Planning to succeed in contracting
A handbook for contract management in Croydon
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Planning to succeed in contracting
Croydon Council Contract Management Handbook
1. Introduction
1. Introduction

1.1 What is contract management?

Contract management is ‘the process of systematically and efficiently managing contract creation, execution and analysis for maximising operational and financial performance and minimising risk’. Put simply it is about ensuring that all parties to a contract fully understand their obligations and responsibilities and fulfil them as efficiently and effectively as possible.

Successful contracting is a process that requires different approaches according to the circumstances. As circumstances become more complex more time and attention needs to be put into the earlier stages of planning both the outline and detail of the contract. It also means we have to think through the types of relationships that need to be established with others to try to ensure that the right issues are being addressed in the right way by the right people at the right time.

1.2 The purpose of this handbook

This Contracts Management Handbook is aimed at ensuring ‘expert contract management’ as part of a suite of ‘expert commissioning’ competencies. It is the responsibility of all Croydon Council staff involved in managing, overseeing or monitoring contracts to use it. The Council has implemented a new target operating model, making contract management a core responsibility of the Strategy Commissioning and Procurement (SCPP) directorate.

SCPP is working in partnership with service commissioners to develop a broader range of competencies, which are broader than the technical and transactional skills required to draft contracts. They include taking on a set of truly commercial skills - the ability to negotiate, communicate, analyse and manage risk, manage relationships, influence others and manage conflict.

This handbook, therefore, covers all those activities associated with contract management – from the establishment of the business case and the confirmation of need, through the engagement process between customer and contractor, contract administration and relationship management to the review of contract performance.
We aim to ensure that all Croydon Council contracts continue to deliver the best outcomes for the people of Croydon.

**We want to make sure that the end to end process of contracting is carried out in a way that delivers:**

- Ongoing value for money
- Solutions to meet ongoing demand
- Realisation of intended benefits, including social value
- Sustainable service delivery
- Performance compliance
- Continuous improvement
- Management of risk
- Statutory obligations
2. Croydon’s contract management framework and principles
2. Croydon’s contract management framework and principles

2.1 Commissioning strategy and category management

The Council’s Commissioning Strategy provides a structure to support all areas of the Council in adopting a consistent, comprehensive and robust approach to commissioning activity, encouraging long term strategic planning. It promotes commissioning, procurement and contract management as a driver for the transformation of Council services and encourages challenge of existing methods of service delivery.

Category management has been introduced to provide a strategic approach to managing all aspects of the commissioning cycle – from the identification of need through to delivery of agreed outcome. It is about taking a project management approach to buying goods and services that is structured, measurable and drives continuous improvement – as outlined in the Category Wheel opposite.

The foundations for effective and successful contract management rely upon careful, comprehensive and thorough planning which clearly defines service outcomes. There are many examples of good contract management in practice across the Council.

However, there are still improvements that can be made – particularly in improving consistency in contract management, gaining greater clarity around key performance indicators (KPIs) and outcomes and simplifying and standardising processes and documentation.
Planning to succeed in contracting
Croydon Council Contract Management Handbook

We also need to gain greater corporate visibility and oversight over contract performance and adopt best practice approaches to transition and decommissioning.

We can do better, through our contracting, to explore and test the available commercial and service improvement opportunities during the term of the contract.

2.2 The contract management framework

The Council has set out its contract management framework based on a series of principles, commitments and ‘enablers’.

**Principles** - the Council will look at end-to-end lifecycle management and encompass each stage of the commissioning cycle by:

- Clarifying objectives and agreements around procedures for managing the contract at the tender stage
- Holding regular monitoring reviews and triggering prompt corrective action to deal with poor performance
- Focusing on continuous improvement via incentivisation, not just compliance
- Emphasising that strong relationship management (internal and external) is a critical success factor

**Commitments** - this handbook will drive a consistent Council-wide approach to contract management with its strategic principles based on:

- **Risk and value based prioritisation** - the more important, higher risk and/or value the contract, the more comprehensive the contract management approach; priority to be given to ‘business-critical’ contracts
- **Integration** - teams will work as one, across departments, and be engaged based on the right expertise at the right time; agreeing that no significant activity is undertaken without wider team consultation
- **Flexibility** - not overly prescriptive or administrative
**Enablers** - investment to drive success will be provided through:

- Capable people
- Appropriate organisational structures
- Effective processes
- Appropriate systems and tools; and
- Meaningful data

### 2.3 Contract management approaches

To support the delivery of this framework there will be 3 main approaches to contract management. The level to which each is applied will be driven by the value, risk and importance of the contract:

**1. Strategic supplier approach** - strategic suppliers are business-critical in the short-term and long-term, and service provision would be compromised to varying degrees without them. Their position in the market is often ‘niche’ and is therefore characterised by ‘supply risk’.

Often these suppliers enjoy close relationships with manufacturers and/or specialist groups of customers, or service-users, say in the case of social care. There may be significant capital assets or intellectual property invested in a strategic supplier. Relationships with strategic suppliers often need a significant level of contact and investment from both sides but they also need to be transparent – particularly around cost; value will be driven by continuous improvement. Full consideration of the contract management steps detailed within this handbook should be applied to these types of relationships which will be assumed to have Executive ownership and have governance appropriate to more complex contracts.

**2. Operational supplier approach** - operational suppliers have a medium-term relationship where value is driven by total cost, continuity of supply and the supplier’s performance to customer specifications. Management of the supplier will largely focus on the supplier’s performance in terms of its contractual obligations and responsibilities, its continuing cost competitiveness and its adherence to service or product quality standards.
The type of operational relationship will be dependent not only on monetary value but to some extent on the nature of the business – for example in social care an open and constructive channel of communication will aim to resolve any day to day care quality issues in a timely manner for all parties concerned.

3. **Transactional supplier approach** - transactional suppliers provide basic commodities and are the least complex and most short-term supplier relationships. Almost all of the value in this type of relationship is driven by the supplier’s unit pricing. All such transactions in Croydon will be undertaken through the e-procurement system. These relationships are typically governed as simple contracts with an agreed volume of goods or services at a fixed price. The contract management approach is therefore relatively localised and output based.
3. Contract management basics
3. Contract management basics

3.1 Planning

Planning a contracting exercise can be like planning a holiday, and it can sometimes be helpful to ask ourselves about:

• The subject – where are we going and how are we going to get there?
• The object – why are we going there and how will we know we have got there?
• The benefits – what are we aiming to get out of this trip longer term and how will we evaluate that, if at all?
• The cost – what will the whole thing cost and have we factored in all the incidental things, such as the equivalent of currency exchange, airport transfers and taxes, additional luggage costs, insurance and so on?
• The type of provider – in terms of type of holiday how do we get the most out of our provider and how much does that depend on whether they are a ‘niche’ provider offering us a specialist experience or a general agency because our needs on this holiday are similar to those of many other people?

• The risks – what are the main risks and how are we going to keep these to a manageable minimum and what insurance should we have in place?
• The effects – what will be the result if this all works out? What are we likely to want to do next and should this be built in now?
• Tolerance – have we built in enough margin for delays or problems?

In the same way, contract management is about the active management of the relationship between the commissioning agent (through the contract manager) and the contractor, over the term of the contract, for the provision of goods and services to the agreed standards.

Contract management should be proportionate to the value, risk and complexity of the contract. So, for example, simple ‘purchase contracts’ will usually only require inspection on receipt and payment of the invoice whilst for complex or high value contracts it will usually be necessary to adopt a more detailed ‘contract management plan’.
As we pointed out in the introductory section, successful contracting is a process that requires different approaches according to the circumstances. Broadly we can categorise contracts into two main types – ‘simple’ and ‘complex’.

### 3.2 Contract types

**Simple contracts**

- **Purchase orders** are simple contracts for a defined quantity of goods or services, supplied in return for an agreed fixed price, under an agreed set of terms and conditions (there are standard terms and conditions for all e-procurement orders in Croydon).

- **Spot contracts** are simple contracts for goods or services purchased in a defined quantity and at the prevailing price. In some areas of spend spot contracts can account for a large proportion of spend, often at short notice. Generally spot contracts should only be made within the context of a previously agreed set of circumstances which define agreed financial delegations.

- **Framework agreements** and ‘call-off’ arrangements are those under which a supplier agrees to supply an undefined quantity of goods or services at an agreed price for a limited period, often to avoid the need for repetitive administration and usually allowing the customer to ‘leverage’ their buying power. Technically, a contract is not formed until the purchaser ‘calls off’ a quantity of goods or services as and when they are required.
Complex contracts

Like all local authorities Croydon has a number of more complex contracts. These might include important out-sourced arrangements for front-line services (such as care services, waste management services, or highway maintenance) or corporate or ‘back office’ services (such as ICT and facilities management).

Outsourced service contracts - put simply, outsourcing is an active decision to give up doing something in-house in favour of paying someone else to do it. In a local government context, out-sourced contracts may be for services provided directly to the public, e.g. in social care, waste management, transport, education and highways maintenance, or ‘managed service’ contracts for back-office and corporate functions such as ICT.

Public-Private Partnerships (PPP) and contracts awarded under the Private Finance Initiative (PFI) are characterised by complex, long-term agreements (e.g. for 30 years’ duration) for the provision of services, centred (in the case of PFI) on the construction and management of an infrastructure or significant capital asset (such as a hospital, school, prison, motorway, waste plant or railway).

The private sector provider invests in the assets and provides the service associated with it, taking on a range of financial, employment and other risks in return for a regular payment from which it will meet all running costs, service and repay the debt and collect a profit. Some PPPs will provide public services through a joint venture arrangement.

These more complex contracts tend to be higher value and are often of significant strategic importance or criticality to the authority.
4. Six steps to successful contract management
4. Six steps to successful contract management

This section deals with the steps that should be undertaken in planning, specifying and managing contracts. The table opposite sets out the six major steps required (building from the foundations upwards) to implementing good contract and relationship management in a more complex contract.

For new contracts all six steps should be applied; for existing contracts steps 2 to 6 should be considered.

As with the ‘holiday planning’ example earlier, planning and management, including relationship management, are absolutely essential ingredients for successful contracting and they should be deployed well before contract award.

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<td>Lay the right foundations. Make sure the contract includes everything you need. Choose the right type of specification. Manage responsible procurement and think about managing social value into the supply chain.</td>
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Step 1: Define your service and performance requirements

It is important to lay the right foundations even though in the course of a busy procurement process it is tempting to leave such matters until later. Often managers find themselves so wrapped up in the process that making arrangements for managing the contract appears less important and, as a result, so many contracts fail to deliver their planned benefits because they are not properly managed throughout the term.

A solid, performance-based, contract will provide the basis upon which a good relationship can grow. If the contract is poorly constructed, it will be much more difficult to make the relationship a success. The contract is not just a legal document; it needs to be practical, effective and workable. Therefore, a good contract not only clearly identifies both the contractor’s obligations and yours, but also forms the foundation for a productive relationship built on communication and trust. It will be based on an understanding that efficiency will be a key driver and an expectation of a commercial approach to contract management arrangements. The tender specification stage is your best opportunity to establish the performance you require from your eventual contractor, how risk will be managed and the necessary arrangements for liaison and reporting. These agreements are then cemented in a legally-binding contractual relationship.

The contract should clearly set out the arrangements that are binding on both you and your contractor, clearly showing how the contract and the relationship will be managed in a way that supports good performance and fosters sound commercial relations. These provisions should include the performance requirements, the arrangements for liaison between the parties, access rights, issue resolution and reporting requirements.

All tender specifications should include:

- A clear definition of what is to be provided and requirements to be met (the ‘specification’)
- An agreed level of service or performance standard
- Means to measure performance against the agreed standard
• Pricing mechanisms including where appropriate, milestone payments, incentivisation/rewards, retentions, and, if appropriate, how prices will vary in reaction to inflation
• A transition plan or contract implementation plan
• Clarity about ownership of assets and intellectual property
• Invoicing arrangements and exit planning expectations
• Agreed break options
• Premises or locations (where the goods/services will be delivered)
• Arrangements governing health and safety, sustainability, equalities and diversity, social value, environmental management, economic regeneration and community engagement
• Arrangements governing sub-contractors.

Additionally, more complex contracts will include:
• A mechanism for managing under-performance
• A clear allocation of risk between the parties
• A plan to cover implementation, transition and rollout
• Escalation and dispute resolution procedures
• Communication routes, typically at three levels: operational (end users/technical support staff); business (contract manager and relationship manager on both sides); strategic (senior management/board of directors)
• A clear statement about the contract manager’s responsibilities
• An agreed exit strategy.

Really good relationship management with a contractor begins with clarity of expectation. All contracts should include predetermined dates, or milestones, which the contractor is contractually obliged to meet. It is important that everyone knows when these dates are, and what needs to be achieved by when.
Case Study 1 shows what can happen if you the arrangements for contract and relationship management are not set up properly.

CASE STUDY 1 - Fail to plan: plan to fail

An authority entered into a long-term contract to outsource the refurbishment, management and operation of a number of care homes for older people. The contract had been very carefully negotiated by a team of experts (some external) in procurement, finance, HR and law. Once negotiations were completed, the commissioning function in the authority’s Social Services department was tasked with the job of managing the contract and the relationship with the provider. No member of the commissioning team had been directly involved in the procurement process.

The team was experienced in commissioning social care services, but had very little knowledge of the contract in terms of: how it was constructed, how risk had been apportioned between the parties, how the payment mechanism was supposed to work and how payment was linked to performance. They did not know who to turn to as the procurement team had been disbanded. Worse still, it took eight months for the team to get a copy of the contract they were supposed to be managing. The team was not sufficiently resourced to undertake the onerous performance monitoring regime that the contract required. When standards began to slip, they were unsure how to deal with the problem.

