



Outcome agreement



This guide is for government agencies and providers who use the new NGO streamlined contracting framework. The guide does not provide legal advice. Instead it offers commentary explaining why each clause of the outcome agreement is required, how those clauses link to the framework terms and conditions (FTC), some key points to note and practical considerations that should assist government agencies and providers who use the OA and FTC. It aims to support a better understanding of the structure, content and use of the OA and FTC. If users have specific legal questions related to the OA and /or FTC, they should consult a lawyer.



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Contents page

| | |
|--|----|
| Introduction | 1 |
| Structure of this guide | 2 |
| Government wide application | 2 |
| Drafting approach..... | 3 |
| Different versions of the template OAs..... | 3 |
| Additional support available..... | 4 |
| Section from the OA: Parties | 5 |
| Commentary | 5 |
| Section from the OA: Introduction | 6 |
| Commentary | 6 |
| Section from the OA: FTC – Future differences | 7 |
| Commentary | 7 |
| Section from the OA: Relationship between this OA and the FTC | 8 |
| Commentary | 8 |
| Section from the OA: Where more than one purchasing agency is a party to the OA..... | 9 |
| Commentary | 10 |
| Section from the OA: Term of this OA | 11 |
| Commentary | 11 |
| Section from the OA: Services, outcome(s) and performance measures | 13 |
| Commentary | 13 |
| Section from the OA: Monitoring by the purchasing agency | 16 |
| Commentary | 16 |
| Section from the OA: Regular reporting by the provider | 19 |
| Commentary | 19 |
| Section from the OA: Regular audits of the provider | 21 |
| Commentary | 21 |
| Section from the OA: Payment | 23 |
| Commentary | 23 |
| Section from the OA: Conditions | 25 |
| Commentary | 26 |
| Section from the OA: Incentives | 28 |
| Commentary | 28 |
| Section from the OA: Permitted information disclosure | 30 |
| Commentary | 30 |
| Section from the OA: New IP | 32 |
| Commentary | 32 |
| Section from the OA: Contact details | 34 |
| Commentary | 34 |
| Section from the OA: Further terms | 35 |
| Commentary | 35 |
| Section from the OA: Signatures..... | 37 |
| Commentary | 37 |

Introduction

The Outcome Agreement (OA) is one of two legal documents that form part of the *Streamlined contracting with NGOs contracting framework*. The other legal document is the Framework Terms and Conditions (FTC). Together, the OA and FTC document all the legal obligations between a government agency (that purchases services) and an NGO (who provides those services). Neither legal document can be used without the other.



The FTC creates a simple contract framework that can apply to a broad range of different contracting scenarios and is incorporated by reference into every OA between purchasing agencies and providers. It is structured as a standard, web-based, set of general terms and conditions that:

- apply to all contracts;
- where purchasing agencies purchase services from NGO providers;
- using the streamlined contracting framework.

However, the FTC is not intended to be amended for individual engagements. Instead it adopts a default position in most areas, with flexibility so engagement specific details (which would not be standard across every contract government enters with an NGO provider) can be included in the OA. This ensures the contract is suitable for a wide variety of engagements.

This approach enables all purchasing agencies to use consistent standard terms and conditions, which should greatly benefit the provider community. It also avoids the need for physically signing the FTC. The OA is the only legal document signed by the purchasing agency and provider.

The OA details:

- specific services being purchased
- community or population outcomes the services contribute to
- desired client outcomes
- how performance will be measured
- price
- monitoring and reporting arrangements
- the term (length) of contract
- conditions either party must comply with
- any other engagement specific details necessary.

Please note that for the purposes of this guide:

- the word *client* refers to any person using the NGO provider's service
- the term *purchasing agency* refers to a government agency that purchases services from a NGO provider using an OA.

Structure of this guide

This guide presents each section of the OA, followed by an explanation of that section under the heading **Commentary** that covers:

- why the clause is needed
- key points to note (including the link to the relevant clause(s) in the FTC)
- what to do in the OA
- important considerations before populating the OA (if relevant)
- contract and relationship management tip (if relevant).

Detailed advice on the content of the FTC is available in the *FTC user guide*.

Government wide application

The new *Streamlined contracting with NGOs contracting framework* is intended to apply to all contracts where purchasing agencies buy services from NGO providers. This change process will take time. Purchasing agencies have three years to move their service contracts with NGO providers onto the new contracting framework. For providers with multiple contracts with a purchasing agency, there may be a period of overlap where they have some contracts on the new contracting framework while other existing contracts run their course.

Every government agency (includes department, state sector and State Services agencies) may become a purchasing agency provided it signs the Government Agency Agreement (GAA). The GAA:

- is a contract between the Ministry of Business, Innovation and Employment (MBIE) and each individual purchasing agency
- supports the FTC by creating obligations between each purchasing agency and MBIE that require each purchasing agency to give effect to clauses in the FTC
- is designed to improve contracting and contract management practices.

Those FTC clauses require purchasing agencies to:

- work in a more coordinated manner
- encourage collaboration and consistency in approach within business units inside a purchasing agency and also across different purchasing agencies.

This process aims to reduce the duplication of contract management activity and the compliance burden that purchasing agencies place on NGO providers.

NGOs do not sign the GAA because it only deals with commitments made between a purchasing agency and MBIE.

Drafting approach

There are a number of clauses in the FTC that would not be present in a standard bilateral contract, but are still necessary for the FTC to:

- allow widespread use by purchasing agencies
- ensure that the major improvements in approach (that will reduce the compliance burden on NGOs) are followed.

The FTC reads as a bilateral contract between the purchasing agency and the provider, which should make it easier for the provider to read. There are two OA templates, namely:

- one for use with bilateral contracting arrangements, like an OA between a single purchasing agency and provider
- one for integrated contracts, like an OA between multiple purchasing agencies and one provider.

For integrated contracts, the multi-purchasing agency implications are addressed in section 2 of the integrated OA template. The bilateral OA template has a different section 2.

Different versions of the template OAs

The OA comes in two forms (see below). For more information on these forms, visit www.procurement.govt.nz => search *the contracting framework*.

| Form | Application |
|-----------------|---|
| OA (Bilateral) | To be used for a contract between a single purchasing agency and single provider. |
| OA (Integrated) | To be used for a contract between multiple purchasing agencies and a single provider. |

Additional support available

The following guidance supports the implementation of the contracting framework. For more information, visit www.procurement.govt.nz.

| Guides, tools and templates | | |
|-----------------------------|--|----------------------|
| Area being supported | Document name | Format |
| To support deployment | Contracting framework deployment guide (being released shortly) | pdf |
| | Presentation to support internal communications (being released shortly) | Microsoft PowerPoint |
| | FTC user guide | pdf |
| | DST user guide | pdf |
| | OAMP user guide | pdf |
| | Project overview | video |
| | Introduction to results based accountability (RBA) | video |
| | Contract framework overview | video |
| To support good practice | Agency quick guide to prompt payment | pdf |

Section from the OA: Parties

Parties

[Her Majesty the Queen in the right of New Zealand acting by and through the Chief Executive of [insert name of Public Service department contracting entity] [Name of other Eligible Agency contracting entity][repeat as necessary for each additional contracting entity] (Purchasing Agency)

[Name of NGO services provider, include address] (Provider)

Commentary

Why we need to describe the parties

All contracts should accurately record the name of each party to the contract. This ensures that each party is easily identifiable. Getting this right is crucial to ensuring that each party has enforceable rights and obligations against the organisation they expect to deal with.

