|  |  |
| --- | --- |
| **DSDM AGILE PROJECT FRAMEWORK AGREEMENT** | |
| **DATED** | 20[xx] |

**(1) [*CUSTOMER*]**

**and**

**(2) [*SUPPLIER*]**

|  |  |  |
| --- | --- | --- |
|  | **CONTRACT**  relating to  [ ] |  |

**[*Drafting Notes:*** *the template includes drafting notes to aid use in the preparation of a contract between the parties. These should be removed before the contract is executed.*

*The template assumes that the parties are familiar with the DSDM Agile Project Framework. References in the notes to the "Handbook" are references to the DSDM Agile Project Framework Handbook. The template does not describe the process or the principles on which its clauses are based and reference should be made to the Handbook as necessary.*

*We recommend that the parties should complete the Project Approach Questionnaire (Handbook, Appendix B) before using the DSDM Agile Project Framework. If this indicates that the parties are, or will be, aligned in their understanding of the statements contained in the questionnaire then this template will provide the most suitable model for their contract. It is also recommended that the parties should revisit the questionnaire periodically (e.g. after the Feasibility or Foundations Phases) to confirm that the approach remains applicable.*

*The template is intended to be used between two legally distinct parties, though it could also be used within a single legal body with distinct functional allocations. It therefore assumes that the Pre-Project and Post-Project Phases described in Chapter 6 of the Handbook will be conducted by the Customer outside the scope of the Contract. The template provides for the conduct of the other phases.*

*The template also anticipates that the parties will need to amend the Contract to meet the specific requirements of the Project by completing, for example details such as the definition of "Commencement Date"; specialist legal advice may be required on the impact of making changes to clauses or sections.*]

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**THIS CONTRACT** is made on 20[xx]

**BETWEEN:**

1. **[*NAME OF THE CUSTOMER*]** a company registered in [England and Wales] under company number [ ] whose registered office is at [ ]  (**“Customer”**); and
2. **[*NAME OF THE*** ***SUPPLIER*]** a company registered in [England and Wales] under company number [ ] whose registered office is at [ ]   (**“Supplier”**),

(each a “**Party**” and together the “**Parties**”)

**BACKGROUND**

***[Set out description of background and objectives of the project. For example:]***

1. The Customer [insert information about the business of the Customer] wishes to [insert objectives of the project].
2. The Supplier is a provider of [insert business of the Supplier] and has experience in [insert services being procured].
3. The Parties have agreed to contract with each other in accordance with the terms and conditions set out below.

**IT IS AGREED** as follows:

# **DEFINITIONS AND INTERPRETATION**

## In this Contract capitalised expressions have the meanings set out in Schedule 1 (Definitions).

## In this Contract, unless the context otherwise requires:

### the singular includes the plural and vice versa;

### reference to a gender includes the other gender and the neuter, and references to any person includes any corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assigns;

### references to writing or written includes the representation of words in a visible and durable form, including e-mail;

### references to a statute or statutory includes any statute, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it; and

### any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.

## The headings in this Contract are for ease of reference only and shall not affect its interpretation.

## References to clauses and schedules are, unless otherwise provided, references to the clauses of and schedules to this Contract.

## The following order of precedence shall prevail if there is any inconsistency or conflict between the provisions of the Contract:

### the clauses and Schedule 1 (Definitions);

### Schedule 2 (Terms of Reference); and

### Schedule 3 (Solution Architecture Definition).

*[****Drafting Note:*** *The Solution Architecture Definition would normally be created during the Foundations Phase. The template anticipates that the Supplier will need to submit a proposed solution where the Customer is contracting for the supply of the Services. However, it is still anticipated that the Terms of Reference and the Solution Architecture Definition, which will be attached to the Contract at the award stage, will continue to evolve during the Project in line with Agile principles (see clause 2.2 below).]*

# **PROJECT APPROACH**

*[****Drafting Note:*** *Like all Agile methodologies, DSDM is a collaborative approach that requires a greater degree of Customer involvement in the project. This provides the Customer with more visibility of solution development, and the ability to provide immediate feedback. The outcome of the Foundations Phase will provide both parties with greater clarity of project outcome and will remove risk, though it may also demonstrate that the desired outcome, for example in terms of the development of a specific product, may not be achievable.*

*The right of the Customer to cancel the project at the end of the Foundations Phase should not be an issue for the Supplier, who will be paid for the value of the work completed up to the end of this stage.*

*The end of the Foundations Phase also provides an opportunity for the parties to review the Project Approach Questionnaire and confirm that any earlier assumptions are accurate. If the assumptions are not accurate, for example because there is insufficient collaboration, the parties may need to make appropriate changes to the working practices or approach, which could include contractual changes. Ultimately, if the parties cannot reach agreement on the Project Approach Questionnaire, this will indicate the need to adopt a different approach for the Project.]*

## The Parties acknowledge and agree:

### to comply with the terms of this Contract;

### to collaborate in good faith and to comply with the principles of the DSDM Project Approach in the conduct of this Project; and

### that any question of interpretation in respect of the tools, products or principles used in this Contract will be resolved by the parties in the first instance by reference to the DSDM Project Approach.

## The Parties further acknowledge and agree that:

### the Terms of Reference set out the Customer’s requirements for the Project at the Commencement Date;

### the Solution Architecture Definition sets out the Supplier's proposal for the Solution at the Commencement Date; and

### consequently, the Terms of Reference and the Solution Architecture Definition may be developed by the Parties during the [Feasibility Phase and the] Foundations Phase.

## The Supplier therefore acknowledges and agrees that the Customer may terminate this Contract at the end of the [Feasibility Phase and the] Foundations Phase without further liability.

## Subject to a Change, the Parties agree that the duration of the Project, the Charges and the quality of the Solution shall be fixed on completion of the Foundations Phase.

# **THE SERVICES**

*[****Drafting Note:*** *The DSDM Agile Project Framework differs from other Agile methodologies by providing a broader approach; it deals with projects rather than just the development of a product. The full nature of the "Services" therefore needs to be set out in the Terms of Reference and addressed by the Solution Architecture Definition. However, it is not desirable to combine these in a single document since the Customer will be relying on the expertise of the Supplier to deliver the best solution to satisfy its requirements.]*

## The Supplier shall provide the Services from the Commencement Date and shall ensure that it develops the Solution:

### to satisfy the Customer's requirements as set out in the Terms of Reference;

### in accordance with the Solution Architecture Definition,

## and that the Solution will deliver the Minimum Useable SubseT.

## The Supplier shall perform its obligations under this Contract in accordance with:

### Good Industry Practice;

### the Development Approach Definition;

### the Delivery Plan; and

### the Management Approach Definition.

# [**FEASIBILITY PHASE**

## *[****Drafting Note****: The Customer may have conducted the Feasibility Phase prior to contracting with the Supplier for the Services. In which case, the Customer need not repeat this phase and delete this section.]*

## The Feasibility Phase shall commence [within [10] Working Days of][with effect from] the Commencement Date.

## The Customer shall conduct one or more workshop sessions facilitated and supported by the Supplier (**"Feasibility Workshops"**) to determine the technical and financial feasibility of the Project.