Thankfully these issues are now being addressed but the authority had clearly failed to establish the resources, people and procedures necessary to manage this contract effectively from the start and as a result, the carefully negotiated performance management framework failed to deliver during its first few years.
Effective contract performance management comes from specifying and agreeing Key Performance Indicators (KPI’s) that complement the deliverables of the agreement. Typically, the choice around specifications is whether to adopt ‘input specifications’ or ‘output specifications’ or a mixture of both.

**Input specifications** set out the precise method that the contractor needs to employ to deliver a service (sometimes known as ‘conformance’ specifications). These prescribe, in some detail, such things as materials, staffing levels and processes and they can be cover things like the frequency of an input (e.g. grass-cutting, street cleaning).

We need to think carefully about the balance of input specifications, given that it can be much more difficult to hold the contractor to account for service quality if you have told them exactly how to do their job and they have followed these instructions to the letter. Prescribing the service this way can also stifle innovation. Input specifications like these tend to lead to longer documents demanding a greater attention to detail.

**Outcome specifications** (sometimes known as ‘performance specifications’) are measures of the impact that the interventions of the contractor will result in. Croydon’s Commissioning Strategy clearly outlines the
Council’s commitment to outcomes-led commissioning. By determining only the desired end result, the contractor is then given the flexibility to decide how those outcomes should be achieved, using their own expertise to determine how best to supply the goods or provide the service. The contractor then carries the greater share of risk in this regard. The chances are we have chosen our contractor because we believe that they know what they are doing and are more likely to have experience and ideas on how to do things more efficiently and more effectively. Sometimes we can specify the actual outcome, as opposed to the output (‘outcome specifications’).

Output or outcome specifications tend to be shorter and more succinct because we are only setting out what we want to get from a product or service, rather than prescribing in detail how the contractor should go about delivering it but they can include technical specifications (e.g. in an ICT context that the system works alongside other ICT products to deliver the desired outputs).

In our Commissioning Strategy the Council sets out its commitment to seeking social value in all contracts. In our Social Value Toolkit we identify the key to successfully delivering additional social benefit in ensuring that social benefits are at the core of the processes: ‘identifying them as one of the key drivers of an exercise means that you have the opportunity to sculpt the process you are about to commence in order to suit the issues (social and otherwise) which you wish to address through the investment.'
Potential bidders should be in no doubt as to what Croydon hopes to achieve. Our enthusiasm for addressing social need in this way should be clear from our behaviour and our documentation’ (pg17). ‘Robust monitoring against defined key performance indicators (KPIs) must also be included. KPIs should be clearly drafted, achievable and reflect the importance of the social benefit to the project as a whole.’(pg24 in the toolkit)

A mechanism needs to be set up to also enable the contractor to provide feedback to you on your performance in managing the contract, how the relationship is working and whether you have created an appropriate environment in which the contractor can best perform. It is best to provide both formal and informal ways of communicating this message. Contract managers say that informal channels of communication are at least as important as the formal ones and, generally, feedback from the contractor’s perspective increases the likelihood of any problems or issues being identified promptly and being resourced appropriately.

Having awarded a commercially sound contract following best procurement practice, it is then essential to manage both the contract and the relationship with the contractor so that the objectives of the contract and value for money are achieved and sustained on an ongoing basis.

Croydon has developed its Category Wheel approach (see page 10), with a target operating model that identifies a more detailed menu of activities and a detailed breakdown of who would be taking responsibility for which part in the process, including:

- Transition & contract implementation
- Operational supplier management
- Contract management (performance)
- Supplier development; and
- Contract review

(See Appendix B page 85 for a checklist of tasks and roles)

Good contract management takes time and effort so adequate resources must be assigned to it. There will be an ‘overhead’ of in-house resource necessary to manage the contract.
All well-managed contracts have robust and appropriately skilled and resourced contract and relationship management arrangements in place.

The relative scale, complexity and criticality of a contract will determine the required level of resource for managing it. (see page 17 and 18).

The financial resource required to manage a major contract has been estimated at 2% of the contract value, but this can increase to as high as 10% for more complex contracts.

Generally speaking, simpler contracts for the supply of goods, where the market is highly competitive, the costs associated with switching suppliers in the market are low and where the contract is of a relatively low strategic importance, will not require the level of investment, skill and stewardship as for, say, a complete outsourcing of a strategically critical activity.

For more complex contracts, contract managers and/or their teams should have a commercial acumen and well-developed competences in performance management, quality management, financial management, risk management, contingency planning, project management, supplier development and communication.
For more complex contracts it is particularly important to use the expertise of Category Managers for the implementation or mobilisation phase of the contract. The team responsible for the contract should use project management-type methods for planning, scheduling, plotting a critical path, analysing cost, risk and stakeholder management. The Category Manager will oversee and manage the relationship with the contractor and all stakeholders during the transition to the operational phase. This is essential where the construction of a new building or new capital asset is fundamental to the contract.

Professional HR, financial and legal support and assistance will be required where the transfer of employees to the contractor is involved.

For more complex contracts research has shown that continuity of personnel between the different phases of the contract is beneficial in order to foster, sustain and develop positive working relationships as well as ensuring knowledge continuity.

The diagram on previous page describes a part of Croydon Council’s operating model, which works by acknowledging that key personnel involved in the contracting activity (echoing the category wheel on page 10) retain involvement to a greater or lesser extent depending on which phase has been entered. This idea of a partnership throughout the lifetime of a contract helps us to retain the original scope, focus and intent of the contract. It also helps prevent contractual ‘scope creep’, builds in continual challenge and helps maintain a focus on the commercial position.

Prior to starting a more complex contract you will be setting an expectation with your bidders that a business plan will be developed in conjunction with the final supplier(s) - particularly if the contract involves the construction, refurbishment or provision of assets, operating a concession or an activity that attracts revenue from the public, such as a leisure centre. The business plan should include detailed arrangements for the ‘parallel’ operation of the service during a construction or refurbishment and commissioning phase and continuity requirements for the business during the period up to and beyond the commencement of the new service.
Croydon’s operating model provides for a joined-up management of risk for more complex projects through SCPP. The Council needs to maintain an overview of the performance of all its more complex contracts or strategically important contracts so that key decision-makers can see them in the context of the authority’s community priorities and take steps to address issues accordingly, so any significant risks must be identified on the JCAD risk management system.
Step 2 Develop your performance management framework

This section deals with establishing a management model that focuses on ensuring that contractual performance levels are maintained or improved. Generally this involves striking a balance between quality and cost to ensure a value for money outcome. In our Social Value Toolkit we also emphasise that ‘thinking social value’ should shift the focus from the bottom-line price or cost of a service towards the overall value of the outcomes delivered. How a service is delivered is taken into account along with what is delivered.

In step 1 we covered the specification phase of a contract and highlighted the need to ensure the contractor is signing up to delivering outputs or outcomes as defined in the specification and that our arrangements for managing any under-performance are working. Performance management is the process of making sure that the contractor continuously performs to and improves the agreed standards of service as specified in the contract.

In order to manage this delivery a baseline set of standards will have been pre-agreed at the procurement stage with bidders and an improvement factored into the contract price. Social value considerations should come into play at this point.

In terms of designing a performance management framework this ought to be proportionate to the complexity and scale of the contract. You can make the process of designing a performance management framework as simple or as elaborate as you wish. You would not wish your contractor to channel their energies (and costs) into a needlessly burdensome performance regime, nor to meeting targets that are only vaguely relevant to what you are trying to achieve.

For more complex contracts, you may wish to start by establishing whether it is important to your contract to measure the availability of service. This is particularly important in ‘managed service’ contracts such as in ICT, where a period of non-availability or ‘down-time’ will disrupt your operations. You may decide that some unavailability is inherent in a service (to allow for routine or planned maintenance, for example) and pay 100% of the service payment for (say) 99.5% availability, or, alternatively, you may decide to set the standard at 100% availability and make a deduction, or abatement, for each (say) 0.1% of availability that is lost. You need to decide which party will carry the risk of that inherent unavailability.
It is vital that you establish the current level of performance, or baseline, before setting targets. This will show contractors how much improvement is required to attain your target standard (and also help you set a target level that is testing but achievable). It is also good practice to ask your contractor to confirm your baseline as part of their due diligence exercise, when they will satisfy themselves that the information you gave them during the tender process is correct. This will prevent re-negotiation once the contract has been signed.

Leading up to and during this stage you should also be considering who will be responsible for capturing and reporting performance data, at what intervals, using performance indicators that are relevant to the essence of the contract; It is important to make sure your performance management arrangements are focused on the desired outcomes. Service quality standards should be established by setting targets that are testing, but also realistic and achievable. Setting performance targets at aspirational but unrealistic levels means setting up your contractor to fail which, in the end, helps no-one. In addition, you also run the risk of unnecessarily inflating the cost of the contract by paying over the odds for a level of service that you don’t really need.

There is a saying that ‘what gets measured gets done’ so remember that the contractor will focus their resources on meeting these standards as measured, particularly where payment or performance deductions (sometimes called ‘contract penalties’ - although see page 37) are linked to performance. However, another saying is ‘hitting the target and missing the point’. Focusing resources in this way can sometimes prove detrimental to other aspects of the service that do not feature in the performance regime.

You may find that your contractor expends less effort than you would like on tasks that are important to you but appear to the contractor to be peripheral to the main focus of the contract.
Case Study 2 shows how one authority dealt with this problem successfully.

**CASE STUDY 2  What get measured gets done**

An authority had awarded a contract for the provision and maintenance of vital front-line assets.

A few years into the contract, the contractor was doing well against operationally critical performance measures, but on occasions the contract manager required the contractor to perform tasks that, though ancillary to the principal purpose of the contract, were nevertheless important to the governance of the authority. The contractor appeared less concerned with completing these additional tasks in a timely manner, as they did not feature in the performance regime.

The contract manager developed a solution to the problem. He needed the contractor to know which ancillary tasks were more important and to incentivise the contractor to complete them on time. He devised a yellow and red card system by which he could alert the contractor to the relative priority of a task. To be workable, the contractor needed to be able to exercise some control over his risk, which meant that a completion period needed to be agreed for each task separately. Default points were imposed for tasks that were not completed by the agreed deadline, which in turn helped determine the contractor’s service payment for a given period.

For all new complex contracts, the authority now employs a ‘catch-all KPI’ that enables the contractor’s performance of ancillary tasks to be measured and incentivised effectively.

Ultimately any good performance is based on supporting the service’s clear view of what qualities of the service are the most important and which measures capture what really makes a good service for service users and you. This could range from volume of throughput, ‘time to respond’ or ‘time to repair’ to the number of complaints received. It is unlikely that one person can do this effectively alone, so it is advisable to get a group of people or a panel together to draw up a list of possible measures of performance. Ideally, these people will be knowledgeable stakeholders to your contract and include service users or their representatives.
From this field of possibilities you should select a suitable number, probably not more than a dozen or so (depending on the contract), to take it forward to the next stage of development. You now need to determine which of these are more important so you can give them an appropriate weighting in your contract.

As we talked about in step 1, care needs to be taken to measure quality as well as quantity. Quality measures might assess such aspects as completeness, capacity, reliability, flexibility and timeliness, among others. Some aspects of a service may be better measured by end-user surveys as performance data as this will offer a direct link between reward and the experience of the service user. The more subjective this measure is the more the contractor will resist it if it represents a major revenue risk to them but it is important to be robust about this.

**Incentivising your contractor to perform is an important consideration.** Linking payment to performance is the usual way – for example linking the required level of service contractually to the payment mechanism, thereby transferring performance risk at least partially to the contractor. Payment for the availability of the service provided can also be abated where availability levels drop, though you should consider giving your contractor a rectification period, or an initial period of time to fix the problem before payment deductions kick in. Whether ‘carrot or stick’ you must ensure that the contract is absolutely clear about exactly what would happen if performance does, and does not, come up to the required standard and how this will affect contract payments. This means that the contract needs to spell out, so that all parties understand:

- Who is responsible for capturing and reporting availability and performance data
- Who is responsible for keeping detailed performance records
- Who is responsible for making payment deductions
- The precise method of calculating and presenting payment deductions
- Whether the deduction is discretionary or automatic, and the method and timing of deductions (i.e. whether they will be made from the next following invoice).
Where you are identified as responsible for calculating and making payment deductions you should always be ready to show your calculations. If your contractor disputes a deduction and you have insufficient evidence to support it, your claim will be difficult to sustain. You may also wish to consider any shared risk and reward payments for exceeding your expectations for performance. You should make this decision during the procurement process. Any additional reward will certainly be popular with bidders, but you should take great care that any payments over and above the contracted payment are budgeted for, structured properly and capped. As well as the obvious financial risk there are serious risks to damaging the relationship you intended to promote. You also want to avoid simply paying for levels of performance that are not required or add no value to your organisation or end users.

Payment Mechanisms (PayMech) have been designed to allow Councils and contractors in the case of long term, complex contracts, to accurately model payment (and profitability) against contract compliance. PayMech has been particularly well developed in PFI-type deals, although it is now in use with some of the largest waste management contracts in the UK. PayMech manages all of the data feeds required and automatically inputs into the PayMech for analysis and financial processing. Since there is a direct relationship between measured compliance and payment it is important that the team who put together the payment mechanism consult with those who become responsible for contract management.