What to do in the OA

You need to include the full legal name of each party to the OA and the provider's address.

Important considerations before populating the OA

- Ensure that the legal name is accurately recorded.
- If the provider is a registered legal entity, its full legal name will be recorded on the relevant register (i.e. companies' office, charities, or incorporated societies and trusts register – all of which are searchable online). The other obvious way to get this right is to ask the provider to confirm that the OA correctly records the legal name and address, which could include asking the provider to give some other forms of certification (e.g. an extract from its rules or other establishment documents).
- The full names of each purchasing agency can be checked:
 - with the internal legal team within that purchasing agency
 - in schedule 1 of the *State Sector Act 1988*, *Crown Entities Act 2004* or *New Zealand Public Health and Disability Act 2000* (for DHBs).

Section from the OA: Introduction

Introduction

- A This Outcome Agreement forms part of the government’s *Streamlined contracting framework*, along with a set of umbrella terms and conditions known as the “Framework Terms and Conditions” that will apply to contracts between the Purchasing Agency and the Provider relating to social, public health, justice and education services. The Framework Terms and Conditions are posted on <http://www.business.govt.nz/procurement/pdf-library/functional-leadership/contracting-with-ngos/framework-terms-and-conditions-476-kb-pdf> (the **Website**) and form an integral part of this Outcome Agreement.
- B This Outcome Agreement describes the:
- (i) Outcome to be achieved;
 - (ii) Services that the Provider will provide to contribute towards achieving that Outcome; and
 - (iii) Performance measurement framework to assess the provision of the Services, and whether the Services have contributed towards achieving the Outcome.
- C The sections in the Framework Terms and Conditions headed “Introduction”, “Purpose and Context Statement” and “Relationship Principles” set the relationship background relevant to this Outcome Agreement.
- D The Purchasing Agency confirms that it has signed a Government Agency Agreement with the Co-ordinating Agency and will ensure that at all times throughout the term of this Outcome Agreement it maintains in place a signed Government Agency Agreement.

Commentary

Why we need the introduction clauses

The introduction sets the scene and explains how the OA and FTC fit together to form a contract.

Key points

It also provides an overview of some of the key features of the OA and how the three sections of the FTC described in recital C, set the relationship background for each OA. Finally, recital D provides confirmation that the purchasing agency has signed the GAA. Further information on the GAA is set out on page two of this guide under *Government wide application* and is available online by viewing our contracting framework video via www.procurement.govt.nz => *search* contracting framework.

What to do in the OA

Nothing.

Section from the OA: FTC – future differences

Framework Terms and Conditions – future differences

If the Framework Terms and Conditions posted on the Website for future general use are ever different to those that apply when this Outcome Agreement is entered into (Updated Framework Terms and Conditions), then:

- (a) any future Outcome Agreement which the Provider enters into with the Purchasing Agency (or another Purchasing Agency) after the date which the Updated Framework Terms and Conditions are publicly posted on the Website will incorporate (or have appended to it) the Updated Framework Terms and Conditions; and
- (b) if the Provider and Purchasing Agency agree to it, the Updated Framework Terms and Conditions will also apply to this Outcome Agreement from an agreed date and any Framework Terms and Conditions already incorporated into (or appended to) this Outcome Agreement will be deemed to be removed and replaced by those publicly posted Updated Framework Terms and Conditions.

Commentary

Why we need future differences clauses

The future differences clauses are included in the FTC because:

- at some point in the future it may become necessary or desirable to amend the FTC
- every OA needs to be very clear about what version of the FTC apply to it at any time.

Key points

The online version of the FTC – at the particular time each OA is entered – will always apply to that OA, unless the provider and purchasing agency agree to move to the updated FTC.

What to do in the OA

Nothing.

Section from the OA: Relationship between this OA and the FTC

1 Relationship between this Outcome Agreement and the Framework Terms and Conditions

- 1.1 This Outcome Agreement is deemed to incorporate all the Framework Terms and Conditions. Accordingly, the Framework Terms and Conditions apply to the Services under this Outcome Agreement.
- 1.2 Unless the context otherwise requires, all terms defined in the Framework Terms and Conditions have the same meaning in this Outcome Agreement.
- 1.3 The Introduction above forms part of this Outcome Agreement.

Commentary

Why we need these clauses

These clauses are included to:

- assist interpretation
- clarify which parts of the OA form part of the binding contract between the purchasing agency and provider.

To avoid duplication, clause 1.2 makes it clear that the terms defined in the FTC have the same meaning when used in the OA.

Key points

Every OA incorporates the FTC by referring to where it can be found on the MBIE's website.

If new defined terms are required for the OA, they can either be:

- defined where they are first used in the OA
- added in the definitions section of *Appendix 11* (see an example below).

Definitions: In this OA, unless the context otherwise requires:
[New definition] means ...

If including a new definitions section, do not define terms already noted in the FTC as that will create confusion as to which defined term should prevail.

What to do in the OA

Nothing.

Section from the OA: Where more than one purchasing agency is a party to this OA

Integrated OA

2 Where more than one Purchasing Agency is a party to this Outcome Agreement

- 2.1 A reference in this Outcome Agreement to “the Purchasing Agency” means each, any or all of the Purchasing Agencies who are a party to this Outcome Agreement. Any Purchasing Agency may exercise Purchasing Agency rights (as they relate to that Purchasing Agency only) under this Outcome Agreement. Without limiting any collective responsibility the Purchasing Agencies have under the Framework Terms and Conditions, a Purchasing Agency may not represent another Purchasing Agency without that Purchasing Agency’s consent, and may only exercise rights, and is only required to do things relating to itself and Services being provided to it. No Purchasing Agency is responsible for what another Purchasing Agency does, or fails to do, under this Outcome Agreement. For example:
 - (a) any extension of the term of this Outcome Agreement is only binding on a Purchasing Agency that provides its written consent to that extension; and
 - (b) Services, payments, conditions or incentives which are referable to a particular Purchasing Agency only relate to that Purchasing Agency and not the others.
- 2.2 If a Purchasing Agency does or requests the Provider to do something which the Provider believes conflicts with what another Purchasing Agency requires or has requested, the Provider will advise each affected Purchasing Agency of that conflict and attempt to resolve it, but until the conflict is resolved, the Provider will be entitled to perform the Services as if the thing giving rise to the conflict had not happened.
- 2.3 The Framework Terms and Conditions set out the commitment Purchasing Agencies make around co-ordinating with the Provider and other Purchasing Agencies to make the provision of reports/information by the Provider, and conducting of any audits of the Service provision and the Provider as efficient and effective as is reasonably practicable. This co-ordination will also take into account that the Provider may have multiple “Outcome Agreements” with multiple “Purchasing Agencies”, including ones who are not a party to this Outcome Agreement.