## The Customer shall ensure that the Feasibility Workshops are attended by the Business Sponsor, the Business Visionary and the Customer's Project Manager as reasonably required by the Supplier.

## On completion of the Feasibility Workshops, the Customer shall, with the support of the Supplier, prepare a written report (**“Feasibility Assessment”**) that:

### confirms the Project feasibility;

### provides an outline of the business case; and

### provides drafts of any other products the Parties have agreed to develop during the Feasibility Phase.

## As an outcome of the Feasibility Assessment the Customer may:

### make changes to the Terms of Reference;

### make changes to the Terms of Reference and require the Supplier to revise the Solution Architecture Definition accordingly;

### subject to agreement of appropriate Charges, repeat the Feasibility Phase; or

### end the Contract.]

# **FOUNDATION PHASE**

## *[****Drafting Note****: The purpose of this phase is to establish a fundamental understanding of the business rationale, the scope of work and to determine the project life-cycle and is therefore an important stage in the project. The outcome of the Foundations Phase will provide both parties with greater clarity of the project outcome and will remove risk. This should allow for greater clarity of the Charges, which may be refined at this stage. However, it may equally demonstrate that the desired project outcome may not be achievable and, therefore, the Customer should have the right to revise the Terms of Reference or to cancel the project following conclusion of this phase. This should not be an issue for the Supplier, who will be paid for the value of the work completed up to the end of this stage.]*

## [Following completion of the Feasibility Phase] [Within [10] Working Days of][With effect from] the Commencement Date], the Customer shall conduct one or more workshop sessions facilitated and supported by the Supplier in order to confirm the business case, the proposed Solution and delivery management for the Project.

## The Parties shall collaborate through the Foundations Phase to:

### determine the Project life-cycle;

### develop the Delivery Plan;

### confirm the Charges;

### agree the Prioritised Requirements List;

### provide any information required to complete the business case;

### refine the Development Approach Definition, including the approach to Acceptance Testing and the test strategy, if required;

### agree the Acceptance Criteria for the Deployed Solution (or any increment of it);

### agree the level of authority for decisions that can be taken autonomously by the Solution Development Team during a Timebox; [and]

### agree the scope of the decision-making powers to be delegated to the Business Ambassador[s][; and

### *other*].

## The Supplier shall, at the written request of the Customer, develop a prototype of its Solution during the Foundations Phase. If the cost of developing the prototype was not included in the Charges for the Foundations Phase, then the Supplier shall provide the Customer with its estimate before commencing any work to develop the prototype.

## On completion of the workshops conducted pursuant to clause 5.1, the Customer shall, with the support of the Supplier, prepare a Foundations Summary.

## As an outcome of the Foundations Phase the Customer may:

### make changes to the Terms of Reference;

### make changes to the Terms of Reference and require the Supplier to revise the Solution Architecture Definition accordingly;

### subject to agreement of appropriate Charges, repeat the Foundations Phase; or

### end the Contract.

# **PROJECT PLANNING**

## *[****Drafting Note****: The template anticipates that an initial draft of the Delivery Plan will be attached at Schedule 6, which will set out a high level schedule of Project Increments and may include detail of the first increment. It should also include any specific project dates that can be anticipated or that are relevant to the success of the project. However, the Delivery Plan should also remain sufficiently flexible to allow for change in the project.]*

## The Parties acknowledge and agree that the Delivery Plan will evolve during the term of the Project and that the evolution of the Delivery Plan is not a contractual variation for the purposes of clause 23.1 (Variations).

## A draft of the Delivery Plan is attached to the Contract at Schedule 6 (Delivery Plan). The Parties shall develop the draft Delivery Plan during the Foundations Phase to create a baseline plan against which all future iterations of the Delivery Plan can be compared.

## The Delivery Plan shall:

### establish an outline timetable for the delivery of the Project, including any hard deadlines that need to be achieved, and provide committed dates for the delivery of Project Increments;

### prioritise the sequence in which Solution Increments are to be developed;

### include an outline of what each Project Increment is expected to achieve;

### identify the date for completion of the Project;

### identify the Timeboxes for the initial Project Increment; [and]

### identify the resources required to deliver the Evolutionary Development Phase and Deployment Phase[; and

### *other*].

## In developing the Delivery Plan, the Parties shall consider:

### the needs of any Stakeholders for the early delivery of any features or functions of the Minimum Useable SubseT; and

### any other factor that affects the development of the PRL, including any sequencing issues, architectural issues or dependencies of the Parties.

## The Parties may review and revise the Delivery Plan at any time during the Project and at the end of each Project Iteration. This may include a review of the Foundations Summary and the PRL, provided that any Change does not increase the ratio of effort necessary to deliver the requirements contained in the Minimum Useable SubseT in proportion to any other requirement.

# **EVOLUTIONARY DEVELOPMENT PHASE**

## *[****Drafting Note****: The typical size of a Solution Development Team varies between 3-7 members but it is unlikely to have more than 10 members. The team should be self-organising and will appoint a team leader depending on the nature of the task – the DSDM Coach can be used to break any deadlock or failure to agree the team leader. Large projects may require multiple development teams with supporting roles shared across development teams.]*

## The Solution Development Team shall:

### agree and appoint a team leader in respect of each Project Iteration or Timebox as appropriate, and in default of agreement as appointed by the DSDM Coach;

### develop the Solution in accordance with the terms of this Contract, including the PRL, the Delivery Plan, the DSDM Project Approach, the Development Approach Definition and the Solution Architecture Definition;

### agree the Acceptance Criteria for each Timebox with the Business Ambassador during the investigation phase of the relevant Timebox and prior to the commencement of any refinement activities;

### organise itself to deliver each Solution Increment within the scope of the relevant Timebox, including by;

### agreeing a Timebox plan at the start of each Timebox;

### prioritising the requirements to be addressed within the Timebox;

### varying the scope of the requirements in accordance with the tolerances set for the Solution Development Team pursuant to clause 5.2.8; and

### promptly escalating all Exceptions to the Project Managers;

### and

### without prejudice to the DSDM Project Approach, deliver the relevant functional and non-functional Deliverables at the end of each Project Increment.

## The Solution Development Team shall notify the Project Managers of the identity of the team leader on each occasion that a new team leader is appointed.

## The Customer shall ensure that the Business Ambassador is released from his/her normal duties at all material times to participate in Solution Development Team meetings and development activities as reasonably [required by the Supplier][agreed by the Parties and set out in the Foundations Summary].

## The Customer shall appoint a DSDM Coach with the support of the Supplier under terms that require him/her to:

### support effective collaboration and communication between the Project Managers and the Solution Development Team;

### ensure that the Solution Development Team is complying with the DSDM Project Approach;

### act as a facilitator and to provide coaching to the Parties as necessary; and

### participate in all relevant Solution Development Team meetings as required.

# **DEPLOYMENT PHASE**

## *[****Drafting Note****: Testing of the developing solution is a continuing process that will be conducted within iterations and as Deliverables are completed. The process of early and continuous testing should significantly reduce project risks and the risk that the Solution does not meet the requirements of the Customer. Customer involvement in testing is integral to the Agile approach and the Customer needs to be involved in determining the approach to be taken when a Deliverable fails to achieve its related Acceptance Criteria. Note that the Development Approach Definition is a standard DSDM product that needs to be baselined by the parties during the Foundations Phase and sets out the practices, tools and standards to be applied to the evolutionary development of the Solution.]*

## Each Solution Increment shall be subjected to a review by the Parties before it is deployed into operational use (**"Deployment Review"**).

