

DATED

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(1) DLM FORUM FOUNDATION

and

(2) [Name of Test Centre]

AGREEMENT

relating to

the provision of testing services in support of
the Modular Requirements for Record
Systems (MoReq2010)

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THIS AGREEMENT is made on

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BETWEEN

- (1) **DLM FORUM FOUNDATION** of [insert address], a company registered in England and Wales under company number 7141822 ("the **DLM Forum**"); and
- (2) [name of Test Centre] a [body corporate] [registered charity] [company registered in [country] under company number []] whose registered office is at [address] [insert detail of other corporate structure as appropriate] [insert name of body able to legally bind your organisation] ("the **Test Centre**") and such term shall be construed to include its employees, agents and sub-contractors.

INTRODUCTION

- A The DLM Forum, a European Commission sponsored community of interested parties in archive, records, document and information lifecycle management, announced on 8 June 2011, the publication of its Modular Requirements for Record Systems (MoReq2010) Specification.
 - B Subsequent to this publication, the DLM Forum is now seeking to set up a number of accredited Test Centres across Europe, and beyond, to carry out an ongoing testing programme against the MoReq2010 Specification.
 - C Any organisation which fulfils certain qualification requirements can apply for accreditation as a MoReq2010 Test Centre.
 - D The Test Centre has successfully demonstrated compliance with the requirements for accreditation.
 - E This Agreement now regulates the Test Centre's activities as an accredited Test Centre.
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IT IS AGREED as follows:

SECTION A - PRELIMINARIES

1. GLOSSARY AND INTERPRETATION

- 1.1 In this Agreement the glossary set out in Annex 0 (Glossary) shall apply.
 - 1.2 In this Agreement, unless the context otherwise requires:
 - 1.2.1 the singular includes the plural and vice versa;
 - 1.2.2 reference to a gender includes the other gender and the neuter;
 - 1.2.3 references to an Act of Parliament, statutory provision or statutory instrument includes a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it, in all cases as relevant to this Agreement, the rights and obligations of the parties under this Agreement; and
 - 1.2.4 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.
 - 1.3 The headings in this Agreement are for ease of reference only and shall not affect its interpretation.
 - 1.4 References to clauses and annexes are, unless otherwise provided, references to the clauses of and annexes to this Agreement.
 - 1.5 Any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).
 - 1.6 If there is any conflict between the clauses and the annexes and/or any annexes to the annexes and/or any other documents referred to in this Agreement, the conflict shall be resolved in accordance with the following order of precedence:
 - 1.6.1 the clauses and Annex 0 (Glossary);
 - 1.6.2 any other annexes and their appendices;
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1.6.3 any other document referred to in this Agreement or any other document attached to this Agreement.

2. TERM

2.1 This Agreement will begin on the Effective Date and, unless terminated in accordance with clause 24, will continue for as long as the Test Centre's accreditation continues.

2.2 During the Term the DLM Forum shall have the right (but not the obligation) to review the Test Centre's accredited status.

3. GOOD FAITH

3.1 Both parties agree that in the performance of their obligations and the exercise of their rights under this Agreement, including the exercise of their allocated discretionary powers where required so to do, they will at all times act in good faith.

3.2 Without prejudice to the generality of clause 3.1, the DLM Forum's overriding consideration in making decisions in respect of this Agreement shall not be profit but the need to ensure that the integrity of the MoReq2010 Accreditation, Testing and Certification processes are protected in accordance with its Articles of Association.

SECTION B - ACTIVITIES AND OBLIGATIONS OF THE PARTIES

4. ACTIVITIES AND OBLIGATION OF THE PARTIES

4.1 From the Effective Date, the DLM Forum grants to the Test Centre the right to advertise itself as an accredited Test Centre, capable of Testing against the MoReq2010 Specification.

4.2 The DLM Forum shall publish on its website the names of all such accredited Test Centres.

4.3 The right granted in clause 4.1 is subject to the Test Centre:

4.3.1 continuing to comply with the terms of its accreditation as set out in this Agreement and Annex 1 (Overview of the Accreditation Process);

4.3.2 performing the activities set out in Annex 2 (Responsibilities) in accordance with the specification as set out in Annex 3 (MoReq2010 Specification) and

any guidelines, policies or standards as published on the DLM Forum website from time to time;

4.3.3 complying with Annex 4 (Mandatory Flow-down Provisions);

4.3.4 complying with the governance requirements set out in Annex 5 (Governance); and

4.3.5 continuing to be a member of the DLM Forum for the Term of the Agreement.

4.4 The Test Centre shall not do anything to bring the DLM Forum and the MoReq2010 Specification into disrepute or affect adversely its reputation.

