

Draft/Contract for Use in DSDM Projects

This Contract is made on [date] 200[_] [and is effective as from [date] 200[_]].

BETWEEN

The Service Provider

[business address]

AND

The User

[business address]

1. Definitions and preliminary matters

- 1.1 The use of a term with an initial capital letter in this Contract is intended to denote the use of that term in accordance with the Glossary of Terms attached as the Definitions Schedule, unless in any individual case the context makes it clear that some other meaning is to be applied.
- 1.2 Where this Contract or any Agreement refers to any document as “attached”, “scheduled” or “annexed” to this Contract or to an Agreement (or whatever other term the Parties have used), that document need not be physically attached to this Contract or to the Agreement and it is sufficient if it can be identified from the description used by the Parties.
- 1.3 Where this Contract calls for or supposes the production of certain deliverables or documents, the deliverables or documents are to be taken to be those called for by DSDM. This Contract chooses to describe such documents and deliverables by the term used in the DSDM Manual, in which case those documents and deliverables are intended to be as described in the DSDM Manual, subject to any Variations Agreed by the Parties or necessary in the context of the particular Project. Where the DSDM Manual is changed in the course of the Project, any relevant changes made to the practice of DSDM may be applied by Agreement of the Parties to the Project as from the date the Parties may specify and the Parties can Agree what updates to the DSDM Manual are to apply to the conduct of the Project.
- 1.4 The Project will be run according to DSDM. The Parties are at liberty to Agree Variations to DSDM, and all such Agreements between the Parties shall be binding according to the terms of such Agreements. All such Agreements shall be interpreted in the light of DSDM and the techniques called for by DSDM but otherwise will be subject to this Contract and must be interpreted in accordance with its terms.

2. Agreements and Variations

Basic provisions about exchanging and authenticating documents

- 2.1 The Parties may attach as the Communications Schedule their own protocol or a third party protocol on electronic signatures or encryption or other such matters so as to
 - 2.1.1 regulate the manner in which documents may be exchanged; or
 - 2.1.2 determine when a Party is to be taken to have authorised any particular document.

Where such a protocol is attached, that protocol will be decisive as to the way in which documents should be exchanged and/or authenticated.

- 2.2 Where there is no such protocol, the Parties may exchange documents in any form of Writing. For the avoidance of any doubt, this therefore includes hard copy or transmission by fax or email and all such documents will be presumed to have come from the person named as the sender at the time and date stated and to be authentic as to their contents in the absence of proof to the contrary.

Agreements reached in the course of the Project

- 2.3 The Parties may Agree to attach as a Documentation Schedule a protocol detailing the specific requirements as to how Agreements should be concluded or evidenced in the course of the Project. Where they do so, that protocol will be decisive as to the way Agreements should be concluded or evidenced. Where there is no such protocol, or to the extent that the terms of that protocol are silent, the following clauses will apply.
- 2.4 On any matter relating to the conduct of the Project within the Scope, the Parties may Agree those matters relevant to conducting the Project by assent made by the Parties' representatives working on the Project. Such assent may be given orally.
- 2.5 Where any Agreement on a matter within the Scope is evidenced in Writing (such as by meeting minutes or the keeping of an updated list of requirements resulting from workshops or any other form of record comprising the configuration management for the Project), that Written document will stand as a valid record of the matters stated as Agreed, but only where that Written document has been Agreed by both Parties, each showing its Agreement in Writing.
- 2.6 An Agreement on a matter outside the Scope or which is intended to Vary the Scope will not be effective unless
- 2.6.1 it is in Writing;
 - 2.6.2 both Parties have indicated their assent to that Agreement in Writing;
 - 2.6.3 the Variation being Agreed to Scope is stated with sufficient precision;
 - 2.6.4 the changes required in the resources (human and otherwise) are described;
 - 2.6.5 any changes to the future estimated sums payable by the User are provided; and
 - 2.6.6 the consequential changes required to the rest of the System and any consequential effects in terms of anticipated limitations to the functional or non-functional requirements within the Scope are set out.

The Service Provider may set out estimates for the matters in clauses 2.6.4 to 2.6.6 and may indicate, where it is appropriate to do so, only high level estimates of any of the changes in those clauses and stating the reason for the imprecision. Where the Service Provider does so, the Service Provider is under no liability for those estimates ultimately proving incorrect for any reason given by the Service Provider, provided it has in giving those estimates discharged its obligations under clause 8 (legal obligations of reasonable care and skill).

Authority of Parties' representatives when they make Agreements

- 2.7 The Parties will name in the Authorised Representatives Schedule those individuals for each Party who are authorised to make Agreements to Vary Scope. The following provisions apply to the authority of the Parties' personnel when they purport to make any Agreements:
- 2.7.1 Where an Agreement relates to a matter within the Scope, the Parties' representatives making such an Agreement do not need to be specifically named in the Authorised Representatives Schedule. Each Party warrants to the other that its representative making that Agreement is duly authorised to make that Agreement.

- 2.7.2 Where an Agreement relates to Varying the Scope (and therefore requires Writing according to clause 2.6 above) each Party warrants to the other that (a) each person named in the Authorised Representatives Schedule has sufficient authority to make such an Agreement and that (b) that person can validly nominate a substitute in Writing either generally or for a specific purpose to do so as well.
- 2.7.3 The provisions on authority in this clause 2.7 will apply notwithstanding any lack of actual authority of that person according to the internal authorisation procedures of the Party for which he or she works. Each Party must, if necessary, ratify any such apparent Agreement made at the earliest opportunity and undertakes that it will not in such circumstances seek subsequently to rely on any lack of actual authority to render void any such apparent Agreement.

Resolution of disputes as to Scope

- 2.8 As is stated elsewhere at clause 12, disputes as to what is included within Scope are to be dealt with under the dispute resolution procedure in clause 12. Where there is dispute as to whether a particular Variation should or should not have been made in Writing, it must be dealt with in accordance with clause 12.

3. Feasibility Study

EITHER:

This version is used where the Feasibility Study is executed by the Parties jointly.