## Prior to the conduct of a Deployment Review, the Supplier shall assemble the Solution Increment, any related Documentation and any other materials that will form the Deployed Solution and notify the Customer that this has been done.

## The Parties shall conduct Acceptance Testing in accordance with the Development Approach Definition and the Delivery Plan.

## If Acceptance Testing identifies that a Solution Increment:

### has failed to meet its Acceptance Criteria for any reason; or

### does not satisfy the Customer's requirements as set out in the Terms of Reference,

### the Customer may:

### reject the Solution Increment and the Supplier shall re-supply the Services to rectify any non-conformance;

### accept the Solution Increment notwithstanding any non-conformance; or

### partially accept the Solution Increment and require the Supplier to correct any non-conformances as part of a subsequent Solution Increment or new Solution Increment as appropriate.

## If the Solution Increment is rejected or partially rejected pursuant to clause 8.4.3 or clause 8.4.5 as applicable, then:

### in respect of a total rejection, the Supplier shall not be entitled to the Charges in respect of that Solution Increment; and

### in respect of a partial rejection, the Charges shall be reduced to the extent that the Solution Increment has been rejected by the Customer.

## Any dispute arising out of the conduct of Acceptance Testing shall be referred to clause 21 (Dispute Resolution).

# **CHANGE MANAGEMENT APPROACH**

## *[****Drafting Note****: Agile and DSDM anticipate that the parties' understanding of the problem and the solution will evolve during the course of the Project. Change to depth and detail at the Solution Development Team level does not represent a formal change of scope, but changes to the high-level requirements requires formal approval, which gives rise to the more disciplined approach set out in this clause.*

## *The template provides two alternative approaches: the first is a simpler approach that is more reflective of the Agile principles (clause 9.1 - clause 9.3). The alternative (clause 9.4 - clause 9.8) provides a more formal process, which Customers in the early adoption of Agile may prefer. Clause 9.9 is required for either approach.*

## *Note that change in certain sectors, such as the public sector, can lead to other legal issues - specialist legal advice should be obtained in the management of such changes.*

## *Also note that there is currently no legal doctrine of "good faith", although recent cases have considered whether such a duty should be implied. In the meantime, the law may provide remedies where a party has demonstrated "bad faith".]*

## The Customer may request a Change to the PRL by agreement with the Supplier.

## The parties shall agree any Change to the PRL in good faith and as soon as reasonably practicable.

## Any agreed Change to the PRL will be documented by the parties, including in relation to:

### any impact on the provision of the Solution;

### any amendment required to the Contract (including to the Terms of Reference or the Solution Architecture Definition) as a result of the proposed Change;

### the consequences of the Change for the Delivery Plan; and

### any proposed revision of the Charges made necessary by the Change.

## [**OR**]

## [*The Customer may request a Change to the PRL by sending a written request to the Supplier setting out the proposed changes to its requirements (****"Change Request"****).*

## *As soon as practicable, [and in any event within [10] Working Days of the receipt of a Change Request,] the Supplier shall deliver a written response or proposal in relation to the Change Request (****"Change Response"****) setting out the Supplier's analysis of the proposed Change in relation to:*

### *any impact on the provision of the Solution;*

### *any amendment required to the Contract (including to the Terms of Reference or the Solution Architecture Definition) as a result of the proposed Change;*

### *the consequences of the Change for the Delivery Plan; and*

### *any proposed revision of the Charges made necessary by the Change.*

## *As soon as practicable[, and in any event within [10] Working Days,] after receipt of the Change Response, the Customer shall:*

### *confirm acceptance of the Change Response; or*

### *withdraw or revise the Change Request.*

## *If the Customer accepts the Change Response, then the Change will be implemented by the Parties, including by the variation of any documents or DSDM products which are necessary to give effect to the Change.*

## *The Customer's failure to accept the Change Response or to withdraw or revise the Change Request in accordance with clause 9.6 shall be deemed to be a rejection of the Change Response*.]

## This Contract shall not be varied until a Change to the PRL has been agreed in writing and signed by both Parties.

# **ENGAGEMENT MANAGERS**

## *[****Drafting Note****: The role of Engagement Manager is a contract governance role that is discrete to the role of a "Project Manager" for the purposes of Solution development, although the roles could be merged where appropriate. The Engagement Managers should meet at regular intervals to discuss the performance by each party of the Project and their respective project teams. The Engagement Managers should also consider the performance of the contract generally and with particular reference to the Project Approach Questionnaire contained in the Handbook]*

## Each Party shall appoint an Engagement Manager for the duration of this Contract who shall have the authority to act on behalf of their respective Party on the matters set out in, or in connection with, this Contract.

## The initial Engagement Managers are those persons named as such in Schedule 8 (Roles & Responsibilities). Any change to the Engagement Managers shall be notified to the other Party in writing as soon as practicable.

## Without prejudice to the Management Approach Definition, the Engagement Managers shall meet each [month], and more frequently if required by either Party, to ensure the smooth operation of the Contract, and in particular to discuss:

### performance of the Services in accordance with the DSDM Project Approach, the Development Approach Definition and the Delivery Plan; and

### the performance by each Party of its obligations under the Contract.

# **PERSONNEL**

## The Supplier shall:

### ensure that all Supplier Personnel are appropriately qualified, trained and experienced to provide the Services with all reasonable skill, care and diligence;

### use all reasonable endeavours to minimise the number of changes to its Personnel allocated to the Project;

### replace any of its Personnel as soon as practicable if such Personnel become unavailable for any reason; and

### ensure that its Personnel comply with the reasonable requirements of the Customer concerning the conduct of such Personnel while on the Customer's premises.

## Where the Customer reasonably objects to the participation, or continued participation, in the Project of any member of the Supplier's Personnel, then:

### the Customer may refuse admission to its premises of that person; and

### the Supplier shall seek to replace that person with an alternative who has the appropriate skills, experience and qualifications.

## Any dispute regarding the suitability of a Solution Development Team member to participate in the Project shall be resolved in accordance with clause 21 (Dispute Resolution).

## The Supplier shall:

### notify the Customer promptly of the absence of any Key Personnel (other than for short-term sickness or holidays of 2 weeks or less);

### ensure that the role of any Key Personnel is not left vacant for any longer than 10 Working Days;

### except in the cases of death, unexpected ill-health or the gross misconduct of the member of Key Personnel, give at least [30] days' notice of its intention to remove or replace a member of its Key Personnel; and

### include arrangements for the adequate transfer of knowledge relating to the Project without cost to the Customer when planning any changes in Key Personnel.

