

Negotiating IT Contracts

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Executive summary

ORGANISATIONS MAY spend millions of pounds on IT or outsourcing projects, but all too often, insufficient attention is paid to the contract, resulting in severe financial losses, failure of the project and the risk of large-scale litigation. What may originally have arisen as a streamlining and cost-cutting exercise can turn out to be a huge drain on resources, which no organisation can afford in this current economic climate.

Negotiating IT Contracts, based on Kit Burden's highly-successful masterclass, is a practical guide on how to understand and negotiate contracts relating to IT and technology-related outsourcing projects. Throughout the report, key points are illustrated with real-life examples from the author's wide-ranging experience of acting for both suppliers and customers. Written in an accessible style, the report is ideal for IT, project and business managers, and anyone else involved in negotiating an IT or technology-related outsourcing deal. Key legal concepts, in particular relevant regulations (such as TUPE), and commonly misunderstood terminology, are explained in simple terms, so that they can be easily understood in the context of negotiating a contract.

The report opens with the identification of the key risks likely to arise in an IT project – the risks which need to be catered for in the contract. A key theme of the report is the allocation of risk between the supplier and the customer, the successful negotiation of which enables the customer to minimise

his/her risks and the supplier to safeguard a reasonable return.

A review of the advantages and the disadvantages of different types of contracts is provided, and guidance is given on their suitability for different kinds of projects.

Chapter 3 covers alternative pricing models. To a non-expert, the wide array of options may be confusing, and it may be hard to ascertain which will offer the best value for the project. The options are also considered from the point of view of long-term value, which is essential for the ongoing success of a project. Thereafter, concepts, such as warranties, indemnities, service credits, liquidated damages and liability claims that commonly feature in contracts are examined, alongside the common errors in drafting, of which contract negotiators should beware.

It is acknowledged that however well a contract is drafted, disputes will arise, and the report discusses where these are likely to occur, how governance processes can ensure they are swiftly and effectively managed and – hopefully – resolved. Should more informal governance measures fail to resolve the issue, the possible next steps are examined, including expert determination, mediation, arbitration and litigation.

The report ends on the themes of exit and termination. Provisions for termination and ongoing rights need to be built into a contract, to ensure that the customer can take back or retender for any services at the end of the term, ideally with the full cooperation of the supplier.

About the author

KIT BURDEN specialises in the areas of outsourcing and complex technology transactions, advising both users and suppliers of IT on all aspects of the procurement process. His work ordinarily involves him in business-critical projects valued in the region of hundreds of millions of pounds. His major clients include: UBS, Dixons, RBS, Lloyds TSB, CMC Markets, TUI, Birds Eye Iglo, HCL Technologies, the Law Society, the British Council and Red Hat, as well as various major insurers, retail banks, and other large corporates and providers of IT and outsourcing services.

Kit is identified as a leading IT and outsourcing lawyer by all of the leading legal directories, including the *Legal 500*, *Legal Experts* and *Chambers and Partners*.

He is a trustee of the Society of Computers and Law, and chairs its Outsourcing Group. He is also a member of the Computer Law Group. A frequent speaker at industry and legal conferences both in the UK and internationally, Kit also writes for various journals on IT and outsourcing including *IT Law Today*, *Computers and Law*, and the *Computer Law and Security Review*, for which he is on the editorial board. He is the author of *Computer Contracts* (Sweet & Maxwell) and the *Legal Protection of Computer Software* (EMIS), and co-author of the chapter on 'IT Contracts' in the *Encyclopaedia of IT Law* (Sweet & Maxwell).

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