- 3.1 The Service Provider and the User will execute a Feasibility Study. The Parties will for this purpose Agree in Writing the work to be performed as part of the Feasibility Study and will produce at the end of that stage the Feasibility Report and the Outline Plan. The Parties may also Agree in Writing other products of the Feasibility Study, such as the Feasibility Prototype.
- 3.2 The User may, following completion of the products of the Feasibility Study, cancel the Project (see Clause 10 on the effects of cancellation). As part of the Feasibility Study, the Service Provider may recommend cancellation of the Project or cancellation of the Project using DSDM. If the Parties Agree at this stage to abandon the use of DSDM but otherwise to continue working together, then this Agreement is deemed cancelled and is then subject to the cancellation provisions at Clause 10 and a new contract must be agreed to provide a contractual relationship between the Parties for that further work.
- 3.3 Successful completion of the Feasibility Study must include within the products identified in clause 3.1 above at least the following:
- 3.3.1 a statement of the scope of the investigation comprised in the Feasibility Study;
 - 3.3.2 the definition of the business problem to be addressed by the proposed System; and
 - 3.3.3 Agreement by the Parties of the Suitability Filter and the Risk Assessment.

See clause 12 which deals with the situation where the Parties cannot reach any Agreement.

- 3.4 Either Party may cancel the Contract following conclusion of the Feasibility Study if, in that Party's reasonable opinion, the willingness of the other Party to use DSDM is not real or realistically achievable in practice. For more detail of cancellation and its consequences, see clause 10.

OR:

This alternative version is used where the User has first executed the Feasibility Study before involvement of the Service Provider.

3.1 Where the User has completed the Feasibility Study prior to the commencement of this Agreement, the Project will commence on the basis of the output of that Study as the completed Feasibility Study. Such items may include, but are not limited to

3.1.1 Feasibility Report

3.1.2 Outline Plan

3.1.3 Feasibility Prototype

3.1.4 Suitability Filter

3.1.5 Risk Assessment

3.2 The User is responsible for the products of the Feasibility Study except to the extent that the Service Provider independently seeks to verify any of the facts or findings of the Feasibility Study, but there is no obligation on the Service Provider to perform any such work of independent verification.

4. Business Study

4.1 Following completion of the Feasibility Study

Or: if the Parties start the Project with the Business Study and use the User's Feasibility Study

At the commencement of the Project,

the Parties will jointly execute the Business Study. The principal products to emerge from the Business Study will be at least the following documents:

4.1.1 the Business Area Definition;

4.1.2 the Prioritised Requirements List;

4.1.3 the System Architecture Definition; and

4.1.4 the Outline Prototyping Plan.

4.2 The products of the Business Study (whether those suggested at clause 4.1 above or such other products as the Parties have Agreed to produce) will between them contain the following:

4.2.1 a description of those features (functional and non-functional) that are Agreed in Writing as being indispensable to the System and which therefore constitute the MUS;

4.2.2 an Agreed scheme for prioritising the work to be done as part of the Project in order to provide both the MUS and in addition as many as possible of the other requirements (functional and non-functional) of the System;

4.2.3 Agreement for proceeding with the Project in terms of an outline plan for Timeboxes, including their content and duration;

4.2.4 Agreement as to the development and implementation platforms;

4.2.5 Agreement on quality-related aspects of the System, including such matters as maintainability; and

- 4.2.6 Agreement on resources, including the human resources to be committed from the Service Provider and also those resources, both human and otherwise, to be supplied by the User for the purposes of the Project and which therefore count as Dependencies (see clause 9 for Dependencies and the effects of Dependency Failure).

By definition, all these matters listed in this clause 4.2 must be in Writing as they are contained in the products of the Business Study and will constitute the Scope of the Project.

- 4.3 At any time during the Business Study or following completion of the products of the Business Study, the Service Provider may recommend cancellation of the Project on the basis that it does not believe the Project is suitable for DSDM, and the Service Provider must provide the reasons for its belief (for the consequences of cancellation or recommending cancellation, see clause 10). Agreement as required by clause 4.4 below.
- 4.4 Following the completion of the products of the Business Study, the Parties will Agree to proceed in one of the following ways:
- 4.4.1 the Parties may Agree to proceed with Development using as the Scope of the Project that Scope as defined in the products of the Business Study, in which case the provisions of this Contract will apply to such further work;
- 4.4.2 the Parties may Agree to do further work as part of the Business Study for the better definition of the Scope of the Project, and the completion of that further work will mean the Parties must again make a decision according to this clause 4.4;
- 4.4.3 the Parties may at this point Agree in Writing cancellation of the Project (with the consequences set out at clause 10); or
- 4.4.4 the Parties may Agree to continue with the Project but using some other method than DSDM, in which case this Contract is deemed cancelled as from the point of such Agreement with the consequences set out at clause 10.

See clause 12 which deals with the situation where the Parties cannot reach any Agreement.

- 4.5 If the Parties agree to proceed using DSDM following the completion of the Business Study (i.e. they have reached Agreement as set out in clause 4.4.1 above), the products of the Business Study (which must include the matters Agreed according to clause 4.2) will stand as the Agreement of the Parties as to the Scope of the Project. Until the Scope is Varied by the Parties by Written Agreement, the Scope as defined by the Business Study will be conclusive as to the following matters
- 4.5.1 functional elements of the System including the MUS; and
- 4.5.2 non-functional requirements of the System.

Any Variation to this Scope, whether in terms of functional or non-functional requirements, requires Agreement in Writing according to clause 2.6.

- 4.6 Either Party may cancel the Contract following conclusion of the Business Study if, in that Party's reasonable opinion, the willingness of the other Party to use DSDM is not real or realistically achievable in practice. For more detail of cancellation and its consequences, see clause 10.