# **CHARGES**

## *[****Drafting Note****: The DSDM Agile Project Framework and this template anticipate that project costs will be fixed and that the features delivered will be variable, provided that the Supplier delivers all the "Must Have" features. In practice costs will be more complex and agreement of the Charges will be unique for each project. However, the parties should be able to agree fixed costs for the feasibility and foundation phases, and the outcome of these phases should provide greater certainty of costs for the development and deployment phases. This clause sets out how the Charges, to be set out in Schedule 7, will be invoiced and paid.]*

## Subject to clause 8.5 (Deployment Phase), the Supplier may submit invoices for the Services [following completion of each Project Increment][in accordance with the payment milestones set out in the Delivery Plan], or as otherwise agreed by the Parties, and the Customer shall pay the Charges within thirty (30) days of the date of invoice (**"Due Date"**).

## The Charges and other sums payable under this Contract are exclusive of VAT and shall be paid free of all deductions and withholdings whatsoever.

## The Parties shall resolve any dispute in relation to an invoice in accordance with clause 21 (Dispute Resolution).

## If the Customer fails to pay any amount payable by it under this Contract by the Due Date, the Supplier may charge the Customer interest on the overdue amount, from the Due Date up to the date of actual payment, at the rate of [x%] per annum above the base rate for the time being of [nominated bank].

# **CONFIDENTIALITY**

## Except as permitted by this Contract, neither Party (**"Receiving Party"**) may use any of the other Party's (**"Disclosing Party"**) Confidential Information.

## The Receiving Party may disclose the Disclosing Party's Confidential Information to any other person:

### when required to do so by law or any regulatory authority, provided that where practicable and lawful, the Receiving Party:

### promptly notifies the Disclosing Party of such a requirement; and

### co-operates with the Disclosing Party regarding the manner, scope or timing of such disclosure or any action that the Disclosing Party may take to challenge the validity of that requirement;

### and

### to those of its Personnel whose duties reasonably require such disclosure, on condition that the Receiving Party ensures that each person to whom a disclosure is made:

### is informed of the obligations of confidentiality under this Contract; and

### complies with those obligations as if they were bound by them.

## The obligations of confidentiality shall not apply to any Confidential Information which:

### is or becomes publicly known (other than by the default of the Receiving Party);

### was in the Receiving Party's lawful possession prior to the disclosure;

### is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or

### is independently and verifiably developed by or on behalf of the Receiving Party.

# **DATA PROTECTION**

## *[****Drafting Note****: This clause anticipates that the Supplier may need to process personal data provided by the Customer during the project. It may need to be amended to suit the specific nature of the project, including the possibility of data being processed outside the EEA. Specialist legal advice may be required to advise on the suitability of these provisions and any subsequent amendments.]*

## Each Party warrants to the other that it will process personal data in compliance with its obligations under the Data Protection Act 1998.

## The Parties acknowledge that, for the purposes of the Data Protection Act 1998, the Customer is the "data controller" and the Supplier is the "data processor" with regards to any "personal data" provided to it by or on behalf of the Customer.

## The Supplier shall process any such personal data under this Contract only in accordance with the Customer's instructions, which may be specific or in general.

# **WARRANTIES**

## Each Party warrants and represents that:

### it has full capacity to execute and perform its obligations under this Contract; and

### the Contract is executed by a duly authorised representative of that Party.

## The Supplier warrants, represents and undertakes that, for the duration of the Contract:

### it has and will continue to have all necessary rights in and to the Intellectual Property Rights necessary to perform its obligations under this Contract;

### it shall devote such time as shall be necessary for the full and proper provision of the Services to the reasonable satisfaction of the Customer; and

### it shall, and shall procure that its Personnel, discharge the obligations of the Supplier under this Contract with all due skill, care and diligence.

## Except as expressly stated in this Contract, all other warranties and conditions whether express or implied by statute, common law or otherwise are hereby excluded to the fullest extent permitted by law.

# **INTELLECTUAL PROPERTY**

## *[****Drafting Note****: It is likely that some new intellectual property will be generated during the course of the project and, due to the collaborative nature of Agile, it may not be possible to determine who created such materials. UK law allows for the parties to own intellectual property jointly in these circumstances, but this creates problems for the use and exploitation of that material that are best avoided. Consequently, it is generally considered better for one party to own any material generated and to give the other party wide licence rights over it.]*

## Except as otherwise expressly provided in this Contract, neither Party shall have any right, title or interest in or to the Intellectual Property Rights of the other.

## The Parties acknowledge and agree that any Intellectual Property Rights created jointly in the course of developing the Solution shall be owned by the Supplier unless expressly agreed in writing (and signed by both Parties) to be owned by the Customer.

## Where either Party acquires, by operation of law, title to any Intellectual Property Right that is inconsistent with the allocation of title set out in clause 16.1 or clause 16.2, it shall assign in writing any acquired Intellectual Property Rights to the other Party on request.

## The Supplier hereby grants (and shall procure the grant of) a royalty-free, irrevocable, non-transferable, non-exclusive licence to use the Supplier's Intellectual Property Rights solely for the purpose of and to the extent necessary for the receipt and use of the Services by the Customer during the Term and enjoyment of the Solution following expiry or termination of this Contract.

## The Customer hereby grants (and shall procure the grant) to the Supplier of a royalty-free, non-exclusive, non-transferable licence during the Term to use the Customer's Intellectual Property Rights solely to the extent necessary for performing the Services in accordance with this Contract.

## The Supplier shall not, without the Customer's prior written consent, use the Customer's Intellectual Property Rights for any other purpose or for the benefit of any person other than the Customer.

## Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.

# **IPR INDEMNITY**

## The Supplier shall at all times, during and after the Term, on written demand indemnify the Customer, and keep the Customer indemnified, against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or arising from an IPR Claim.

## The Customer agrees that:

### it will notify the Supplier in writing of any IPR Claim;

### it will allow the Supplier to conduct all negotiations and proceedings and will provide the Supplier with all such reasonable assistance required by the Supplier, each at the Supplier's cost, with regard to the IPR Claim; and

### it will not, without first consulting with the Supplier, make any admission relating to the IPR Claim.

## The Supplier shall consider and defend the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute.

## If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:

### procure for the Customer the right to continue using the relevant item which is subject to the IPR Claim;

### replace or modify the relevant item with non-infringing substitutes provided that:

### the performance and functionality of the replaced or modified item is at least equivalent to the performance and functionality of the original item;

### there is no additional cost to the Customer; and

### the terms and conditions of this Contract shall apply to the replaced or modified item,

### or

### terminate this Contract and reimburse the Customer for the Charges paid prior to the date of termination.

## The provisions of clauses 17.1 - 17.4 (inclusive) shall not apply in respect of any IPR Claim caused by:

### any use by or on behalf of the Customer of the relevant item in combination with any item not supplied pursuant to this Contract; or

### the use by the Customer of the relevant item in a manner not reasonably anticipated by this Contract.

# **LIMITATION OF LIABILITY**

## Neither Party limits its liability for:

### death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors;

### fraud, fraudulent misrepresentation by it or its Personnel; or

### breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

## Subject to clause 18.1, the aggregate liability of either Party to the other for all claims, losses or damages, whether arising from tort (including negligence), breach of contract or otherwise in connection with any breach of this Contract shall in no event exceed [125%] of the aggregate value of the Charges.