5. CONFLICT OF INTEREST

5.1 The Test Centre shall take appropriate steps to ensure that neither the Test Centre or its staff are placed in a position where (in the reasonable opinion of the DLM Forum), there is or may be an actual or potential conflict, between the pecuniary or personal interest of the Test Centre and the duties owed to the DLM Forum under the provisions of this Agreement.

5.2 The Test Centre shall promptly notify the DLM Forum (and provide full particulars, including how the Test Centre proposes to resolve any such conflict) if any conflict referred to in clause 5.1 arises or is reasonably foreseeable.

5.3 Where conflicts of interest or other disputes occur, whether actual or potential, the Test Centre shall, on request by the DLM Forum, provide copies of any contracts it has in place with any Suppliers.

6. PERFORMANCE MONITORING

6.1 The DLM Forum may at its sole discretion monitor the performance of the Test Centre in its performance of Testing potential Suppliers and discuss and review the same with the Test Centre in the manner set out in Annex 5 (Governance).

6.2 The DLM Forum may, at any time on reasonable notice send representatives to attend (as observers) any Test (or part thereof) being carried out by the Test Centre, at the DLM Forum's cost.

- 6.3 The Test Centre shall give the DLM Forum not less than three (3) weeks notice prior to any Testing to be carried out by the Test Centre.
- 6.4 Within one (1) calendar week of receipt of such notice, the DLM Forum shall confirm whether or not it intends to send representatives to attend the Testing.
- 6.5 In the event that the Test Centre does not provide the DLM Forum with not less than one (1) week's notice of any cancellation or postponement of the scheduled testing, the Test Centre shall reimburse the DLM Forum for any of its travel or related costs that have been reasonably incurred.
- 6.6 The Test Centre shall, on request by representatives of the DLM Forum observing a test, provide them with access to the Test Report and any other Test documentation, such as the Supplier's Pre-Qualification Questionnaire.
- 6.7 The DLM Forum shall use all reasonable endeavours to ensure that the conduct of its monitoring does not unreasonably disrupt the Test Centre or delay the provision of the Testing process.
- 6.8 The Test Centre shall, on request by the DLM Forum, provide copies of incomplete or unsuccessful Test Results.

SECTION C - GOVERNANCE AND SERVICE MANAGEMENT

7. REPRESENTATIVES

- 7.1 Each party shall appoint representatives for the roles required in Annex 5 (Governance). The Representatives shall have the authority to act on behalf of their respective party on the matters set out in, or in connection with, this Agreement. Either party may, by further written notice to the other party, revoke or amend the authority of its Representatives or appoint new Representatives.

8. CHANGE CONTROL

- 8.1 The DLM Forum may, at any time, change the Test Materials and/ or the MoReq2010 Specification (or any part thereof). The DLM Forum shall notify the Test Centre of any such change.
 - 8.2 On receipt of such notice, the Test Centre shall have a period of not less than six (6) months to make any consequential changes to the Test process.
-

9. DISPUTES

9.1 The parties shall resolve any Dispute in accordance with the Dispute Resolution Procedure set out at Annex 5 (Governance).

10. THIRD PARTY INDEMNITY

10.1 The Test Centre acknowledges that it is responsible for its relationship with Suppliers. In the event that a Supplier seeks to bring action against the DLM Forum in connection with this Agreement, the Test Centre shall indemnify and hold harmless the DLM Forum from any losses it incurs.

SECTION D - PAYMENT

11. ANNUAL MEMBERSHIP FEE AND INVOICING

11.1 In consideration of the Test Centre being accredited as a Test Centre, the Test Centre shall pay the Annual Membership Fee to the DLM Forum in the amounts and in accordance with the invoicing and payment procedures specified in the DLM Forum's website.

12. TAX

12.1 As at the Effective Date, annual membership fees to the DLM Forum are exempt from VAT.

12.2 In the event that the tax status set out in clause 12.1 changes, the Annual Membership Fee (and all other consideration in cash or otherwise to be provided) pursuant to this Agreement are stated exclusive of any applicable VAT and VAT shall, if applicable, be paid in addition to the cash or other consideration and at the same time.

SECTION E - INTELLECTUAL PROPERTY, DATA AND CONFIDENTIALITY

13. INTELLECTUAL PROPERTY RIGHTS

13.1 Except as expressly set out in this Agreement:

13.1.1 the DLM Forum shall not acquire any right, title or interest in or to the Intellectual Property Rights owned by the Test Centre or its licensors; **and**

13.1.2 the Test Centre shall not acquire any right, title or interest in or to the Intellectual Property Rights owned by the DLM Forum.