Bilateral OA

2 Not an integrated Outcome Agreement

- 2.1 This Outcome Agreement is not suitable for situations where more than one Purchasing Agency wants to contract with the Provider in a single Outcome Agreement.

Commentary

Why we need these clauses

Clauses 2.1 to 2.3 in the integrated OA are included to clarify what rights a single purchasing agency may exercise when multiple purchasing agencies are party to the same OA with a single provider.

Key points

This is the only area of the OA where there is any difference between the two OA templates (i.e. the integrated and bilateral versions). The integrated version details a number of important matters (see clauses 2.1 to 2.3), which are not relevant when the OA is between only one purchasing agency and a single provider.

Clause 2.1 of the bilateral OA template is included as a reminder and also to ensure that the balance of the clause numbering remains the same across both templates. This makes it easier for users of the two OA templates to become familiar with the various sections if they have matching numbers.

A purchasing agency can only exercise its own rights (i.e. ones that relate to services it is purchasing from the provider). It cannot make decisions for or exercise rights belonging to, any other purchasing agency.

Clause 2.3 encourages purchasing agencies to consider whether the provider has signed other OAs, when considering what reporting and auditing requirements are most appropriate to manage or mitigate risks identified through using the DST.

MBIE is developing an NGO contract register to better show which purchasing agencies are contracting with the same provider. This should help purchasing agencies to align regular reporting and auditing. Until this register is operational (targeted for end of 2014), providers can offer this information directly to purchasing agencies to help them coordinate their contracting activity.

What to do in the OA

Nothing.

Section from the OA: Term of this OA

3 Term of this Outcome Agreement

- 3.1 This Outcome Agreement will commence on *[insert date]* and, end on *[insert date]* unless extended pursuant to clause 3.2 or terminated earlier in accordance with the Framework Terms and Conditions or as otherwise allowed by Law.
- 3.2 The Purchasing Agency may, extend the term of this Outcome Agreement for up to *[insert number of possible extension rights]* further periods of *[insert length of each extension term]* by giving the Provider notice it wishes to extend the term at least *[insert notice period]* days before the date when the term would otherwise expire.

Commentary

Why we need these clauses

All contracts should be for an agreed period of time (referred to as the *term*), with a commencement and expiry date. If a purchasing agency wants the right to extend the term beyond an initial period, it should be clear about that up-front.

These clauses related to clause 1 of the FTC.

Key points

The commencement date is the date that the OA comes into effect. It can be different from the date the OA is signed. Services should not be delivered before the commencement date. The expiry date is the date that the OA will end, unless one party exercises its right to end the OA before its expiry date for any of the reasons described in either the FTC or OA.

Clause 3.2 also gives the purchasing agency the right to extend the term of the OA beyond the initial term, by including any further extensions of the term of the OA.

What to do in the OA

You need to include a commencement and expiry date in clause 3.1. If you want to include a right to extend the term of the OA, you must detail the length of any extended term including:

- how many times you want to be able to extend the term
- how much notice the purchasing agency must give the provider to extend the term.

Delete clause 3.2 if you do not want to include a right to extend the term.

Important considerations before populating the OA

- The cost to establish and provide the service (especially an on-going service) will be directly impacted by the term of the OA. Longer-term contracts have a longer period over which to recover establishment costs.

- Shorter term contracts:
 - can impact the experience of the person using the services (both clients in the community and the purchasing agency administering the contract), especially if there is provider turnover as a result of frequent short term contracts
 - usually impact the way a provider hires staff, which can increase the cost of providing the service.
- If the provision of services is being tendered, the cost of tendering (for both the purchasing agency and the provider) and selecting the right provider should be considered when deciding the term of the OA. If those costs are high, it points towards offering a longer term so that those costs:
 - are not incurred so frequently
 - can be absorbed over a longer period.

Contract and relationship management tip

Before extending the term, the purchasing agency should ensure the provider is happy to continue providing the services on the same terms during the extended term. We encourage each purchasing agency to engage with the provider as early as possible to discuss:

- the potential extension of the term
- what parts of the OA (if any) need to be amended to accommodate the provision of services during the extended term.

Section from the OA: Services, outcome(s) and performance measures

4 Services, Outcome(s) and performance measures

- 4.1 The Provider will provide the Services to satisfy the performance measures set out in Appendix 1. The performance measures set out in Appendix 1 for each Service will be used to determine whether the Provider has been successful in delivering each Service in accordance with this Outcome Agreement so as to contribute toward achieving the Outcome linked to each Service.
- 4.2 In providing the Services the Provider must follow the reasonable directions of the Purchasing Agency. Such directions must be consistent with the terms of this Outcome Agreement.

Appendix 1: Services and outcomes to be achieved

| Outcome (population)* | | | | |
|------------------------|--------------|---------------------|-----------------------|--------------------------------------|
| Indicator (population) | | | | |
| Service * | Client group | Contracted volume * | Performance measure * | Purchasing agency (if more than one) |
| | | | | |

* An asterisk in any box of the tables in this OA means population of those fields is mandatory. Anything without an asterisk is an optional field and a purchasing agency may delete those fields if it wishes. If a purchasing agency and provider consider there is further relevant information they would like to include, they may also add extra fields to any table in the OA to capture that information.

Commentary

Why we need these clauses

All contracts should contain an accurate description of the services to be performed and how service performance will be measured. In addition, the services being purchased should contribute to achieving a pre-agreed population outcome.

The population outcome, service description and corresponding performance measures will vary from one engagement to another. These clauses and *Appendix 1* are therefore vital to the proper operation of the OA.

In preparing any OA, it is crucial that *Appendix 1* is as clear, accurate and detailed as possible because it:

- will be the yardstick by which performance/success is measured
- is critical to the payment regime, especially any incentives.

These clauses and *Appendix 1* relate to clause 3.1 of the FTC.

Key points

To have a meaningful contract, the purchasing agency needs to describe the services and the corresponding performance measures in enough detail so that the provider has certainty regarding:

- what is expected
- how the purchasing agency will decide if the services meet their expectations.

MBIE recommends that the provider shows the purchasing agency whether the services it provides positively contribute towards outcomes that are client-based.

Visibility and accountability: An integral part of the streamlined contracting framework is getting a better line of sight:

- from the services being purchased from NGO providers
- to the desired client and population or community outcomes being sought.

While providers cannot be held solely accountable for achieving population or community outcomes, they can be accountable for achieving desired client outcomes for those passing through their doors. Creating the link between the services being performed and the population outcome they contribute towards, is also very important. Without that information it is difficult to determine if purchasing the services was a good idea or whether the results represent good value for money.

Contracted volume: This can mean the number of:

- services provided (or to be provided)
- clients the provider will see or directly assist
- full-time equivalent (FTE) if the contract is effectively purchasing a resource to undertake a particular activity.

