CONTRACTS, CONTROL AND 'PRESENTIATION' IN IT OUTSOURCING: RESEARCH IN THIRTEEN UK ORGANISATIONS

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ABSTRACT

Information Technology (IT) outsourcing continues to experience phenomenal growth, with an estimated market size of over $70 billion in 1998. Its adoption by some of the largest international corporations has seen outsourcing become considered a key component of the Information Management agenda. Critical to this agenda is the formulation of comprehensive contracts. For this, legal experts and/or advisors can be consulted, but enforcement depends very much on client and vendor account managers. A theoretical analysis of the contract contrasted with empirical data from client and vendor post-contract management practice revealed that the contract has a number of purposes beyond its sole legal nature, outlining a number of control dimensions both parties aim to enforce. This paper presents findings from 13 UK-based organisations on the role of the outsourcing contract and its purpose for ensuring control over the client's outsourcing destiny.

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1. INTRODUCTION

Information technology (IT) outsourcing continues to experience a phenomenal growth rate especially in North America, Europe and more recently Australia. Ever since the Kodak watershed deal in 1989, IT outsourcing has continued to mature to a status where nowadays it is considered a viable management option, making it an integral component of the information management agenda (Feeny and Willcocks 1997; Rockart, Earl, *et al.* 1996; Rockart and Ross 1995). This agenda in many circumstances deems it prudent to compare the performance of the in-house IT department with the services available externally (Willcocks, Fitzgerald et al. 1996). IT outsourcing is broadly defined as a decision taken by an organisation to contract out or sell the organisation's IT assets, people and/or activities to a third party vendor, who in exchange provides and manages assets and services for monetary returns over an agreed time period (Loh and Venkatraman 1992; Lacity and Hirschheim 1993).

Research so far has shown that the client-vendor relationship is indeed more complex than a mere contractual transaction-based relationship (Kern, 1997; Klepper, 1994, 1995; McFarlan and Nolan, 1995; Willcocks and Choi, 1995; Willcocks and Kern, 1998). A major complexity is the near impossibility of presentiation[2] of future requirements in long-term deals such as outsourcing, due to the volatility of information technology and the likely changes in user and company requirements. Suggestions have thus been made that the client-vendor relationship has to include relational contract and/or partnering dimensions (Kern, 1997; Willcocks and Kern, 1997). However, research and industry best practice has clearly shown that a central focus has to remain on the contract and hence its enforcement in the post-contract management stage (Lacity and Hirschheim, 1993,1995).

So far, little to no research has focused on explaining which contractual dimensions are eventually operationalised. Such information would allow practitioners to better understand and prescribe the contractual dimensions of the client-vendor relationship. Moreover, we conjecture that these dimensions essentially define the client company's and to some extent the vendor's, control agenda over whether the major objectives of the outsourcing arrangement are being achieved. Pilot analysis of two IT outsourcing contracts revealed a number of dimensions that pervaded the post-contract management agenda. In each case the client attempted to maintain control through two detailed contractual clauses/schedules, acting essentially as a third party judicial entity. By control we mean the process by which the client company initiates activities to assure contractually agreed terms are by the vendor(s) company delivered in full and according to expectations and objectives. "Control, in other words, is aimed at ensuring that a predictable level and type of performance is attained and maintained" (Child, 1984, p. 136).

In this paper we discuss and analyse the role of the contract in IT outsourcing to elucidate the post-contract management agenda. This agenda essentially prescribes the operationalisation of the contract and the control dimension in IT outsourcing. Drawing upon two precedent contracts, we highlight some of the clauses being effectuated. Next, we present findings from an exploratory research study into the client-vendor relationship that reveals how organisations attempt to enforce the contract. The ensuing discussion identifies five different purposes of the contract in the client-vendor relationship, which allow us to infer that a number of contractual dimensions also define the control agenda for the client in the post-contract management stage.

2. IT OUTSOURCING CONTRACT

[2] "to make or render present in place or time; to cause to be perceived or realized as present" (Macneil 1974a).

The contract in outsourcing has been described as a mechanism that establishes the balance of power between the client-vendor (Lacity and Hirschheim, 1993). Contracts essentially have to be as ‘airtight’ as possible (Lacity and Hirschheim, 1993; Fitzgerald and Willcocks, 1994abc; Saunders *et al.*, 1997), because research has shown that vendors tend to refer to it as their chief source of obligation. Vendors however would prefer to see the contract as a working document (cf. EDS lawyers Hartstang and Forster, 1995), giving them flexibility to suggest improvements and new services. Clearly, this is in the interest of most vendor companies for their goal is one of profit margins.

An IT outsourcing contract tends to be more complicated than other business contracts, resembling as it does a “hybrid between an asset purchase and sale agreement, and a sale/leaseback agreement, in that there is a sale of assets or transfer of operations, transfer of employees, and a lease back to the customer of the information technology services that were divested” (Halvey and Melby, 1996) (p.43). This legal complexity is evident in the detail and in the time typically invested in negotiating agreement. Third party legal experts have for quite some time emphasised the need for a comprehensive contracts, not only because its their livelihood, but also because it basically becomes a reference point specifying how the client and vendor relate (Fitzgerald and Willcocks, 1994). The table in the appendix summarises the main clauses of an outsourcing agreement as specified by legal experts (Burnett, 1998; Clifford Chance, 1997; Halvey and Melby, 1996; Klinger and Burnett, 1994; Mayer, *et al.*, 1996).

2.1. Nature of the Outsourcing Contract

As previously discussed, the outsourcing contract is unlike other service contracts because of the nature of what is being contracted for and the length of the contracts. This makes it extremely difficult to presentiate service provision or any other exchanges that may be needed in the future. Outsourcing contracts, and indeed most long term contracts have a tendency to be incomplete, which raises the possibility of opportunistic behaviour by the vendor (Williamson, 1975; Hart, 1995). Macneil (1974b and 1980) in turn proposes to alleviate the incompleteness and presentiation situation through a relational, as opposed to a transactional, contract. However, there is evidence that, despite Macneil’s theorem, most effective outsourcing contracts are essentially neither completely transactional nor relational but mainly transactional intertwined with relational aspects (Currie and Willcocks, 1997; Lacity and Hirschheim, 1993; Willcocks and Kern, 1998). Actual operationalisation of the written letter of any contract requires procedures that Macneil (1974ab) prescribes to the relational contract (e.g. extensive co-operation). In this paper we will focus solely on the transactional aspect of how the contract is enforced, which we identify as determining the control agenda. In the following sections we first discuss control, before looking at the post-contract management agenda in outsourcing The analysis of two pro-forma precedent contracts elicits the dimensions which pervade post-contract management and further defines the ‘transactional’ level of the client-vendor relationship (or ‘contractual’ as we have termed it elsewhere - see Kern, 1997)

3. THE CONCEPT OF CONTROL

Control is a complex issue that has received considerable attention in the literature. Table 1 lists some important contributions. Anthony’s (1965) contribution in particular is often referred to and well known for its distinction between strategic planning, management control and operational control. Strategic planning is defined as the process of deciding on the objectives of the organisation, on changing these objectives, on the resources used to attain these objectives and on the policies that are to govern the acquisition, use and disposition of these resources. Anthony distinguishes strategic planning from the more management and operational control issues like Child (1984) does. Management control is defined as the process by which management assures that resources are obtained and used effectively and efficiently in the accomplishment of organisational objectives, whereas operational control focuses more on the actual efficient and

effective performance of activities. Child (1984), Eisenhardt (1985), Hofstede (1981) and Ouchi (1979) determine the context of control in organisations and determine a number of characteristics that lend themselves to define a typology. On the other hand Boland (1979) and Orlikowski (1991) reveal how control is applied in the context of information management.