14. LICENCES GRANTED BY THE TEST CENTRE

- 14.1 From the Effective Date the Test Centre shall grant to the DLM Forum a perpetual royalty-free, non-exclusive licence to use all information collated following Testing, including the Test Results for any purposes relating to the activities of the DLM Forum.
- 14.2 In particular, the Test Centre consents to the Processing of Test Data by the DLM Forum for the purposes of providing statistical and management information, or otherwise in accordance with the DLM Forum's remit.

15. LICENCES GRANTED BY THE DLM FORUM

- 15.1 From the Effective Date, the DLM Forum shall grant to the Test Centre a royalty-free, non-exclusive, non-transferable licence for the Term to use:
- 15.1.1 the DLM Forum's documentation, processes and procedures relevant to this Agreement;
 - 15.1.2 the Test Materials;
 - 15.1.3 the MoReq2010 Specification; and
 - 15.1.4 the MoReq2010 Accredited Test Centre Logo.
- 15.2 The licence granted in clause 15.1 is granted solely to the extent required within Annex 2 (Responsibilities) and to carry out the processes in accordance with this Agreement. The Test Centre shall not use the licensed data or materials for any marketing of its services to third parties.
- 15.3 Subject to the right set out in clause 15.1.4, 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. Each party acknowledges to the other that nothing in this Agreement either expressly or by implication constitutes an endorsement of any products or services of the other party and each party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.
- 15.4 In the event of the termination or expiry of this Agreement, the licence referred to in clause 15.1 shall terminate.
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16. PROTECTION OF PERSONAL DATA

16.1 Each party shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Agreement in such a way as to cause the other party to breach any of its applicable obligations under the Data Protection Legislation.

17. CONFIDENTIALITY

17.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:

17.1.1 treat the other party's Confidential Information as confidential; and

17.1.2 not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

17.2 Clause 17.1 shall not apply to the extent that:

17.2.1 such information was legally in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;

17.2.2 such information was obtained from a third party without obligation of confidentiality;

17.2.3 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or

17.2.4 it is independently developed without access to the other party's Confidential Information.

17.3 Without prejudice to the provisions of clause 17.4, neither party shall use any of the other party's Confidential Information it has received otherwise than for the purposes of this Agreement.

17.4 Nothing in this Agreement shall prevent the DLM Forum from disclosing the Test Centre's Confidential Information:

17.4.1 to any member of the DLM Forum and the European Commission, any consultant, contractor or other person engaged by the DLM Forum

reasonably required in relation to MoReq2010 provided that such member, consultant or contractor or other person is subject to confidentiality obligations which are no less onerous than the obligations contained in clause 21.1; or

17.4.2 to a Supplier only as is necessary in order to provide the Testing on the basis that the information is confidential and is not to be disclosed to a third party, subject always to seeking the prior written consent of the Test Centre for such disclosure (such consent not to be unreasonably withheld or delayed).

SECTION F - TEST CENTRE AND DLM FORUM PROTECTIONS

18. GENERAL OBLIGATIONS OF THE PARTIES

18.1.1 Each party shall obtain, and maintain throughout the duration of this Agreement, all the consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it lawfully to provide the Testing or receive the Test results (as applicable) and to comply with its obligations under this Agreement;

18.1.2 The Test Centre shall (at its cost) provide to the DLM Forum such reasonable co-operation, information, advice and assistance to enable the DLM Forum to create and maintain organisational arrangements with the Test Centre for the purposes of complying with this Agreement.

19. WARRANTIES

19.1 Each party warrants and undertakes to the other that it shall not cause the other to infringe the Intellectual Property Rights of any third party through use of the Testing or otherwise as a result of its performance of its obligations under this Agreement.

19.2 Each party warrants, represents and undertakes that:

19.2.1 it has full capacity and authority to enter into and to perform this Agreement;

19.2.2 this Agreement is executed by a duly authorised representative of that party;

19.2.3 there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the

ability of that party to meet and carry out its obligations under this Agreement; and

19.2.4 once duly executed this Agreement will constitute its legal, valid and binding obligations.

19.3 The Test Centre warrants that all statements and representations in the Test Centre's Application for Accreditation are to the best of its knowledge, information and belief, true and accurate and that it will advise the DLM Forum of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading.

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

20. FORCE MAJEURE

20.1 Subject to the remaining provisions of this clause 20, either party to this Agreement may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

20.2 A party cannot claim relief if the Force Majeure Event is attributable to its wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

SECTION G - REMEDIES, TERMINATION AND EXIT ARRANGEMENTS

21. WARNING NOTICES

21.1 Without prejudice to the other rights and remedies of the parties, the DLM Forum may give a written notice to the Test Centre if the Test Center has committed a breach of this Agreement. The notice shall state on its face that it is a Warning Notice.