Finally, it is important to be reasonable about the start-up phase to any contract and a some form of flexibility is advisable around performance standards being expected to rise from the baseline. Your contractor will need some time to get up to the new standard. You should agree how long it should take to do this, and communicate it clearly to all stakeholders. During this period, performance data should be recorded for information purposes but should not entail payment deductions. It is also a good idea to agree a few key indicators just for the transition phase, so that you can monitor your contractor’s progress during this period. Compare performance regularly with a range of relevant benchmarks in other authorities or other relevant organisations so the results can be used to inform a process of continuous improvement.

Some contract managers find it difficult to take remedial action such as making performance deductions when standards fall. They may be worried that it will damage their working relationship with the contractor, or that
the contractor is having financial difficulties and that the service will suffer further if deductions are made.

One solution is to set up your performance management framework that invokes the contractor to make performance deductions from their invoice automatically, thus relieving the contract manager from having to impose them on a more discretionary basis. Under this arrangement, the contractor undertakes self-monitoring of performance, with occasional spot checks carried out by the contract manager to ensure that monitoring continues to be effective. The invoice is supported with statistical information that clearly explains what is going on.

Legally, deductions you make from payment should be a genuine pre-estimate of the loss the authority will incur from the failure. We need to be careful not to set deductions at a level that could be interpreted as punishing the contractor. In the UK penalty clauses are unenforceable in law, so it is better to call them ‘performance deductions’, ‘default payments’ or ‘liquidated damages.’ In case of dispute (if it comes to that), a court is more likely to find in your favour if you can show that the deductions were set by making a genuine pre-estimate of the loss incurred by the failure.

In the main, linking payment to performance will offer you the best opportunity for success, provided you exercise care in designing and implementing an effective performance management framework.

A salutary note, though, is that sometimes the consequences and implications of not tackling performance through contract management have statutory implications. In the case of the legionella outbreak in Barrow in Furness, for example, failures did result in loss of life and corporate manslaughter charges.
Case Study 3 shows how one authority dealt with the issue of linking payment to performance.

CASE STUDY 3

An authority has an integrated contract for refuse collection and street cleansing in the borough.

The contract manager, who also managed the procurement process, chose not to link payment to performance in his contract. He had become disillusioned after seeing bidders put a line of cost in their budgets to meet performance deductions. He wanted a partner who truly shared the authority’s objectives for the street environment.

The two parties have a Partnership Charter that fosters joint decision-making and there is even a fund for innovation. The kind of relationship and culture they enjoy (they are co-located) makes linking payment to performance, in this case, somewhat redundant.

“My way of managing under-performance is immediate rectification. It’s in our contractor’s culture and it’s the expectation of the citizens in this borough – a perfectionist, obsessive culture.

I don’t want to get bogged down with performance statistics. If there’s a problem with a missed collection or a sub-standard condition I say ‘Don’t report it to me, speak to the cleaner and get it sorted!”

Our Decommissioning Toolkit is dedicated to guiding good practice when the need to decommission a particular service arises. Normally decommissioning takes place as a result of changing need or the wish to redesign a solution, but, exceptionally, services are terminated for poor performance. In such circumstances the need to plan well, take legal advice, and particularly to take care of service continuity and vulnerable service users is just as important.

Contracts should always set out the provisions for terminating the contract if levels of performance, non-availability or non-delivery fall to an unacceptable level. There is a risk that
a court may find that performance was poor but not poor enough to justify termination, in which case the client may be liable for the contractor’s losses including lost profits. For more complex contracts it is likely that your contract will contain ‘step-in’ rights or other provisions to allow you to assume control of some or all aspects of the service in a controlled manner. In contracts where the contractor is funded by a bank or other financial institution you will need to discuss and agree with them detailed arrangements for the ongoing provision of the service.

Benefits realisation can be a key part of some contracts, showing the profile of planned investment over the life of the contract. During the procurement process, it is prudent to prepare a benefits realisation plan, showing anticipated benefits and how they will be realised or achieved. Some contracts offer excellent opportunities to improve availability and performance levels. You should seek to identify these opportunities and document the intended benefits from the contract, so that you can monitor and record the achievement of the benefits during the operational phase. Benefits realisation plans are developed to enable the achievement of benefits to be tracked and reported during the operational phase. Your plan should clearly show what will happen, where and when the benefits will occur and who will be responsible for their delivery. You should also have a process for monitoring the achievement of benefits against expectations and targets, which you must be capable of tracking in terms of ‘hard’ (e.g. cost, or anticipated savings) and ‘soft’ (e.g. image, skills-transfer) benefits. Ideally you should link this tracking to the established performance framework, rather than duplicate it.

Maintaining and updating the benefits realisation plan together with the contractor will enable both parties to track the delivery of benefits and report such delivery to stakeholders at any point during the life of the contract. You should consider appointing a nominated officer to be responsible for benefits realisation, who will report upwards or into a Board any serious barriers to benefits realisation, whether external or internal. A benefits realisation plan that involves mutual benefits for the client and the contractor can ensure the greatest buy-in.
Step 3 Manage your relationship

Like any other relationship, you have to work on your relationship with your contractor, and it takes time - perhaps more time than many people realise. It is important to be realistic. The relationship you are forging is based on cooperation between two or more parties, where the parties have some shared interests and some interests that are opposed; you will disagree occasionally. This section deals with building up mutual trust and establishing a basis for negotiation based on trust and understanding so that there is a contract culture defined by openness in communication and a joint approach to managing delivery.

Whilst a well-drafted and effectively managed contract is essential, it is not in itself a substitute for effective relationship management. Effectively managing your relationship with your contractor will breathe life and vitality into the contract.

For simpler contracts, such as goods supply contracts, you should be chiefly concerned with measuring performance and service levels by using Service Level Agreements (SLA), conducting regular reviews and giving and receiving feedback. For more complex contracts, you will need to move your relationship to a different level.

On page 12 we identify circumstances where a ‘strategic approach’ needs to be taken with suppliers. Strategic suppliers are business-critical and service provision would be compromised to varying degrees without them. At their most complex, supplier relationships move even beyond joint innovation and product development to be concerned with managing and developing markets to meet the need for continuous improvement in public services.

Strategic partnerships can sometimes take the practical characteristics of an alliance but all alliances run into rough patches, particularly in early days. Exaggerated expectations can often lead to demise of the alliance. Stakeholders in alliances should facilitate processes of collaboration and frequent and transparent exchanges are essential ingredients to enriching the quality of the relationship – avoiding the ‘us and them’ syndrome at all costs.

It is important to deal with problems promptly even if the relationship between you and your contractor is as good as it can be. Contracts should be governed by procedures that seek to prevent problems as well as resolve them but all contracts should include formal escalation procedures that provide a structure for sorting out the more serious problems that can’t be resolved at the operational level.
Effective dispute resolution means allowing local resolution for the great majority of issues but efficiently escalating more serious differences as appropriate. The contract must define the procedures for undertaking corrective action if, for example, target performance levels are not being achieved.

By using both formal and informal structures appropriately you should be able to resolve problems swiftly and successfully and strengthen your relationship as a result. That said, good relations need to be supported by ‘good housekeeping,’ i.e. well-maintained records of change management and issue resolution.

For more complex contracts, the creation of a Partnership Board, made up of senior representatives from both customer and contractor, can support positive working relationships. The term is used here in a generic sense, i.e. your contract does not have to constitute a formal partnership for this technique to offer benefits. The Partnership Board should meet regularly to discuss matters of strategic importance to the relationship, making joint decisions as appropriate to provide a high-level ‘steer’ to both the contract and the relationship. A key responsibility of the Partnership Board is to ensure that both parties are aligned in delivering the contract effectively and are not pulling in opposing directions. Appendix D shows a sample ‘partnership charter’.
Case Study 4 describes how one Partnership Board is working to improve the service to end-users

CASE STUDY 4 What ‘partnership’ really means for one authority

An authority has an integrated contract for refuse collection and street cleansing in the borough. The contract manager wanted a partner who truly shared the Council’s objectives for the street environment. The two parties have a legally binding Partnership Charter, which governs the relationship and fosters joint decision-making. A Partnership Board, with top-level representatives from both customer and contractor, meets quarterly to give the contract and the relationship a strategic ‘steer.’

Under the Charter, each partner accepts a duty to:

Make an effort to understand the other’s obligations

• Be just and faithful in all dealings
• Work in the spirit of co-operation
• Resolve differences by discussion and negotiation
• Communicate clearly and effectively
• Seek to achieve savings to the benefit of both partners; and
• Give early warnings to the other about mistakes or problems.

To do this, the partners have committed to:

• Work alongside each other and not in separate rooms
• Sharing communication and information systems
• Encouraging secondments and joint training and induction of staff; and
• Jointly monitoring costs through ‘open-book’ accounting.

Four ‘innovation forums,’ composed of people from both partners, develop proposals for service improvement and greater cost-effectiveness and anticipate proposals for any change in the service that may be required. An innovation fund is in place and available to support the development of ideas and get them put into practice.

“Our style is geared toward solving problems - not monitoring by statistics,” says the contract manager. “Problems are shared - we don’t punish contractors financially. Issuing defaults is not our style. There are arrangements in the contract but in seeking partnership, we do more. We aspire to act justly to each other.”
“I am not doing this service on the cheap, it’s expensive - but I have the capacity to respond to problems rapidly and fix them, and open-book accounting gives me full disclosure and the profits are capped. They need to please us because there’s a break clause after Year 8.”

The contractor can also use the contract as a reference site. They want to showcase the service to help win business from other authorities. “I believe we have maturity to acknowledge the legitimacy of profit, but with a relationship like a direct labour organisation. We feel that the contractor is part of the family.”

In the manner of a project ‘highlight report’ it is useful to agree standing agenda items with your contractor, covering performance, progress against milestones, issue resolution, stakeholder management, staff issues, sustainability and risk management. It is also important that you record all decisions and actions from your review meetings formally and agree the record with your contractor. Appendix E Contains a simple agenda.

When managing more complex contracts you should take prudent steps to maintain a working knowledge of any contractor’s business and their position in the market, particularly if commercial and operational risk is to be effectively managed to protect long-term service continuity or leveraged for best value. This means collecting strategic intelligence about the contractor concerning a number of factors such as their ongoing financial strength, security and capability, their competitiveness in, and aspirations for, the developing marketplace and their behaviour (such as business strategy, growth, new contracts, liabilities, mergers, acquisitions, disposals, product development, market share, divergence into new markets or withdrawal from existing markets, industrial and investor relations).

In Croydon our Finance Services will conduct checks at the tendering stage through ‘Company Watch’ but your knowledge-base may include existing publicly-available information and intelligence from other sources, information from other authorities, and analysis on past performance and spend. In the Coydon operating model, market knowledge and analysis is a responsibility equally shared between SCPP (with Category Managers expected to be experts around their category portfolio) and service commissioners.
Finally, shared commissioning arrangements are becoming increasingly common and will become the norm in the future as public services seek benefits from greater economies of scale and reductions in duplicative back offices. This means an increasing culture of shared contracts. Whilst we have some notable examples already, the current level of experience in the sector is still at fairly low levels and there are perceptions of shared commissioning and contracting unnecessarily lengthening and complicating processes.

Shared commissioning and procurement arrangements are often contractually formalised under the Local Government Acts or other public sector legislation. E.g. the delegation by individual authorities to undertake functions can be agreed under sections of the Local Government Act 1972, and lead commissioning and pooled funding agreed under the National Health Service Act 2006. Other flexibilities in public sector partnerships have also been opened up by case law. Specific advice should be sought from Legal Services.

Authorities participating in shared commissioning and contracting need to:

- Gain an early commitment to joint working before approaching the market
- Nominate a lead authority to be responsible for contract and relationship management
- Identify opportunities for reducing costs by eliminating duplication and standardising processes (for example, sharing mechanisms for obtaining user input)
- Establish common performance standards and expectations and methods for measuring performance; and establish a common escalation and dispute resolution procedure
- Consider how they can leave the door open for further authorities to join at future dates.

In summary, factors that can inhibit the development of a successful relationship include:

- Frequent and rapid recourse to the formal contract to overcome problems
• Clashes in cultures which are so disparate as to prevent the creation of the level of trust and confidence required

• Reluctance by the supplier to cooperate in value for money or benchmarking tests conducted by the organisation

• Commercial issues, for example lack of real competition resulting in uncompetitive, poor value for money terms from the supplier, or conversely that the organisation is critically dependent on one supplier leading to price rise vulnerability and/or problems of management capability or resources

Factors that encourage the development of a successful relationship include:

Securing senior level support in both organisations

• Recognising that actions and attitudes affect the tone of the relationship

• Ensuring that the governance arrangements are fair

• Ensuring that relationships between the parties are peer-to-peer as far as possible

• Ensuring that roles and responsibilities are clearly understood by both parties and that the necessary authority levels have been ascribed

• Ensuring that escalation routes are clear and understood but that problems are resolved as early as possible and as low down the management tree as possible

• Separating strategic matters from the day-to-day service delivery issues

• Ensuring that appropriate attitudes and behaviour are practised and displayed to assist the promotion of a positive and constructive relationship

• Communicating and sharing information at the appropriate level between the organisation and the supplier - for example strategic, business and operational levels and as openly as possible.
Step 4 Manage your contract

Your contract provides a formal ‘safety net’ for your working relationship with your contractor and good housekeeping provides the foundation for good relations. This means you will need to administer your contract properly. This section deals with the mechanics of administering your contract.

Your contract documentation should be constantly maintained, especially where any changes to services, requirements, prices or procedures are concerned. Senior management and stakeholders should be kept informed through a clear reporting mechanism.