## Subject to clause 18.1, neither Party shall be liable to the other Party for:

### any indirect, special or consequential loss or damage; or

### any loss of profits, business opportunities, revenue or damage to goodwill.

# **INSURANCE**

## The Supplier shall take out and maintain adequate insurance with a reputable insurer to cover its liabilities arising under or in connection with this Contract.

## The Supplier shall on the reasonable request of the Customer, but not more than once in any 12 month period, provide reasonable evidence that the insurance anticipated by clause 19.1 is in force.

# **TERM AND TERMINATION**

## This Contract shall start on the Commencement Date and, subject to any Change or earlier termination, shall expire on [*date*][the date identified in the Delivery Plan for completion of the Project] (**"Term"**).

## **Termination for Cause**

## Either Party may terminate the Contract (without prejudice to its other rights and remedies) by giving written notice to the other Party (**"Defaulting Party"**) if:

### the Defaulting Party is in breach of any term of this Contract which, unless irremediable, is not remedied to the reasonable satisfaction of the injured Party within [15] Working Days of notice to remedy the breach;

### the Defaulting Party fails to pay any amount due by the Due Date and remains in default for [xx] Working Days after being notified in writing to make such payment;

### or

## the Defaulting Party is subject to an Insolvency Event.

## **Non-Fault Termination**

## *[****Drafting Note****: Agile anticipates that a Customer should be entitled to end a project when its requirements have been satisfied without financial penalty. This should be acceptable to the Supplier provided it is able to recover its unrecovered costs or breakage costs as set out in the following clauses.]*

## Subject to the payment of any Charges due for Services received up until the date of termination, the Customer may terminate this Contract without further liability:

### [at the end of the Feasibility Phase;]

### at the end of the Foundations Phase; or

### at any other time, provided that termination does not occur during a Project Increment.

## **Consequences of Termination**

## Termination of this Contract for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the Parties.

## If this Contract is terminated by the Customer pursuant to clause 20.4.3, then the Customer shall pay the Termination Payment to the Supplier within [20] Working Days of the end of the Contract.

## Following termination, each Party shall destroy or, at the request of the other Party, return all information and materials belonging to the other Party then in its custody or control, including all Confidential Information of the Disclosing Party.

## The provisions of clauses 12 (Charges), 13 (Confidentiality), 16.4 (Intellectual Property), 17 (IPR Indemnity), 18 (Limits of Liability), 23.5 (Waiver), 23.6 (Exclusion of Terms), 23.7 (Severance), 23.9 (Publicity), 23.13 (Law and Jurisdiction) and Schedule 7 (Charges), together with any clauses whose survival is necessary for the interpretation or enforcement of this Contract, shall survive the termination or expiry of this Contract.

# **DISPUTE RESOLUTION**

## Any disputes or disagreements in relation to the Contract will be resolved as follows:

### in the first instance, by discussion between the Engagement Managers;

### if no agreement is reached within [10] Working Days of the matter being referred to the Engagement Managers, the dispute shall be escalated to the Business Sponsor for the Customer and the Suppliers chief financial officer;

### if no agreement is reached within [10] Working Days of the matter being referred to the representatives identified in clause 21.1.2, the dispute shall be escalated to the chief executive officer of each Party; and

### if no agreement is reached within [10] Working Days of the matter being referred to the parties’ chief executive officers, the dispute shall be referred to mediation in accordance with clause 21.2.

## The Parties will attempt to settle the dispute by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (**"ADR Notice"**) to the other Party requesting mediation with a copy of the request being sent to CEDR Solve. The mediation will start no later than [20] Working Days after the date of the ADR notice.

## If and to the extent that the Parties do not resolve any dispute in the course of any mediation, either Party may commence or continue court proceedings in respect of the unresolved dispute.

## Nothing in this clause 21 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

# **NOTICES**

## Any notice or other communication required to be given under the Contract shall be in writing and shall be delivered personally, sent by pre-paid first class post, recorded delivery or commercial courier, or by email to the recipient at the following address, or as otherwise specified by the relevant Party by notice in writing:

|  |  |  |
| --- | --- | --- |
| **Party** | **For the attention of:** | **Contact Details** |
| Customer | [ *Name & Position* ] | [ ] |
| Supplier | [ *Name & Position* ] | [ ] |

## Any notice or other communication shall be deemed to have been duly received:

### if delivered personally, on the date of delivery if delivered by 17:00 on a Working Day and otherwise at 09:00 on the next Working Day;

### if sent by pre-paid first class post or recorded delivery, at 09.00 on the second Working Day after posting;

### if delivered by commercial courier, on the date of delivery if delivered by 17:00 on a Working Day and otherwise at 09:00 on the next Working Day; or

### if delivered by email, on the date of delivery if sent by 17:00 on a Working Day and otherwise at 09:00 on the next Working Day provided no error message is received.

## The provisions of this clause 22 shall not apply to the service of any proceedings or other documents in any legal action.

# **GENERAL PROVISIONS**

## **Variation:** A variation of this Contract shall not be effective unless it is in writing and signed on behalf of the Parties by their authorised representative.

## *[****Drafting Note****: Note the difference between a change to the high-level requirements achieved by the Change Management Process in clause 9 and a variation to the terms of the Contract anticipated by this clause.]*

## **Assignment and Sub-contracting:** Neither Party may assign, transfer or deal in any other manner with this Contract or any of its rights and obligations under or arising out of the Contract without the prior written consent of the other Party (such consent not to be unreasonably withheld or delayed).

## **Relationship of the Parties:** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, make one Party the agent of the other, or authorise a Party to make or enter into any commitments for or on behalf of the other.

## **Rights of Third Parties:** A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **Waiver:** No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

## **Exclusion of Terms:** This Contract constitutes the whole agreement and understanding between the Parties and supersedes any previous arrangement, understanding or agreement between them relating to its subject matter, provided that nothing in this Contract shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

## **Severance:** If any provision of this Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable for any reason, that provision shall be deemed not to form part of the Contract to the extent necessary to give effect to the remainder of the Contract. If any such part is fundamental to the purpose of this Contract then the Parties shall seek to remedy that invalidity as soon as practicable through commercial discussions conducted in good faith.

## **Force Majeure:** Neither Party shall be in breach of this Contract nor liable for any delay in performing, or failure to perform, any of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the affected Party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for [60] Working Days, the other Party may terminate this Contract by giving not less than [60] Working Days' written notice to the affected Party.

## **Publicity:** Neither Party shall make any public announcement concerning this Contract or its contents without the prior written consent of the other Party except as required by law or any governmental or regulatory authority, or by any court or other authority of competent jurisdiction.

## **Non-Solicitation:** Neither Party shall directly or indirectly solicit or entice away from the employment of the other Party any person employed or engaged by the other Party during the Term or for a period of 6 months after the expiry or termination of this Contract other than as the result of a national advertising campaign open to anyone and not specifically targeted at the staff of the other Party.

## **Counterparts:** This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement, provided that this Contract shall only take effect on the execution of the last counterpart to be executed.

## **Further Assurance:** Each Party undertakes at the request of the other, and at the cost of the requesting Party, to do all acts and to execute all documents which may be necessary to give full effect to the Contract.

## **Law and Jurisdiction:** The Contract shall be governed by and construed in accordance with the laws of England and Wales and, without prejudice to clause 21, the Parties agree to submit any dispute or claim that arises out of or in connection with this Contract or its subject matter to the exclusive jurisdiction of the courts of England and Wales.