5. Development

General matters

- 5.1 Following the completion of the Business Study and the reaching of Agreement to proceed with Development (see clause 4.4.1), the remaining parts of the Project will be completed

according to the principles set out in the DSDM Manual and will in essence comprise the conduct by the Parties of the work comprised in the Timeboxes and applying to each Timebox as appropriate in the circumstances the DSDM method of Functional Model Iteration, Design and Build Iteration and Implementation.

Framework for Agreeing detail of stages following the Business Study

- 5.2 The Parties will Agree for this part of the Project all such things as are necessary to proceed in accordance with the Scope. This will include more detailed Agreement as part of conducting the Project day to day on the matters that were Agreed as the Scope in the products of the Business Study as follows:
- 5.2.1 the detail of the System, in functional and non-functional terms, to be comprised within the Scope for development into the System;
 - 5.2.2 the processes to be used for the accomplishment of development, including the detailed content and timing of Timeboxes;
 - 5.2.3 the details for Testing of the System that are developed and delivered for implementation by the User in the course of the Project (see further in clause 6 for Testing);
 - 5.2.4 the identities of the persons involved in the Project to fulfil the roles as set out in the Roles Schedule; and
 - 5.2.5 documentation that is to be prepared and/or delivered as part of the Project for the User.
- 5.3 In the course of reaching Agreement on such matters as are mentioned in clause 5.2
- 5.3.1 the User will apply the MoSCoW rules in accordance with good project practice and with a view to achieving a System that is Fit For Business Purpose;
 - 5.3.2 the Service Provider will advise the User on the application of the MoSCoW rules to the extent of providing full information (to the extent reasonably available to it) and advice based on the Service Provider's reasonable perception of what will be Fit for Business Purpose;
 - 5.3.3 the Parties will accordingly Agree those matters to be included in Timeboxes in accordance with these principles and good DSDM practice.
- 5.4 The Parties will proceed in accordance with good project management practice in the context of a Project run according to DSDM, and this will mean as a minimum:
- 5.4.1 the time Agreed for duration of the Timeboxes will be strictly maintained, including to the extent of not completing any requirements that are not part of the MUS where the time for that Timebox expires;
 - 5.4.2 Agreeing matters for inclusion in Timeboxes that are a combination of matters contained in the MUS and outside it in such way that achievement of the MUS matters in that Timebox is reasonably achievable;
 - 5.4.3 It is in particular the User's responsibility to apply the MoSCoW Rules at all times during the conduct of Timeboxes in respect of the work comprised in that Timebox and at the completion of the time Agreed for each Timebox in respect of the work to be included in further Timeboxes; and
 - 5.4.4 In applying the MoSCoW Rules, the User will take account of the advice of the Service Provider as to the estimated time for accomplishing the tasks required by the

User and will not seek to include in any Timebox any elements that would not allow at least completion of the MUS Agreed for that Timebox.

Fitness for Business Purpose

- 5.5 In Agreeing the detail of the System to be Developed and the content of Tests and criteria for Acceptance of the products of a Timebox, the following criteria will apply:
- 5.5.1 Accomplishment of the entire MUS is a prerequisite for the Acceptance of the System;
 - 5.5.2 For all items completed and delivered to the User for implementation (whether as part of the MUS or as part of further items within Scope Agreed to be done as part of Development) the criterion for Acceptance is Fitness For Business Purpose.
- 5.6 Any assessment of Fitness For Business Purpose of any part of the System for any purpose associated with the Project (including Acceptance) will have regard only to the following factors:
- 5.6.1 there must be present all features (functional and non-functional) of the MUS current as at the time the assessment of Fitness for Business Purpose is being made; and
 - 5.6.2 as regards matters other than the MUS, the criterion is that the practical requirements of the User in having that part of the System operational are met, and for this purpose the Parties will have regard only to the use reasonably to be made of the System for its reasonable lifetime.

6. Testing and Acceptance

Purpose and Agreement of Tests

- 6.1 Each Timebox will be considered successfully concluded by the passing of Tests in respect of the work involved in that Timebox. There are no separate final Tests for the whole System following completion of the last Timebox other than as Agreed by the Parties. The Parties will for each Timebox Agree such Tests as will demonstrate the Acceptability of the products of that Timebox in conjunction with all other Accepted Timeboxes (see clause 5.2.3). The Service Provider will ensure that the products of the Timebox in question are reasonably fit to be Tested by the application of its own internal testing, but the Parties envisage that Testing may well find errors already discovered by the Service Provider in its own Testing or further errors not yet discovered by the Service Provider.
- 6.2 No tests other than the Tests Agreed by the Parties will be used for determining the Acceptability of the System or of any part of it. It is the User's responsibility to ensure that the Tests as Agreed are effective to Test all such parts of the System as it requires. The Service Provider will advise the User in this respect but it is not responsible for the ultimate choice of Tests made by the User except to the extent that the User accepts the Service Provider's advice.
- 6.3 The Tests will be Agreed by the Parties based on the criterion of proving the Fitness for Business Purpose of each part of the System (see clauses 5.5 and 5.6) and the Service Provider is not obliged to Agree any other Tests other than to demonstrate such Fitness for Business Purpose. Achieving the standard of Fitness for Business Purpose means that the Tests are passed (see clauses 5.5 and 5.6 for the meaning of this expression).
- 6.4 When the content of any individual Tests is Agreed for the products of a Timebox, the Parties will conduct those Tests following completion of the time allowed for that Timebox. The Tests must still be conducted even if it is clear at the end of the Timebox that the totality of the Tests for that Timebox would not be passed (e.g. because the must-haves comprised in that Timebox have not been completed), although the Parties may Agree not to conduct further Tests if no practical purpose would be served by doing so.

Conduct of Tests

- 6.5 The Parties will also Agree the detail of how such Tests will be conducted, and unless they Agree otherwise, the following will apply:
- 6.5.1 data for Testing will be provided by the User after Agreeing the required content and quantity of such data with the Service Provider;
 - 6.5.2 the responsibility for taking backups before Testing in or Testing in conjunction with a live environment lies exclusively with the User and the Service Provider has no responsibility for any loss or damage caused by the User's failure to be in a position to restore a backed up position;
 - 6.5.3 the User will conduct all Tests which the Service Provider may attend and the User will give sufficient notice to the Service Provider to enable it to do so; and
 - 6.5.4 all Test data and results will be supplied by the User to the Service Provider.