You will also need to manage risk and put plans into place to ensure continuity of service in case something should go wrong.

Don’t underestimate the importance of administering your contract. With clear administrative procedures you can ensure that all parties to the contract understand who does what, when, and how. Well-managed contracts include arrangements for contract administration that are clearly set out in the contract. They are binding on both you and your contractor, in a manner that supports rather than hinders good performance.

The elements that may require most careful administration include:
- Contract maintenance and change control (variation)
- Charges and cost monitoring
- Ordering procedures
- Payment procedures
- Budget procedures
- Resource management and planning
- Management reporting
- Maintaining availability and performance records
- Asset management.

It is highly likely that there will be changes, or variations to the contract, especially if the duration of the contract is longer than a year or two. It is vital that we follow the process for variations which ensure the contract documentation is kept up to date and relevant to what is happening ‘on the ground’. All documents relating to the contract need to be consistent and all parties must have the correct version. Any variation to a contract must be specifically authorised in writing by the Director of SCPP or a designated officer, who must retain a copy of this authorisation as a document relating to the contract.
If the variation is likely to result in an increase in the value of the contract the officer must also firstly obtain authority for the additional expenditure in accordance with the Council’s Financial Regulations and the overall costs must be contained within agreed budgets. A report seeking authority for the change to the contract must be made to the Contracts and Commissioning Board or Corporate Services Committee.

You will need to allocate resources to this important activity and establish a clear accountability for it in your contract management approach.

As covered in step 3 above, for more complex contracts, senior management will need to know how a contractor is performing and whether any issues are arising that will require their intervention. A contract manager’s responsibility is to establish efficient and effective management reporting procedures, so that information about performance and possible problems with a contract reaches those with power to act as soon as practicable.

**It is best to define your requirements for service performance reports and management information** before and during the procurement process. Consideration should be given not only to what information indicates contract compliance but what management information (MI) needs the organisation has for this function. During the procurement process, you will need to decide who will undertake the capture and reporting of performance data. Alternatively, you could allocate this responsibility to the contractor. However, there is a cost involved that you will either bear yourself or will be included in the contract price in some way. Either way you will need to consider cost-effectiveness as part of your decision.

For the sake of simplicity, reliability and to keep costs down, you should consider using the contractor’s own management information and performance measurement systems. After all, your contractor needs to know what’s going on, too, and it might also help you to benchmark the contractor’s performance on your contract with their performance on their contracts with other customers.
Understanding the costs underlying the contract is a key responsibility of a contract manager and is essential for achieving ongoing value for money, especially when evaluating the cost of changes to the contract. All changes to the contract or to the respective obligations of both client and contractor need to be evaluated in terms of their effect on costs and on the contract price. Without this discipline, contract price inflation can be allowed to continue unabated and can lead ultimately to questions about value for money. If you are in doubt, you should seek specialist legal or financial advice, as appropriate.

‘Open-book’ accounting is the optimum arrangement for more complex contracts as both you and your contractor need to enjoy a shared understanding of profile of investment, inflationary pressures and revenue and cashflow forecasts. Sharing this knowledge can support positive working relationships and joint working between the parties. It can also prevent misunderstandings and reduce the instance of disputes relating to costs. Open-book accounting is the complete and unimpeded sharing of detailed, up-to-date financial information pertaining to the contract and its operation, where every item of planned income and expenditure is shown as a line item at the bid stage and continues to be shared openly throughout the term of the contract.

Understanding the make-up of costs and analysing trends will also allow you to better judge the validity of any claims your contractor might make for compensation in extraneous circumstances, or in respect of costs arising from risks that were shared or retained by the customer.

Risk is defined as the probability of an unwanted outcome happening. In contract management, managing risk means identifying and controlling the factors that may have an impact on the fulfilment of a contract. Risks can relate to any aspect of the contract and include fluctuations in demand, lack of contractor capacity, changes to your requirements, industry standards or to legislation and the transfer of staff. Risks may be classified as:

- **Operating risks** that you and your contractor may encounter during the operational phase of the contract. These may be further categorised as environmental risks, health and safety risks, financial and investment risks, demand risks, employment risks and performance risks.

- **Emerging risks** that are unknown during the procurement process but which will come to light and require management during the life of the contract.
• **Project risks** that will need to be managed during the procurement process and, if appropriate, the construction or implementation phase of the project. These risks need to be managed separately and you need to identify, understand and have a plan for managing all risks before you can finalise the tender documentation, in particular the conditions of contract, the specification and the performance management framework. During the procurement process for a more complex contract you will need to capture the likelihood, impact and mitigation of all identified risks and emerging risks (which you will allocate between the you and your contractor) as well as project risks themselves.

**Operating risks are those that you will need to allocate between the authority and your contractor.** You should follow the general principle that risks should be placed with the party best placed to manage them, remembering that wherever risk is transferred to or shared with the contractor, they will very likely require a commensurate compensation or reward. You cannot hope to transfer all risks to the contractor; not only would it be impractical, it would also be too expensive. The allocation of risks needs to be clearly captured and dealt with in the terms and conditions of contract and should inform both the development of the specification and the performance management framework.

**Some risks are what we might call ‘emerging risks’** or ‘unforeseeable risks’ – i.e. those where you just don’t know what they are going to be until they occur. Nevertheless, you and your contractor will need to agree a process by which you will evaluate and allocate new risks as they emerge during the operational phase of the contract.

A risk register needs to be maintained throughout the operational phase of the contract, retiring operating risks that have been fully mitigated and adding emerging risks as time goes on. Share your risk register with your contractor and encourage them to use it, too. You can then jointly operate your process for identifying emerging risks, developing and implementing mitigating actions and subsequently retiring them as appropriate. Together, you should make a point of reviewing all high and medium-level risks routinely at your regular review meetings. If you can do this well, you will be much less likely to get nasty surprises along the way.
A major part of contract management is considering what will happen if the service fails or is interrupted. Even disruptions of a temporary nature can have dramatic impacts both on public services and on the lives of those that depend upon them. Effective business continuity management of the supply chain is ever increasing in its importance, particularly in times of a challenging economic climate.

You and your contractor need to identify business continuity issues, which should be included in the tender response method statement. The contractor’s business continuity arrangements should set out clearly what will happen and what steps will be taken to keep the service running day-by-day and hour-by-hour, including the procedure for the recovery of ICT systems and essential data and arrangements and for the payment of operational staff in case the contractor should become insolvent.

Your plan should help prepare you for:

- Failure of equipment or buildings
- Industrial action or other non-availability of staff
- Shortage or non-availability of supplies or fuel
- Interruptions to transport, water, power, ICT or communications
- Natural or man-made disasters and other force majeure events (i.e. events generally considered to be outside the control of either party, usually defined in the conditions of contract)
- Insolvency or bankruptcy of your contractor.

Depending on the nature of the service the business continuity plan could be tested as a ‘desktop’ scenario, working with your contractor.

Contractors need to take out suitable cover to protect both parties from insurable risks arising in the course of the performance of the contract. Usually this will mean that your contractor, as a minimum, will need to obtain public liability (this will cover a value of £5 million unless the Council’s Head of Risk approves a lower limit), professional indemnity (£2 million if applicable) and employers’ liability insurance cover (£10 million) as a condition of the contract. You will need to ask for evidence that this cover has been obtained prior to commencement of the contract.

For lower value or lower risk contracts these can reviewed in conjunction with the Insurance section.
Managers often under-estimate the value of intellectual property rights (IPR). These are the legal rights to use, for commercial gain, ‘soft’ property such as ideas, drawings, designs, specifications, documents, training materials, marketing campaigns or software which have an intrinsic value to the organisation, either for its own use or, more likely, as a potential source of revenue.

Clearly, IPR tend to offer the greatest commercial value to contractors, but that does not mean that customers should let go of their rights too cheaply. Sometimes customers are ready to accept developmental services, such as writing new software, at a reduced or zero cost in return for the transfer of intellectual property rights to the contractor. However, this often vastly under-values the IPR and can lead to public sector as a whole having to pay several times over for the development of the material in question. Retaining, or at least sharing, IPR with the contractor can lead to a healthy income and a better deal for the public sector, if alternative customers or even new markets can be found.

As contract manager, you should be particularly watchful of IPR clauses in contracts for consultancy, training, software or design services and take appropriate steps to protect, or if possible, exploit the value of your IPR for your authority.

It is good practice for contracts to be independently audited to ensure contracts are fit for purpose, particularly for contracts of a more complex nature. As part of Croydon’s developing governance framework around contracting we will be determining the process for auditing the contract and who we will appoint to carry out such a review.

Using the Legal Team

At initial procurement stage specialist support should be sought by the Category Manager. The right planning process will help highlight the issues that will need professional support and when this is best obtained. In Croydon all contracts will be subject to review by Legal Services so it is important to introduce this element early. Signing off for contracts under a value of £100K can be done at the level of the relevant financial delegation but for values over £100K there is a need to secure the relevant legal signatory. The process of sealing contract documentation has to be done through Legal Services, who will complete a ‘signing and sealing’ form.

Spending time at the outset of the relationship, with updates from time to time, pays dividends, allowing Legal Services to develop the quality, speed and relevance of their advice as their knowledge of your business increases.
Category Managers will manage the roles and responsibilities of the parties involved and will negotiate the level of input needed. Developing mutual expectations will help Legal Services save time and avoid unnecessary cost, lengthy correspondence and unnecessary redrafting. All too often Legal Services has limited information and is faced with unrealistic expectations on timescale. It is helpful to identify for Legal Services what level of risk clients will and don’t want to accept. Without this information they will try to cover them all.

**Your legal advisers will challenge you, and are right to do so.** There will be times when you are intent on doing a deal that is fundamentally flawed or exposes you to a major degree of risk with limited advantages. This is when you need someone working with you who will question you before it’s too late.

Finally, **remember your obligations and responsibilities under Data Protection and Freedom of Information legislation.** As contract manager, you should make yourself aware of your contractor’s and your own responsibilities under all relevant legislation, including the Data Protection Act 1998 and the Freedom of Information Act 2000. Legal Services will support you in this regard.
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Step 5 Seek improvement

All public authorities have the responsibility to seek improvement in the services they provide to the public. Outsourced services and other services provided by third parties are not exempt from this requirement and in times of stringent cuts in public sector funding it is important to work with contractors towards reducing costs, improving quality and building in as much flexibility as possible to ensure contractors can support the Council in its responsiveness to changing demands over the lifetime of the contract.

This section deals with seeking to make improvements, principally through providing incentives to the contractor. The aim is to achieve a continuous improvement in the performance and value for money of services.

Most organisations need an incentive to improve. A mature, commercial approach to contract management recognises that commercial organisations are planning to build sustained business growth and profitability, whilst the Council is planning for increasing efficiency, continuous improvement over time and preferably additional social value for Croydon communities (see Croydon’s Social Value Toolkit).

Types of incentive we can consider include revenue sharing and access to new commercial opportunities. Although it is best to have these incentives to improve written into the contract during the procurement phase it may be possible to build in review periods as part of an agreed commitment to continuous improvement. You should seek legal and financial advice, however, before making these changes mid-term.

Financial incentives should offer rewards that reflect fairly any investment either party is required to make to achieve the saving in the first place. Under a ‘gainshare’ agreement, both the authority and the contractor can be incentivised to share in the profits of increased efficiency or revenues. As a general rule, you should seek to bring down costs, not margins. This will allow the contractor a reasonable return to cover necessary investment on items such as new equipment or training and development.
Case Study 5 shows how an authority has a number of contractors providing similar services. It rewards better performance by awarding a greater share of its business.

CASE STUDY 5 Perform well, and you’ll get more business

An authority outsourced the provision of domiciliary care (care and support services to people in their own homes) to six local service providers. A contracts team set up framework agreements with the providers so that care managers could commission services to meet the assessed needs of individual service users in the borough.

The contracts team had tried a system of default payments to manage poor service. “We would impose a £50 penalty here and there, but it wasn’t working,” says the team leader. “We wanted performance to improve and the inspectorate wanted authorities to tighten up on the performance of providers, so we needed something else.”

The team realised that all providers wanted a greater share of the business, so they could get the providers to compete for it on performance. With new contracts they introduced a system of default points, allocated each time a provider missed a visit or provided a poor quality service. Points accumulated would lead to reductions in, or a complete cessation of, client referrals by care managers (i.e. new business).

It’s early days, but performance is already improving. “We gave them a couple of months before new system was invoked. Points are automatic but follow a rectification period - I think it’s only fair that providers get the chance to put it right.”

An electronic monitoring system that requires care workers to clock-in and clock-off to evidence timely visits saves worry for service users. “Some feel they are grassing on their care worker by complaining about a missed visit. This will mean they won’t be put in that position, and it is more efficient, too.”
You can build an explicit mechanism for ensuring continuous improvement into your contract from the start (i.e. in the advertisement and tender documentation). For example, your contract might simply require the price to decrease, in real terms, year-on-year. This is known as the ‘cost-down’ technique and is predicated on the assumption that your contractor will find and implement efficiencies and reduce the input of management and other resources over time. The benefit of this is shared with you by gradually reducing the contract price, usually by pre-determined annual increments.

Another example of achieving a similar situation is to deal with inflation differently. Inflation clauses, by which prices are automatically inflated, usually each year, by linking them to an agreed index such as the Retail Prices Index (RPI) are now generally seen by progressive thinkers as a ‘throw-back’ to another time and as a disincentive to improving efficiency. Absorption of inflationary pressures can be seen as, effectively, a ‘price-down’ technique.