## **IN WITNESS** of which the Parties have duly executed this Contract.

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** for and on behalf of [*the CUSTOMER*] |  | Signature: |  |
| Name: |  |
| Position: |  |
| Date: |  |
|  |  |  |  |
| **SIGNED** for and on behalf of [*the SUPPLIER*] |  | Signature: |  |
| Name: |  |
| Position: |  |
| Date: |  |

1. - Definitions

## Unless otherwise provided or the context otherwise requires the following expressions shall have the meanings set out below.

|  |  |
| --- | --- |
| **"Acceptance Criteria"** | in respect of a Project Increment means criteria that determines whether the Deliverables for that Project Increment are of satisfactory quality; |
| **"Acceptance Testing"** | the testing of Deliverables for conformance with the relevant Acceptance Criteria; |
| **"ADR Notice"** | has the meaning given in clause 21.2; |
| **“Agile Business Consortium”** | a not-for-profit organisation registered under company number 03030597 and whose registered address is at Henwood House, Henwood, Ashford, Kent, TN24 8DH, established to promote the use of agile business methodologies, and particularly the DSDM Project Approach; |
| **"Breakage Costs"** | the Supplier's redundancy costs and costs incurred by the Supplier directly as a result of the termination of this Contract which:   1. would not have been incurred had this Contract continued until its natural expiry; 2. relate directly to the termination of the Services; 3. are unavoidable, proven, reasonable, and not otherwise capable of recovery; 4. are incurred under arrangements or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms; and 5. do not relate to contracts or subcontracts with affiliates of the Supplier; |
| **"Business Ambassador"** | the key representative of the business needs in the Solution Development Team with authority to take decisions on behalf of the Customer; |
| **"Business Sponsor"** | the senior representative of the Customer who is responsible to the business for delivery of the Project; |
| **"Business Visionary"** | the senior representative of the Customer who is responsible for interpreting the business needs and communicating these to the Supplier; |
| **"Charges"** | the charges for provision of the Services and development of the Solution as set out in Schedule 7 (Charges); |
| **"Commencement Date"** | means [the date of the Contract][*insert date*]; |
| **"Confidential Information"** | means any information of any technical or commercial nature (including all specifications, drawings and designs) in any format and any media however disclosed, whether nor not identified as confidential at the time of disclosure or which ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure; |
| **"Contract"** | means this contract between the Customer and the Supplier containing the clauses, Schedules and any attachments to the Contract; |
| **"Change"** | any change to the Prioritised Requirements List made in accordance with the Change Management Process; |
| **"Change Management Process"** | the process for changing the Prioritised Requirements List set out in clause 9; |
| **"Deliverable"** | any element of the Solution to be delivered by the Supplier, including Software, Documentation and any other materials that form part of the Deployed Solution; |
| **"Delivery Plan"** | the joint plan agreed by the Parties for the development and delivery of the Solution developed during the Foundations Phase and updated periodically during the Project[, the first draft of which is attached at Schedule 6 (Delivery Plan)]; |
| **"Deployed Solution"** | one or more Solution Increments that have been deployed into operational use; |
| **"Deployment Phase"** | the activities needed to transition Solution Increments into the Deployed Solution; |
| **"Development Approach Definition"** | a standard DSDM product which is baselined by the Parties during the Foundations Phase that establishes the tools, techniques, customs, practices and standards that will be applied to the evolutionary development of the Solution; |
| **"Documentation"** | relevant design and development information, technical specifications, configuration details, test scripts, user manuals, operating manuals, process definitions and procedures, and all such other documentation that would reasonably be required by a reasonably competent and experienced person to develop, configure, build, deploy, run, maintain, upgrade and test the Solution or Solution Increments; |
| **"DSDM"** | means Dynamic System Development Method; |
| **"DSDM Coach"** | the person(s) appointed pursuant to clause 7.4 to provide independent support to the Solution Development Teams in the application of the DSDM Project Approach; |
| **"DSDM Project Approach"** | the approach taken to the management of software development projects set out in the DSDM Agile Project Framework periodically published by the Agile Business Consortium; |
| **"Due Date"** | has the meaning given in clause 12.1; |
| **"Evolutionary Development Phase"** | the period during which the Solution Development Team develops a Solution to meet the business need in accordance with the principles of the DSDM Project Approach; |
| **"Exception"** | any issue requiring determination that exceeds the level of authority set for the Solution Development Team pursuant to clause 5.2.8; |
| **"Feasibility Phase"** | the preliminary phase of the Project intended to establish whether a solution to the business need is technically feasible and affordable; |
| **"Foundations Summary"** | a written report produced during the Foundations Phase that provides a baselined set of management tools for the development of the Solution, including PRL, Delivery Plan and the level of authority for decisions to be taken by the Solution Development Team; |
| **"Foundations Phase"** | the preliminary phase of the Project that is intended to establish a fundamental understanding of the business requirements, Solution and process for achieving the Solution; |
| **"Good Industry Practice"** | means the exercise of the degree of skill, care, diligence prudence and foresight which would reasonably be expected from a skilled and experienced person engaged in the same type of undertaking under the same or similar circumstances and using standards, practices, methods and procedures in the performance of obligations and responsibilities under this Contract; |
| **"Insolvency Event"** | means, in relation to a Party, that Party suffering or being subject to any of the following events:   1. the Party, being a company, is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (without any requirement to prove a matter stated therein to a Court) or any meeting is convened for the purpose of considering a resolution for, or any application or petition is presented or any other step is taken for the purposes of making an administration order against it, or for the appointment of an administrator over it (including, without limitation, the filing of a Notice of Intention to Appoint an Administrator), or for the winding-up or dissolution of it (otherwise than in the course of a solvent reorganisation or restructuring); 2. the Party, being an individual, partnership or firm, has entered into any composition or arrangement with its creditors, has a bankruptcy order made against it, has a creditors' petition for its bankruptcy presented to the Court, applies for a debt relief order under section 251A of the Insolvency Act 1986, has been made subject to an application for an interim order under section 253 of the Insolvency Act 1986, has an interim receiver of its property appointed under section 286 of the Insolvency Act 1986, or dies; 3. the Party has a receiver, manager or trustee appointed over, or any encumbrancer takes possession of, the whole or any part of its business or assets; 4. the Party has taken any steps are taken with a view to proposing or entering into any composition, compromise, voluntary arrangement, scheme of arrangement or any analogous procedure involving the Party and its creditors or any class of them; 5. the Party suspends or ceases to carry on business or any material part of its business or materially alters the nature of its business as conducted at the date of this Contract; or 6. an event occurs which is analogous to any of the foregoing events anywhere in the world; |
| **"Intellectual Property Rights"** or **"IPR"** | means patents, rights to inventions, copyright and related rights, moral rights, trade-marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; |
| **"IPR Claim"** | any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply of the Services or the use of the Solution; |
| **"Key Personnel"** | those persons fulfilling key roles in the Project as identified in Schedule 8 (Roles & Responsibilities); |
| **"Management Approach Definition"** | the approach to managing the Project as set out in Schedule 5 (Management Approach Definition), including organisational structure, stakeholder engagement and communications, and reporting; |
| **"Minimum Useable SubseT"** | the minimum functional and non-functional requirements which must be delivered for the Solution to meet the Customer's needs for the Project; |
| **"Personnel"** | all directors, officers, employees, agents, consultants and subcontractors of a Party; |
| **"Prioritised Requirements List"** or **"PRL"** | a description of the requirements that the Project needs to address in order to deliver the Solution with an indication of the priority ascribed to each requirement by the Parties; |
| **"Project"** | the Customer's project for the development of the Solution; |
| **"Project Increment"** | an element of the Project which delivers one or more Solution Increments; |
| **"Project Manager"** | the person appointed by each Party as its representative for the management of the Project; |
| **"Services"** | means the services to be performed by the Supplier for the development of the Solution as described in this Contract; |
| **"Software"** | computer programs whether in source code or object code form; |
| **"Solution"** | the solution to be developed by the Supplier to satisfy the Customer’s requirements as identified in the Terms of Reference and the Solution Architecture Definition, as amended periodically through the Change Management Process; |
| **"Solution Architecture Definition"** | the high-level design framework for the Solution that sets out business and technical aspects as proposed by the Supplier and attached to the Contract as Schedule 3 (Solution Architecture Definition); |
| **"Solution Development Team"** | a cross-functional team of between [5] and [9] developers, architects, testers, systems analysts and software engineers, which may include Customer specialists and Stakeholders, formed as a self-managing team to develop, test and deliver the Solution; |
| **"Solution Increments"** | an element of the evolving Solution comprising a collection of one or more features which my deployed as a release and which will provide value for the business; |
| **"Stakeholders"** | members of the Customer whose position or role gives them a particular vested interest in the outcome of the Project; |
| **"Term"** | has the meaning given in clause 20.1; |
| **"Terms of Reference"** | a high-level description of the Customer's requirements for the Project, including the Customer's vision and objectives for the Project and an outline business case; |
| **"Termination Payment"** | means the payment calculated in accordance with paragraph 5 of Schedule 7 (Charges); |
| **"Timebox"** | an iteration of the development cycle with a fixed duration [of [20] Working Days][set at the start of the Timebox][set out in the Delivery Plan]; |
| **"Unrecovered Costs"** | the Supplier's overheads to the extent that they remain to be recovered through the Charges; |
| **"VAT"** | value added tax as provided for in the Value Added Tax Act 1994; and |
| **"Working Day"** | means any day other than a Saturday, Sunday or public holiday in England and Wales. |