Client group: This section provides flexibility to describe one of the following:

- the target client group (e.g. children under five years old)
- any eligibility criteria that needs to be met for a client to be eligible to receive a service (e.g. a person diagnosed with a severe conduct disorder)
- a person referred to the service from the courts.

RBA: Performance measures for any service may incorporate RBA performance metrics including how much, how well and is anyone better off?

Further information about RBA and how to write performance measures using RBA methodology is available via:

- www.procurement.govt.nz => search *results based accountability*
- www.procurement.govt.nz => search *training and education programmes*.

What to do in the OA

Appendix 1 is intended to be flexible because the user can add additional columns to accurately and fully describe the services, performance measures or other important associated details as required. The user can change the table to suit whatever needs to be included (e.g. change the heading axis to populate rows rather than columns) and accommodate any preferences for how that information might best be presented.

Describe the outcome (population), services, contracted volume and corresponding performance measures in *Appendix 1*. Add any further rows or columns required. Since each OA can cater for multiple service lines, the user needs to ensure that each service has a contracted volume and corresponding performance measure (e.g. the client outcomes).

Important considerations before populating Appendix 1

- If the services and/or corresponding performance measure are already described in an online service specification, practice guideline or service manual then they do not need to be repeated in *Appendix 1*. Instead, provide a brief description of the service and follow that with the words: *as described in the* (insert service specification, practice guideline or service manual) *“located at* (insert website details) *” or “appended to this Outcome Agreement”* (if the document is not available online).
- If the service and/or corresponding performance measures are described in an online service specification, practice guideline or service manual – check that any reporting and monitoring requirements included in the OA, align with any monitoring or reporting obligations contained in the online material. If they do not align, managing performance under the OA will be more difficult because there will be uncertainty around what performance measure needs to be met. This also risks adding to rather than reducing, the compliance burden for providers.
- Wherever possible, ensure that the selected performance measures will allow you to determine whether the services are:
 - achieving the desired client outcomes
 - contributing to the population or community outcome being sought.

Contract and relationship management tip

Think about whether or not the services and corresponding performance measures are achieving the desired client outcomes and contributing to the desired population or community outcome. This should help focus the contract management activity (i.e. monitoring, reporting etc.). Since both the purchasing agency and provider want to help clients achieve better personal outcomes, having this focus should also help develop the relationship between purchasing agency and provider. The two parties can then:

- learn from each other about the best ways to improve client outcomes
- tailor the service provision to best meet clients' needs.

Section from the OA: Monitoring by the purchasing agency

5 Monitoring by the Purchasing Agency

5.1 The Purchasing Agency will undertake the scheduled monitoring activities at the times and frequencies set out in Appendix 2.

Appendix 2: Monitoring by the purchasing agency

| Services * | Monitoring activity * | Time and frequency of monitoring activity * | Purchasing agency (if more than one) |
|------------|-----------------------|---|--------------------------------------|
| | | | |

Commentary

Why we need this clause

Each OA should specify how often the purchasing agency intends to schedule monitoring activity.

The purpose of including this clause is to allow the provider to plan for and ensure it has the right people available during, monitoring visits. Since the nature, scope and frequency of monitoring activity will vary depending on a range of circumstances, this clause and *Appendix 2* are necessary to ensure the OA can specify fit-for purpose monitoring arrangements.

This clause and *Appendix 2* relate to clause 5.2 of the FTC.

Key points

The nature, scope and frequency of monitoring activities are matters for each purchasing agency to determine. However, because all monitoring activity incurs cost for the purchasing agency and provider, the purchasing agency should ensure that the proposed monitoring activity is appropriate for the type of service provided given:

- the vulnerability (or otherwise) of the client
- the provider's experience (e.g. the length of time its team has successfully delivered the required service, together with the scale and sophistication of its operations).

The purchasing agency may also wish to consider whether the proposed monitoring regime reflects the nature and strategic importance of the relationship it wants to have with the provider (recognising that not all relationships the purchasing agency has with its providers will be the same).

What to do in the OA

Describe the monitoring activity (e.g. proposed visits, teleconferences, Skype discussions, etc.), together with the timing and frequency of those activities. Since each OA can cater for multiple service lines, you need to ensure that the monitoring activity aligns with a particular service.

Important considerations before populating Appendix 2

- The cost to establish and provide the service will be directly impacted by the amount of time the provider needs to devote to monitoring activities, including when looked at across all its various relationships with purchasing agencies. Generally, the more time a provider spends monitoring for the purchasing agency, the less time spent delivering services to the clients who need them.
- Before deciding on a monitoring regime, the purchasing agency should use the DST to identify and weigh the risks associated with purchasing the service from that provider. Doing that assessment and sharing the results with the provider, should help both parties agree on appropriate monitoring arrangements that:
 - balance the need to responsibly monitor contracted activity that is paid for with taxpayer's money
 - allow the provider to perform the services without unnecessary disruption or the distraction of its limited resources.

Contract and relationship management tip

Effective monitoring can be a great way to develop or further enhance working relationships. It affords both parties an opportunity to discuss progress. With the assistance of the RBA methodology and tools, it also allows the parties to frequently discuss whether the desired client and population outcomes are being achieved or contributed to.

Sections 17 and 18 of the OAMP template provides a simple and easy to use framework for discussing:

- whether desired client outcomes are being achieved
- how those outcomes contribute towards achieving desired population/community outcomes.

Using this RBA framework as part of regular monitoring discussions (especially when developing the action plan at the end of the discussion) will enhance a purchasing agency's ability to know what activities make a positive difference to the clients.

Extract: Section 17 the OAMP

17 RBA – acknowledging that this service contributes to improving population outcomes

- 17.1 The agreed population outcome that relates to this service is all This means that both parties would like to see There are [four] “vital few” or prioritised indicators of success for this population outcome. They are (refer to *Appendix 1*, Outcome Agreement).
- 17.2 The clients of the services described in the Outcome Agreement are drawn from this overarching population group and as such agreed outcomes delivered to clients are acknowledged as contributing to these aligned population outcomes. Both parties recognise that this contribution is part of the rationale for funding these services as one of the most effective ‘means’ to achieve agreed ‘ends’ (i.e. improved population outcomes).

Extract: Section 18 of the OAMP

18. RBA - working together to understand performance and support continuous performance improvement

18.1 This section outlines the seven questions linked to improving performance accountability. Application of the seven questions supports parties to understand and agree upon prioritised actions for performance improvement.

| |
|--|
| Who are our clients? (Client group) |
| How can we measure if our clients are better off? (Client outcome) |
| How can we measure if we are delivering the services well? (Quality measures) |
| How we are doing on the most important of these measures? (Baseline data and story) |
| Who are the partners that have a role to play in doing better? (Partners) |
| What works to do better, including no-cost and low cost ideas? (Common sense ideas and research where available) |
| What do we propose to do? (Action plan) |

18.2 It is anticipated that at contract monitoring and management meetings, both parties will actively engage in using the seven questions as part of working collaboratively together to achieve improved services and outcomes for clients.