It is important that both you and your contractor see continuous improvement as being desirable and beneficial for both of you, rather than as simply a means to drive down prices. One way of generating ideas and achieving joint ownership of continuous improvement, particularly where there is an established strategic contract relationship, is to hold workshops or learning events attended by teams from both your authority and your contractor. The workshop can focus on availability and performance data and on lessons learned to be discussed at review meetings held during the year. Actions from the workshop can be captured in a continuous improvement work plan that can be used to monitor progress during the coming year, perhaps as a standing agenda item at your regular review meetings.

Sharing efficiency gains is a win:win scenario. Some contracts are silent on the issue of efficiency gains, and who should benefit from them and your contractor will probably assume that they will benefit wholly from any they can make. It is often more productive if negotiating down prices with contractors to ask them if there is anything the authority can do to help them to become more efficient or to incentivise them to find efficiencies.
A contract manager needs to understand the implications and consequences of any change - both from the authority’s and your contractor’s perspectives. You will need to know how to manage them effectively and legally. More often than not, planned changes are much easier to manage than unplanned, reactive changes. It is vital that we stick to the agreed control process for requesting, processing, evaluating, agreeing and recording all changes to the contract.

Variations to contracts should be written in an approved form and can only be authorised by the relevant Executive Director or a senior Officer nominated by them or the contract administrator appointed by the Council. All variations and a copy of the variation order should be retained as a document appertaining to the contract, with the contract and should observe a disciplined version control methodology. All variations are governed through the Contracts and Commissioning Board (CCB) or, in certain circumstances, Croydon Council Corporate Services Committee (CSC).

Drivers for change (factors that suggest, or make necessary, changes during the term of a contract) can originate either internally or externally. Internal drivers for change could include evolving business or service requirements, organisational or political restructuring or revisions to corporate strategy or business objectives.

External drivers could include developments in technology, economic or demographic trends, changing customer expectations or other changes that affect the value for money of a contract or the manner of delivery.

The specification and management of change control is an important area of contract administration and it is vital that you get it right. When things are going well, performance is good and you are enjoying a good working relationship with your contractor, it is tempting to rely on trust rather than take proper account of changes to the contract. After all, it can appear a waste of scarce resources when things are going so well and there is so much else to do. However, changes have to be looked at not only in terms of the costs now but in terms of the whole-life cost of every change – in terms of how it affects, for example, the cost of capital, planned and unplanned maintenance, risks and warranties. Changes to a contract may affect the scope, the transfer of risk and even the financial viability of the deal, for either you or your contractor.
For example:

- If a change reduces the scope of the deal, economies of scale may be affected; or
- If a change increases or reduces the scope of the deal significantly, it may be taken outside the scope of the original specification or OJEU notice, which may be unlawful.

All changes to the contract must be fully recorded in accordance with the change control process, demanding ‘good housekeeping’ from both you and your contractor to demonstrate compliance with the change control mechanism. The approval process you need to follow for significant variations to contract are at part of the Council’s Contracts and Tenders Regulations. A simple change control diagram is produced as Appendix G. (Page 101)

Legal contracts are all finalised and sealed, once agreed and signed. One copy goes to the contractor and one is archived by our Business Support Service where the responsible person fills in the sealing register and then copies are sent out by him or her to the contractor and one to archives.

**Case Study 6 demonstrates what can happen if you don’t.**

**CASE STUDY 13 When you’ll wish you’d kept better records**

An authority entered into a long-term contract to outsource the operation and management of a vital front-line service and invest in new assets. The contract manager enjoyed a very good personal and professional working relationship with his contractor. What he lacked in his eye for detail, he made up for with sound technical knowledge and an ability to use informal structures and channels of communication to get what he wanted from his contractor. A good level of trust, openness and goodwill was built up and things were going well.

Over time, the contractor developed ideas for solving problems at some of the sites he operated for the authority. He would discuss these informally with the contract manager and some changes were agreed to the way things were done. In some cases this involved additional cost, while in others the contractor would be relieved of some of his obligations because the contract manager could see that it would be better if the Council resumed responsibility for some parts of the service.
Most of these agreements were informal. The contract manager believed that, since he trusted his contractor so highly, he wouldn’t need to spend his valuable time on the paperwork. He was happy that he could keep track of costs and, anyway, the auditors hadn’t been in for years.

But then circumstances changed. There was a major problem with gaining the relevant consents for the new assets, and Members pressed for the matter to be resolved. The contractor dug in his heels and it seemed to the contract manager that the parties were heading for a serious dispute and there was little he could do about it.

The formal procedures of the Council came in to play and eventually both the Council and contractor sought legal advice, at which point questions started to be asked about why the invoiced amounts were so different to the payments determined in the contract. They also asked why certain responsibilities and risks seemed to have reverted to the authority without a commensurate change in the price. Eventually, the contract manager left the authority, somewhat under a cloud.

Matters took a turn for the worse. The dispute went to court and, although the authority believed it had a strong case, its major weakness was a complete lack of recorded evidence to back its claims. The contractor won damages and the authority was also required to meet costs.

It could all have been different if the contract manager had a proper change control process and had kept a record of all changes to the contract.

The main message, apart from keeping any change formal, is to make any changes part of a planned process. It is probably not a good idea to make incremental changes to a service that is running smoothly. It is usually better to accumulate change requirements and make them all together. You should involve your contractor closely in planning the changes, or make them accountable for them.

Stay compliant with the law. Some changes may be necessary in order to be compliant with changes in law. Over a long-term contract, it is not uncommon for a change to occur in the law or to industry standards that will affect your contract, so it is best to provide for this during the
procurement process. Depending on the terms of your contract, it may be your responsibility to make these changes.

If your contractor’s costs change as a result of the change in law, you’ll need to know whether compensation is due to your contractor to meet them. Check the terms of your contract. Quite often in more complex contracts, the issue of changes in law is dealt with specifically, allocating the risk of increased costs arising from a change in law either to you or to your contractor, or sharing it between you. If you are in any doubt contact the Head of Procurement and the procurement team will work with you and Legal Services if legal advice is needed.

Croydon’s Decommissioning Toolkit outlines the importance of managing the end of a contract and the start of a new one; there is a wrong way to end a contract and the Toolkit serves to help contractors manage this in a best practice way. You should not assume that your contractor is willing to carry out additional work over and above what they have already priced for, especially as their interest is likely to be low if your relationship is about to end and they do not stand a significant chance of winning further business from you in the near future.

Legally, any contractor is obliged to maintain records regarding personnel who may transfer from your contractor under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE 2006) and to hand these over to you two weeks prior to the end of the contract. However, this will not be of much help to you if you need to invite tenders from the market for a new contract – you will need this information far sooner than that. It is essential that your bidders have key data about these employees to price their bids.

You will also need to pay close attention to your arrangements for the service in case the contract is terminated early for whatever reason. You may need details of, for example (and in addition to personnel records), assets, premises, equipment, data, information, leases, materials and software licences. Remember to prepare for the possibility that your contractor will go out of business.

Please refer to the Decommissioning Toolkit or the checklist at the back of Croydon’s Commissioning Strategy.
5. Conclusion
5. Conclusion

This Handbook began by simplifying the process of planning for successful contracting by planning for a holiday. The analogy can be stretched to include thinking of the contract as a suitcase - think of it as a matter of choice as to what to put in and what to leave out - what are you most likely to be doing on your holiday and what is the weather likely to be? You may want one sweater, but there’s no point in packing several for a warm climate. Likewise there is no reason to have extensive default provisions if the business arrangement can be cancelled at short notice without fault on either side.

Will there be laundry facilities? The equivalent might be regular meetings built into the agenda to assess how the project is developing and to give an early opportunity to deal with any problems that arise. Or is this a long-term multi-continent holiday where you really have to provide for a full range of possibilities and changing climates?

You might be going somewhere where local supplies are cheap and plentiful. The analogy has its weaknesses but the danger lies in thinking that the contract is an ever-expandable suitcase, with the result that it becomes harder to choose (and can cause friction) as to what to put in it and much harder to carry from place to place once you have finally finished packing. Sometimes the tendency to want to forget the over-heavy contract is as great as the tendency to leave the over-heavy suitcase behind and travel light.

Planning can be half the battle. The project team responsible for any piece of contracting needs to do the initial planning and appraisal first, but should know who to bring in to support them and when. Achieving a successful contract is about getting the right contract for the occasion, not the definitive draft for all occasions.

A sense of proportion and relevance goes to the route of contract planning. A balance needs to be achieved between action and protection and it is primarily up to you, as the person who knows the business, to decide what sort of document you want. The emphasis should be on what is important to make the contract reflect the essential obligations and responsibilities of the parties, what is needed to make it work and what should happen if it does not. When that foundation has been established, the detail can then safely be added. The process of identifying subject, object, benefit of the contract, cost, risks and the tolerance factor should all help in planning that foundation and structure for the relevant terrain.
Key planning points to consider include:

• What is the subject of the contract and is it clearly covered – for example, by a detailed specification?

• What are the objectives of the contract? Are they measurable and what are the conditions of achievement?

• What will be the benefits of the contract being carried out and what new pressures might this produce?

• Have you worked out all the cost implications and covered these in the contract as far as possible?

• Have all assumptions been checked and recorded in the contract?

• What are the risks and how are these dealt with? Are there exclusion or limitation clauses? Is insurance cover in place? Has some tolerance been built in to the equation?

• Will the deal work in practice and have you done all that is required to integrate the necessary processes to make it work as effectively as possible?

• What areas of uncertainty still exist and how far can these sensibly be covered?
Glossary

**Abatement:** A payment deduction made in respect of sub-standard performance or non-availability of service.

**Access rights:** Rights for the customer granted under the terms of contract service continuity. Also called step-in rights.

**Automatic payment deduction:** A payment deduction made automatically by the contractor in respect of sub-standard performance or non-availability of service.

**Benchmarking:** The practice of making comparisons between organisations with the aim of ensuring continuing value for money, getting better performance and improving business practices.

**Benefits realisation plan:** A plan to implement processes that enable the achievement of benefits to be tracked and reported during the operational phase of a contract, showing clearly where and when the benefits will occur and who will be responsible for their delivery.

**Best value:** The desired result of an authority “making arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness” (Local Government Act 1999).

**Break option:** An option to either terminate or continue a contract at a given point in time, by mutual agreement or at one party’s sole discretion or in a given set of circumstances.

**Business case:** A document prepared in support of a decision to make an investment or award a contract, showing an analysis of the costs, benefits and risks associated with each option open to the authority.

**Business continuity plan:** A document setting out clearly what steps will be taken to keep the service running in the event of a threatened or actual major interruption, e.g. contractor insolvency. It should detail what will happen day-by-day and hour-by-hour, including the procedure for the recovery of IT systems and essential data and arrangements for the supervision and payment of operational staff.

**Business plan:** A document agreed between both parties to a contract showing pre-determined milestones (or what needs to be achieved by when) that the contractor is contractually obliged to meet. Also called a contractual obligations timetable.
**Category management**: Category management is a process that involves managing product categories as ‘business units’ and customising them to satisfy customer needs. Category managers in Croydon Council work with the support of Procurement and Contracts Officers but have a more strategic role involving managing a portfolio of related activity (the category) through the life cycle of the contracts in that category.

**Category Wheel**: The ‘Category Wheel’, developed in Croydon Council, describes a dynamic of 21 stages that constitutes category management. It largely mirrors a standard ‘commissioning cycle’, beginning with identifying and analysing need and ending with reviewing effectiveness. The wheel also, however, helps identify the division of responsibilities between service commissioners and staff in the enabling functions – particularly category management and procurement staff.

**Change control process**: A process for proposing, agreeing and controlling changes to a contract that will impact on costs and how these are handled under the contract terms.

**Change in law clause**: A clause in a contract setting out how increased costs arising from a change in law are dealt with, specifically allocating the risk to either party, or sharing it between them.

**Communication plan**: A protocol for managing both formal and informal communication with service users, Members, the press and the general public throughout the operational phase of a contract.

**Concession**: A service contract granted by an authority to a contractor for the provision of a service to the general public usually under the arm’s length control of the authority, e.g. a catering kiosk at a hospital or leisure centre.

**Conformance specification**: See input specification.

**Continuous improvement work plan**: Plan of actions prepared by a contractor or jointly between the parties to a contract showing what will be done when in the coming year to achieve and sustain continuous improvement in the service provided, often as an output from shared learning events.

**Contract**: Any lawful agreement between two parties where goods, services or works are provided in exchange for a consideration.
**Contract and relationship management**: A vital part of the procurement lifecycle, definable as:

- the management of the interfaces between client and contractor to ensure that the relationship and contract performance are optimised to deliver best value, or as:
- a number of related activities that together form a structured and planned system which enables the proactive management of all aspects of contractual relationships and their desired outcomes or, put simply, as:
- the pursuit of contractual performance.

**Contract manager**: For the purposes of this document a ‘contract manager’ is the person who holds operational responsibility for a contract. The contract manager will normally not be a ‘head of commissioning’, a ‘category manager’ or a ‘procurement officer’ but will be the contractual ‘middle-person’ between the Council, customers and the contractor, ensuring everyday management of a contract - e.g. timely review and approval, reconciliation of variations, maintaining contractual records and documentation, control of all contract correspondence and other documents and activities that enable the proactive management of all aspects of the contractual relationship (see Contract and relationship management).

**Contract management**: See contract and relationship management.

**Contractor**: For the purposes of this manual, a supplier, seller, vendor, provider, service provider, partner, constructor or other name that means a party contracted by the Council to provide goods or services in return for payment.