21.2 Each Warning Notice shall specify in reasonable detail the matters giving rise to the notice and the measures required to be taken by the Test Centre to correct those matters.

21.3 The Test Centre shall serve a draft remedial plan within 14 calendar days (or any other period agreed by the parties) of receipt of the Warning Notice. If the Test Centre disputes that it is responsible for the matters complained of it may escalate any issues using the Dispute Resolution Procedure;

22. GOVERNANCE

22.1 Both parties shall comply with Annex 5 (Governance).

23. SUSPENSION OF SERVICE

23.1 The DLM Forum may take emergency action (at any time and on any conditions as it may require) to suspend the accreditation of the Test Centre if the DLM Forum considers that suspension is necessary to protect the integrity of the Accreditation, Testing and Certification processes.

24. TERMINATION RIGHTS

24.1 Termination for cause by the DLM Forum

24.1.1 The DLM Forum may terminate this Agreement by giving written notice of termination to the Test Centre if one or more of the circumstances set out in clause 24.1.4 exist.

24.1.2 Where the DLM Forum is terminating this Agreement for a material Default of this Agreement or one of the specific provisions in clause 24.1.4 it may rely on a single material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.

24.1.3 Where a material Default is capable of remedy the parties shall follow the process set out at clause 21. If the remedial plan process fails then the DLM Forum may terminate this Agreement at any time following such failure by giving written notice of termination to the Test Centre and this Agreement shall terminate on the last day of the period specified by the DLM Forum in its notice, which shall not be less than thirty (30) calendar days from the date on which the Termination Notice is sent to the Test Centre.

24.1.4 The circumstances giving rise to the DLM Forum's right to terminate are:

24.1.4.1 the Test Centre is in material Default which it has failed to remedy in accordance with the remedial plan process;

24.1.4.2 the Test Centre commits a material Default of this Agreement which is irremediable;

24.1.4.3 the Test Centre receives three (3) or more Warning Notices in any period of six (6) consecutive months;

24.1.4.4 an Insolvency Event affecting the Test Centre occurs;

24.1.4.5 any act or omission of the Test Centre or, any Affiliate of the Test Centre, that results in material damage to the reputation of the DLM Forum where the Test Centre does not, within twenty (20) calendar days of receiving notice of such act or omission from the DLM Forum and its effect, ensure that procedures are implemented that are likely, to the reasonable satisfaction of the DLM Forum, to prevent a repetition or the continuance of such embarrassment or damage to reputation and which mitigate, so far as practicable, the initial damage to reputation and/or embarrassment.

24.2 The rights of the DLM Forum (to terminate or otherwise) under this clause 24 are in addition (and without prejudice) to any other right or remedy which the DLM Forum (or a Supplier under a third party rights clause) may have to claim the amount of loss or damage suffered by the DLM Forum on account of the acts or omissions of the Test Centre (or to take any action other than termination of this Agreement).

24.3 Termination for convenience by either party

24.3.1 Without prejudice to any accrued rights or liabilities of the parties, either party may terminate this Agreement by giving at least six (6) months written notice to the other party subject to complying with the Exit Arrangements.

24.4 Termination for Continuing Force Majeure Event

24.4.1 Either party may, by written notice to the other, terminate this Agreement, or require the partial termination of any part of the Services on the occurrence

of a Force Majeure Event for a continuous period of more than ninety (90) calendar days.

25. CONSEQUENCES OF EXPIRY OR TERMINATION

25.1 In the event of termination or expiry:

25.1.1 there shall be an automatic cessation of the licence granted at clause 15.1;

25.1.2 the Test Centre shall immediately cease Testing and in the event that any Tests are incomplete, shall provide all Test Materials to the DLM Forum, including all Test Results whether successful or unsuccessful, complete or incomplete;

25.1.3 the Test Centre shall no longer be accredited as a Test Centre in respect of the MoReq2010 Specification; and

25.1.4 the Test Centre's membership of the DLM Forum shall continue until the end of the calendar year and thereafter would automatically terminate unless the Test Centre wished to continue to be a member of the DLM Forum whereby it would be required to apply under a different category of membership.

25.2 The provisions of clauses 11 (Annual Membership Fee and Invoicing), 13 (Intellectual Property Rights), 17 (Confidentiality), 26 (Limitations on Liability), 25 (Consequences of Expiry or Termination), 31 (Severance), 33 (Entire Agreement), 34 (Third Party Rights) and 36 (Governing Law and Jurisdiction), and the provisions of Annex 0 (Glossary) shall survive the termination or expiry of this Agreement.