Looking at the existing theories three common dimensions can be identified according to Fischer (1993) that describe a useful typology for analysing control in IS: focus of control (directed at whom or what), measures of control (degree of control), and process of control (means of enforcing control). Using this typology as an underlying guide, the next section presents the post-contract management agenda as the focus of control, before looking at the process of control in the empirical findings. The subsequent discussion will then allude to the degree of control in outsourcing.

Table 1 – about here
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4. POST-CONTRACT MANAGEMENT IN IT OUTSOURCING

The greatest challenge that client companies face following the signing of the contract is the achievement and the enforcement of agreed terms. A number of stipulated terms will always be integral to driving the outsourcing venture forward for both sides. For the majority of client organisations we can assume they are service levels and costs (i.e. payments), whereas for the vendor it is clearly payment (i.e. profits). This control agenda defined by the contract is an integral part of post-contract management. By 1997, based on over 10 years of drawing up outsourcing contracts, several law firms had developed pro-forma precedent contracts. Here we analyse these and related sources to establish templates against which to assess our case histories and also briefly look at the often elusive concept of control.

To enforce the contract, the appointed client managers and/or residual IT group are held accountable for the management and delivery of all products and services related to the outsourcing venture (Fitzgerald and Willcocks, 1994a,c). Related to this task will be the conjoint rationalisation and implementation of the vendor's processes for service changes, charges, and general financial and operational management of the contract, as well as approval of any special projects that may arise. Appointing duties and responsibility in the post-contract stage is critical, as effective management necessitates continuous communication between the responsible persons to ensure services, payments, and extra requirements are met, and conflicts resolved. In our sources we found the post-contract management agenda for the client to cover the issues detailed in Table 2.

Table 2 about here

For the client to accomplish this management agenda, an effective communication and operations structure has to be established in each organisation and between both parties. McFarlan and Nolan (1995, p. 22) suggest interfaces have to occur at multiple levels: "At the most senior levels, there must be links to deal with major issues of policy and relationship restructuring, while at lower levels, there must be mechanisms for identifying and handling more operational and tactical issues. Both the customer and outsourcer need regular, full time relationship managers and coordinating groups lower in the organisation to deal with narrow operational issues and potential difficulties." To ensure the various interfacing points on the vendor's side matches the client's operational and management style, they should ensure mutual involvement in selecting key vendor personnel.

4.1. Contract Operationalisation And Control

We undertook a closer analysis of some of the key clauses and schedules in a UK (Clifford Chance, 1997) and a North American (Halvey and Melby, 1996) precedent contract. The following contractual issues, for analytical purposes classified under each type of interaction, were found to demarcate the transactional focus of the post-contract management agenda.

A. Service Exchanges

The most important part of every outsourcing agreement is the description of the services the vendor has to supply (Klinger and Burnett, 1994). Therefore, the service requirements have to be as detailed as possible to avoid disputes over service scope. Services are typically described in a series of exhibits, i.e. schedules. The following give an indication of what exhibits might cover:

- architecture and product standards (services delivered according to these standards),
- company critical services (non-achievement may result in liquidated damages),
- new technology environment (new products/services and migration plan),
- security services (data and/or physical security services),
- value-added services (e.g. risk/reward sharing, marketing, and others)

B. Service Enforcement and Monitoring

To enforce services, performance standards and service levels have to be established and agreed for each service the vendor has to provide. Service levels typically include response times, processing priorities, systems availability used to provide services, and percentages for processing errors (Halvey and Melby, 1996). In some cases clients want to streamline the service levels through the joint efforts of the parties after the contract has been signed. In these circumstances, but also when all service levels have been specified, it is essential that the client monitors the service levels and possibly benchmarks them against previous and/or best-in-class service levels. The vendors non-achievement of service levels is often directly tied to liquidated damage provisions, giving clients a powerful leverage and control mechanism. Typical clauses and exhibits for service enforcement and monitoring are:

- application development measure procedures (allows client to monitor development),
- benchmarking (the client can compare at any time services with other services of third parties),
- customer satisfaction survey (to be carried out by the vendor at certain intervals and reported to the client),
- performance reporting requirements (reports on service performance to be provided by the vendor in intervals).

C. Financial Exchanges

For the vendor to provide the services according to the agreement, the client will be charged a base fee with respect to the base services provided. Fees allocated to these base services need to be as exact as possible to avoid any confusion and dispute. Any additional services outside the previously agreed service scope (e.g. overtime, additional volume of services) will be charged according to agreed price rates. Similarly, details of fees payable to the vendor for services above baseline (e.g. hourly, daily, weekly, monthly) should also be covered to give the client flexibility. The timing of the payments has to be agreed, but they depend largely on the client's approval. The following are typical clauses and schedules:

- Base fees (fees payable for base services),
- Expenses (previous agreement on expense budget),
- Incremental fees (fees payable for additional services above baseline),
- New service fees (fees payable for new services out of services scope),

D. Financial Control and Monitoring

To ensure the client has some level of control over the costs, appropriate means to monitor the fees charged by the vendor need to be agreed. Klinger and Burnett (1994) suggest the client must have

the right to audit and request verification of the charges put forward by the vendor at any time. Additionally, the client can enforce liquidated damages in circumstances of non-performance of service levels. Other suggested means included:

- Audit (access to financial information and charges),
- Liquidated damages (for failing to meet service levels),
- Open book accounting (vendor keeps an open book of costs and charges accessible by the client),
- Price lists (list or catalogue of prices of different services, hardware, software and technology that the client can request from the vendor).