Successful Testing

- 6.6 The following are the consequences if the Tests are successfully passed in all respects:
- 6.6.1 The products of the Timebox are considered Accepted for all purposes and the User accordingly has no right to reject any of those products thereafter. If there should emerge any defects in or omissions from those products, the User's remedy (if any) is to damages only (subject to any limits or exclusions of liability set out in this Contract).
 - 6.6.2 The User must acknowledge to the Service Provider in Writing the successful accomplishment of a particular set of Tests, and such document is conclusive evidence of the passing of those Tests. If the User does not do this within 14 days of successful completion of those Tests, the Service Provider may do so in Writing to the User and that Writing becomes conclusive evidence of the passing of those Tests unless challenged in Writing by the User within 7 days of receipt of the Service Provider's Writing.
 - 6.6.3 For the avoidance of any doubt on the matter, Acceptance does not imply that the Accepted part cannot be subsequently Varied and it may be a necessary part of the Project to Vary any part of the System as so far developed in the ordinary course of the Project. Such subsequent work does not of itself imply that the part Accepted was defective and should not have passed the Tests.

Failed Testing

Failure because of defect in the Service Provider's work

- 6.7 Clause 6.8 applies where the reason the products of a Timebox are not completed and fail Acceptance is as a result of some defect or omission in the Service Provider's duty to carry out the Project in accordance with this Contract, in particular, the Service Provider's obligation to use reasonable care and skill. The obligation to use reasonable care and skill will, as regards those parts of the Timebox that are not part of the MUS, be assessed by reference to the resources (including time) available after taking into account the resources necessary to allow completion of the must-haves in that Timebox.
- 6.8 If failure is for the reason described in clause 6.7 (failure because of defect or omission in the Service Provider's work), the following consequences apply:
- 6.8.1 If the failed part is part of the MUS (i.e. a must-have), the Service Provider must put right that failed part before the Tests for that Timebox can be deemed successfully

completed. If the Service Provider cannot or will not do this within a reasonable time after completion of the time allowed for that Timebox, the Tests are deemed failed with the consequences in clause 6.11.

- 6.8.2 If the failed part is not part of the MUS (i.e. it is a should-have, can-have or won't-have) the Service Provider will provide free of charge in the context of another or a further Timebox an amount of time equivalent to that spent on the Development of the part that failed. The User may allocate this time as it sees fit to any matter within the Scope.
- 6.8.3 Where the failed part was part of the MUS (a must-have), the Service Provider's liability to make that part good as per clause 6.8.1 above is not necessarily the limit of its liability in respect of the failure, and the User may claim damages in respect of the failure (subject to any limits or exclusions of liability in this Contract).
- 6.8.4 Where the failed part was not part of the MUS, the obligation in clause 6.8.2 on the Service Provider to provide further time free of charge is in full and final satisfaction of any claim the User might have against the Service Provider for its failed performance in that respect.

Failure for a reason not associated with the Service Provider's performance

- 6.9 Clause 6.10 applies where clause 6.8 does not i.e. clause 6.10 applies if Acceptance Tests are failed where the Service Provider has complied with its obligations under this Contract to use reasonable care and skill.
- 6.10 If the failure is for the reason described in clause 6.9 (failure not as a result of any defect or omission by the Service Provider), the following consequences apply:
 - 6.10.1 the Timebox will be deemed Accepted notwithstanding the failed part except that the following provisions also apply;
 - 6.10.2 the User may require any part of the MUS (i.e. a must-have) involved in the failure to be completed as part of another or a further Timebox, but such work will be paid for by the User at the rates set out in this Contract (or as otherwise Agreed). This is an exception to the general provision that the Service Provider must provide the complete MUS (see clause 8.1).
 - 6.10.3 if the failed part was not part of the MUS (i.e. it is a should-have, a can-have or a won't-have) the User is not entitled to have that part included in another or a further Timebox free of charge, but the Parties may Agree that it should be so in the ordinary course of applying the MoSCoW Rules (see clauses 5.2 to 5.4) .
 - 6.10.4 for the avoidance of any doubt, if there is insufficient time to complete the non-MUS products Agreed as part of the Timebox, and the reason for the lack of time is not due to the fault of the Service Provider, no liability attaches to the Service Provider for that failure to complete the non-MUS parts of the Timebox, and the inclusion of those incomplete parts in other Timeboxes is at the User's option as it applies the MoSCoW Rules (see clauses 5.2 to 5.4).

Continued failure

- 6.11 If the Tests for a Timebox are still failed following the Service Provider's attempted re-performance to provide the MUS (see clause 6.8.1) the User has the following options:
 - 6.11.1 terminate the Contract as for a breach of contract; or
 - 6.11.2 Accept such of the products as have passed Tests, and all sums already paid for the failed part will be refunded to the User and any sums still payable for the failed part will be waived.

Where the User exercises the option in clause 6.11.2, this is not the User's exclusive remedy and the User may claim against the Service Provider for the non-delivery of the failed part, subject to any limits or exclusions of liability set out in this Contract.

7 Charges and Payment

- 7.1 The rates charged by the Service Provider are set out in the Charges Schedule along with the periods at which or other occasions on which the Service Provider may raise an invoice for payment. The Charges Schedule may also include details of such information as the Service Provider must provide to the User to accompany each invoice.
- 7.2 Where for any reason the Service Provider performs services or provides items (tangible or otherwise) to the User at the User's request, and the charges for those items are not included in the Charges Schedule, the User will pay the Service Provider a reasonable rate for those services or items regardless of whether those services or items are within Scope or not and whether or not the Service Provider claimed for those additional sums at the time of performance or not.
- 7.3 Payments will be made in the manner set out in the Charges Schedule. Where a payment is owing but the Charges Schedule makes no provision for the time of payment, such payment will be made within 30 days of receipt by the User of a correct invoice accompanied by all such information as is required according to the Charges Schedule. Late payment entitles the Service Provider to interest at the rate set out in the Charges Schedule.
- 7.4 Late payment does not entitle the Service Provider to terminate the Contract as for breach unless
- 7.4.1 the Service Provider gives in any individual case Written notice that payment must be made within 7 days of the User's receipt of the notice; or
- 7.4.2 late payment has become persistent (including where the Service Provider persistently has to give Written notice under clause 7.4.1 above).