For more information on the OAMP, visit www.procurement.govt.nz => search *OAMP*.

Section from the OA: Regular reporting by the provider

6 Regular reporting by the Provider

6.1 In providing the Services, the Provider will provide the Purchasing Agency with reports that include the details specified, at the times and frequency set out in Appendix 3.

Appendix 3: Regular reporting by the provider

| Service * | Report name * | Details to be included in the report * | Time and frequency of reporting * | Purchasing agency (if more than one) |
|-----------|---------------|--|-----------------------------------|--------------------------------------|
| | | | | |

Commentary

Why we need this clause

Each OA should specify how often the provider is required to generate reports for the purchasing agency and the content of those reports. Since the form and content of reports a purchasing agency may request will vary, this clause and *Appendix 3* ensure the OA can describe the reporting requirements to suit the engagement.

This clause and *Appendix 3* relate to clause 5.3 of the FTC.

Key points

Each purchasing agency will need to determine the form, content and frequency of reports it requires in the OA. Before requesting information in a report, a purchasing agency should be able to explain why that information is required and what it will be used for. If a purchasing agency cannot explain why the information is required, it should not ask for it.

Some information is required to allow the purchasing agency to responsibly manage whether the services have been provided in accordance with the OA. Other information may be requested to help the purchasing agency gain a better picture of the sector and the people who use the services. This information can inform strategic decision-making (i.e. policy or legislative settings for the sector).

What to do in the OA

Describe the information to be included in each report requested, including the timing and frequency when those reports must be submitted.

A number of purchasing agencies will want to ensure that their reporting includes some RBA performance measures (i.e. reporting on how much, how well and whether or not anyone is better off after using the services). For more information on developing RBA performance measure, see page 14 of this guide.

Since each OA can cater for multiple service lines, each requested report must align with a particular service.

Important considerations before populating Appendix 3

- The cost to establish and provide the service (especially an on-going service), will be directly impacted by the amount of time the provider spends on generating reports for the purchasing agency. Again, the more time a provider spends generating reports, the less time spent delivering services to the clients. Only ask for information that is going to be used.
- Using the DST to assess the risks associated with purchasing the service will help both parties decide what information needs to be reported on to appropriately manage or mitigate any associated risks.
- Purchasing agencies should consider what information the provider already collects as part of its usual business activity. If there is overlap between what the provider collects and what the purchasing agency wants, the purchasing agency should:
 - try to use the provider's information
 - only ask for additional information where required to appropriately manage or mitigate an identified risk, or if there is a reason for collecting it.
- Adding a reporting template to the OA is a good way to ensure that a provider is aware of and can populate the template with the required information, before signing the OA.

Contract and relationship management tip

Creating certainty of the form, content and frequency of reporting means a provider can plan to deliver each report on time and to the required standard, something which can often be a pre-condition to receiving payment from the purchasing agency. Both parties should periodically:

- check that each report's content meets the required needs
- amend that content if necessary.

Section from the OA: Regular audits of the provider

7 Regular audits of the Provider

7.1 The Purchasing Agency is currently required or permitted by Law to conduct an audit or review of the Provider during the term of this Outcome Agreement as set out in Appendix 4, with those audits or reviews being conducted on or around the times specified in Appendix 4.

Appendix 4: Regular audits of the provider

| Audit and corresponding legal requirement * | Anticipated timeframe for conducting the audit | Purchasing agency (if more than one) |
|---|--|--------------------------------------|
| | | |

Commentary

Why we need this clause

Each OA should specify how often the purchasing agency intends to audit the provider and under what authority those audits will be conducted (i.e. what Act or regulation requires or permits the audit). The purpose of including this clause is to allow the provider to plan for statutory audits and ensure it has the right people available during those processes. Since the type of audit and authorising law will vary, this clause and *Appendix 4* ensure the OA can capture a range of statutory audits or reviews as required.

This clause and *Appendix 4* relate to clause 5.5 of the FTC.

Key points

Each purchasing agency notes what statutory audits or reviews (including approximate timing) it may utilise in the OA, based on the law that applies to providing those services.

Not all services will be subject to statutory audit or review. That does not mean the provider or the provision of services can never be audited. Clause 5.4 of the FTC still allows the purchasing agency (acting reasonably) to require further information or carry out an audit if it believes that provider has breached the OA (referred to in the FTC as *special enquiry rights*).

What to do in the OA

Describe the type of audit, authorising law, approximate timing and frequency when those statutory audits or reviews may take place.

If no statutory audit or review right exists at law, this section will not be relevant. In this case, insert *N/A* in *Appendix 4*.

Important considerations before populating Appendix 4

- If a purchasing agency is required or permitted to undertake a statutory audit or review of the provider and/or the services being provided, it should aim to:
 - maximise the value of carrying out that audit or review
 - avoid duplicating that exercise as part of its regular reporting and monitoring activities, unless that separate monitoring and reporting is required to appropriately manage or mitigate an identified risk.
- If a purchasing agency wants to include a spot audit regime in its OA, it will most likely fit in *Appendix 2* (monitoring) or *Appendix 6* (conditions) rather than this section. This is because most spot audits do not cover audit or review activity that is required or permitted by law, so they are not what clause 5.5 of the FTC describes as being statutory audits.

Contract and relationship management tip

Giving the provider as much notice as possible before conducting a statutory audit or review, allows the provider to plan for when its senior staff (who will likely have many demands on their time) need to be available.

Section from the OA: Payment

8 Payment

- 8.1 Subject to the Purchasing Agency's rights under clause 13.1 to 13.3 of the Framework Terms and Conditions (Recovery, Reduction or Suspension of Payments), the Purchasing Agency will pay the Provider the amounts specified for the Service, at the times and subject to any pre-conditions set out in Appendix 5.

Appendix 5: Payment for services

| Service * | Payment date/milestone * | Payment amount * | Pre-conditions to receiving payment (if any) | Purchasing agency (if more than one) |
|-----------|--------------------------|------------------|--|--------------------------------------|
| | | | | |

Commentary

Why we need this clause

Each OA should specify how much the provider will get paid for performing the services, when that payment will be made and whether the provider needs to meet any pre-conditions before it will receive payment. Since payment details may vary for each service, this clause and *Appendix 5* are necessary to describe the payment arrangements for each service.

This clause and *Appendix 5* relate to clauses 4.1 plus 4.2 of the FTC.

Key points

The OA should include the payment amount and frequency those payments will be made, together with any pre-conditions the provider must satisfy before getting paid. This last part is critical to the provider being entitled to submit its invoices and then get them paid on time, so that cash flow covers its regular operating costs (e.g. wages, rent and tax).

What to do in the OA

Describe the payment amount, date or milestone and any pre-conditions the provider must satisfy before getting paid.

If the provision of a valid tax invoice is the only requirement to receiving payment, no pre-condition is required in *Appendix 5* because that requirement is included in clause 4.2 of the FTC.

