contact

If you have any queries please contact

Charles Mallows

Associate

+44 (0)20 7427 6789

Charles.Mallows@crsblaw.com

charlesrussellspeechlys.com

This information has been prepared by Charles Russell Speechlys LLP as a general guide only and does not constitute advice on any specific matter. We recommend that you seek professional advice before taking action. No liability can be accepted by us for any action taken or not taken as a result of this information. Charles Russell Speechlys LLP is a limited liability partnership registered in England and Wales, registered number OC311850, and is authorised and regulated by the Solicitors Regulation Authority. Charles Russell Speechlys LLP is also licensed by the Qatar Financial Centre Authority in respect of its branch office in Doha and registered in the Dubai International Financial Centre under number CL2511 and regulated by the Government of Dubai Legal Affairs Department in respect of its branch office in the DIFC. Charles Russell Speechlys LLP's branch office in Hong Kong is registered as a foreign firm by The Law Society of Hong Kong. In France, Luxembourg and Switzerland Charles Russell Speechlys provides legal services through locally regulated and managed partnerships or corporate entities. Any reference to a partner in relation to Charles Russell Speechlys LLP is to a member of Charles Russell Speechlys LLP or an employee with equivalent standing and qualifications. A list of members and of non-members who are described as partners, is available for inspection at the registered office, 5 Fleet Place, London, EC4M 7RD