8. Scope of the Parties' legal obligations

- 8.1 The Service Provider will in all cases (subject to any cancellation or Dependency Failure) be obliged to complete the MUS by achieving Acceptance of it in accordance with clause 6. Other than this specific obligation on the Service Provider, in performing their obligations under this Contract, both Parties will use reasonable care and skill. The Service Provider will, in particular, comply with the following obligations as part of this general obligation of using reasonable care and skill:
- 8.1.1 sub-contractors and other personnel will be selected for work on the Project on the basis of their skills and experience and will be appropriate for the roles they are given to fulfil in the Project;
- 8.1.2 methods and resources other than human resources will be used that are reasonably appropriate for the circumstances taking account of any Dependencies including those specifically set out in the Dependencies Schedule;
- 8.1.3 any estimates provided of whatever sort (whether of time, cost, resources required or of anything else) will be based on the application of reasonably appropriate methods (taking account of any information provided to it by the User); and
- 8.1.4 accurate information and data (including any failings or apprehended failings of the Service Provider) will be provided on a timely and proactive basis in order to enable the User to carry out its obligations and to exercise its options as provided for by this Contract (provided that this obligation on the Service Provider does not of itself entitle

the User to audit the Service Provider's work or internal documentation in the absence of Agreement to this effect).

- 8.2 In applying the test of what is "reasonable" in assessing whether a Party has discharged its obligation of reasonable care and skill, it is necessary to look at whether the Party has exercised the care a reasonable User or Service Provider (as appropriate) should have discharged, taking account of all facts known to a Party (or which that Party should reasonably have known or discovered).
- 8.3 Other than as specifically set out in this Contract, or unless specifically Agreed in Writing, the obligations in this Contract describe the limit of each Party's obligations with regard to performing all its obligations under this Contract and accordingly all other implied terms (such as satisfactory quality or fitness for purpose implied under the Sale of Goods Act 1979, the Supply of Goods of Goods and Services Act 1982 or equivalent terms at common law) are excluded and replaced by the mutual rights and obligations in this Contract.

9. Dependencies

- 9.1 The precise Dependencies will vary from project to project and nothing in this clause is intended to limit the type of actions or occurrences that may qualify as a Dependency according to the definition of that term in the Definitions Schedule. Specific Dependencies are attached in the Dependencies Schedule but this is not intended to be an exhaustive list. The Parties in the course of the Project may Agree further matters that are Dependencies without their being specifically identified as such and formally included in the Dependencies Schedule. However, this clause sets out the exclusive consequences for when there is a Dependency Failure and neither Party may claim any remedy against the other Party for Dependency Failure except as is set out in this clause 9.
- 9.2 The following are always Dependencies:
- 9.2.1 timely decisions or directions from the User where these are required or reasonably necessary according to this Contract or by DSDM, or are reasonably required or necessary in the context of the Project according to good IT project practice using DSDM;
 - 9.2.2 decision making by the User in accordance with the MoSCoW rules and clear and unambiguous directions to the Service Provider in accordance with those decisions;
 - 9.2.3 complete and timely provision of and access to the User's premises, personnel and information in accordance with this Contract or, where not specifically provided for in this Contract, in accordance with good project practice to the extent that any of the above are reasonably necessary for the progress of the Project;
 - 9.2.4 the accuracy and continued correctness of assumptions for the Project (whether technical, related to the system architecture or otherwise) as set out in the Dependencies Schedule, or as Agreed by the Parties as part of the Feasibility or Business Study or elsewhere.
- 9.3 Where a Dependency Fails, either in whole or in some particular part of the Project, the Service Provider's obligations are to proceed with the Project with reasonable speed and efficiency in the light of the Dependency Failure and to apply such reasonable measures as will minimise or eliminate the effects of the Dependency Failure. However, neither Party will be further liable for the Failure of any Dependency or any of its consequences otherwise than as described in this clause. Clause 9.4 below provides for the Parties' duties to Agree revised Scope and Timetable after a Dependency Failure.
- 9.4 Where the Failure of a Dependency results in less time available in the Timetable, then the remainder of the Contract must be performed in accordance with a reasonable timescale to implement the Scope unless and until the Parties Agree in Writing any further fixed dates for the completion of the Project or any reduction in Scope. On the occurrence of a Dependency

Failure that impacts the remaining time available to complete the Scope within the Timetable, the Parties must Agree in Writing a revised reasonable Scope and/or Timetable to take account of the lost time and any additional work or wasted effort that has been unavoidably incurred by the Service Provider as a consequence of working around the Dependency Failure.

- 9.5 Where the Dependency Failure is caused by matters within the User's control or power, and that Dependency Failure causes the Service Provider additional expense to be incurred or wasted beyond what would otherwise be properly chargeable to the User (including expense such as the expense caused by the inability to reallocate staff as a result of idle time consequent on the Dependency Failure), the Service Provider is entitled to the reimbursement of such sums as will compensate it for the additional expense incurred or wasted. However, the Service Provider must take all reasonable steps to minimise such a claim and the Service Provider must try to reach Agreement with the User as to the steps the Service Provider should take.

10. Cancellation

General

- 10.1 Cancellation (or a recommendation of cancellation) may be of the whole Project or of some separate and identifiable part of it. This clause 10 governs cancellation of the whole Project or any part of it, and references to the Project in this clause 10 apply equally to cancellation of part of the Project. If it is a question of cancellation of a particular part of the Project, any notice or recommendation of cancellation to be effective must identify with adequate precision what part of the Project is being cancelled or recommended to be cancelled. As cancellation in all cases affects Scope, any notice or recommendation of cancellation must be in Writing.