Where a report is also required to accompany the provider's invoice before payment is made, this pre-condition should be noted in *Appendix 5* with details of the report's content included in *Appendix 3* (reporting).

Since each OA can cater for multiple service lines, so each payment must align to a particular service.

Important considerations before populating Appendix 5

- Payment is critical for the provider. While many NGO providers are not-for-profit organisations, they still need to ensure they have sufficient cash-flow to pay staff and other operating costs on time. Accordingly, when considering payment arrangements a purchasing agency should consider:
 - whether the time between payments might be a source of financial stress for the provider
 - making payment more frequently if necessary.
- Paying more frequently can create its own challenges, especially if payment is sought before the desired results are achieved. Using the DST to assess the risks associated with purchasing the service (including paying in advance of results being achieved if that's a relevant consideration), should help both parties work through these challenges.

Contract and relationship management tip

The best thing a purchasing agency can do to reduce the financial stress on a provider, is to prioritise the processing of a provider's invoice. This approach could include a purchasing agency:

- reminding the provider to issue the invoice (and report if relevant) if it is not promptly received after the invoice period ends
- promptly advising the provider if any required reports are deficient and what information is required to correct them
- ensuring the person who needs to approve payment has done so and the invoice is in the payment system
- confirming with the finance team that payment has been made.

This is a relatively small thing for purchasing agency staff to do, but it will make a huge difference to the provider and they will appreciate the purchasing agency's attention to this detail.

Section from the OA: Conditions

9 Conditions

- 9.1 The Provider must satisfy or comply with the conditions within the timeframes set out in Appendix 6.
- 9.2 If the Provider fails to satisfy or comply with any of the conditions it is responsible for:
- (a) the Provider must notify the Purchasing Agency of that failure as soon as reasonably practicable; and
 - (b) the applicable consequence set out in Appendix 6 will apply and, if none are specified for that condition, the consequence will be that the Purchasing Agency may do any one or more of the following:
 - (i) require a Remedy Plan to be agreed (if appropriate) and require the Provider to perform all actions recorded in the Remedy Plan;
 - (ii) suspend some or all of the Services (and suspend payment for those Services) on giving written notice to the Provider;
 - (iii) exercise its rights under clause 13.1 to 13.3 of the Framework Terms and Conditions (Recovery, Reduction or Suspension of Payments); or
 - (iv) exercise its termination rights described in the Framework Terms and Conditions.
- 9.3 The Purchasing Agency must satisfy or comply with the conditions within the timeframes set out in Appendix 7.
- 9.4 If the Purchasing Agency fails to satisfy or comply with any of the conditions it is responsible for:
- (a) the Purchasing Agency will notify the Provider of that failure; and
 - (b) the applicable consequence set out in Appendix 7 will apply and, if none are specified for that condition, the consequence will be that the Purchasing Agency and the Provider will discuss with each other what an appropriate response should be.
- 9.5 If the Purchasing Agency or the Provider fails to satisfy any condition that is required to be satisfied before the Outcome Agreement comes into full effect, the consequence will be that the Purchasing Agency and the Provider will discuss with each other what an appropriate response should be.

Appendix 6: Conditions the provider is responsible for

| Condition * | Consequence (specific and additional to those in the Framework Terms and Conditions) if not satisfied or complied with * | Last date to comply * | Before services provided? Yes / No * | On-going? Yes / No * | Purchasing agency (if more than one) |
|-------------|--|-----------------------|--------------------------------------|----------------------|--------------------------------------|
| | | | | | |

Appendix 7: Conditions the purchasing agency is responsible for

| Condition * | Consequence (specific and additional to those in the Framework Terms and Conditions) if not satisfied or complied with * | Last date to comply * | Before services provided? Yes / No * | Ongoing? Yes / No * | Purchasing agency (if more than one) |
|-------------|--|-----------------------|--------------------------------------|---------------------|--------------------------------------|
| | | | | | |

Commentary

Why we need this clause

Each OA should specify (preferably in one place) what conditions each party must satisfy or comply with before and/or during the term of the OA. The conditions imposed on a provider or purchasing agency may vary, along with the consequences for failing to meet that condition. Clauses 9.1 to 9.5, *Appendix 6* and *Appendix 7* are therefore necessary to describe conditions and consequences (outside the standard consequences found in clause 6.3 of the FTC).

These clauses, *Appendix 6* and *Appendix 7* relate to clauses 6.1 to 6.3 of the FTC.

Key points

Conditions: All conditions should include a date when they must be satisfied or complied with. Before including any condition in an OA, the party who wants it imposed should be able to explain why it is required and what risk it is managing or mitigating.

Consequences: Whenever a condition is included in an OA, there should be a corresponding consequence if that condition is not met or complied with. Clause 6.3 of the FTC specifies a range of consequences that include:

- agreeing a remedy plan with actions necessary to fix the failure
- suspension of services, which can also include suspending payment
- exercising any of the other remedies in the FTC, particularly section 12 (termination) or section 13 (recovery, reduction or suspension of payment)
- taking any other action allowed under the OA.

Some of these consequences can have serious implications for both the provider and purchasing agency, depending on which of them has not satisfied or complied with a condition. The final consequence in the above-mentioned list is included so that if the other specified consequences are considered inappropriate, there is flexibility to agree (up-front) on a different consequence to match the particular condition. Any different consequences noted in *Appendix 6* or *Appendix 7* are additional to the consequences already available under the FTC.

For example, the provider is required to hold and maintain current approval under section 396 of the *Children, Young Persons and Their Families Act 1989* to provide the services. If that condition is not complied with at all relevant times, the provider may not lawfully provide the services. The first three consequences noted above may be inappropriate and a more appropriate consequence may be:

- immediate suspension (if the loss of approval status is temporary and easily fixed)
- termination of the service altogether (if that approval status is permanently lost).

The revised condition and corresponding consequence would then be included in *Appendix 6*.

What to do in the OA

For conditions imposed on the provider use *Appendix 6* and conditions imposed on the purchasing agency use *Appendix 7*, to describe:

- each condition
- the last date for complying with each condition
- whether each condition:
 - must be satisfied or complied with before the services are provided
 - and/or requires on-going compliance during the term
- any new consequences (specific and additional to those described in clause 6.3 of the FTC) that may apply if the condition is not met or complied with.

If the consequences in clause 6.3 of the FTC are adequate, the consequence box in *Appendix 6* or *Appendix 7* can stay blank.

Important considerations before populating Appendix 6 or 7

- The difference between including an obligation as a condition (i.e. putting it in *Appendix 6* or *Appendix 7*) or including it as a further term (i.e. putting it in *Appendix 11*), is that including it as a condition means there is an automatic right to suspend services that is not present if the obligation is only a further term.
- The consequences for failing to comply with a further term are:
 - agreeing a remedy plan with actions necessary to fix the failure
 - exercising any of the other remedies in the FTC, particularly section 12 (termination) or section 13 (recovery, reduction or suspension of payment)
 - taking any other action allowed under the OA.
- Include all conditions (except those that are pre-conditions to receiving payment, which fit in *Appendix 5*) in these appendices rather than adding them to the body of the OA. Ideally, the body of the OA should follow the template OA, to ensure the same look and feel irrespective of what purchasing agency the provider contracts with. Any customisations should be captured in the relevant appendix.