**Contractual obligations timetable**: See business plan.

‘Cost-down’ technique: A way of sharing continuous efficiency gains with the client by reducing the contract price year-on-year in real terms, usually in pre-determined annual increments. It is predicated on the assumption that the contractor will find and implement efficiencies and reduce the input of management and other resources over time.

**Discretionary payment deduction**: A payment deduction made only at the contract manager’s discretion in respect of sub-standard performance or non-availability of service. Problematical for those contract managers who feel that making deductions will damage their working relationship with the contractor or have a negative impact on service quality.

**Dispute resolution procedure**: The process set out in the contract for raising, escalating and resolving matters of dispute between client and contractor. See also escalation procedure.
**Emerging risk:** A risk which are unknown during the procurement process but which will come to light and require management during the life of the contract.

**Escalation procedure:** The process set out in the contract for escalating matters of dispute between client and contractor. Its principle is that serious efforts should be made by both parties to resolve issues at the lowest level of the organisational hierarchy before escalating them. See also dispute resolution procedure.

**Exit strategy:** A strategy by which a party will terminate a contract and end the relationship in certain circumstances with, if necessary, access or step-in rights that will allow the client to assume control of such assets, materials, personnel and information that are necessary to maintain service continuity.

**Force majeure event:** An event generally considered to be outside the control of either party, usually defined in the conditions of contract.

**Gain-share:** The process by which both parties to a contract may be incentivised to make efficiency improvements or generate third-party revenues and share the benefits of them.

**Implementation or mobilisation phase:** The phase of a contract after award but prior to the commencement of service.

**Incentivisation:** The process by which a contractor is encouraged to perform well by avoiding payment deductions or gaining additional financial reward by achieving or exceeding a pre-determined performance standard.

**Input specification:** A specification that sets out the precise method that the contractor needs to employ to deliver a product or service (sometimes known as a conformance specification). Places the onus and the risk firmly with the client to prescribe correctly, in some detail, such things as materials, staffing levels and processes; consequently seen to stifle innovation. Input specifications tend to be longer documents demanding a greater attention to detail. See also output specifications and outcome specifications.

**Intellectual property rights (IPR):** The legal rights to use, for commercial gain, ‘soft’ property such as ideas, drawings, designs, specifications, documents, training materials, marketing campaigns or software which have an intrinsic value to an organisation, either for its own use or, more likely, as a potential source of revenue.

**Key performance indicator (KPI):** One of a small number of the most important measures of a contractor’s performance. The word ‘key’ denotes an assumption that by looking at the ‘key’ (really important) indicators you can tell what general performance is like, throughout the contract.
Lessons learned log: A document used by both parties to a contract for recording lessons learned during the operational phase, as part of an effort to achieve and monitor continuous improvement.

Milestone payments: Part payments made to the contractor on satisfactory completion and confirmed acceptance by the client of a predefined stage of delivery. Since they improve cash-flow for the contractor during a protracted project, they offer a more cost-effective method of financing a project than borrowing. Also called stage payments.

More complex contracts: For the purposes of this manual, those contracts that tend to be higher value and are often of significant strategic importance or criticality to the authority.


Open-book accounting: The complete and unimpeded sharing of detailed, up-to-date financial information pertaining to the contract and its operation, where every item of planned income and expenditure is shown as a line item at the bid stage and continues to be shared openly throughout the term of the contract.

Operating risk: A risk that may be encountered during the operational phase of the contract and which may be further categorised as environmental risks, health and safety risks, financial and investment risks, demand risks, employment risks and performance risks.

Outcome specification: A specification that determines only the desired result (sometimes called a performance specification). The contractor is given the flexibility to decide for themselves exactly how those outcomes should be achieved, using their own specialist expertise and competence to determine how best to manufacture and supply the goods or provide the service. Consequently the contractor bears the greater share of risk in this regard. Tend to be shorter, more succinct documents, because they only set out what is required from a product or service, rather than prescribing in detail how the contractor should go about delivering it.

Output specification: Descriptions or measures of a program’s activities. See outcome specification above – outcomes are the results or changes resulting from outputs.

Partnership Board: A group of people made up of senior representatives from both customer and contractor (usually at Board and/or Member level) with the aim of supporting positive working relationships. It allows senior management to lead by example, by demonstrating the ability to work
together to mutual benefit and by showing people from both organisations that the success of the contract and the relationship is valued at the highest level. The Board also grants stakeholder representatives participation in the management of the relationship. It should meet regularly to discuss matters of strategic importance to the relationship, making joint decisions as appropriate to provide a high-level ‘steer’ to both the contract and the relationship. Applicable to strategic relationships only.

**Payment mechanism**: A mechanism set out in the contract showing precisely how payments to the contractor will be calculated and timed, taking into account any milestone payments and any performance or availability data that may trigger payment deductions or bonuses.

**Performance baseline**: For outsourced service contracts, the level of service prevailing at the time of the procurement process against which performance of the contractor may be compared once the contract commences.

**Performance management framework**: A set of requirements in a contract that sets out the expected performance and quality of service to be delivered, together with the methods by which performance will be monitored, measured, reported and managed.

**Performance monitoring**: The process of gathering data pertaining to a contractor’s performance by an agreed set of measures set out in the contract.

**Performance reporting**: The process of compiling and analysing data pertaining to a contractor’s performance by an agreed set of measures set out in the contract and presenting it as management information in a format as set out in the contract. See output specification.

**Price indexation formula**: A mathematical formula in the payment mechanism by which prices are automatically inflated, usually each year, by linking them to an agreed index such as the Retail Prices Index (RPI) and by drawing data from pre-determined sources such as national statistics.

**Private Finance Initiative (PFI)**: A programme launched by the UK Government in 1992 by which new assets could be provided to the public sector (such as hospitals, schools and roads) through more complex, long-term service contracts, under which staff and operations would transfer, along with operational, investment and employment risks, to the contractor, who would also bear the value of the capital asset on their balance sheet, thus relieving the public sector borrowing requirement.
**Procurement process:** The process by which competitive tenders are invited, received and evaluated against a specification and conditions of contract. Subject to a supportive business case, the process ends with the negotiation (if appropriate) and award of the contract.

**Professional indemnity insurance:** Insurance cover purchased by the contractor at a level usually set by the client, to protect both parties from insurable risks arising from the application of the contractor’s professional skill, knowledge and practice in the course of the performance of the contract.

**Project risk:** A risk that will need to be managed during the procurement and, if appropriate, construction phases of the project.

**Public liability insurance:** Insurance cover purchased by the contractor at a level usually set by the client, to protect both parties from claims arising from the general public and third parties in the course of the performance of the contract.

**Public-private partnership (PPP):** A more complex, long-term contract, joint venture or similar partnership between public and private sector bodies to deliver a public service. Includes contracts awarded under the Private Finance Initiative (PFI).

**Rectification period:** An initial period of time for the contractor to fix a problem with performance or availability of service before payment deductions are applied.

**Relationship management:** See contract and relationship management.

**Retention risk:** A proportion of payment (usually 5-10% of the total contract price) withheld by the client until satisfactory completion of a warranty period or initial period of operation. Usually associated with contracts for the purchase of capital equipment.

**Risk management:** Uncertainty of outcome, whether this is positive (i.e. an opportunity) or negative (i.e. a threat). Identifying and controlling the factors that may have an impact on the fulfilment of a contract.

**Risk register:** A document designed to aid the recording and monitoring of the likelihood, impact and mitigation of all identified risks.

**Risk transfer:** The process of allocating operating and emerging risks to the contractor under the terms of a contract. By valuing each risk or group of risks, this transfer can form an important part of a business case supporting the project and the decision to award a contract.
**Service continuity:** The practice of considering what will happen if the service fails or is interrupted and what steps can be taken to prevent or minimise the disruption to service. See also business continuity plan.

**Shared commissioning / contracting:** Where one public service body agrees to host a commissioning and contracting arrangement or undertake a procurement exercise to source services on behalf of other bodies. This may have the benefit of supporting the development of collective negotiating power with major providers and/or reduce transaction costs. Shared commissioning and contracting may be supported by pooled budgeting arrangements. Complex, large scale contracts should be procured through lead commissioner arrangements.

**Simpler contracts:** Simpler agreements for the supply of goods or services including purchase orders, ‘spot’ contracts and framework agreements or term contracts. Generally shorter term.

**Social Value:** For the purpose of this handbook, a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits to society and the economy, whilst minimising damage to the environment’. ‘Thinking social value’ should shift the focus from the bottom-line price or cost of a service towards the overall value of the outcomes delivered. See Croydon’s Social Value Toolkit.

**Specification:** A document contained within a contract setting out clearly the client’s specific requirements for the goods, services or works in question. See also input specification and output specification.

**Stage payments:** See milestone payments.

**Stakeholder:** Any individual or group of people, either internal or external to the authority, who can be identifying as having either an interest in, or an influence over a contract or relationship. The client, contractor, service users and Members are all stakeholders.

**Stakeholder management:** The process of managing the involvement of and communication with all stakeholders to the contract.

**Step-in rights:** See access rights.

**Supplier relationship management strategy:** A strategy designed to help both client and contractor share information regarding their respective organisations’ corporate aspirations to mutual benefit. Can bring the relationship into a useful focus for senior management or for a Partnership Board, providing data about the parties’
respective financial strength, security and capability, their competitiveness in, and aspirations for, the developing marketplace and their business behaviour (such as business strategy, growth, new contracts, liabilities, mergers, acquisitions, disposals, product development, market share, divergence into new markets or withdrawal from existing markets, industrial and investor relations).

**TUPE:** The Transfer of Undertakings (Protection of Employment) Regulations 2006, are the UK’s implementation of the EU Business Transfers Directive. They are an important part of employment law, protecting employees whose business is being transferred to another business. The regulations’ main aims are to ensure that: just because of the transfer, employees are not dismissed before or after (unless there is an ‘economic, technical or organisational’ reason); employees’ most important terms and conditions of contracts are not worsened before or after the transfer (unless as above) and affected employees are informed and consulted through representatives. NB. TUPE does not apply to transfers which go merely through the sale of a company’s shares.

**Value-for-money model:** A device for calculating the whole-life cost of every proposed change to the contract, taking account of the cost of capital, lifespan, operating costs, planned and unplanned maintenance, risks and warranties. Its main function is that the impact of the change to the contract is rendered ‘neutral,’ both in terms of the contractor’s margin and value-for-money for the customer. The principle is that neither party should be able to exploit the change for commercial gain.

**Variation:** A change to the contract agreed by both parties and implemented under the change control process as set out in the contract.

**Warranty:** An assurance by a party to a contract that the information provided in the course of the procurement process (such as information about assets, premises or employees) is complete and accurate such that the other party may rely on it. Any party that grants such a warranty can expect to meet the cost incurred by the other party should the information prove inaccurate or incomplete.

**Whole-life cost:** The total cost of investing in an asset, evaluated by taking into account not only the initial outlay but also all the costs of owning, operating and disposing of that asset. See also value-for-money model and Social Value.
# APPENDIX A Performance Standards – Sample (source: London Fire Brigade)

**Key Performance Indicators**

This document sets out the criteria to be used to determine performance via a set of Key Performance Indicators (KPIs).

<table>
<thead>
<tr>
<th>KPI 1</th>
<th>Health and Safety – Secure retention of Evidence</th>
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</table>
| **Performance standards:** | 1.1 The Contractor will, in relation to a Safety Event, maintain continuity of Evidence in accordance with the contract or is reasonably anticipated pursuant to the agreed Health and Safety procedures.  
1.2 The Contractor will maintain the agreed documented Health and Safety procedures in place and ensure that its employees, agents or relevant sub-contractors understand the requirements for maintaining and securing evidence. |
| **Performance points:** | 1.1 X points for failures in respect of each Safety Event  
1.2 X points for failure in a Monitoring Period |
<table>
<thead>
<tr>
<th>KPI 2</th>
<th>Health and Safety – Access to Evidence and any records relating to such Evidence</th>
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<tbody>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The Contractor will provide all reasonable assistance to the Authority to enable it to undertake its investigations into Safety Events unhindered by:</td>
</tr>
<tr>
<td></td>
<td>2.1 ensuring that a member of its personnel is available at all times to deal with all requests for access to Evidence and records relating to Evidence and where appropriate provide access to its premises and use its reasonable endeavours to procure access to the premises of its sub-contractors and agents for such purposes (subject to the restrictions on access to such sub-contractors’ premises set out in this Contract);</td>
</tr>
<tr>
<td></td>
<td>2.2 enabling the Authority to take photocopies, photographs or recordings of any relevant Evidence in accordance with the agreed Health and Safety procedures; and</td>
</tr>
<tr>
<td></td>
<td>2.3 providing appropriate personnel to give statements as required to the Authority’s Investigating Officer or any other Investigating Authority.</td>
</tr>
<tr>
<td><strong>Performance points:</strong></td>
<td>2.1 X points for failures in respect of each Safety Event</td>
</tr>
<tr>
<td></td>
<td>2.2 X points for failure in a Monitoring Period</td>
</tr>
<tr>
<td>KPI 3</td>
<td>Health and Safety – Maintenance of records relating to Health &amp; Safety standards</td>
</tr>
<tr>
<td>-----------------------</td>
<td>--------------------------------------------------------------------------------</td>
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<tr>
<td></td>
<td>Records means any paper, computer file or document relating to work carried out in relation to the provision of the Services in relation to Health and Safety and any CEN technical files. These Standards include any requirement relating to the CEN certification standards, design, specification, provision supply and maintenance of any PPE Item to which specific health and safety, product or vehicle Legislation relates or to which general duties apply as prescribed by health and safety or product legislation in force at the time.</td>
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<tr>
<th>Performance standards:</th>
<th>The Contractor will:</th>
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<tbody>
<tr>
<td></td>
<td>3.1 maintain the Records in relation to the above Standards</td>
</tr>
<tr>
<td></td>
<td>3.2 keep such records for such period of time as agreed with the Authority</td>
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<thead>
<tr>
<th>Performance points:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3.1 30 (max) for all failures in any Monitoring Period with 5 day rectification period</td>
</tr>
<tr>
<td></td>
<td>3.2 5 per failure per Monitoring Period with no retrospective effect</td>
</tr>
<tr>
<td><strong>KPI 4</strong></td>
<td>Environmental issues</td>
</tr>
<tr>
<td>-----------</td>
<td>----------------------</td>
</tr>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The development and maintenance of an Environmental Management System to reflect the Authority’s approach to environmental controls which is to ensure that any harmful environmental impact of its service delivery is avoided, reduced or mitigated in accordance with a best practice approach to sustainability.</td>
</tr>
</tbody>
</table>

| **Performance points:** | 5 for failure with 1 month rectification period |

<table>
<thead>
<tr>
<th><strong>KPI 5</strong></th>
<th>Cleaning items</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The Contractor will clean and return an item of PPE within 7 calendar days of collection.</td>
</tr>
</tbody>
</table>