1. - Terms of Reference

[*To be provided by Customer* ]

*[****Drafting Note:*** *This schedule sets out the Customer's high level requirements for the Project. These should be written as a set of statements and can include any constraints or parameters that must be considered by the Supplier. Requirements can be:*

* + - * *functional - these express a function or feature and define* ***what*** *is required, but do not state* ***how*** *the solution is to be achieved; or*
      * *non-functional - these define solution attributes such as performance or acceptance criteria, including reliability, maintainability, availability, etc.*

*Requirements can be written in different formats depending on the Agile methodology employed. A common format is the "user story", which is a requirement expressed from the perspective of an end-user goal. The typical format for a User Story is:*

***As a*** *<role>*

***I need*** *<requirement or feature>*

***So that*** *<goal / value>.*

*The DSDM approach to Agile and the requirement to identify the Minimum Useable SubseT anticipates that requirements will be prioritised. The Handbook identifies that these will be prioritised in accordance with the "MoSCoW Rules". Please refer to the Handbook for a detailed description of these principles and the setting of requirements in accordance with DSDM. ]*

1. - Solution Architecture Definition

[*To be provided by Supplier* ]

*[****Drafting Note:*** *This schedule sets out how the Supplier proposes to satisfy the Customer's requirements. It is also set out at a high level recognising that the solution will evolve as the Supplier learns more about the Customer's requirements during the Feasibility and Foundations Phases. It may also need to adapt to changes made to the requirements as the Project progresses.*

*The Solution should seek to identify how the Supplier proposes to address each of the requirements and should be drafted in a manner that can be understood by the end user.*

*The Solution is treated as a separate document to the Terms of Reference; it represents the Supplier's input into the Project and is based on its knowledge and experience of delivering solutions. The Customer is relying on the greater knowledge and experience of the Supplier to provide a solution that addresses its needs and it is therefore important to the understanding of the success of the Project that the requirements and solution are kept distinct.]*

1. - Development Approach Definition

[ *This schedule should set out the Development Approach, the Quality Plan and the Test Strategy* ]

1. - Management Approach Definition

[ *Set out governance procedures in this schedule* ]

1. - Delivery Plan

[ *Supplier should provide a draft Delivery Plan to be inserted here* ]

1. - Charges
2. **Introduction**
   1. This Schedule sets out the Charges and the payment milestones for the Project.
   2. The Supplier shall not be entitled to payment of Charges for the Services unless the Customer has approved the Charges in accordance with this Schedule.
3. **Charges**
   1. [ *to be provided by Supplier* ]
4. **Payment Milestones**

* 1. [ *to be provided by Supplier* ]

1. **Expenses**
   1. Subject to the prior written consent of the Customer, the Charges are inclusive of expenses.
   2. Where the Charges are agreed to be exclusive of expenses, then expenses shall be incurred and reimbursed in accordance with the Customer's expenses policy.
   3. Where the Supplier incurs additional expenditure in excess of the daily allowance in support of the Project, such additional expenses may be reimbursed at the sole discretion of the Customer provided that the Supplier supports its request for reimbursement with receipts and a detailed explanation as to why such expenses were necessary.
   4. The Supplier may include agreed expenses in the next invoice submitted after the relevant expense has been incurred.
2. **Termination Payment**
   1. The Termination Payment payable pursuant to clause 20.6 (Consequences of Termination) shall be calculated as the sum of:
      1. the Unrecovered Costs; and
      2. any Breakage Costs.
   2. The Supplier agrees to take all reasonable steps to minimise and mitigate Breakage Costs by:
      1. the use of its Personnel for other purposes. If such Personnel can be used for other purposes then there shall be an equitable reduction in the Breakage Costs payable by the Customer; and
      2. in relation to contracts entered into with third parties, termination by the Supplier of those contracts at the earliest possible date without breach or, where contractually permitted and required by the Customer, by transferring such contracts to the Customer or a Replacement Supplier.
3. - Roles & Responsibilities

## *[****Drafting Note:*** *These tables set out some of the roles and responsibilities as suggested by the Handbook. These will need to be reviewed and amended to suit the needs of the current Project, including the appropriate allocation of roles between the Customer and the Supplier. Note also that a role is not necessarily assigned to a single person but may be split between two or more people. Similarly, in smaller projects, one person may perform more than one role.]*