Service Provider's right of cancellation

- 10.2 The Service Provider may only cancel the Contract in the specific circumstances set out in this Contract, or as otherwise Agreed by the Parties. Apart from such specific rights of cancellation, the Service Provider may cancel the Project at any time if, following a major Dependency Failure, or persistent Dependency Failures (whether from the same cause or from different causes) the Project has become materially different from what the Service Provider reasonably could have anticipated at its outset and proceeding with the Project in the changed circumstances would as a result be unduly onerous on the Service Provider.

Service Provider's recommendation of cancellation

- 10.3 The Service Provider may recommend cancellation at any point in the Project based on a reasonable view of the likely chances of the Project turning out to be successful. "Success" in this context is to be measured by the prospects of achieving a System that is Fit For Business Purpose as compared with the costs likely to be incurred by the User on the Project and the resources (both human and technical) that will be necessary for the User to devote to the Project. Any such recommendation must be made in Writing and provided to the User with a reasonably adequate explanation why a recommendation of cancellation is being made at that point. The Service Provider may not charge for any work done in assessing whether cancellation is to be recommended without the User's prior Agreement. However, the Service Provider may charge at the rates in the Charges Schedule for work directly related to the making of the recommendation itself.
- 10.4 The User is not obliged to accept any such recommendation made by the Service Provider and the limit of the User's obligation is to consider that recommendation and the reasons provided by the Service Provider. The User may request and the Service Provider will supply such reasonable information as is necessary for the User to make an informed decision about cancelling. Any such additional work so performed by the Service Provider in providing further information is chargeable at the rates set out in the Charges Schedule in addition to any sums otherwise payable by the User under this Contract.

- 10.5 Where the User accepts the recommendation of cancellation, the consequences are set out in clauses 10.9 to 10.11.
- 10.6 Where the User does not accept the recommendation of cancellation and decides to proceed against the Service Provider's recommendation, the User accepts the full responsibility for that decision and accordingly, the Service Provider will not be responsible for any failure or shortcoming of the System which arises because of a specific reason contained in the recommendation for cancellation. Accordingly, the Service Provider is not liable for any loss or damage of whatever type the User may claim in respect of the System recommended to be cancelled as long as the loss or damage arises out of a reason given with the recommendation to cancel. Furthermore, the User indemnifies and holds the Service Provider harmless for any claim made by a third party arising out of the use of the System recommended to be cancelled as long as the claim arises out of a specific reason given with the recommendation to cancel.

User's cancellation

- 10.7 The User may cancel the Project at any time by giving written notice. Such cancellation can be
- 10.7.1 immediately effective;
- 10.7.2 effective at a certain future point in time; or
- 10.7.3 effective after the completion of identified items of work.

The notice of cancellation need not specify any reasons for cancellation, but must identify it as cancellation rather than termination for any other reason. The User may in advance of exercising its right to cancel request a statement of the sums (broken down) that the Service Provider would charge for such cancellation. In that case, the Service Provider may not charge more for cancellation than is contained in that cancellation statement if the User cancels within 3 working days of receiving the cancellation statement.

- 10.8 The Service Provider will continue with the Project up to the moment identified as the point for cancellation and this Contract and all Agreements will continue in effect subject to the cancellation.

Consequences of cancellation

- 10.9 Cancellation leads to the termination of the Project, but the User may decide to keep what has been delivered and Accepted up to the time of cancellation and also to keep materials created by the Service Provider and which can be provided to the User subject to any third party owned IPRs (see clause 11). The Service Provider will Agree reasonable steps with the User concerning the orderly handover of the Project to the User.
- 10.10 The Service Provider will charge at the rates in the Charges Schedule for
- 10.10.1 all work done within Scope up to the point of cancellation;
- 10.10.2 all materials supplied within Scope up to the point of cancellation;
- 10.10.3 all sums committed to third parties for the supply of resources for the work within the Scope which cannot by reasonable efforts be cancelled or reduced following receipt or giving of notice of cancellation; and
- 10.10.4 all work Agreed by the Parties to be done as part of the orderly handover of the Project after cancellation.
- 10.11 Cancellation will lead to no other consequences between the Parties except as otherwise set out in this clause or as otherwise Agreed in writing. In particular, it will not of itself lead to any

right of action by one Party against the other and no act or recommendation of cancellation by one Party will be actionable by the other.

11. Intellectual Property Rights

- 11.1 "Background IPR" refers to any IPR belonging or licensed to a Party that existed prior to the Project and which was not created specifically for the purpose of accomplishing the Project but which is used for the purposes of delivering the System. "Foreground IPR" refers to any IPR belonging or licensed to a Party that is created or acquired in the course of the Project and is created or acquired specifically for the purpose of delivering the System. "Acquiring" in this sense can mean either taking an assignment of the IPR or taking a licence of the IPR from a third party.
- 11.2 The Licensing Schedule may contain specific provisions on licensing Foreground or Background IPR, including any specific licensing provisions for individual software programs or third party owned IPR. The Licensing Schedule takes precedence over this clause in the event of any inconsistency.
- 11.3 This Contract has no effect in terms of assigning (transferring) or agreeing to assign (transfer) ownership of any IPR either created in the course of performing this Contract, or already owned by a Party at the time this Contract was executed.
- 11.4 This Contract is a licence from the Service Provider to the User to use the Foreground and Background IPR in all Software and related materials delivered as part of providing the System. This licence is, except as provided for in the Licences Schedule, to use within the User's organisation for any internal business purpose whatsoever of the User. "Use" includes use as contemplated by the Scope of the System, and also use by a third party on behalf of or for the User for any purpose which the User would be licensed to do itself.
- 11.5 The User is, subject to what follows, entitled to receive source code for all software containing Foreground IPR created or licensed by the Service Provider. The User is entitled to such source code as soon as any materials containing Foreground IPR are delivered to the Project (whether or not they are at that stage formally Accepted). The Parties may Agree on a case by case basis whether any such source code will in fact be delivered or whether delivery should be postponed to the time of Acceptance. The User may not insist on delivery of source code that has not yet been Accepted unless there is some good reason for its having that source code at that time. This Contract licenses the User to use the IPR in such materials for the further purposes of further development, maintenance or enhancement. The User is also licensed by this Contract to license other third parties to work on behalf of the User or for it in such activities of development, maintenance or enhancement. The licences described in this clause 11.5 will not apply to any Background IPR provided by the Service Provider and if it is not for any reason practicably possible to separate materials containing Foreground IPR from those containing Background IPR, then this clause will not apply to any of those materials and the User is accordingly not entitled to the source code of them.
- 11.6 The User is also licensed, in the course of exercising its rights granted under the licence in this clause 11, to make a reasonable number of copies of any of the software and related materials delivered as part of the Solution. These copies may be given to third parties to achieve the purposes of the licences in clauses 11.4 and 11.5. Nothing in this Contract is intended in any way to derogate from any of the rights granted by the Copyright, Designs and Patents Act 1988, or any other applicable law.
- 11.7 All the licences described in this clause 11 are, except as described in the Licensing Schedule,
- 11.7.1 for the entire duration of any IPR comprised in the licence (including any extensions or renewals) and takes effect as from the time the material containing the IPR is delivered to the Project (regardless of whether it is formally Accepted);
- 11.7.2 free of any further payment other than as set out in this Contract; and