E. Key Vendor Personnel

Of fundamental importance to the client will be to know who is responsible for certain services, areas, or technology in the vendor company, and vice versa. The precedent contracts suggest that key vendor employees will be explicitly listed in the contract as remaining with the account for specified time periods, or equivalent staff made available (Clifford Chance, 1997). The client should have approval rights over vendor employees and their length of involvement with the account. Furthermore, the vendor has to disclose to the client how it will structure its organisation to be able to respond to their needs. Both the key contact points and the structure are fundamental to ensure communication. The contract will address these under the following terms or schedules:

- supplier personnel and key employees
- vendor account management team structure

F. Dispute Resolution

Typically the contract will give guidance on an informal resolution mechanism to deal with disputes. If disputes cannot be resolved in the first instance, the contract describes an escalation procedure and the appropriate persons, groups, or committees to contact. As a final resort a neutral third party advisor or even a judgement is suggested in the contract to resolve a dispute:

- Dispute resolution (details of procedures for resolution).

G. Change Control And Management

Finally, to ensure the contract allows for flexibility to cater for changes in user and company requirements, the contract specifies change procedures the client can initiate formally. For this a change request has to be issued detailing the changes required from the vendor. This will most likely affect pricing arrangements, and possibly take effect with a time delay. The agreed procedures will be specified in a schedule referred to something like:

- change control procedures

The analysis revealed that service exchanges, service enforcement and monitoring, financial exchanges, financial control and monitoring, and change control and management circumscribe the nature of the ongoing transactional processes between both parties. Secondly, it identifies in the vendor company the key contact points and provides an overview of the account management teams organisational structure describing some of the structural factors of the client-vendor relationship, whereas the dispute resolution method describes some of the skills the managers handling the relationship must have. Combined, these arrangements will come to bear upon the client-vendor relationship and describe the focus of the control agenda in post-contract management.

5. FIELD STUDIES

Findings from the research portray in detail those issues that play a crucial part in client organisations' attempts to control their outsourcing arrangements. Our analysis suggests that maintaining control over the outsourcing venture through contractual means was seen as particularly important. The general concern following hand-over was loss of control and over-

dependency on the vendor. Clients were thus keen to affirm their control in the venture, through a number of different contractual dimensions and considerations. Although we recognise the study focuses on a small and geographical distinct sample where a particular set of contracting practices apply, there are though a number of learning pointers applicable to outsourcing contract management in general.

5.1. Research Approach

In early 1997 we undertook research into client and vendor relationship practice in thirteen organisations based in the United Kingdom. Using a semi-structured interview protocol a series of interviews were undertaken with a range of participants, including lawyers, IT managers, contract managers, account executives, general managers, and support managers in both customer and vendor organisations. Questions addressing the contract, post-contract management, relationship management, the nature of the working relationship and the evolution of a relationship were posed, with a strong emphasis on what characteristics influenced the operationalisation of the contract. These are some of the key questions asked:

- What role does the contract play in the relationship? Have you had to refer, enforce it, or use it in anyway in the relationship so far?
- Could you describe the state of the relationship? What operational difficulties have you encountered?
- What were some of the major milestones, achievements and/or developments in relationship? Examples?
- Are you achieving your expectations and outsourcing intentions? Why not?
- What are the upcoming challenges for the relationship?

While we made no judgement as to whether the thirteen contracts were successful or otherwise, we did need to be in a position to assess whether specific contractual practices were experienced as essential, helpful or otherwise. The interviews were scheduled for one hour but in many cases lasted anywhere up to three hours. All of the interviews were tape-recorded and transcribed, after which the responses from the client and the vendor companies were grouped together into subject categories by applying a 'data display' method (Miles and Huberman, 1994). The resulting checklist matrices of subject categories were then classified into areas of agreement and commonality, and into sets of disagreement and problems. The areas of agreement that illustrated a within-group similarity (Eisenhardt, 1989) identified those variables which underpinned the outsourcing relationship, and also provided the means for further subjective cross-case analysis. In some cases it was possible to cross-case analyse a client company's response with its respective vendor company's response. The interviews formed the basis for a number of case studies, which were corroborated by the collection and the ensuing analysis of relevant documentation, including internal memos, company information, minutes of meetings, and outsourcing contracts. Tables 3, 4, and 5 present an overview of the companies interviewed, clients' perceptions of their relationship focus, and subjective third party ratings of the partnering capabilities of the vendor companies interviewed. Tables 3, 4, 5 below are constructed from interview responses, as indicated.

Tables 3,4, and 5 about here

5.3. Findings

5.3.1. The Contract

Contracts were found to stipulate at length the terms and obligations the vendor and the client had to fulfill. Its ultimate function was explained as its legal nature, allowing the client and/or vendor to produce the contract in court, in cases of, for example, dispute or termination (*Solicitor, Service A*).

This legal nature of the contract[3] - in the United Kingdom - makes it near impossible to include non-legalistic terms such as trust, co-operation and so on in the contract (*Partner, Service A*). The vendor could not commit to these terms contractually because they do not know what the client's requirements are. In essence then, the contract outlines the bare bones of the deal "…which is the formal structure of the relationship on which you might actually rely if it all collapsed and you had to seek legal redress" (*Partner, Service A*).

The contract was found to build the foundation, on which the ensuing client-vendor relationship is then based (*Business Director, Vendor E; Managing Director, Vendor A*). It "defines how you are going to work more than anything else, but you then still have to make it work. This is just paper, it's people that make things work. This gives them the guidelines, the stepping stones, the structure…" (*Management Service Manager, Client C*). Getting the contract, i.e. the foundations right (*Group IS Manager, Client B*) is vital, because a badly formulated contract can lead to frustration, and in some circumstances - as Client A experienced - lead to costly re-negotiations, and eventuate in possible failure.

The contract's role in the post-contract management stage was also found to be one of guidance. During this stage managers implementing the venture will use the contract as a management guide to operationalise the contract. The *Manager* from *Client C* explained the use of the contract in the beginning as essential for "…bedding down the exact processes. We are still doing things for the first time and therefore it gets referred to in the sense of this is how we thought we would do it, how does that actually match up to what we are doing, what's the next step, what's missing, shall I just check that I'm doing this right. So it's being referred to in that way, but it's not being referred to in an adversarial way". It is used as a vehicle for describing the relationship and getting rid of ambiguity (*European Strategic Director, Vendor B*).

The contract and its schedules defines the level of control and the responsibility and expectations of each side (*Managing Director, Vendor A*). In most situations the contract gives the client ultimate control through the possibility of invoking early termination via exit clauses (according to *MIS Executive, Client E; Business Director, Vendor D*). Seldom are these invoked though, as they could introduce new cost factors (e.g. switching), a loss of time and result in a break down of services. Consequently: "although we legally have the option to do that [terminate] the much more practical solution is to learn your lessons and to renegotiate the contract to address the things that you think you would like to be better" (*Business Support Manager, Client A*). This seemed to be an approach a number of customers adopted. Termination is really the last resort (*MIS Executive, Client E*).

