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1. Introduction

This Guidance Note: Retainer Arrangements provides guidance for a supplier of any services (typically consultancy, marketing, advertising or other business or professional services) available on a retainer basis to any business clients.

This Note does not:

- provide any guidance for the consumer as opposed to a business client/customer
- address supply of goods (as opposed to a supplier to a client/customer.)

In the usual course, a business client wishing to order services will usually do so on a "one off" basis with a supplier for the type and quantity of services it requires. The client will agree a price or hourly rate to apply, and any deadlines for completion of work. If the supplier accepts the order, it then supplies the services. If the supplier does not accept an order, the client can instead deal with another supplier provided that there are other available suppliers and the client has time to shop around.

In contrast to this situation, some clients are free of dependency on being sure that they can be supplied with certain services and when needed, perhaps at a predictable price. They might not have a supplier ready, able and willing to supply the services at the time the client really needs them.

In such a case, the client's lack of alternative suppliers might cause it operational and/or financial problems. There might be other suppliers willing and able to meet the client's needs, especially where the client is not a busy supplier. The choice for a business in this situation is either to engage an independent supplier so that the necessary resource is available or, if this is not feasible, to engage another business as an external resource on a retainer basis.

2. What is meant by a "retainer arrangement"

A retainer arrangement differs from a "call off" or framework agreement. Under a typical call off or framework agreement, the client is permitted to ordering any quantity of services and it only has to pay for the services it requests, if any, that it chooses to request from time to time. Similarly, the supplier is not bound to accept any particular order or request for services. As to such call off arrangements, please see our Call Off Arrangements [here](#).

There are various types of retainer arrangements which you can see if you click [here](#). They have in common the following features.

The supplier and its client enter into a legally binding agreement (contract) which details the general or specific services that can be carried out under the arrangement, and the hourly/daily rate for the services. However, it neither specifies any particular or minimum quantity of services to be carried out nor does it in itself amount to an order for any particular services. Instead, the contract will typically provide for advance payment of an amount to an order for any particular services (the right for the client to be supplied with services ("retainer fee"), and the services that the client does later require are only to be ordered by the client).

The retainer fee might be a one off payment or usually be a recurring fee payable in

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advance of each period (e.g. three months). The contract will provide either that the retainer fee will be payable in full at the end of that term. The retainer fee will be payable in full at the end of that term. The retainer fee will be payable in full at the end of that term.

Importantly, the contract will stipulate that each of those periods, or at least the first, will be a fixed sum and only be increased after the end of that period. The retainer fee will be payable in full at the end of that term.

### 3. What type of services might be offered on a retainer basis?

### What type of services might be offered on a retainer basis?

If a supplier provides various types of services, but not others, it might offer on a retainer basis those services which are most likely to be used by the client. What criteria might the supplier use to decide which types of services to offer on a retainer basis?

A supplier might decide to offer certain types of services on a retainer basis. Retainer terms might vary from client to client. A supplier might decide which types of services to offer on a retainer basis.

#### Operational factors

In order to enable a supplier to provide services on a retainer basis, it might decide to take on only work which by its nature is consistent with a client's business strategy, or work which is simple and routine in nature. For example, a supplier might decide not to provide on a retainer basis services which involve having to deal with numerous phone calls.

A supplier might decide to offer certain types of services on a retainer basis. For example, consultancy advice about a client's business strategy will take a predictable length of time to provide. A supplier might decide to offer on a retainer basis simple routine maintenance tasks or services involving it which do not disrupt its other work.

#### Financial factors

A supplier will ultimately have to decide whether to offer services on a retainer basis based on financial considerations. A supplier should only enter into a retainer arrangement because it is financially beneficial overall to it to do so compared to not doing so.

In the long run, any retainer arrangement will be financially beneficial overall to it to do so compared to not doing so.

Amongst any other relevant factors, a supplier might consider:

Amongst any other relevant factors, a supplier might consider:

- the real hourly rate it is likely to receive under the arrangement compared to the real hourly rate it could receive if it carried out work without a retainer arrangement.
- the value of any available work which it might be able to carry out without a retainer arrangement because it would conflict with other work which the client under any retainer arrangement might be able to carry out.

A supplier might consider (i) the real hourly rate it is likely to receive under a particular retainer arrangement compared to the real hourly rate it could receive if it carried out other available work it could carry out.

If a supplier is not sure whether to offer services on a retainer basis, it might try to negotiate an arrangement with the client on a trial or experimental basis. The client might allow the supplier to terminate the arrangement at any time on relatively short notice if the supplier finds that it is not viable. The client might also agree to such a proposal if the client needs security of supply for a period of time and the supplier agrees to provide a minimum or notice period proposed by the client.