SECTION H - LIABILITY

26. LIMITATIONS ON LIABILITY

26.1 The parties expressly agree that if any limitation or provision contained or expressly referred to in this clause 26 is held to be invalid under any Law, it will be deemed omitted to that extent, and if any party becomes liable for loss or damage to which that limitation or provision applied, that liability will be subject to the remaining limitations and provisions set out in this clause 26.

26.2 Nothing in this clause 26 shall act to reduce or affect a party's general duty to mitigate its loss.

- 26.3 Neither party limits its liability for:
- 26.3.1 death or personal injury caused by its negligence, or that of its employees, agents or Sub-contractors (as applicable); or
 - 26.3.2 fraud or fraudulent misrepresentation by it or its employees.
- 26.4 Subject to clauses 26.3, by entering into this Agreement, the Test Centre acknowledges that it is entering into this agreement at its own risk and that the DLM Forum has excluded all liability (whether arising from tort (including negligence), breach of contract or otherwise) in respect of this Agreement.

27. ASSIGNMENT AND NOVATION

- 27.1 The Test Centre shall not assign, novate or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under this Agreement without the prior written consent of the DLM Forum (not to be unreasonably withheld or delayed) in the case of any solvent restructuring of the Test Centre's business.
- 27.2 The DLM Forum may assign, novate or otherwise dispose of its rights and obligations under this Agreement (or any part) to any body with the prior written consent of the Test Centre (which consent shall not be unreasonably withheld or delayed).

28. WAIVER AND CUMULATIVE REMEDIES

- 28.1 The rights and remedies provided by this Agreement may be waived only in writing by the relevant Representative in a manner that expressly states that a waiver is intended, and such waiver shall only be operative with regard to the specific circumstances referred to.
- 28.2 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by that party is without prejudice to that party's other rights and remedies. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 28.3 The rights and remedies provided by this Agreement are cumulative and, unless otherwise provided in this Agreement, are not exclusive of any right or remedies provided at law or in equity or otherwise under this Agreement.
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29. RELATIONSHIP OF THE PARTIES

29.1 Nothing in this Agreement is intended to create a partnership, or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall have authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

30. PREVENTION OF CORRUPTION

30.1 The Test Centre shall not:

30.1.1 offer or agree to give any person working for or engaged by the DLM Forum any gift or other consideration which could act as an inducement or a reward for any act or failure to act connected to this Agreement, or any other agreement between the Test Centre and the DLM Forum, including its award to the Test Centre and any of the rights and obligations contained within it; or

30.1.2 enter into this Agreement if it has knowledge that, in connection with it, any money has been, or will be, paid to any person working for or engaged by the DLM Forum by or for the Test Centre, or that an agreement has been reached to that effect, unless details of any such arrangement have been disclosed in writing to the DLM Forum before execution of this Agreement.

30.2 Notwithstanding clause 9 (Disputes), any Dispute relating to:

30.2.1 the interpretation of clauses 30.1; or

30.2.2 the amount or value of any gift, consideration or commission,

shall be determined by the DLM Forum acting reasonably and its decision shall be final and conclusive.

31. SEVERANCE

31.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remaining provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held to any

extent to be invalid, the Test Centre and the DLM Forum shall immediately commence good faith negotiations to remedy that invalidity.

32. FURTHER ASSURANCES

32.1 Each party undertakes at the request of the other, and at the reasonable cost of the requesting party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Agreement.

33. ENTIRE AGREEMENT

33.1 This Agreement, together with any documents referred to or attached to it, constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement (whether written or oral) between the parties in relation to such matters.

33.2 Each of the parties acknowledges and agrees that in entering into this Agreement and any documents attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement or such other remedies available under the law governing this Agreement.

33.3 Nothing in this clause 33 shall operate to exclude any liability for fraud.

34. THIRD PARTY RIGHTS

34.1 Subject to clause 17.4 (Confidentiality) (to the extent a relevant recipient requires to rely upon this Agreement in its defence to a breach of confidentiality claim), a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

35. NOTICES

35.1 Any notices given under or in relation to this Agreement shall be in writing, signed by or on behalf of the party giving it and shall be served by delivering it personally or by

sending it by pre-paid first class post, recorded delivery or registered post or by way of email to the address and for the attention of the signatory or to such other address as that party may have stipulated in accordance with this clause.

35.2 A notice shall be deemed to have been received:

35.2.1 if delivered personally, at the time of delivery; and

35.2.2 in the case of pre-paid first class post, five (5) calendar days from the date of posting;

provided that, if a notice is deemed to have been received in accordance with the provisions of this clause 35.2 during a period or on a day when the recipient's offices are officially closed, the notice shall be deemed to have been received on the next working day following the end of this period or this day.