Interestingly though, the *IT Coordinator* from *Client F* and the *Manager* from *Client A* explained they do not find the contract that important. In fact, as the *Manager* at *Client A* explained "…the existing contract is treated the way many companies treat a strategy document, you don't really want a strategy process (where) you produce a document and stick it on the shelf and never read it again. Occasionally we get the contract out and we refer to what it actually says. … And if we get the contract out we've failed in our ability to manage the situation." Similarly, the *Coordinator* at *Client F* explained "if we ever have to go back to the contract then the out-sourcing deal has failed. The contract is there to actually protect us as a company but to have to invoke anything within the contract means you have failed to negotiate with the supplier. And really it's not something we want to do lightly." The reason being in most situations if you operate an outsourcing venture solely by the contract the ensuing relationship could go dangerously wrong, because the contract does not adjust according to possible changes. The outcome of a contract may become totally inflexible, and to actually specify the relationship in any detail over that length of time of the contract is really

[3] North American contracts on the other hand can include goodwill gestures, and relationship important notions such as trust, co-operation, etc. in the contract and exhibits, i.e. schedules (*Partner, Service A*).

outside of reality (*MIS Executive, Client E*). Therefore, the only way flexibility was found to be attainable, is through agreeing specific contractual change procedures.

Flexibility and changes

In essence, the legal nature of the contract does not exactly allow for flexibility. Therefore, the contract is "…drafted as a long term commitment, and pricing takes into account the changes in some way, shape or form" (*Client C*). In other words, the contract requires renegotiation or amendment if major parts where to be changed, but for service or technological requirement changes there are procedures available in the contract that cater for these. As the partner from (*Service A*) explained there are "very detailed change control procedure because clearly you know that technology is going change. It is the most difficult thing to provide for, you need to encourage the suppliers to come up with changes, because you want them to be pro-active. But then you also want the strategy to stay with the customer so they can actually determine whether the changes go with their objectives. … But it is difficult. You can't prescribe what's going to happen all you can do is provide provisions in the contract to point people in the right direction and give them flexibility as far as possible" (*Partner, Service A*).

According to what *Client* and *Vendor* companies, change procedures are commonly initiated in two steps. Upon realising changes in the business require alterations in the services delivered by the IT function or system, Client's will issue a request for change with the vendor company. This change request states in detail the requirements and the vendor will then present the exact specification and costs for the new services and/or products. In some situation Vendors may actually propose change, as services may have become defunct or services are duplicated (*Executive Director, Vendor D*). The second step will be for the Client to formally sign-off the proposed changes and their price, so that the Vendor can arrange for them to be implemented. However, change management and control was found in practice very problematic as Clients where uncertain in many occasion about whether they had catered for all eventualities (*Solicitor, Service A; Management Services Manager, Client C and Corporate IT Advisor, Client G*).

5.3.2. Post-Contract Management

The findings from client and vendor companies revealed that essentially the post-contract management agenda is concerned with enforcing the contract and achieving the stipulated terms. Interviewees corroborated this finding by suggesting that control over the vendor and vice versa is enforced through the following five contractual dimensions:

- Financial control and monitoring;
- Penalty payments;
- Monitoring of service levels and/or products;
- Performance measurements; and
- Selection of key interface points.

Financial control and monitoring

Clients and *Vendors*, suggested that everything in the contract at the end of the day winds down to a financial consideration. "…the case where we do stick firmly to the contract primarily is when it comes to money. If we are duty bound to pay something or if we are not bound to pay for something, we either will or won't depending on what it says. … I think we are softer on service where we are looking for flexibility, but hard-nosed on cost issues where we are very precise" (*Business Support Manager, Client A*). However, this is not to say that other stipulated terms in the contract will be disrespected. It was just emphasised that the profit margins and payments to be made will always be closely monitored and scrutinised by both parties (*Manager, Client A*; *Director, Vendor E*). It is one of the key areas were control is emphasised. For example, the *Economic Analyst* from *Client D* explained that in their contract with *Vendor A* every change

initiative and/or major service delivery improvement is cost benefit analysed. And the way that is essentially measured is usually pounds over a period of time (*Economic Analyst, Client D*).

To be able to undertake such an assessment, you need complete access to the costs and pricing strategy of your vendor (*Executive Director, Vendor D*). In other words as *Clients* explained, you need an open book arrangement. Essentially, this arrangement gives the client a lot of control over where the vendor actually makes money. This is apparent in *Client A's* objective: "the new arrangement should make it clearer how *Vendor B* make their money. We don't want them to go out of business, we don't want them to have such a bad deal that they walk away from it. But we do want to understand, and we have in the past understood them, where we think they make their money, but it will be clearer with the open book arrangement. The deal was always set up that we would save costs in the first few years and they would make more money in the later years of the contract. And it could well be that they weren't sure that those costs … were going to be generated in the first few year of the contract. So they may feel they've lost money in the first couple of years" (*Manager, Client A*).

However, when the vendor suggests an open book arrangement because the problem or issue can not be settled through a fixed price, the client subsequently gives the vendor control over large profit margins. This exemplified by the *Director's* (*Vendor D*) explanation of an open book arrangement: "If you want to out-source that kind of situation then the other way of doing it is … [by] an open pricing arrangement. In other words I say to you I don't know how much this is going to cost, you don't know either, and what we will do is put sufficient people and hardware in and we will write all the costs of those down and you can look at those and make sure you are happy that we are not putting enough people on that problem. It's open. We will agree in addition to that cost that we can charge you a certain figure, a certain percentage, or a certain amount of money. … So I would rather say we will do that and in addition we will charge you £50,000 a month for our management, for our profit, for our margin. And we will look together at the cost of doing this and then our total charge would be those costs plus our management charges". Clearly, this latter arrangement would give the vendor significant to total control over the costs and possible services they will deliver at the end of the day.

Another means for controlling the costs is through the introduction of a competitive benchmarking process (*Partner, Service A*). This was found to be an important contractual contingency (*Solicitor, Service A*). It protects customers against increasing prices, while the quality of services decreases. It also allows customers to compare prices and services against competitors and request the vendor to match industry 'best practice'. This seemed especially appropriate for commodity processes such as basic computing or telecommunications. To ensure cost control "you continually set your suppliers of the commodity services at each others throat, demand that they keep to a certain international standard, and request lower and lower prices the whole time" (*Group IS Manager, Client B*).

Cost control is crucial for the client to have, since the motivation of the vendor is always to make a profit (*Principal Consultant, Vendor E; European Strategic Director, Vendor B; Executive Director, Vendor D; Partner, Vendor C*). In some cases such as total outsourcing deals, before the vendor can actually make a profit they will have to recuperate the initial premium payment, and only then will the vendor begin to make a profit from the deal. "So premium payment may be say 30M pounds or what number it might be, but how do you pay for it? You pay for it by charging them back for it. You squeeze a bit more to actually pay for some of that money. Therefore you are putting a tighter squeeze on the situation as you go along" (*Partner, Vendor C*).