11.7.3 irrevocable, even in the case of termination or cancellation (clause 10).

11.8 "Knowhow" in this clause 11.8 means any general knowhow which does not consist of any IPR received from the other Party in the course of performing this Contract. Each Party reserves the right to use for any purpose whatsoever any such knowhow which that Party has gained in the performance of this Contract. However, such use may in no case breach any obligation of confidentiality in this Contract and this clause 11.8 does not grant any licence to the Party wishing to use that knowhow to use any IPR otherwise belonging to or licensed to that other Party except as provided by this Contract.

12. Dispute and disagreement resolution

12.1 This clause 12 applies to the following types of dispute or disagreement:

12.1.1 any dispute arising in the course of the Project in relation to the Project or any matter concerning the Project, including the interpretation of this Contract or of any Agreement regardless of whether the dispute is as to a matter within Scope or about the Scope itself (referred to in this Contract as disputes);

12.1.2 any disagreement which consists of an inability of the Parties to reach Agreement where they are required to do so by this Contract (referred to in this Contract as disagreements).

12.2 For disputes of the type referred to in clause 12.1.1, the Parties will use the procedure set out in the Dispute Resolution Schedule. For disagreements of the type referred to in clause 12.1.2, the Parties will use the Disagreement Resolution Schedule.

12.3 For the period that any procedure in the Dispute or Disagreement Resolution Schedules is being followed, the Parties will use reasonable endeavours to proceed with as much of the rest of the Project as is reasonably possible until resolution of the dispute or disagreement or until cancellation.

Adjudication Schedule

The Parties may Agree to attach a protocol to provide for third party adjudication of disputes or disagreements which cannot be resolved according to the provisions of the Dispute Resolution Schedule or the Disagreement Resolution Schedule. Such Agreement may be made at the time of entering into the Contract or at any time during the course of the Project.

Authorised Representatives Schedule

See clauses 2.7 and the Dispute Resolution Schedule.

Charges Schedule

See clause 7.

Communications Schedule

See clauses 2.1 and 2.2

Definitions Schedule

GLOSSARY OF TERMS

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| Acceptance, Accept | all such terms relate to the fact that a particular set of Tests has been successfully accomplished. Clause 6.6 deals with the consequences of Acceptance. |
| Agreement, Agree | all such terms relate to any agreement between the Parties as to any matter in the course of the Project and thus such Agreements form part of this Contract. Such agreements must be concluded in the way required by clause 2 for the reaching of Agreements (and thus may in some circumstances include oral agreements while Agreements Varying Scope require Writing). |
| Contract | this Contract in writing, including all Schedules, Attachments or Appendices either attached or referred to as becoming part of this Contract whether physically attached or not. This defined term also includes all Variations to this Contract reached in the course of conducting the Project (see further clause 2 on the way in which Agreements may be concluded in the course of the Project) and also includes all Agreements reached by the Parties as part of carrying out the Project. |
| Dependency | This term includes joint assumptions made by the Parties for the conduct or accomplishment of the Project or any part of it and also actions of the User or third parties or any other occurrences on which the proper progress of the Project depends. Such assumptions or actions or occurrences act as a precondition for the efficient or even continued progress of the Project (according to the circumstances). A Dependency cannot be any action or requirement for action on the part of the Service Provider. Some individual Dependencies for particular stages of the Project are specifically named at particular points in the Contract and clause 9 gives further specific matters which qualify as Dependencies. |
| Dependency Failure | where a Dependency is not performed or not performed on time or does not occur in accordance with this Contract or any Agreement, or in accordance with good IT project practice or according to either of the Party's reasonable expectations. This definition also applies to use of these or similar words in expressions, such as "where a Dependency has Failed". |
| Develop, Development | work related to that part of the DSDM Project following on from completion of the Feasibility Study and the Business Study and related to completion of those matters Agreed as the Scope in the Business Study. In the absence of Agreement (which must be in Writing as a Variation of Scope), Development does not include work on matters outside Scope as originally Agreed in the Business Study. |
| DSDM | Dynamic Systems Development Method, as more fully described in the current version of the DSDM Manual, with any specific agreements reached between the parties from |