(ii) the value of any available work (which it might be able to carry out without a retainer arrangement) it would have to forgo if it entered into a retainer arrangement, or would have to make, to a retainer arrangement.

### 4. How might the retainer fee be payable?

In any instance, it might be agreed that the arrangement will be on a trial or experimental basis, i.e. the agreement will be terminable at any time on relatively short notice if the client does not agree to such a proposal if the client needs security of supply for a period of time and the supplier agrees to provide a minimum or notice period proposed by the client.

If the retainer fee is small, that might be the case. The retainer fee might be ordered to be paid for in addition to the hourly rate. The hourly rate might differ from the retainer hourly rate.

The contract stipulates that each hour of work which is set out in the contract. That stipulation might be in addition to the retainer hourly rate for its services.

If, however, the retainer fee is quite large, the supplier might have the right to receive services and the right to receive a certain number of hours of services in each period. In such a case, the client will have the right to order services up to a certain maximum number of hours, without paying anything further for the work that is ordered. The number of hours, without paying anything further for the work that is ordered, will depend on the financial circumstances of each party.

It might be because it secures both the right to receive services and the right to receive a certain maximum number of hours of services in each period. In such a case, the client will have the right to order services up to a certain maximum number of hours, without paying anything further for the work that is ordered. The number of hours, without paying anything further for the work that is ordered, will depend on the financial circumstances of each party.

Whilst the retainer fee is payable in full at the end of each period, the supplier might be payable for work not covered by the retainer fee.

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the retainer fee will only be invoice carried out.

when the work has been ordered or

The way in which a retainer arrangement, will depend on the arrangement, might vary from industry to industry

and priced, and the detailed terms of the arrangement concerned and their needs, and that

5. **To what extent will the services be available and when required?**

**able to provide the services as**

The essence of a retainer arrangement is the client an allocation of a certain amount of time per month/week/quarter, but it does not guarantee that the services are available on demand at very short notice. It does not give the client any priority over other clients for the same work or other benefits or entitlements. However, a retainer arrangement can include such a priority, but they would need to be made clear in the agreement and clearly spelt out.

is on “standby”, and that it grants the client a certain amount of the supplier’s time per month/week/quarter, but it does not guarantee that the supplier is “on call” or “available on demand” in that the arrangement grants the client no right to a quicker turnaround of work. However, if the supplier agrees, the arrangement can include entitlements for the client, but they would need to be made clear in the agreement and clearly spelt out.

6. **The period of the retainer arrangement**

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**might provide that the arrangement**

As to how long the arrangement runs for:

might provide that the arrangement runs for a fixed period or

- an indefinite term subject to termination by either party giving a minimum period of written notice which becomes effective on a certain date which is, for example, 3 months;
- at least a stated minimum period; or
- a fixed period.

for a fixed period or an indefinite term subject to termination by either party giving a minimum period of written notice which becomes effective on a certain date (e.g. “Termination Notice”); (e.g. 18 months) so that any such arrangement will be at least on the expiry of that minimum

7. **What other pricing variables are there for a retainer arrangement?**

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**retainer arrangement?**

Value based, not time based

The above outline of retainer arrangements is based on a time-based fee, and what is subsequently ordered. However, certain types of services where the retainer fee represents the value of the specialist input available. Typically this would be the case where the input is of a high level of skill, uncommon skill, or specialist skill, where the supplier has few competitors. In such cases, the time to be spent in providing that input will be no charge/budget for time as such in the agreement.

what is secured by the retainer arrangement is the specialist input of the supplier based on a rate per hour. The retainer fee is based on the value of the input and the supplier on the basis that the value of the input will be readily available. Typically this would be the case where the input is of a high level of skill, uncommon skill, or specialist skill, in each case often where the supplier has few competitors. In such cases, the time to be spent in providing that input will be no charge/budget for time as such in the agreement.

Even though the supplier may not be providing its input, where value rather than time is the basis of the arrangement, the retainer fee is likely to be high, since the client is paying primarily for the specialist input. The retainer fee will be set on the assumption that, in an urgent situation, the client would not otherwise be able to obtain the necessary specialist input quickly from any other supplier.

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That specialist/high value input might be regarded as in effect a form of risk mitigation or prevention measure which can form part of your business continuity planning documents.)

the sum, and so this type of retainer arrangement might be regarded as in effect a form of risk mitigation or prevention measure which can form part of your business continuity planning documents.) (Click [here](#) to see our Business Continuity Planning documents.)

This “value” model assumes that value

might be high, it does include the price of the specialist input.

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of the services, not just the right charge. A variant of this is the services of a prestigious much although often substantial, only to the supplier's services. When pay for them on a time or other ba

to provide them at some additional e so keen to have access to the ne retainer fee in that scenario, "access" fee which entitles the client receives those services, it has to he "access" fee.