Penalty payments
In the event of a client not receiving the quality of services for the value of the money, it was suggested that that would be a just cause for enforcing penalty payments or in extreme cases early

termination of the contract (*MIS Executive, Client E*). Penalty payments were described by clients as a formalised means of control, to ensure for example target deadlines are met (*Management Services Manager, Client C*).

However, requesting penalty payments and enforcing them unilaterally damages the overall relationship. It was suggested a mutual understanding of the reason for enforcing penalty payment is necessary, to avoid reoccurrence and to ensure the client-vendor relationship moves forward. It is similar to early contract termination, it is really the last resort to enforce control over service delivery.

Monitoring of service levels and/or products

Another key control factor is the monitoring of services and their delivery. These are very carefully monitored as services are in many cases the main part of the deliverables for which the client contracted the vendor (*Group IS Manager, Client B; Management Services Manager, Client C; Solicitor, Services A*). In most deals services were explicitly detailed in the service level agreement (SLA), which outlined what client companies expect as their basic service requirements. For example *Client E* stressed that they had very detailed SLAs including specific availability targets, response times, outages, and so on for their service requirements. The SLAs essentially defined the chief (hard) measure. "If we are not actually getting the SLAs, then it is our right not to pay. We are paying for a quality service and that's what we specified in the SLA and if the SLA is not achieved, then in my view the contract stresses that we should pay less" (*MIS Executive, Client E*).

The importance of service level agreements in the contract was emphasised by both client and vendor companies. The UK *Managing Director* from *Vendor A* described this importance as a level of control it gives both parties and the extent to which the SLAs defines each others responsibilities and the clients expectations. The *Executive Director* from *Vendor D* endorsed this view and further explained that "… a service level agreement really expresses what the customer wants and what's important to him. Because what a customer would say normally is I want 99% availability of service. When you get down to the service level agreement, they might well say actually this system we want 99.5% availability and this one we would be happy with 75% or 50%. You actually really get down to what they want in a detailed sense. That then enables you to measure whether you are billing them for that service. So it helps the relationship, because when the customer says your service is no good you can say well that's pretty strange because according to my statistics we hit every one of these service levels." It thus becomes a control factor through which both parties were found to assert their power.

Performance measures

To ensure services and/or products are delivered according to expectations and agreement, clients and vendors operate an array of hard and soft performance measurement methods. Depending on the outsourcing intent, clients focused their performance measures on cost reductions, services deliver, service improvement, specific projects, new technology, user satisfaction and others. In the majority cases *Clients* and *Vendors* explained they measure a range of the former, to address both business and user measures. "You have got to be able to put together an analysis that is partly people's subjective reaction to what's going on, partly objective measures of where their contribution has been … And it's a combination of those different measures all coming together that allows you to do it. You must have some very hard measures in there, more of those hard measures that are output oriented the better" (*Group IS Manager, Client B*). Thus, *Client B* uses service delivery according to contract, step changes performance measure, return on net assets, and other business measures, such as customer responsiveness, output measures such as On Time In Full (did the customer get everything they wanted in good time) as their main measures. Alternatively, *Client A* employs a scorecard scheme, that allows them to "…look at are we on time with the budget, does the user community like the new systems, do the board of directors feel that the new systems are a

good thing. This allows us to measure whether our programmes succeed…. So we are trying to more formally set up a tool for measuring the success of the programme, as we don't have anything similar at the moment for the *Vendor B* relationship" (*Business Support Manager, Client A*).

Vendors explained their performance measures similarly involve an array of objective and soft methods, including third party auditing. The *Executive Director* from *Vendor D* explained they measure their performance against the SLAs, perform a customer satisfaction survey, undertake an internal quality review of staff and attain an external auditors assessment of specific contracts. Similarly, the *Partner* from *Vendor B*, explained they use surveys, reviews and external audits to measure success in contracts. Accordingly, the *Director* from *Vendor E* explained "…we have every month a service measurement report. So we have a clear statement every month on at least the objective measures. That doesn't tell the whole story because it's the subjective measures which are also very important. So if a customer carries out at their expense a survey every year which measures the subjective satisfaction of all the receivers of the service, both managers and technical people - and that's a useful guide on an annual basis - we also from time to time commission bits of research from a market research organisation who go to our customers and ask them about services, service values, and so forth."

The subjective measures employed in some cases are crucial as they elicit whether the services delivered satisfy the user community. *Clients* explained that sometimes formal measures are achieved according to agreement, but they do not actually satisfy the users requirements. It is then a matter of adjusting them accordingly, which in many situations the vendor will not undertake without formally increasing costs (*Corporate IT Advisor, Client G*). *Vendor A* employs in *Client D* a contract measurement scheme of customer values and expectations, alongside their objective indicators. "So it isn't just a matter of asking the customer are you satisfied or not, we have to understand what his expectation is rather than what his requirement is. Then there are some quite sophisticated measurement systems that we deploy to actually take a particular user, look at all the parameters of interest to him…. It might be reliability, it might be the quality of original thought, empathy, all these sorts of things. And we get the user to identify, first of all what are the dimensions of what you would expect from us, and what is the most important. … So you get a picture of what he wants and then how he thinks we are measuring up against that. So that's how you measure the soft issues. And we have to do that on a continual basis across all aspects of the relationship. Different people have very different expectations from us" (*Programme Director, Vendor A*).

User satisfaction is the most common soft measure elicited by both vendor and client companies. Although, extremely difficult to measure and most commonly arrived at by customer satisfaction surveys, it was found to be an important indicator of whether vendors achieve the users service requirements (*MIS Executive, Client E; IT Coordinator, Client F*). *Vendors* find user satisfaction surveys fundamental, because "that's what actually is going to affect our reputation. That's what, if someone goes through a reference visit, they are not going to tell them that we achieved all these SLA's they are going to tell them whether we are good or not so good. It's going to be perception on a particular subject" (*Executive Director, Vendor D*).

Interface and/or contact points

The *Clients* explained that in situations where discrepancies about service levels and/or payments arise, they would contact a specific manager in the vendor company. In most cases the *Clients* revealed, they know the managers in the vendor company quite well because they were involved in selecting them as their contact points (*Management Services Manager, Client C*). In a number of *Client* companies the residual IT group defines the actual contact points. So for example at *Client A*, the remaining five IT managers who handle the outsourcing deal - which included a senior manager in charge of the contract, two middle managers in charge of the headquarters IT requirements and

the overall store systems, and two operational managers in charge of assessing the service levels and delivery, business developments and requirements - are also the main contact points for the vendor . Similarly, at *Client D* a small remaining client team represent the main interface point for *Vendor A* in matters of IT (*Programme Director, Vendor A*). In most instances this interface structure is mimicked by the vendor company. "There tends to be a matching process where you take the structure of the company that you are going to service provide and take the structure of the customer and kind of match it. So our Managing Director matches with their Managing Director and so on. When you start in terms of building the relationship, you need to have that matching pulled through. To make sure you don't fall over each other" (*Business Director, Vendor E*).

