



## Summary of Performance Management Arrangements in the GovNext Agreement

*This is a summary and is therefore not a substitute for consulting the contract in specific instances.*

*See also 'Dealing with Disputes under GovNext'.*

### **Performance Management under the Customer Contract (General)**

A customer contract (between an agency and a vendor) includes the following documents:

- the Enrolment Agreement (the Agreement);
- the Customer Relationship Terms;
- the Service Category Terms;
- the Service Catalogue; and
- the Order.

Any review of State rights under a contract is incomplete unless specific orders are examined. This summary reflects only a review of the 'standard' documents – the Enrolment Agreement and the Customer Relationship Terms.

**For Complex Services** (including Transition Services) the contract contains Liquidated Damages provisions. Liquidated Damages are capped.

Liquidated Damages are paid where the Contractor has not achieved acceptance of the Transition Services by the date agreed by the parties (the 'acceptance' process must be followed prior to being able to claim Liquidated Damages).

Where the Liquidated Damages cap is reached, or transition completion has not occurred within one month of the completion date, then the Customer can terminate.

Service credits accumulate for non-performance of **Critical Service Levels**. Critical Service Levels are outlined in the Service Category Terms, the Service Catalogue and the Order. Service credits are capped monthly.

If the Contractor fails to meet a **Service Level, including a Critical Service Level**, (Schedule 2<sup>1</sup>), the Contractor must perform an analysis of the problem and take all necessary steps to remedy (the Customer may also direct the Contractor to engage additional personnel).

If in any 2 consecutive months the Contractor fails to meet a Service Level (or any combination thereof), the Customer may provide the Contractor a written notice to submit a Remediation Plan, which the Contractor has to submit within 20 Business Days. The Customer may:

- approve;
- give notice to amend; or
- reject.

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<sup>1</sup> All specific clause and Schedule references in this document are to the Customer Relationship Terms

If the Customer approves, then the Contractor must comply. Approval does not affect any other rights arising out of non-performance.

If in any three consecutive months the Contractor fails to meet the same Service Level; the Contractor incurs eight Service Level Failures over a consecutive six month period; the Contractor fails to submit or comply with a Remediation Plan; there is likely to be a risk to the State (clause 22.1 outlines the nature of the risks e.g. health or safety of any person; material data security; damage to reputation); or the State has a right to terminate; then the State may appoint a Performance Manager.

The Performance Manager is to help the Contractor to remedy and mitigate the risks.

### ***Rights for specific non-performance***

As outlined, above, Liquidated Damages are paid where the Contractor has not achieved acceptance of the transition services by the date agreed by the parties.

Under performance may be managed through the Service Level provisions outlined above.

### ***Suspension***

The Customer may issue a notice to suspend a Contractor where there is likely to be a risk to the Customer (clause 43.1 outlines the nature of the risks e.g. health or safety of any person; material data security; damage to reputation); a Disaster occurs<sup>2</sup>; there arises a requirement to be notified under Workplace Health and Safety Laws; or the Customer has a right to terminate.

Note that a suspension of the Umbrella Agreement does not suspend existing Orders, though it does suspend any new Orders from being placed.

### ***Termination***

The Customer has a right to terminate the Agreement (which includes *all* Orders):

- if the Contractor commits a Material Breach;
- if any For Cause Termination Event occurs;
- material breach of clause 29 (Intellectual Property), 30 (Confidentiality), 31 (Customer Data), 32 (Privacy) or 33 (Security);
- if the Contractor breaches clause 50.3(a) (No Dealing); or
- fails the same Service Level in respect of 3 months in a 6 month period.

The Customer may terminate any *part* of the services:

- if the Contractor fails to comply with its obligations under clause 20; or
- an Extended Service Level Default<sup>3</sup> occurs.

If the State terminates the Umbrella Agreement, then this Agreement terminates in whole or in part (if the State terminates the Umbrella Agreement in part).

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<sup>2</sup> Disaster includes, but is not limited to a Force Majeure event.

<sup>3</sup> Failure to meet a Service Level and failure to remedy in 20 Business days; or any other event so identified in this Agreement.

The Customer may terminate *Orders* for cause:

- if the Contractor commits a Material Breach;
- if any For Cause Termination Event occurs;
- material breach of clause 29, 30, 31, 32 or 33;
- if the Contractor breaches clause 50.3(a);
- fails the same Service Level in respect of 3 months in a 6 month period; or
- if a click and buy service, in accordance with clause 15.3(d).

The Customer may terminate *Orders* for convenience in accordance with clause 45.2.

***For more information, please see:***

*What can I do with my GovNext order for Network Equipment if my agency is moving buildings?*

*GovNext-ICT – Can I terminate a GovNext order?*