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| | time to time for the detailed use of DSDM on the Project, including the Agreement to Vary any part or parts of it. |
| DSDM Manual | the edition of the DSDM manual published by the DSDM Consortium as at the time of the Commencement Date. |
| Fit for Business Purpose | has the meaning given to it in clauses 5.5 and 5.6. |
| IPR | any type of intellectual property right, including any application for such, wherever that right may exist in the world, and whatever steps are necessary to be performed in order to obtain that right. Accordingly, the following types of rights are included within the definition: patents, copyright, database right, design right (registered or unregistered), trade marks, rights in performances. |
| MoSCoW Rules | those principles as described in the DSDM Manual by which the User is able to select such items for inclusion in a Timebox by choosing from among Must-Haves (i.e. elements from the MUS), Should-Haves, Could-Haves and Won't-Haves. |
| MUS | the minimum usable subset of required features (functional and non-functional) without which the System cannot be considered to be Fit for Business Purpose. The MUS is identified as part of the output of the Business Study and constitutes part of the definition of the Scope of the Project. |
| Parties, Party | both the Service Provider and User together and in the singular means either of them. |
| Project | The Project consists of the User and Service Provider providing their respective contributions to work together to produce the System. |
| Scope | the limits (in functional and non-functional terms) of what the Parties set out to achieve in the Project. This is more specifically agreed as the result of the Business Study and set out in the documents and deliverables resulting from the Business Study. It may also be further defined by Agreements made by the Parties but a Variation of the Scope must be accomplished by Written Agreement between the Parties. |
| Software | means the code itself, not including any preparatory design materials or accompanying documentation and references to source code are to the high level code before compiling, assembling or interpreting takes place. |
| System | those business processes including hardware and software elements which it is the purpose of the Project to achieve as defined by the Scope. |
| Test, Testing | all such terms relate to the Agreed procedures to demonstrate successful accomplishment of each Timebox. Testing is more precisely defined and the consequences of passing or failing Tests are set out in clauses 6.6 to 6.11. |

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| Timebox | a period of time Agreed by the Parties as part of the conduct of the Project together with the planned activities of that Timebox and the anticipated output of it. The Parties are to Agree each Timebox in accordance with proper DSDM principles (see further, clause 5.3). |
| Vary, Variation | all such terms include additions, omissions and changes. Clause 2 sets out some conditions to making Variations, and provides for the necessity of Writing where there the Variation proposed is one which changes the Scope. |
| Write, Writing | all such terms refer to any form in which materials can be recorded that can later be read or viewed, including hard copy or in electronic format (such as email, whether printed out or stored in any way). Clauses 2.1 and 2.2 provide that the Parties may establish a protocol for exchanging and authenticating Written documents. |

General provisions relating to definitions

1. Headings in this Contract are inserted for convenience only and will not affect its interpretation.
2. References in this Contract to clauses or Schedules (or any kind of attachment) are to clauses and Schedules of this Contract.
3. Words indicating a singular are to be taken to include the plural and *vice versa*.
4. Words indicating a gender are to be taken to include any gender.
5. Reference to any statute, statutory provision or statutory instrument means a reference to any such together with all rules and regulations made under it and as from time to time amended, consolidated or re-enacted.

Dependencies Schedule

See clause 9.

Disagreement Resolution Schedule

See clause 12. This procedure only applies where there is any disagreement which consists of an inability of the Parties to reach Agreement where they are required to do so by this Contract.

1. In order to start this procedure, one Party must send to the other Party a Written notice setting out the proposed Agreement that it wants the other Party to accept and also stating that the Party is commencing this procedure. It is not necessary that the proposed Agreement should be the same as previously put forward in discussions between the Parties in relation to that matter, but the proposed Agreement must be capable, if accepted, of resolving the entire disagreement between the Parties.
2. The other Party has 30 days from receipt of the Written notice referred to paragraph 1 above to accept the proposed Agreement. If the other Party has not accepted that Agreement in whole and without reservation within that period of 30 days, the Parties may Agree to
 - 2.1 follow the dispute resolution procedure provided in paragraphs 1 and 2 of the Dispute Resolution Schedule; or
 - 2.2 follow the adjudication procedure in the Adjudication Schedule.

If there is no Adjudication Schedule attached to this Contract, or the Parties are unable to Agree one within the 30 period referred to above, the Parties must abide by following paragraphs 1 and 2 of the Dispute Resolution Schedule.

3. If the result of the application of paragraphs 1 and 2 of the Dispute Resolution Schedule is inconclusive, either Party may serve on the other a Written notice stating its intention to cancel the Contract within 30 days of receipt of that further Written notice unless an Agreement is reached. At the end of that further 30 day period, either Party may cancel the Contract (for more details of cancellation, see clause 10).

Dispute Resolution Schedule

See clause 12.1.1. This procedure only applies to disputes arising in the course of the Project in relation to the Project or any matter concerning the Project, including the interpretation of this Contract or of any Agreement regardless of whether the dispute is as to a matter within Scope or about the Scope itself.

1. Either of the Party's Representatives named in the Authorised Representatives Schedule may refer the matter in dispute to the Parties' executive sponsors as identified in the Authorised Representatives Schedule. Each Party will ensure that its executive sponsor will meet the other Party's executive sponsor at Agreed times within the period of 14 days from the date on which the matter is so referred to attempt, in good faith, to resolve the dispute.
2. If the Parties' executive sponsors fail to reach agreement within the time specified in paragraph 1 above, or together Agree that resolution is unlikely to result from their meeting, each Party will ensure that one of its senior executive officers will meet a senior executive officer of the other Party and the provisions of paragraph 1 above will apply to the meetings of such senior executive officers.
3. If the matter in dispute has not been resolved in accordance with paragraph 2 above within a further period of 14 days, or the senior executive officers have Agreed that resolution is unlikely to result from their meeting, this dispute resolution procedure will, as regards the matter in dispute, have been exhausted. For the avoidance of any doubt on the matter, the fact that the dispute resolution procedure has been exhausted without resolution of the matter in dispute will not prevent the parties from Agreeing that the matter in question should be referred to an independent form of alternative dispute resolution agreed between them.
4. The foregoing provisions of this clause will not prevent either Party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Agreement or infringement, or threatened infringement, of the applicant's IPR.

Documentation Schedule

See clauses 2.3 to 2.6.

Licensing Schedule

See clause 11.

Roles Schedule

See clause 5.2.4.