In some cases, *Vendors* explained, the contact points in the client company interface with a number of managers on the vendor side (*Business Director, Vendor D and Programme Director, Vendor A*). This suggests the client company contact point may have a one to many relationship. "It is rarely a simple one to one relationship. In *Vendor E's* case in every contract there will be two managers contacting the person on the client's side. One will be a service or customer service manager and the other will be a business development manager. These two managers job is to develop business in a very proactive way, and to make sure the service is satisfactory and is on time. So there is a set of relationships for each of these customers" (*Business Director, Vendor E*).

Client and *Vendor* companies stressed the importance of staffing the interface points. For the *Client* this entails retaining a group of experienced managers who can effectively handle the vendor. This group can then act as a controlling agent. Findings suggest that the IT team will take responsibilities for researching and defining the IT function for the business, and for controlling the vendor. To ensure continuation of the relationship between the IT group and the vendor, "…you have to engage the delivery team. [To do that] most people are expected to stay on a contract for 18 months to 2 years. And some people will stay there longer" (*Partner, Vendor B*).

6. DISCUSSION

The findings confirm past researchers insistence on the critical importance of the contract in outsourcing. From our evidence we would suggest that this importance derives from the multiple purposes that are associated with the contract. The study of its enforcement revealed that in post-contract management there were five main ways in which the contractual terms affect or influence the management of the client-vendor relationship. In the following we discuss these and elaborate the control agenda inherent to enforcing the contract.

6.1. The Outsourcing Contract

The contract undergirds the IT outsourcing venture in a number of ways, even though clients that stressed essentially it is only 'paper'. The document might be termed though the manual to the deal, outlining each other's commitments, and the client's expectations. Clearly, it is not the agreement that will make the outsourcing deal work, but the people. However, for the people, it takes on a significant enough role beyond merely a 'strategy document on a shelf' (*Manager, Client A*); indeed it would appear to be associated with five purposes in post-contract management. Firstly, the contract has a legal function, in the sense that it can be produced in court to explain the arrangements of the deal that were agreed by both parties. Its legal status encapsulates for example termination clauses, penalty demands and dispute resolution procedures, that client companies can legally enforce in court. Although companies emphasised that such extreme measures are seldom implemented, they still pose a strong means of putting pressure on the vendor to ensure contractual achievement. The legality of the document allows clients to ultimately wave it as a 'sword and shield' as the *Solicitor* from *Service A* highlighted.

Secondly, the contract attempts to presentiate service levels as far into the future representing user and organisation requirements. Of course uncertainty cannot be avoided, only mitigated, due to the

nature of the rapid changes in information technology, and likely changes in user and business requirements (Willcocks, Feeny and Islei, 1997). To this extent the actioning of presentiation as it might be ascertainable in transaction or discrete deals, is not possible in long-term IT outsourcing ventures. This would seem to be the case for most deals, given the fact that on average deals last, as reported by recent survey results from Saunders *et al.* (1997) and Fitzgerald and Willcocks (1994a,b,c), somewhere between 3 to 5 years. Therefore, it would seem plausible to consider outsourcing contracts more relational (according to Macneil's description) than transactional focused, especially when considering the rate at which they become outdated. Of course building in regular contract reviews and renegotiations terms can restore the transactional focus, and indeed this is a major feature of newer (1995-97) trends in contracting (Currie and Willcocks, 1997; Willcocks and Lacity, 1997).

Thirdly, as evident from the findings, the contract assures client control over the outsourcing venture in that it initially defines the obligations and expectations bearing on the vendor. It also gives the client ultimate control through its legal status (possibility to terminate proceedings). The findings revealed that, as we had theoretically conjectured, client companies affirm their control via a number of contractual clauses that are later operationalised in the post-contract management stage. These then also become the measures through which the client monitors the vendor'(s) performance and vice versa.

Fourthly, the contract is to be understood as the 'bare bones' of the client-vendor relationship. It prescribes the start, the length of the venture and through a number of clauses and schedules outlines the structure of the relationship, at least to the point of determining the key interfaces (e.g. interface and/or contact points). It further describes, at least in the start up phase, the exchanges that need to occur to achieve the stipulated terms (e.g. service levels and financial exchanges). Additionally, the contract also prescribes ultimate dissolution and termination of the relationship via exit clauses and schedules.

Fifthly, the outsourcing contract provides guidance to the managers chiefly involved in the outsourcing venture. The findings revealed that in the post-contract management stage at least five contractually agreed clauses and/or schedules pervade the agenda. They comprise some of the reasons for why the client contracted the vendor, and thus describe the early objectives both parties aim to achieve.

6.2. Post-Contract Management and Control

As evident, one of the purposes or roles of the contract is its use for the client to assure control over those functions and reasons for which it had essentially outsourced. All client companies interviewed revealed that the base line services, their delivery and costs are some of the key factors over which they affirm control. For the vendor companies it was clearly stated that payment, i.e. profit is their main goal. The affirmation of both parties' control truly emerges in the post-contract management stage.

Post-contract management essentially is the starting point of 'working together'. Respondents explained that at this point the client-vendor relationship begins to take shape. The early endeavour is the conjoint operationalisation of the contract. But with enforcement a number of control issues arise for the client. On a routine basis these are chiefly focused on what the vendor is delivering, the charges incurred, and the effectiveness of the working relationship. Other control issues emerge from the dilemma of presentiation and the possibility that a client over time finds the deal unworkable.

It was found that these control concerns pervade the post-contract management agenda so much so that the client companies invested considerable time to affirm their control. This then provided the

basis upon which the client-vendor relationship began to be built. In other words, the control dimensions defined enforcement of the contract, and thus delimited those contractual management issues inherent to the dyad.

It became apparent that a number of contractual dimensions, which resultantly pervade the post-contract management agenda, specify early on those activities that the client designates later on as their control agenda with the vendor. In part these are management issues, but essentially can be summarised as the clients' control dimensions. Table 6 outlines these findings in line with the control typology adopted.

Table 6 about here

Looking at these control activities and the purposes of the contract, it would seem one can draw a number of parallels. Firstly, all the control dimensions are enforceable legally in court. Secondly, the service levels agreed and the possibility to adjust requirements through change control, gives the contract presentiation flexibility. Thirdly, combining the two would make the contract the controlling factor in IT outsourcing. Fourthly, they define the contractual level of the client-vendor relationship and thus support the notion that they outline the bare bones of the relationship (Davis, 1996).