Contract and relationship management tip

If requesting the inclusion of conditions in an OA, ensure to monitor whether or not those conditions have been satisfied or complied with and actively do something if they are not met. An example action would be to:

- first contact the other party – find out why the condition has not been satisfied or complied with and if/when it will be satisfied or complied with
- then consider what further steps should be taken.

Section from the OA: Incentives

10 Incentives

10.1 If the Provider satisfies the criteria set out in Appendix 8, the Purchasing Agency will provide the Provider with the Incentive set out in Appendix 8.

Appendix 8: Incentives

| Criteria * | Incentive * | Purchasing Agency (if more than one) |
|--|-------------|--------------------------------------|
| Criteria 1: option to leave blank if no incentives are being offered | | |
| | | |

Commentary

Why we need these clauses

This clause is included to prompt the purchasing agency to consider whether offering any incentive beyond simply paying the provider for their services, would increase the likelihood of the provider achieving better or more of the desired client outcomes. Since the range of possible incentives is broad, this clause and *Appendix 8* are necessary to describe any incentive arrangements.

This clause and *Appendix 8* relate to clause 8.1 of the FTC.

Key points

Including an incentive is optional. Incentives may be financial or non-financial and some examples of types of incentive are included on page 20 of the FTC user guide.

What to do in the OA

Record the incentive and the criteria the provider must met before the purchasing agency will provide the incentive.

Important considerations before populating Appendix 8

- Incentives are optional.
- Before offering an incentive, the purchasing agency should check that the qualifying criteria are measureable and achievable.
- Discuss with the provider whether or not provision of an incentive beyond payment under the OA, will actually improve the desired client and/or population or community outcomes and if so, why?

Contract and relationship management tip

If a purchasing agency chooses to include an incentive, it should actively monitor performance of the provider's service against the agreed qualifying criteria, which will likely focus on whether or not the services are:

- achieving client outcomes
- contributing to the desired population/community outcomes.

This monitoring will likely include use of the RBA methodology to help assess:

- success against pre-agreed client and population/community outcomes
- whether providing an incentive will contribute towards greater achievement of client outcomes.

Sections 17 and 18 of the OAMP template (replicated on pages 17 and 18 of this guide) provide a useful RBA framework for this process. For more information, visit www.procurement.govt.nz => search OAMP.

Section from the OA: Permitted information disclosure

11 Permitted information disclosure

11.1 Despite clause 10 of the Framework Terms and Conditions relating to confidentiality the Purchasing Agency may disclose any information described in Appendix 9 to the persons named in that appendix, provided that in no circumstances will the Purchasing Agency disclose any personal information about an identifiable individual without the consent of that individual first being obtained.

Appendix 9: Permitted information disclosure

| Service * | Information to be published * | Audience * | Purchasing agency (if more than one) |
|-----------|-------------------------------|------------|--------------------------------------|
| | | | |

Commentary

Why we need this clause

Normally all information relating to or obtained in connection with an OA will be confidential and may not be released without appropriate consent. An important goal of the new contracting framework is to reduce the duplication of contract management activity by purchasing agencies and consequently, the compliance burden on providers. To achieve this, purchasing agencies will need to share some information with each other to minimise that duplication wherever possible.

This clause is necessary to allow the purchasing agency and provider to discuss and agree what confidential information can be published and to what audience (i.e. other purchasing agencies or the public at large). Since there is a broad range of confidential information that may be shared, this clause and *Appendix 9* are necessary for describing that information and intended audience.

This clause and *Appendix 9* relate to clause 10.2 of the FTC.

Key points

Including information in *Appendix 9* is only necessary if the purchasing agency wants to publish information that would otherwise be treated as confidential to a particular audience. The purchasing agency and provider must agree on the information to be published and its intended audience.

Clause 10.2(c) of the FTC already permits disclosure of information necessary for a purchasing agency to respond to an *Official Information Act 1982* request or parliamentary or select committee question.

Similarly, users do not need to complete *Appendix 9* if they only want to share regular reporting or audit related information with other purchasing agencies that are part of an integrated OA, because sharing that information is already contemplated by clause 5.6 and 10.2(a) of the FTC.

What to do in the OA

Record the information to be published, the intended audience and what service that information relates to. This way both parties are aware of exactly what information is being disclosed and to whom.

Important considerations before populating Appendix 9

- Regular reporting and/or audit related information might be obvious candidates for wider disclosure. However, information about whether or not the services are resulting in better client outcomes and contributing to improved population/community outcomes could be useful to disclose more broadly too.
- If a purchasing agency wants to publish information about an OA or services provided under it that would otherwise be confidential, it should be able to explain why it wants to do that.
- Under the *Official Information Act 1982*, each purchasing agency can be required to disclose a broad range of information that may relate to any OA. When a purchasing agency enters an OA, it is spending tax-payer money and needs to be transparent about what it is buying and what those services achieve.

Contract and relationship management tip

There may be occasions when the provider wants a wider audience to know information about an OA, services performed under it, or client and/or population/community outcomes being achieved or contributed to. This might be very relevant for providers working with Māori or Pacific Island families who may want to share information with their iwi or community elders or representatives. In such situations, the provider and purchasing agency could include a reciprocal information sharing clause and table in *Appendix 11*. The latter would be another term that is specific and additional to what is already covered in the FTC and OA templates.

Section from the OA: New IP

12 New Intellectual Property

12.1 Without limiting the intellectual property clauses in the Framework Terms and Conditions, any new Intellectual Property Rights (**New IP**) that will be created by the Provider in connection with the Services and described in Appendix 10 will be owned (including the proportion) by the party identified in Appendix 10 and will be licensed to the other party or parties in accordance with clause 11.3 of the Framework Terms and Conditions.

Appendix 10: Ownership of New IP

| Service | New IP * | Owner of the New IP * <i>(specify if alone, jointly or in other proportions)</i> |
|---------|----------|---|
| | | |

Commentary

Why we need this clause

This clause is included because the standard position on ownership of New IP in the FTC (which says it belongs to the provider with a range of rights provided to the purchasing agency under licence) will not be appropriate in every situation.

There may be situations when it is more appropriate for the purchasing agency to own any New IP and licence its use back to the provider, or for it to be jointly owned. For example, a purchasing agency may engage a provider to undertake research and want to share the results of that research with others in the sector free-of-charge. Anyone in the sector can use that research for any purpose. In that situation it may be more appropriate for:

- the New IP in that research to be owned by the purchasing agency rather than the provider
- the provider still having a licence to use that New IP.

Clause 12.1 and *Appendix 10* are necessary for recording examples like the one above.

This clause and *Appendix 10* relate to clauses 11.2 and 11.3 of the FTC.