**Customer Roles**

| **Role** | **Responsibility** | **Level** | **Contact Details** |
| --- | --- | --- | --- |
| Engagement Manager | Provision of contract management and governance.  Interfaces with Supplier Engagement Manager to review Project performance  First level of escalation in event of any dispute or disagreement between the parties | Project | Name:  Tel:  Email: |
| Project Manager | Ensuring effective & timely communications  Provision of information to Business Sponsor, project board and steering committees, and to stakeholders  Performs high level project planning and scheduling  Monitors progress against Delivery Plan  Managing risk and issues as they arise  Managing problems escalated by the Solution Development Team | Project | Name:  Tel:  Email: |
| Business Sponsor | Owns business case  Viability of Project  Budget holder  Ensuring decisions for escalated issues are made effectively and efficiently  Ultimate point for resolution of conflicting issues  [*other?*] | Project | Name:  Tel:  Email: |
| Business Visionary | Defining business vision for the Project  Communicating and promoting business vision  Monitoring progress of the project in line with business vision  Owns wider implication of business change  Contributes to key requirements, design and review sessions  Identifying and owning business-based risk  Defining and approving changes to the PRL  Ensuring collaboration across stakeholder business areas  Promoting transition of business vision into working practice  Empowering the business roles within the Solution Development Team  Point of escalation for business requirements | Project | Name:  Tel:  Email: |
| Business Ambassador | Contributes to all requirements design and review sessions  Provides business perspective for all day-to-day solution development decisions  Provides detail of business scenarios to help define and test the Solution  Communicates with other users  Provides day-to-day assurance that the Solutions is evolving correctly  Organising and controlling business Acceptance Testing of the Solution  Responsibility for the creation of business user and support documentation  Training and support of business participants in Deployed Solution | Solution Development | Name:  Tel:  Email: |
| Business Advisor | Provides specialist input into relevant:   * requirements design and review activities * day-to-day Project decisions * business scenarios to help define and test the Solution   Provides specialist advice on or help with:   * developing business user and support documentation * deployment of Solution Increments into operations | Supporting | Name:  Tel:  Email: |
| DSDM Coach | Providing detailed knowledge and experience of DSDM  Tailoring the DSDM process to suit the individual needs of the Project  Helping the Solution Development Team use DSDM practices and helping the wider Project appreciate the DSDM philosophy  Helping the team work in the collaborative and cooperative way typical of DSDM  Building DSDM capability within the wider Project team *[****Drafting Note****: The role of the DSDM Coach is to facilitate collaboration and compliance with the DSDM Project Approach. Ideally, this person should be a member of the Customer's personnel, but if the Customer does not have the capacity, capability or an employee with appropriate knowledge and experience, then it should consider appointing an independent person to perform this role. Alternatively, the Supplier may be able to provide a suitable person, though this lacks some of the independence desirable for this role.]* | Supporting | Name:  Tel:  Email: |
| [Business Analyst] | Assisting Business Visionary in the formulation and promotion of the business vision  Modelling the organisation's current and future state and identifying opportunities, risks and impacts  Working with the Business Visionary and the Solution Development Team to formulate and communicate solution options  Working with project-level roles to formulate the business case and organising benefits assessments  Supporting and facilitating communications between business and technical participants  Ensuring the requirements defined are of good quality and are analysed and managed appropriately  Managing development, distribution and baseline approval of all communication related to business requirements and their interpretation  Ensuring the PRL is updated as the detail expands and evolves  Modelling the business implications of the Solution as it evolves  Ensuring the impact of business decisions is reviewed in the context of the Project  Ensuring the business and technical components of the solution collectively provide a cohesive whole for the business  Ensuring the non-functional requirements are achievable and are subsequently met  Responsibility for tracking business requirements through to business acceptance  Liaising with the Business Visionary in organising support for implementation of the Solution | Solution Development | Name:  Tel:  Email: |
| [Technical Coordinator] | Agreeing and controlling the technical architecture  Identifying and owning architectural and other technically based risks  Advising on the achievability of non-functional requirements  Working with the Business Analyst to evaluate the technical options and deciding how to turn the high-level business requirements into a technical solution | Project | Name:  Tel:  Email: |
| [Stakeholders] |  | Supporting | Name:  Tel:  Email: |
| [*Repeat rows for each Stakeholder* ] |  |  | Name:  Tel:  Email: |

**Supplier Roles**

| **Role** | **Responsibilities** | **Level** | **Contact Details** |
| --- | --- | --- | --- |
| Engagement Manager  (Key Personnel) | Provision of contract management and governance.  Interfaces with Customer Engagement Manager to review Project performance  First level of escalation in event of any dispute or disagreement between the parties | Project | Name:  Tel:  Email: |
| Project Manager  (Key Personnel) | Ensuring effective & timely communications  Performs high level project planning and scheduling  Monitors progress against Delivery Plan  Managing risk and issues as they arise  Managing problems escalated by the Solution Development Team | Project | Name:  Tel:  Email: |
| [Technical Coordinator]  (Key Personnel) | Agreeing and controlling the technical architecture  Identifying and owning architectural and other technically based risks  Advising on the achievability of non-functional requirements  Working with the Business Analyst to evaluate the technical options and deciding how to turn the high-level business requirements into a technical solution | Project | Name:  Tel:  Email: |
| [Business Analyst]  (Key Personnel) | Assisting Business Visionary in the formulation and promotion of the business vision  Modelling the organisation's current and future state and identifying opportunities, risks and impacts  Working with the Business Visionary and the Solution Development Team to formulate and communicate solution options  Working with project-level roles to formulate the business case and organising benefits assessments  Supporting and facilitating communications between business and technical participants  Ensuring the requirements defined are of good quality and are analysed and managed appropriately  Managing development, distribution and baseline approval of all communication related to business requirements and their interpretation  Ensuring the PRL is updated as the detail expands and evolves  Modelling the business implications of the Solution as it evolves  Ensuring the impact of business decisions is reviewed in the context of the Project  Ensuring the business and technical components of the solution collectively provide a cohesive whole for the business  Ensuring the non-functional requirements are achievable and are subsequently met  Responsibility for tracking business requirements through to business acceptance  Liaising with the Business Visionary in organising support for implementation of the Solution | Solution Development | Name:  Tel:  Email: |
| Solution Developer  (Key Personnel)  [*Repeat rows as necessary*] | [*State position in team, e.g. analyst, architect, security specialist, etc.*]  Development of the Solution  Adhering to the organisation's technical implementation standards and best practice  Participating in quality assurance work required to ensure the delivered products are fit for purpose  Recording any:   * changes to the detailed requirements * change to the interpretation of requirements resulting in re-work within the Solution * information likely to impact on the evolution of the Solution | Solution Development | Name:  Tel:  Email: |
| Solution Tester | Working with the business roles to define test scenarios and test cases for the evolving Solution  Conduct of technical testing of the Solution  Liaising with the Business Analyst and Business Ambassador to clarify Acceptance Criteria  Creating test products as appropriate  Reporting the results of testing activities to the Technical Coordinator for quality assurance purposes  Assisting the Business Analyst and Business Advisor so that they can carry out their tests | Solution Development | Name:  Tel:  Email: |
| Technical Advisor | Requirements design and review sessions  Operational perspective or day-to-day decisions  Operational or support scenarios to help define and test Solution  Assurance that Solution is evolving correctly  Operational acceptance testing  Development of technical support documentation  Training of technical operations and support staff | Supporting | Name:  Tel:  Email: |
| [*Repeat rows for other roles as required* ] |  |  | Name:  Tel:  Email: |