7. CONCLUSION

In this paper we discussed the experiences of thirteen organisations with IT outsourcing contracts and their operationalisation in the post-contract management stage. The empirical findings corroborated our initial assumptions about which contractual issues are enforced. These were also identified as the control agenda the client employs in the venture to manifest its outsourcing destiny. A number of issues were determined which may need consideration prior to outsourcing.

Output, financial, relational, and change issues, and how to retain control over control emerged as requiring careful planning prior to contracting and will undoubtedly have to inform the clients outsourcing strategy. Hence it would seem prudent for organisations considering outsourcing to establish a task list for the group of managers selected to handle the deal, that assures firstly, that managers have the greatest control over these and related issues and secondly, that the outsourcing strategy is achieved. This requires the group to have a clear understanding of contractual requirements and the general organisational objectives. In most situations the organisational IT goals will then be mirrored by the outsourcing strategy. Table 7 summarises those management implications from paper that need attention prior to outsourcing to ensure strategic alignment of the outsourcing deal with the clients overall business objectives.

Table 7

Controlling occurs at different intervals in the post-contract management stage. Clearly, daily and weekly interactions involve output and financial controls and sometimes relational and change control. However, relational and change control occur infrequent and control over control may only be enforced in complete break downs or as the last resort of putting pressure on the vendor. In the client-vendor relationship therefore, one could expect output, financial, relational and change control to essentially define the contractual level. We can assume that the critical relationship factors such as co-operation, communication, and trust will develop on back of the contract and the enforcement of these control dimensions.

Contracting in the UK, as explored in this paper, was shown to focus primarily on the legality of contracting, thus preventing the inclusion of informal issues such as trust and cooperation that inherently provides a form of contractual flexibility that enables parties to develop their relationship. Contracting in the UK thus might be considered as standing at the extreme end of contractual formality in outsourcing, raising concerns about whether the strict adherence to the contract may hamper relational developments. Of interest here would be to study outsourcing contracts in other countries in light of the subsequent relationship development along the lines of the degree of contractual formality and flexibility. For example, comparing contracting in the UK and USA our research shows contracting in the USA provides interesting informal and flexible contracting vehicles, giving parties a head start in developing their relationship. We assume similar contractual arrangements might also be available in other countries, but what they look like is not clear. This is an area with significant further research interest, exploring the vehicles available for balancing contractual formality and flexibility.

Finally, there are a number of limitations in terms of sample size and geographical distinctiveness. Due to the rather small sample further studies need to look at expanding and verifying the findings from this study. Also the distinctiveness of legal systems and hence contracting across countries and continents, may give rise to a number of additional issues that are unique and country specific to contract management practice. Thus we suggest further research is needed into the post-contract management agenda to elaborate in detail the tasks client managers need to perform prior to outsourcing to assure the greatest possible success of their deal. We suggest that these will revolve strongly around the control dimensions identified in this paper.

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1. Setting and/or approving IT strategy, architectural directions, and business improvements;
2. Insuring user service objectives and customer satisfaction targets are achieved;
3. Insuring quality and continuous improvements;
4. Setting and changing priorities to insure objectives of the business are met;
5. Being the focal point for determination and translation of all new business requirements necessitating vendor action;
6. Resolving disputes that arise;
7. Overseeing the vendor's performance as specified in the agreement;
8. Monitoring overall service quality and continuous improvement initiatives;
9. Assuring proper charges and billing for the services rendered;
10. General contract administration and amendment control; and
11. Involvement in allocating new managers in vendor company to handle the account.

Table 1 - Post-contract management agenda (adapted from Halvey & Murphy Melby, 1996).

Author & Year	Control context
Anthony (1965)	Management control process
Boland (1979)	Control versus control over
Child (1984)	Control use in organisations
Eisenhardt (1985)	Control as part of organisational design
Hofstede (1981)	Typology of management control
Orlikowski (1991)	Impact of IT on control in organisations
Ouchi (1979)	Typology of control

Table 2 – Overview of important control literature

Client Company & Interviewee	Industry	Annual Turnover	Origin	Outsourced	Start of deal	Length of deal	Size of deal	No. of people transferred	Relationship Focus (1997)[3]	Customer of Vendor Company
Client A Business Support Manager	Retailing & Stores	£780mn (1995)[1]	British	Total	1993	10 years	£1bn	120	Transactional/ Relational	**Vendor B**
Client B Group IS Manager	Chemicals manufacturer	£10bn (1996)[2]	British	Selective (Europe) 1. telecomms network 2. data centre, software support & legacy systems 3. desktop systems & phones	1. 1994 2. 1995 3. 1997	1. 3 years 2. 5 years 3. 4 years	1.<10mn 2. £75mn 3. £40mn	1. <10 2. 400 3. <10	1.Transactional 2.Relational 3.To recent	**1. Confidential 2. Vendor B 3. Confidential**
Client C Management Services Manager	Property Investment & Development	£472mn (1995)[1]	British	Selective 1. hardware & software maintenance 2. legacy system, & software development	1. 1993 2. 1995	1. 4 years 2. 3 years	1.£2.5mn 2.£10mn	none transferred	1.Relational 2.Transactional	**1. Confidential 2. Confidential**
Client D Economic Analyst	Aerospace Manufacturer	£3.5bn (1995)[2]	British	Total & major business process reengineering programmes	1996	10 years	$900mn	850	Relational	**Vendor A**
Client E MIS Executive	Motor Car Manufacturer	£397mn (1995)[2]	British	Selective 1. software development & IT operations 2. systems integration 3. global networking	1. 1992 2. 1992 3. N/A	1. 5 years 2. <3yrs. 3. 3 years	1.<0.5mn 2.<.05mn 3. £1mn	1. 12	1.Transactional 2.Transactional 3.Transactional	**1. Confidential 2. Vendor B 3. Confidential**
Client F IT Coordinator	Electronics Manufacturer	£270mn (1995)[1]	Japanese	Selective legacy & operating systems	1994	5years	£2.5mn	none transferred	Transactional/ Relational	**Vendor D**
Client G Corporate IT Adviser	Oil, Gas, & Nuclear Fuels	£453mn (1995)[2]	Dutch/ British	Selective & Total (Global) 1. desktop computing, networking, & others 2. Total	1. N/A 2. 1993	1. <1yr. 2. 3 years	1.<20mn 2.<20mn	1.<10 2.<10	1. Transactional 2.Transactional /Relational	**1. Others 2. Vendor A**

[1]United Kingdom Turnover; [2]Total including other subsidiaries; [3]Findings from research in 1997 rated according to Macneil (1974a) distinction between transactional and relational.