Key points

Describe the New IP in sufficient detail so that the purchasing agency and provider know:

- what New IP will not be owned by the provider
- who owns that New IP.

Since New IP may relate to a particular service, there is an optional field for including a description of that service.

What to do in the OA

Record a description of the New IP and its owner in *Appendix 10*. Users may also want to highlight the link between the New IP and the service it relates to in *Appendix 10*, but that is not mandatory.

Important considerations before populating Appendix 10

- Even though the provider may own the New IP under the FTC, the purchasing agency always has a licence to use/modify/copy (hereafter referred to as *use*) that New IP for any purpose connected with performance of the OA and any other agreed uses. Those other agreed uses represent additional purposes for which the purchasing agency may use that New IP. The provider and purchasing agency must agree on those uses.
- If a purchasing agency wants to depart from the standard position in the FTC (i.e. the purchasing agency wants to own some or all New IP), it should be able to explain to the provider why that is necessary.
- If the purchasing agency ends up owning any New IP, it also grants the provider a licence to use it for any purpose connected with performance of the OA and any agreed uses.

Contract and relationship management tip

To get a better understanding of how the provider is using any New IP and how the purchasing agency might want to use it itself, a purchasing agency should consider periodically discussing New IP as part of its contract management meetings.

Section from the OA: Contact details

13 Contact Details

13.1 Each party's initial postal address, physical address, email address, phone number and Relationship Manager details is set out below:

Purchasing Agency:

Postal address:

Physical address:

Email address:

Phone number:

Relationship Manager:

Provider:

Postal address:

Physical address:

Email address:

Phone number:

Relationship Manager:

Commentary

Why we need this clause

Each OA must specify the contact details for the purchasing agency, the provider and their respective relationship managers. This information is important because any notices that need to be served under the OA or FTC (i.e. notice of breach of the OA, or notice from the provider that it's changing its legal structure) will need to be sent to one of these addresses.

What to do in the OA

Complete each line of the contact details section for both the purchasing agency and provider.

Important considerations before populating clause 13.1

- It is preferable to name an individual as the relationship manager and ensure the email address is regularly checked, so that any sent notices are promptly acted on.
- If the relationship manager is delegated by reference to a job title, the agency should ensure that each party at least:
 - notifies the name of the person holding that role
 - keeps that information up-to-date during the term of the OA.

Section from the OA: Further terms

14 Further terms

14.1 The Purchasing Agency and the Provider also agree that the further terms set out in Appendix 11 form part of this Outcome Agreement. The Purchasing Agency and the Provider each acknowledge that:

- (a) any further terms must be read and applied in a way which preserves the greatest degree of consistency and compliance with the Framework Terms and Conditions; and
- (b) before including a further term that adds to, or departs from, the arrangements described in the Framework Terms and Conditions, the Purchasing Agency and the Provider have both discussed and agreed that the addition or departure is necessary to address a matter that is both novel and specific to the Provider or the Services and which (for clearly identified reasons) is not otherwise adequately or appropriately provided for under the Framework Terms and Conditions.

Appendix 11: Further terms

| Further term (if any) * | Consequence (specific and additional to those in the Framework Terms and Conditions), if not satisfied or complied with * |
|-------------------------|---|
| | |

Commentary

Why we need this clause

This clause is intended to allow a purchasing agency and provider to agree any further terms that are specific and additional to those in the FTC, where this is necessary for clearly identified reasons.

Key points

If the purchasing agency and provider want to include any further terms in *Appendix 11*, they must be able to clearly explain why the departure from the standard position in the FTC is necessary. In most cases that will be:

- to more appropriately manage or mitigate an identified and clearly articulated risk
- to address a matter that is both novel and specific to the provider or services, which is not adequately covered by the FTC.

Whenever a further term is included in an OA, consider whether or not there should be a corresponding consequence if that further term is not complied with. The FTC provides a range of standard consequences if an obligation (other than a condition) is not complied with including:

- agreeing a remedy plan with actions necessary to fix the breach
- exercising any of the other remedies in the FTC, particularly section 12 (termination) or section 13 (recovery, reduction or suspension of payment).

Again, in recognition that the standard consequences may not be suitable for every possible further term, there is flexibility to agree (up-front) a different consequence to match any further terms.

What to do in the OA

Record a description of each further term and if relevant, the consequence for not complying with each one.

Important considerations before populating Appendix 11

- You must be able to explain why the proposed further term is necessary and in particular, describe why the matter is both novel and specific to the provider or the services (i.e. the risk is not adequately covered by the FTC).
- Check whether the further term is consistent with the FTC, which may be the case where the further term simply expands (for good reason) on the position taken in the FTC.
- If the further term is inconsistent with the position in the FTC, the reason for the change must be included in any new clause drafted and included in *Appendix 11*.

Contract and relationship management tip

If including further terms in the OA, ensure to monitor whether or not those further terms have been complied with and actively do something if they are not. An example action would be to first contact the other party – find out why the further term has not been complied with and if/when it will be complied with – then consider what further steps should be taken.

Section from the OA: Signatures

Signatures

Signed for and on behalf of the Purchasing Agency as follows:

Signed by [insert name and title of signatory]

Date

Signed for and on behalf of the Provider as follows:

Signed by [insert name and title of signatory]

Date

Commentary

Why we need these clauses

The provider and every purchasing agency that is party to the OA, must sign it. Each party that signs the OA is agreeing to be bound by it.

Factors to consider before populating the OA

Recording the title of the signatory helps ensure that only the person with authority to sign contracts for that entity, actually signs the OA. Unless you know or have reason to suspect otherwise, you can assume that the person signing the OA on behalf of the relevant party has the appropriate authority to do so. You can ask for proof that the person signing has both:

- the appropriate level of financial delegation that covers the value of the OA
- a current valid delegation that has been properly granted.

If there is any doubt or concern, individual enquiries can be made. This could include checking if the provider is a registered legal entity or searching the relevant register (companies, charities, incorporated societies etc.). The provider's constitution or founding document (i.e. trust deed) may also assist.

Information to include when populating an OA

Record the name and title of the signatory for each party in the OA, together with the date each party signed it.

You do not always need to have the signatures witnessed on an OA. However, if this is a requirement for your organisation then you can replace the signing clause with a clause like the one given in the following table.

Example: Signature clause with provision for witnesses:

| For and on behalf of the Purchasing Agency | For and on behalf of the Provider |
|--|--|
| Signature Name: Position: Date: | Signature Name: Position: Date: |
| Signature of witness Name: Occupation: Address: | Signature of witness Name: Occupation: Address: |

If you are about to enter into an integrated OA (i.e. one between multiple purchasing agencies and a single provider), it may be useful to add a counterparts clause to avoid needing lots of parties to sign a single document. Below is a counterpart clause that you may wish to include as a further term.

Counterparts: This Outcome Agreement may be signed in two or more counterparts, each of which will be deemed an original, and of which together are deemed to constitute a single signed Outcome Agreement.