35.3 In proving service, it shall be sufficient to prove that the envelope containing the notice was addressed to the relevant party at its address previously notified for the receipt of notices (or as otherwise notified by that party) and delivered either to that address or into the custody of the postal authorities as pre-paid first class post, recorded delivery, registered post or airmail letter.

36. GOVERNING LAW AND JURISDICTION

36.1 This Agreement shall be governed by and construed in accordance with English law and without prejudice to the Dispute Resolution Procedure each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

IN WITNESS of which this Agreement has been duly executed by the parties.

SIGNED for and on behalf of the **DLM Forum**

Signature.....

Name:

Position:

Date:.....



SIGNED for and on behalf of [**name of the Test Centre**]

Signature.....

Name:

Position:

Date:.....



ANNEX 0

Glossary

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

"Affiliate"	in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;
"Agreement"	the clauses of this Agreement together with the annexes to it and any documents attached to it;
"Application for Accreditation"	the DLM Forum's application form completed by the Test Centre in order to apply for accreditation status, and as set out as an appendix to Annex 1 (Overview of Accreditation);
"Change"	any change to this Agreement;
" Annual Membership Fees"	the fee set out in clause 11 (Annual Membership Fee and Invoicing);
"Confidential Information"	DLM Forum's and/or Test Centre's Confidential Information;
"Control"	means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;

"Data Protection Legislation"

the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

"Default"

any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other;

"Dispute"

any dispute, difference or question of interpretation arising out of or in connection with this Agreement, including any dispute, difference or question of interpretation relating to the Accreditation, Testing and Certification process or any matter where this Agreement directs the parties to resolve an issue by reference to the Dispute Resolution Procedure (as set out in Annex 5);

"Dispute Resolution Procedure"

the procedure set out in Annex 5 (Governance);

"DLM Confidential Information"	all Personal Data, and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, and suppliers of DLM Forum and any Supplier, including all IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential;
"DLM Representatives"	the representatives appointed by DLM Forum pursuant to clause 7.1 (Representatives);
"Effective Date"	the date on which this Agreement is signed by both parties;
"Escalation Process"	the initial stages of the process for dealing with Disputes without the intervention of third parties as set out in Annex 5 (Governance);
"Force Majeure Event"	any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including acts of God, riots, war or armed conflict, acts of terrorism, fire, flood, storm or earthquake;

"Insolvency Event"

the occurrence of any of the following events (or any event analogous to any of the following in a jurisdiction other than England and Wales) in relation to the relevant entity:

- (a) the entity passing a resolution for its winding up or a court of competent jurisdiction making an order for the entity to be wound up or dissolved or the entity being otherwise dissolved;
- (b) the appointment of an administrator of, or the making of an administration order in relation to the entity or the appointment of a receiver or administrative receiver of, or an encumbrancer taking possession of or selling, the whole or part of the entity's undertaking, assets, rights or revenue;
- (c) the entity entering into an arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them or taking steps to obtain a moratorium or making an application to a court of competent jurisdiction for protection from its creditors;
- (d) the entity being unable to pay its debts or being deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (e) the entity entering into any arrangement, compromise or composition in satisfaction of its debts with its creditors.

However, a resolution by the relevant entity or a court order that such entity be wound up for the purpose of a bona fide reconstruction or amalgamation shall not amount to an Insolvency Event;

"Intellectual Property Rights" or "IPRs"	<p>(a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information;</p> <p>(b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and</p> <p>(c) all other rights having equivalent or similar effect in any country or jurisdiction;</p>
"Know-How"	<p>all ideas, concepts, schemes, information, knowledge, techniques, methodology and anything else in the nature of know-how relating to the Agreement but excluding know-how already in the Test Centre's or the DLM Forum's and/or a Supplier's possession before this Agreement;</p>
"Month" or "month"	<p>a calendar month and "monthly" shall be interpreted accordingly;</p>
"MoReq2010 Accredited Test Centre Logo"	<p>the DLM Forum logo that successfully accredited Test Centres may use for advertising or marketing purposes;</p>
"MoReq2010 Certified Records System Logo"	<p>the DLM Forum logo that Suppliers may use for advertising or marketing purposes on;</p>
"MoReq Governance Board"	<p>the board constituted in accordance with Annex 5 (Governance) chaired by DLM Forum;</p>
"Representatives"	<p>DLM Forum Representatives and the Test Centre Representatives or any of them;</p>