Table 3 - Client Companies

Vendor company & Interviewee	Origin	Employees (Globally)	Annual Turnover (Global)	Business or Service areas	Explicit Relationship view	Partnering capabilites[1]
Vendor A - Managing Director & Programme Director	American	approx. 70,000	£12,4bn (1995)	Consulting, Systems Development, Systems Integration, Systems Management, & Process Management	Yes	3
Vendor B - European Strategic Director	American	approx. 50,000	£4,2bn (1996)	Management Consulting / Professional Services, Systems Integration, Outsourcing	No	2
Vendor C - Partner	American	38,000	£4,2bn (1995)	Consulting, Business Process Management, Outsourcing, Change Management, Strategic Management	No	3
Vendor D - Executive Director (UK)	British/ French	27,000	£1,8bn (1996)	IS and business process management, project services, products, consulting, and education & training	Yes	3
Vendor E - Business Director & Principal Consultant	French/ British	9,400	£678mn (1995)	IT consulting, systems integration, products and outsourcing	No	4

[1]Meta Group Inc.'s (1996) global rating of IT vendors on a scale of 1 to 5; (1 is best). Partnering capabilities entail the 'ability to partner at various levels, including megadeal alliances and project-specific partnerships.

Table 4 - Vendor Companies

Outsourcing Advisor & Interviewee	Origin	Employees (Globally)	Annual Turnover (Global)	Business or Service areas	Specialist Area
Service A Solicitor & Partner	British	approx. 5,000	approx. <£5mn	Financial, Corporate, Commercial, & Litigation Matters	IT Outsourcing Contract Development

Table 5 - Outsourcing Advisor

CONTROL AGENDA IN THE CLIENT-VENDOR RELATIONSHIP

Contract	Post-Contract Management	Control (Findings according to participants)	Client's Level of Control	Client Control Dimensions
• Service level agreements & exchanges • Service measurements & monitoring procedures • Penalty clauses for non-performance	• Overseeing the vendor's performance as specified in the agreement • Insuring user service objectives and customer satisfaction targets are achieved. • Monitoring overall service quality and continuous improvement initiatives.	• Client and Vendor spend considerable time on assuring services are delivered according to agreement. • However, Client has the ultimate responsibility to assure services are deliver and users are satisfied. • For the Vendor, delivery is a necessity as payments are dependent on service level achievement	**High**	**Output Control**
• Financial payments & exchanges • Financial monitoring & assessment	• Assuring proper charges and billing for the services rendered	• Again, both parties spend considerable time on monitoring and controlling costs. • Clients have the ultimate responsibility to monitor charges raised by the Vendors. • Vendors goal obviously is to make a profit, so this is where one of their core focus will be.	**High**	**Financial Control**
• Dispute resolution procedures • Key vendor personnel	• Resolving disputes that arise • Involvement in allocating new managers in vendor company to handle the account.	• In cases of dispute the client can raise complaints with senior managers and escalate matters until satisfactorily resolved. Extreme disputes may demand a third party arbitrator. • Client knows and sometimes selects managers appointed on the vendor side. Breakdown of relations may cause clients to request the vendor company to allocate a new manager.	**High to Shared with Vendor**	**Relational Control**
• Arrangements for adapting to changing circumstances in the future	• Setting and changing priorities to insure objectives of the business are met.	• Change control and management allow the client to initiate change requests when new requirements arise in the business.	**Total**	**Change Control**
• Early termination clause	*• No management agenda.*	• This legal arrangement allows the client ultimately to terminate the contract. Although seldom enforced, it gives the client company a means of putting pressure on the vendor.	**Total**	**Control over Control**

Table 6 - Control Agenda in the client-vendor relationship

Control Dimension	Contract	Management Implications (Attention warranted prior to outsourcing)
Output Control	• Service level agreements and exchanges • Service measurements and monitoring procedures • Penalty clauses for non-performance	• Specify in detail service levels and what is expected from the vendor. • Specify both hard and soft performance measures. Best practice suggests appointing additionally an external third party to undertake evaluations. • Specify penalty clauses and use them!
Financial Control	• Financial payments and exchanges • Financial monitoring and assessment	• Make sure the contract details all prices for services. • Ensure you are aware of how vendor prices and charges for services. Best practice suggests an open book arrangement for closest scrutiny. • Predetermine procedures and/or methods for assessing vendor charges.
Relational Control	• Dispute resolution procedures • Key vendor personnel	• Include clear escalation procedures with specific people or positions to approach in the vendor firm and third party arbitrators. • Strongly, request the vendor to commit its account management team for at least 2 years. • Include clauses that enable you to partake and veto appointments.
Change Control	• Arrangements for adapting to changing circumstances in the future	• Assure contractual change management and procedures are specified. • Define pricing mechanism that apply for change requirements and services. • Specify the possibility for future renegotiations of services and prices.
Control over Control	• Early termination clause	• Include exit clause and the procedures for termination. • Specify the length of assistance vendor has to provide following termination.

Table 7 – Management implications - contractual issues to consider prior to outsourcing

8. Appendix

Clauses, i.e. Terms and Conditions	**Brief outline**
1. Parties and Term	The companies and length of contract
2. Definitions	Explanations and definitions of wording
3. Supporting documentation	Any documentation clarifying the clients and vendors intentions and objectives, and that can be helpful for dispute resolution (e.g. RFP).
4. Asset transfer	Transfer of assets and employees to vendor
5. Base services, i.e. service supply and testing	Description of services to be delivered to the vendor
6. Performance standards, i.e. service level agreement	Description of the service levels vendor is expected to provide.
7. Service & equipment location(s)	The actual physical locations of services and security issues.
8. Additional services and projects	Any other services or projects the client may need or is considering.
9. Service management and contract monitoring	Both parties endeavour to achieve the terms stipulated in the contract.
10. Disaster recovery and security	Backup and emergency services and other security concerns.
11. Obligations & responsibilities of the client	Client should make all reasonable efforts to ensure achievement of the contract.
12. Benchmarking	Method for monitoring vendor's performance.
13. Vendor personnel	Overview of vendors key employees for contract.
14. Payments	Describes the base charges and any additional charges for services delivered.
15. Payment schedule	The times of payment for the different services delivered.
16. Taxes	Explains the tax situation.
17. Audits	Financial control and monitoring
18. Change control and management	Provisions to change services and its management.
19. Dispute resolution	Procedures for dispute resolution.
20. Termination - fees and assistance	Reasons for termination, the fees that may arise when client wishes to terminate the contract, and the length of assistance the vendor shall perform.
21. Proprietary rights	Legal property rights given to the vendor for the length of the contract to deliver services of software and systems.
22. Confidentiality	Confidentiality of information and the effects of breach.
23. Damages	Liquidated damages in the event the vendor fails to meet service levels. Also liability for damages by the client or vendor to the other party when relating to the performance of the contract.
24. Miscellaneous provisions	Numerous other contractual terms and conditions
25. Appendices	Exhibits, i.e. schedules.

IT Outsourcing Contract: Essential Clauses And Issues