Roll over

The basic retainer arrangement c number of hours of services, so t loses the shortfall in hours: it does alternative, the arrangement can over into the next period.

retainer fee in return for a certain ber of hours is required, the client any part of the retainer fee. As an way that the unused time is rolled

Retainer fee credit/adjustment

An alternative to "roll over" is for a the amount of the retainer fee for be adjusted downwards to take ac

for a period to be credited against or the retainer fee for the period to e not used.

Suppliers will need to bear in mind "retainer fee credit/adjustment", could occur. The client might "un possibility that it simply is unable in fulfilling the orders concerned, necessary work than the client co the supplier would normally take fo

and how to allow for "roll over" or ise that underutilisation of hours number of reasons including the me the supplier will need to spend r takes less time to carry out the expected to contemplate) or than

Call out fee

A supplier might want to make p additional requirement that the cli are required. The call out fee can on the call out), or it may be in add

ee to secure its services, with an ee on each occasion that services ed charge for time (i.e. time spent d charge.

**8. What other terms are incl**

**ement?**

The retainer agreement should r contain all of the terms and conditi

ns of the retainer. It should also r is to provide its services.

Standard terms and conditions

If the supplier usually trades on a part of the trading relationship with for the retainer agreement to stat terms and conditions and that tho the retainer agreement. It is best t schedule to the retainer agreeme is part of the agreement.

nd conditions and these are to be ain the supplier, then one option is services will be provided on those are deemed to be incorporated in standard terms and conditions as a greement states that the schedule

This is a simple, easy and practic for its legal protection) the supp services to the client are governed

at (in the supplier's interests, and he client and its provision of all

The potential complication is that t retainer agreement and the suppli need to adapt its draft retainer a conflict. If the standard terms are only to a particular retainer agree clients), the altered terms will nee altered terms that apply to the reta

between one or more terms of the conditions, and so the supplier will dard terms to eliminate any such and the altered terms are to apply of services to the supplier's other schedule to ensure that it is those usual standard terms.

No standard terms and conditions

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If the supplier does not usually trade, then it should add into the retainer agreement all necessary provisions.

When it should add into the retainer agreement all necessary provisions.

Goods supply

Retainer agreements (including the (Services) subfolder) are usually drafted by you. If you intend to supply not only services but also goods or materials, the terms of the retainer agreement will need to be drafted accordingly.

included in our Retainer Agreements (Services) subfolder are usually drafted by you. If you intend to supply not only services but also goods or materials, the terms of the retainer agreement will need to be drafted accordingly.

Ensure that the agreement includes necessary terms

In any event, before finalising the agreement and offering it to a client, the supplier will need to check the terms and conditions and other provisions which are to govern the supply of services to, the client in question, and that it appropriate to the client's legal position.

Necessary terms

In any event, before finalising the agreement and offering it to a client, the supplier will need to check the terms and conditions and other provisions which are to govern the supply of services to, the client in question, and that it appropriate to the client's legal position.

For example, some types of services may require specific terms to be met and include details of financial requirements. (Such service level requirements may include service level requirements or other details.) If they will need to be included in the agreement. Similarly, any other terms which the supplier wishes or needs to include in the agreement.

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**9. What are the benefits of a retainer agreement?**

The supplier

The primary benefit is the guaranteed income. For a freelancer building up his business, it can help to reduce the risk of irregular income, especially if he/she works for a number of clients on a retainer basis.

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The client

The benefit to a client is that it can ensure that the supplier will make available a certain amount of time on a regular basis and will not turn down requests to carry out work. If the client's needs, it can provide it with a predictable expenditure on the services for a set period, which can also help create a stronger relationship with the supplier.

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**10. What are the drawbacks of a retainer agreement?**

The supplier

A major disadvantage is that the supplier's time can be allocated to the client, which may mean that the supplier loses out on securing more profitable opportunities available elsewhere, such as marketing or other activities.

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The client

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**11. Our templates**

We have several template agreements which differ from each other in a number of ways. The information pages which accompany the templates, in certain circumstances, one of these templates may need to be edited or adapted.

We have several template agreements (Services) subfolder which differ from each other in a number of ways. The main differences are spelt out in the information pages which accompany the templates. Depending on your needs and circumstances, one of these templates may need to be edited or adapted (either with or without some changes).

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## 12. Legal advice

If you are in any doubt as to whether you should use any of our Retainer Agreements templates or adapt any of them, you should seek professional legal advice before using any of them. We also recommend that you take such advice in all cases. In all cases a supplier or client will not be liable for a prudent choice in all of the circumstances if the circumstances are suitable and do not give rise to

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