"Sub-contract"	any contract or agreement between the Test Centre and any third party, and "Sub-contractor" shall be construed accordingly;
"Supplier"	any third party to whom the Test Centre carries out Testing using the MoReq2010 Specification;
"Supplier's Pre-Qualification Questionnaire"	the pre-qualification questionnaire completed by the Supplier and provided to the Test Centre prior to the Testing being carried out;
"Term"	the period described in clause 2;
"Termination Notice"	a notice to terminate this Agreement or part of the Services either immediately or at a date specified in the notice;
"Test Centre's Confidential Information"	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel, customers and Suppliers of the Test Centre, including IPRs, and the Test Centre's performance against the Service Levels, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;
"Test Centre IPRs"	IPRs owned by the Test Centre before the Effective Date or created by the Test Centre independently of this Agreement;
"Test Centre Representatives"	the representatives appointed by the Test Centre pursuant to clause 7.1 (Representatives);
"Test(s)"	the test(s) and related activities required to be carried out under this Agreement, as further described in Annex 2 (Responsibilities);

"Testing"	the process of conducting the Tests ;
"Test Data"	the data used and produced in respect of the Tests;
"Test Materials"	<p>the Test Data, Test Scripts, Test Report (including the template for recording results), guidance on Testing and any other materials, documentation, information or programs supplied by the DLM Forum to the Test Centre, the IPR in which:</p> <ul style="list-style-type: none">(i) are owned or used by or on behalf of DLM Forum; and(ii) are or may be used in connection with the provision or receipt of the Testing, <p>but excluding any third party material;</p>
"Test Report"	the report to be used by the Test Centre setting out details of a Test, including the template for recording results;
"Test Scripts"	the document prepared by DLM Forum as set out in Annex 3 (MoReq2010 Specification);
"UK"	the United Kingdom;
"VAT"	value added tax as provided for in the Value Added Tax Act 1994;
"Warning Notice"	a notice served under clause 21;

ANNEX 1

Overview of the Accreditation Process

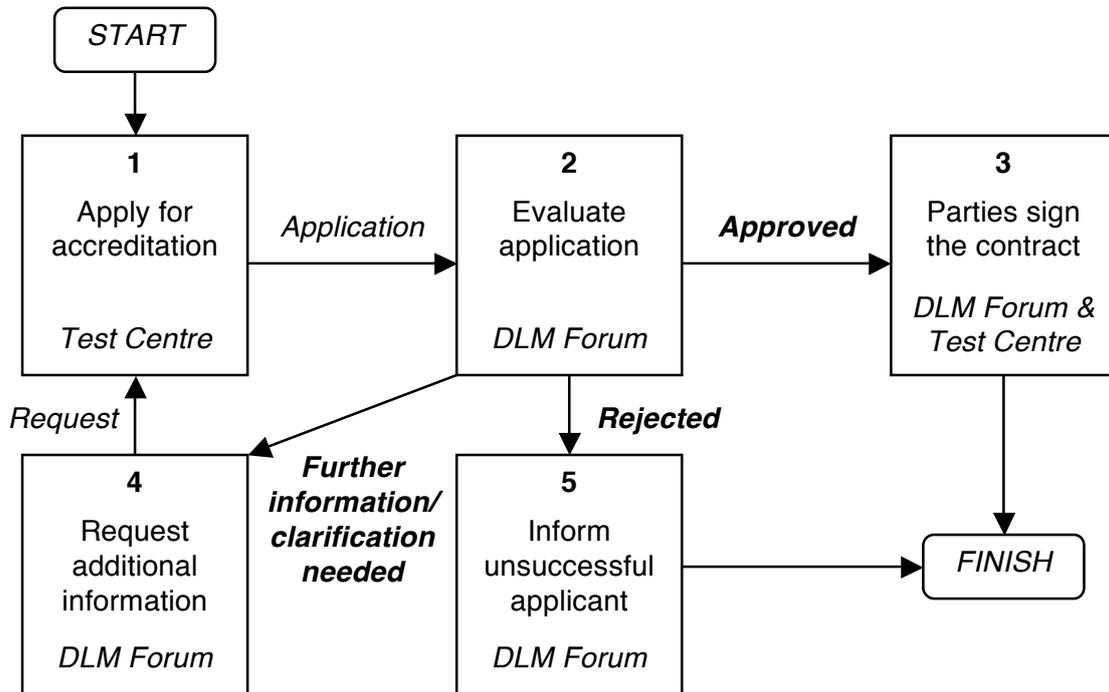


Diagram of the Accreditation Process

1. APPLY FOR ACCREDITATION

- 1.1 An organisation or body seeking to become a Test Centre must first complete the Application for Accreditation (see the Appendix to Annex1).
- 1.2 In accordance with the provisions of this contract the test centre must either be a member of the DLM Forum or must apply for membership as part of completing the Application for Accreditation.
- 1.3 The Application for Accreditation must be sent to the DLM Forum secretariat.