<p>| Performance points per item per failure per 24 hours | 1 per failure per Item per 24 hours including where the standard of cleaning is rejected as being inadequate |</p>
<table>
<thead>
<tr>
<th><strong>KPI 6</strong></th>
<th><strong>Compliance with Maintenance Programmes</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>All Maintenance Programmes will be agreed in advance from time to time by the JCMT (as may be varied from time to time with agreement of the Authorised Officer). All Maintenance Programmes will be agreed in advance by the Contractor and the Authorised Officer.</td>
<td></td>
</tr>
</tbody>
</table>

**Performance standards:**
- Save when the Maintenance Event is cancelled by the Authority and subject to the Authority making the Item available for collection by the Contractor, the Contractor will:
  - 6.1 comply with the agreed Programmes
  - 6.2 arrive for each appointment time in the Programme within $X$ hours of the appointment time.

**Performance points per failure:**
- $X$ per Item and per Monitoring Period where the Programme is not achieved
- $X$ per appointment where the Contractor arrives later than $X$ hours after the appointment time

<table>
<thead>
<tr>
<th><strong>KPI 7</strong></th>
<th><strong>Production of monitoring information within agreed time-scale and in agreed format</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Contractor will provide:</td>
<td></td>
</tr>
<tr>
<td>7.1 the contractually agreed monitoring and other information at the end of each Monitoring Period or within $XX$ days thereafter</td>
<td></td>
</tr>
<tr>
<td>7.2 agreed standard reports when requested by the Authorised Officer (or persons authorised by him) within 4 hours (or such other time as may be agreed) of the request being received</td>
<td></td>
</tr>
<tr>
<td>7.3 annual audit reports as required by the contract</td>
<td></td>
</tr>
</tbody>
</table>

**Performance points**
- $X$ for each report not received on time, not in agreed format or containing materially inaccurate or insufficient information.
<table>
<thead>
<tr>
<th>KPI 8</th>
<th>Maintenance of the Authority’s positive public image</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The Contractor will:</td>
</tr>
<tr>
<td></td>
<td>8.1 maintain agreed appearance standards and rectify any deficiencies within one day of notification.</td>
</tr>
<tr>
<td></td>
<td>8.2 incur Performance Points where the Authority is required to attend a special Committee of the House of Commons or House of Lords or the Greater London Authority (or any successor body) to answer questions in relation to the poor performance of the services by the Contractor as a result of which rectification action by the Contractor is required in respect of the Services</td>
</tr>
</tbody>
</table>

**Performance points**

- 8.1 X per item per failure for not meeting agreed standards
- 8.2 X for House of Commons or House of Lords
- X for Greater London Authority
<table>
<thead>
<tr>
<th>KPI 9</th>
<th>Compliance with Replacement Programmes</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The Contractor will achieve agreed Replacement Programmes provided that:</td>
</tr>
<tr>
<td>9.1</td>
<td>If the Items are planned to be brought into service ahead of the lifing policy referred to in the contract and the lifing policy for the Item(s) has not been exceeded a failure to achieve the Replacement Programme will not incur performance points.</td>
</tr>
<tr>
<td>9.2</td>
<td>The Contractor will not incur Performance Points if a Force Majeure Event has occurred and the Contractor demonstrates to the reasonable satisfaction of the Authority that:</td>
</tr>
<tr>
<td></td>
<td>(a) the Contractor and its sub-contractors could not reasonably have foreseen the occurrence or consequences of the relevant event and could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken without incurring material expenditure;</td>
</tr>
<tr>
<td></td>
<td>(b) the Event directly caused the failure to the above Performance Standard;</td>
</tr>
<tr>
<td></td>
<td>(c) the failure of the Performance Standard could not reasonably be expected to be mitigated or recovered by the Contractor acting in accordance with good industry practice without incurring material expenditure; and</td>
</tr>
<tr>
<td></td>
<td>(d) the Contractor is using reasonable endeavours to comply with the Performance Standards.</td>
</tr>
<tr>
<td>9.3</td>
<td>enabling the Authority to take photocopies, photographs or recordings of any relevant Evidence in accordance with the agreed Health and Safety procedures; and</td>
</tr>
<tr>
<td>9.4</td>
<td>providing appropriate personnel to give statements as required to the Authority’s Investigating Officer or any other Investigating Authority.</td>
</tr>
<tr>
<td><strong>Monitoring Period:</strong> Per monthly programme</td>
<td>Performance points per missed Item per Monitoring Period in an agreed programme: X for each Item</td>
</tr>
<tr>
<td>KPI 10</td>
<td>Service Support</td>
</tr>
<tr>
<td>--------</td>
<td>-----------------</td>
</tr>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The Contractor will:</td>
</tr>
<tr>
<td>10.1</td>
<td>provide Service Support at all required times staffed with sufficient and appropriately trained personnel</td>
</tr>
<tr>
<td>10.2</td>
<td>ensure that the Service Support Freephone number is answered by a human being (i.e. not a recorded message)</td>
</tr>
<tr>
<td>•</td>
<td>within X seconds on % of occasions</td>
</tr>
<tr>
<td>•</td>
<td>within X minute on % of occasions</td>
</tr>
<tr>
<td>A lost call is deemed answered at the time when the call is lost.</td>
<td></td>
</tr>
<tr>
<td><strong>Monitoring Period:</strong></td>
<td>X point for every percentage under % during one Monitoring Period. Y for every percentage under % in a Monitoring Period.</td>
</tr>
<tr>
<td>KPI 11</td>
<td>User satisfaction and complaints</td>
</tr>
<tr>
<td>--------</td>
<td>----------------------------------</td>
</tr>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The Contractor will:</td>
</tr>
<tr>
<td></td>
<td>11.1 Comply with the Authority’s and the Contractor’s agreed satisfaction and complaints procedures</td>
</tr>
<tr>
<td></td>
<td>11.2 Incur performance points for each substantiated complaint in relation to the provision of the Services which is not frivolous or vexatious</td>
</tr>
<tr>
<td><strong>Performance points</strong></td>
<td>11.1 X per failure to comply with the agreed procedures</td>
</tr>
<tr>
<td></td>
<td>11.2 Y per substantiated complaint.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>KPI 12</th>
<th>Agreed actions</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Performance standards:</strong></td>
<td>The Contractor will:</td>
</tr>
<tr>
<td></td>
<td>Comply with actions agreed with the Authority’s Contract Manager (whether in the joint liaison forum or via correspondence) to the satisfaction of the Contract Manager.</td>
</tr>
<tr>
<td><strong>Performance points</strong></td>
<td>12.1 X point per failure per issue per day</td>
</tr>
</tbody>
</table>
### APPENDIX B

Checklist of tasks and roles (NB begins at the ‘Tender’ stage on the wheel)

**Key Performance Indicators**

This document sets out the criteria to be used to determine performance via a set of Key Performance Indicators (KPIs).

<table>
<thead>
<tr>
<th>Category wheel area</th>
<th>SCPP involvement</th>
<th>Tasks</th>
<th>Responsible</th>
<th>Accountable</th>
<th>Consulted</th>
<th>Informed</th>
</tr>
</thead>
</table>
| **Sourcing plans**      | 85%              | • Identify procurement approach options and agree preferred approach.  
<pre><code>                     |                    | • Document the procurement strategy                                | • Category Managers agree                    | • Category managers         | • Service teams                    | • Heads of SCPP, Contracts officers |
</code></pre>
<p>|                         |                  | • Define procurement activities and timescales within a procurement plan | • Procurement officers draft                  | • Procurement Development &amp; Governance Manager (resource allocation) | • Heads of SCPP, CSC as appropriate. |                                    |
| <strong>Tender document presentation</strong> | 85%              | • Create the tender plan and agree milestone dates                    | • Procurement officers                         | • Category managers              | Input and approval required from: |                                    |
|                         |                  | • If required, post the OJEU notice                                  |                                                  |                                  | • Service teams              |                                    |
|                         |                  | • Prepare and approve tender documents e.g. evaluation criteria, specifications, T&amp;Cs, contract management etc and seek approval to issue |                                                  |                                  | • Legal Services             |                                    |
|                         |                  |                                                                      |                                                  |                                  | • Category Manager           |                                    |</p>
<table>
<thead>
<tr>
<th>Category wheel area</th>
<th>SCPP involvement</th>
<th>Tasks</th>
<th>Responsible</th>
<th>Accountable</th>
<th>Consulted</th>
<th>Informed</th>
</tr>
</thead>
</table>
| Tendering           | 70%              | • Pre-qualify providers – if required prepare a Pre-Qualification Questionnaire (PQQ).  
• Facilitate the scoring of the PQQ, summarise the results and recommend the tender short list  
• Issue tender  
• Manage the response to bidders questions and lead on commercials  
• Evaluate response - facilitate the evaluation team to examine each tender received and make recommendations  
• Engage legal to create the contract and negotiate terms  
• Lead detailed negotiations with one or more parties to secure and finalise commercial and other terms  
• Award - notify both the successful and unsuccessful bidders  
• Prepare summary of lessons learnt to feed into contract award report | If contract value is less than OJEU limits, and risk and sensitivity are low:  
• Procurement Officer lead  
• Category Manager support/QA | • Category managers | Input and collaboration with:  
• Legal Services  
• Service teams  
• Heads of SCPP on contentious questions  
• Approval of contract award required from:  
• Corporate CCB or CSC as appropriate | Governance arrangements for tender: Procurement Development and Governance Manager |
<table>
<thead>
<tr>
<th>Category wheel area</th>
<th>SCPP involvement</th>
<th>Tasks</th>
<th>Responsible</th>
<th>Accountable</th>
<th>Consulted</th>
<th>Informed</th>
</tr>
</thead>
</table>
| Transition & contract implementation | 40% | • Lead SCPP input to the development of the transition plan with service managers and commissioners  
  • Lead SCPP input to the development of the transition communications plan  
  • Agree contract management and supplier relationship management measures  
  • Ensure contract details are set up in appropriate systems  
  • Agree handover dates and details with providers and service managers | • Category managers, with procurement officer support / lead where non-complex.  
  • Procurement officers lead bullet three | • Category managers | • Collaboration with service teams  
  • Liaison with legal department | • Contracts team |
| Operational supplier management | 20% | • Where appropriate and agreed with service, attend operational review meetings – maintain a record of decisions and actions  
  • Advise on how to resolve operational challenges with the supplier – lead on any negotiations and escalations | • Contracts officers for lower value/ risk/ sensitivity contracts  
  • Category managers for higher value/risk or sensitivity contracts | • Heads of SCPP | • Collaboration with Service teams  
  • Liaison with legal department | • Contracts team |
<table>
<thead>
<tr>
<th>Category wheel area</th>
<th>SCPP involvement</th>
<th>Tasks</th>
<th>Responsible</th>
<th>Accountable</th>
<th>Consulted</th>
<th>Informed</th>
</tr>
</thead>
</table>
| **Contract management (performance)** | 80%              | • Provide a summary of the contract to service owners and managers along with SLAs, KPIs and Council obligations  
• Recommend and agree Governance structure – setting out hierarchy of commercial and operational interactions between the service provider and the council  
• Chair the regular commercial review meetings – issue and maintain a record of decisions and actions  
• Attend the client relationship review meetings – issue and maintain a record of decisions and actions  
• Encourage the Service provider to deliver added value and innovation (see Supplier Development)  
• Maintain an up to date record of all aspects of the relationship – including a summary of delivery performance  
• Advise on how to resolve operational challenges with the supplier – lead on any negotiations and escalations | • Category managers  
• Contracts officers for bullet six | • Heads of SCPP | • Collaboration with Service teams  
• Liaison with legal department  
• Heads of SCPP pre-meeting or if escalated | Heads of SCPP |
<table>
<thead>
<tr>
<th>Category wheel area</th>
<th>SCPP involvement</th>
<th>Tasks</th>
<th>Responsible</th>
<th>Accountable</th>
<th>Consulted</th>
<th>Informed</th>
</tr>
</thead>
</table>
| **Supplier development** | 70% | • Supplier, service or SCPP representative identifies improvement opportunity. SCPP and service managers liaise to discuss opportunity or establishes team to work through requirement with supplier  
• Jointly agree (SCPP, service managers and supplier) changes to working practices and contractual delivery requirements | • Category managers supported by contracts officers. | • Category managers | • Collaboration with Service teams  
• Liaison with legal department  
• Heads of SCPP | |
| **Category review** | 75% | • Review category plan  
• Understand and review current category and subcategory performance against needs analysis, service design.  
• Review spend and compliance against contract and any non-compliance and determine action plan to deal with  
• Monitor and receive changes in market, technology trends and suggest options  
• Update category plan and procurement strategy as appropriate  
• Suggest changes to current contractual arrangements and gain agreement  
• Examine ways of constantly improving category supplier quality, service and cost  
• Communicate and negotiate changes to current supplier arrangements as required | • Category managers with support from contracts officers | • Heads of SCPP | • Service teams  
• Legal  
• Finance  
• Changes to category strategy require approvals from:  
• Heads of SCPP  
• HoPC  
• Relevant DMT | • Contracts officers |
<table>
<thead>
<tr>
<th>Category wheel area</th>
<th>SCPP involvement</th>
<th>Tasks</th>
<th>Responsible</th>
<th>Accountable</th>
<th>Consulted</th>
<th>Informed</th>
</tr>
</thead>
</table>
| **Contract review (cont...)** | 75% | • Review of supplier delivery performance against KPI’s and SLA’s (to include service credits and debits) since contract award or last review  
• Review of supplier payments against contract pricing schedule to ensure no overpayments have been made  
• Prepare a summary of findings and recommendations  
• Negotiate any changes needed to the contract  
• Ensure findings and recommendations feed into category planning cycle e.g. changes to desired outcomes, scope of services, KPI’s. | • Contracts officers with support from Category Managers as appropriate. | • Category managers | Input required from:  
• Service teams  
• Finance department  
• Legal department | • Procurement Development & Governance Manager |
| **Service needs/business requirements review** | 20% | • Receive changes to needs analysis and service designs and agree 3rd party implications  
• Update category plans and procurement strategies | • Category managers with support from contracts officers | • Heads of SCPP | • Collaboration with:  
• Service teams  
• Legal department  
• Strategic intelligence |
APPENDIX C: Benchmarking guidelines (Source: London Fire Brigade)

a) As part of the Best Value regime set out in Paragraph [ ] above the Authority and the Contractor will agree a Benchmarking procedure based upon the following guidelines.

b) A benchmarking exercise in respect of the Services will be carried out during the [fifth, tenth and fifteenth] Contract Years so as to compare on a like for like basis the quality and scope of the Services and obligations undertaken by the Contractor under this Contract with comparable services in the public emergency service sector (and/or, if appropriate, elsewhere) with a view to providing an objective demonstration of the relative value for money which the Contractor is delivering under the terms of this Contract.

c) Adjustments to the benchmarks to take in to consideration higher or lower quality services will be agreed by the Joint Performance Team (JPT).

d) The Parties will by no later than 3 months before the end of the [fourth, ninth and fourteenth] Contract Years set up a Joint Benchmarking Working Group to:

1. i) identify those areas to be benchmarked, in the fifth, tenth and fifteenth Contract Years respectively;

2. ii) decide on what these areas are to be benchmarked against;

3. iii) decide on a timetable for the benchmarking exercise to ensure its completion by the end of the fifth, tenth and fifteenth Contract Years respectively;

4. iv) decide on the outputs of the benchmarking exercise. and the Joint Benchmarking Working Group will submit a report to the JPT on (a) to (d) above by not later than the end of the fourth, ninth and fourteenth Contract Years.

e) On each occasion that a benchmarking exercise is to be carried out by the Contractor, the Contractor will undertake a comparison of the Unitary Payment and the quality and scope of the Services provided under this Contract through liaison with other providers, benchmarking clubs and independent benchmarking agencies as may be agreed between the Contractor and the Authority or, in default of agreement, as may be determined under the Disputes Resolution Procedure.
f) Where the Contractor and the Authority agree (within 30 days after the first meeting for such purpose or such other period as the Parties may agree) the results of any benchmarking exercise, it shall be final and binding on the Parties and there shall be no right of reference thereafter to the Disputes Resolution Procedure. Where the Parties fail to reach agreement within that 30-day period or such other period as the Parties may agree that the result of any such benchmarking exercise is conclusive the matter shall be referred to the Disputes Resolution Procedure.

g) The Unitary Payment will be reduced where it can be demonstrated through the benchmarking exercise that the Contractor’s costs are higher than the benchmarking average. Where the Contractor can demonstrate through benchmarking that its Costs are higher than those against which benchmarking has taken place, notwithstanding adjustments in earlier Contract Years due to Indexation, the Contractor will be able to increase the Unitary Payment to the extent an increase is necessary to restore its base case return as set out in the Financial Model contained in Appendix [ ]. The Contractor shall recalculate its Financial Model after each benchmarking.
APPENDIX D: Partnership Charter – Sample (Source: Royal Borough of Kensington & Chelsea)

Addendum to Contract

Partnership Charter

between

the “the Council”

and “the Contractor”

This Partnership Charter is to be read in conjunction with the contract for the provision of [the Service] which has been awarded to the Contractor and which is to commence first as stated in the contract.

The Partnership Charter will run for the complete duration of the contract.

1. CONTEXT

The Council has engaged the Contractor as a partner to undertake [the Services].

The Council and the Contractor agree to work with each other co-operatively in partnership to discharge their responsibilities in relation to the services and to apply their respective special knowledge, skill and expertise, in accordance with the terms of the contract and this Charter.

2. DEFINITIONS

Partnership Charter/Charter means this agreement

Contract means the contract terms

Parties means the Council and the Contractor

Partners means the Council and the Contractor

The Services are the services described in the Contract and its appendices.

The Partnership Board means a co-operative group established under this Charter and described in clause 3.

The Innovation Forums means the groups established to bring innovation to the service and described in clause 4.

3. THE PARTNERSHIP BOARD

The Partnership Board shall be chaired by the Council’s Director of [Service] and shall meet quarterly or at such other times as the Partnership Board may determine.
The members of the Partnership Board are to be nominated by the parties to the contract. As a minimum the Partnership Board shall consist of the following four members:

The Council:
- Director of [Service],
- Council’s Representative under the Contract

The Contractor:
- Operations Director
- Senior Contract Manager

Anually, one of the quarterly meetings will be attended by:
- Council’s Representative from elected members
- The Contractor’s Chief Operating Officer to receive, on behalf of each of the Parties, annual reports of the Partnership.

The Partnership Board meetings can be attended by persons who are not members of the Board, at the invitation of the Board e.g. Chairpersons of the Innovation Forum (see below) or specialist advisors to the Board.

The functions of the Partnership Board are:

- To monitor service performance: ensure the services are delivered to a high standard in accordance with this Charter and the contract, in particular by commissioning qualitative and quantitative reports on performance and implementing/reviewing procedures for self-monitoring and reporting
- To be innovative: develop and/or consider proposals for service improvement and for greater cost-effectiveness in the delivery of the services on a whole life cycle costs basis, in particular by studying examples of best practice elsewhere. To implement studies, reports and projects managed by the Innovation Forums and using joint teams
- To be proactive: anticipate and consider proposals for any change in the service that may be required, for example, by any change in law or policy, or by any change in economic or social circumstances or expectations. To implement studies, reports and projects managed by the Innovation Forums and using joint teams
• To ensure partnership: consider any representations that may be made by either party to the contract concerning any matter that appears to be inconsistent with the parties’ commitment to work co-operatively.

• To resolve differences: seek the rapid and fair resolution of any differences between the parties to the contract. The Parties commit to discuss problems as soon as they arise and to work together in a no blame culture. To put in place procedures for referring disputes to the Partnership Board if they cannot be resolved at Contract level.

• To review partnership performance: receive annual reports prepared separately by each of the partners setting out an open account of that Partner’s opinion of the state of the partnership, successes and shortcomings over the year, and proposals for improvement in the partnership in future.

• To report on performance: receive an annual report prepared jointly by the partners’ senior staff on workforce matters, dealing with such matters as trends and notable events in relation to recruitment, retention, training and development, health and safety, equalities, and performance management.

4. INNOVATION FORUMS

The Partnership Board will establish Innovation Forums. The purpose of the Innovation Forums is to manage projects to:

• Develop and/or consider proposals for service improvement and for greater cost-effectiveness in the delivery of the services.

• Anticipate and consider proposals for any change in the service that may be required, for example by any change in law or policy, or by any change in economic or social circumstances or expectations.

Separate Forums would be established for each of the following subject areas:

These forums would meet formally and regularly and make written reports to the Partnership Board.

The frequency of the forum meetings would be determined by the demands of the particular projects upon which they have been directed to work.

Further Innovation Forums can be established, or existing ones dissolved as determined by the Partnership Board.

Where projects require funding, this can be provided by the Partnership Board, from an Innovation fund, set...
up specifically for this purpose. The Innovation Fund will receive £50,000 per annum through the Contract Budget from the Contractor. At the meeting of the Partnership Board closest to the anniversary of the contract commencement date the Partnership Board will decide whether to pay over any monies remaining in the Innovation Fund to the Council or whether to roll over such monies to the following year’s innovation Fund.

The Innovation Forums will be charged with seeking and securing external grant funding for projects whenever appropriate.

Members of the Forums will be persons from both the Council and the Contractor with the appropriate experience and background to manage and promote the work of each specific Forum.

Equal participation and membership from both the Council and the Contractor will be an aim of the Forums.

5. PARTNERSHIP DUTIES

The Partners each accept a duty to:

• Make a sincere effort to understand the other partner’s obligations, goals, expectations, duties and objectives in entering and performing their obligations under the contract and this Charter

• Be just and faithful in all dealings relating to this Charter and to the contract, and to give a true account of such dealings

• Work at all times within a spirit of co-operation to ensure the delivery of the services to a high standard

• Resolve differences that may arise in relation to this Charter or the contract by discussion and negotiation wherever possible

• Communicate clearly and effectively, and in a timely manner, on all matters relating to the contract.

• Make the most efficient use of resources, and seek to achieve cost-effective savings to the benefit of both partners
• Make every endeavour to ensure that all persons engaged on the contract diligently and faithfully employ themselves to bring about its performance to a high standard.

• Give an early warning to the other partner of any mistake discrepancy or omission of which either partner becomes aware within or between the Charter and the Contract, and offer fair and reasonable solutions where practicable.

• Give an early warning to the other party of any matter that they become aware of that could affect the achievement of any objective, obligation, or the like contained in this Charter or the contract.

• Finalise those matters to be agreed prior to commencement of the services and described in clause [ ] of the contract.

6. DAY TO DAY WORKING IN PARTNERSHIP

To foster a successful working partnership at every level, the partners will ensure that:

• The Contractor’s staff will work immediately alongside the Council’s staff, and not occupy separate rooms.

• Staff secondments between the partners will be encouraged.

• Joint training and induction of staff will be encouraged.

• The Partners will share the same information and communication systems.
7. OPEN BOOK ACCOUNTING

The Partners agree to develop and improve the system of ‘open book accounting’ agreed during the negotiations and set out in the contract.

The Partners agree that for the contract and the Partnership to be successful it must be based on sustainable, accurate and realistic operational performance and on clear and robust financial information, and further that is to their mutual benefit to share such information in confidence in order to develop trust and to better understand the pressures and market forces exerted on each of them.

The Partners will at all times act reasonably and in good faith in relation to all matters that may arise under this Charter and the contract. This mutual commitment to each other includes an obligation on each Partner to ensure that the other Partner is not unduly prejudiced, financially or otherwise, as a result of the operation of the contract, the acts or omissions of the other Partner, market forces, changes of law or otherwise.

Subject only to any requirements in law, the partners commit themselves not to disclose to any third party any commercially sensitive information unless by express written agreement of the other Partner.

Signed on behalf of the Council

Date:

Title:

Signed on behalf of the Contractor

Date:

Title:
APPENDIX E: Standing agenda for regular review meetings – Sample

(NAME OF AUTHORITY)
(NAME OF CONTRACT)

CONTRACT MANAGEMENT MEETING

to be held on [date] at [time] at [venue]

AGENDA

Standing Items

1. Apologies for absence
2. Matters Arising
3. Action Log Update
4. Review of Performance Monitoring Information
5. Contractual Obligations - Targets and Timetable
6. Complaints, Compliments and Concerns
7. Project Updates
8. Risk Register
9. Improvement opportunities

New Items

11. [ ]
12. [ ]
13. [ ]
14. Any Other Business
15. Date and Time of Next Meeting
# Appendix F: Risk register – Croydon template

<table>
<thead>
<tr>
<th>RISK REF</th>
<th>RISK SCENARIO</th>
<th>ASSIGNED TO</th>
<th>EXISTING CONTROLS</th>
<th>CURRENT RISK RATING</th>
<th>FUTURE CONTROL MEASURES</th>
<th>FUTURE RISK RATING</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Impact (1-5)</td>
<td>Likelihood (1-5)</td>
<td>Total</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
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Appendix G: Change control process

Need for a new project identified

Client completes New Project Request, attaches appropriate documentation and e-mails to Contractor Account Management

Contractor logs the request, assigns request number and sends acknowledge

Contractor commences pricing work with relevant departments using value-for-money model

Proposes price to client

Is price acceptable?

yes

Client terminates request

no

Client and contractor review/negotiate the request and price and revise as necessary

Is Revised proposal acceptable?

yes

Confirmation of change issued and signed by both parties and price impact recorded

no

Need for a new project identified