2. EVALUATE APPLICATION

- 2.1 Representatives of the DLM Forum evaluate each Application for Accreditation that they receive, in any order they choose, using any criteria and weighting they may so determine, as directed from time-to-time by the DLM Forum Executive Committee.
-

- 2.2 In evaluating any completed Application for Accreditation it receives, the DLM Forum will give due consideration to applicants that provide evidence of at least the following characteristics:
- 2.2.1 Their sound legal and financial standing;
 - 2.2.2 Their ability to carry out the testing to the highest standards;
 - 2.2.3 They have in place suitable and sufficient quality procedures; and
 - 2.2.4 They have positive previous experience of conducting software testing or, if they lack previous experience, are able to otherwise demonstrate their suitability to conduct future testing.
- 2.3 Each evaluation of an Application for Accreditation by the DLM Forum will result in one of the following outcomes:
- 2.3.1 The application is approved (see 3. below);
 - 2.3.2 The application is rejected (see 5. below); or
 - 2.3.3 The DLM Forum decides that the application is incomplete or that additional information or clarification is required before it can complete its evaluation (see 4. below).

3. PARTIES SIGN THE CONTRACT

- 3.1 Should the DLM Forum approve an Application for Accreditation under 2.3.1, above, the applicant will receive accreditation as a Test Centre upon both parties signing this contract.
- 3.2 The Application for Accreditation and any additional information requested and provided (see 4. below) will be incorporated into the agreement as the contract schedule.

4. REQUEST ADDITIONAL INFORMATION

- 4.1 Should additional information be required so as to amplify the original or amended Application for Accreditation as described under 2.3.3, above, the DLM Forum will send a request for this additional information to the applicant.
- 4.2 The DLM Forum's request for additional information will describe the nature of the information required and will include the reason or explanation for why such information is required.
-

- 4.3 The DLM Forum's request for additional information will advise the applicant of a reasonable date by which the additional information is required. Should the information requested not be delivered to the DLM Forum by the due date then the applicant will be deemed to have withdrawn its Application for Accreditation.
- 4.4 The DLM Forum may make more than one request for additional information, as it so decides.

5. INFORM UNSUCCESSFUL APPLICANT

- 5.1 Should the DLM Forum decide not to accredit any applicant for any reason then it will communicate its decision to the applicant giving the reasons why the application has been rejected.
 - 5.2 Providing inaccurate or misleading information in the Application for Accreditation shall in and of itself be sufficient for the DLM Forum to reject any application.
 - 5.3 The decision of the DLM Forum will be final and not subject to review or appeal.
 - 5.4 An unsuccessful applicant may subsequently reapply for accreditation as a Test Centre at a later date, if the reasons for its rejection no longer apply. To reapply, the applicant must complete and submit the Application for Accreditation (see the Appendix to Annex 1), under 1. above, which will be evaluated by the DLM Forum as a new application under 2. above.
-

Appendix to Annex 1

APPLICATION FOR ACCREDITATION

Answers must be accurate, complete and accompanied by supporting evidence

1. APPLICANT INFORMATION

- 1.1 Applicant information provided in this section must show that the organisation is what it purports to be, that it has a sound legal and financial status, and conforms with the requirement for membership of the DLM Forum.
 - 1.2 Provide the following national registration details:
 - 1.2.1 Company Name (include Trading As, if applicable);
 - 1.2.2 Registration Number; and
 - 1.2.3 Where and When Registered.
 - 1.3 Provide the following location and contact details:
 - 1.3.1 Organisation website URL(s);
 - 1.3.2 Location of Head Office and location of each facility where testing is to be conducted; and
 - 1.3.3 Address, telephone, email, of the Director of Testing and any additional contact officers for liaison with the DLM Forum regarding testing services.
 - 1.4 Describe the legal status of the organisation:
 - 1.4.1 Legal Ownership, whether publicly, privately or government owned and the type of organisation (e.g. Limited Company);
 - 1.4.2 State the objective and the main activities of the organisation;
 - 1.4.3 Indicate any legal or other restrictions on the activities of the organisation, if any; and
 - 1.4.4 Attach supporting documentation as necessary.
 - 1.5 Describe the financial status of the organisation:
 - 1.5.1 State the current financial status of the organisation;
 - 1.5.2 Explain how the organisation is financially capable of carrying out the activity of MoReq2010 testing;
 - 1.5.3 Confirm that the organisation is solvent at the time of application;
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- 1.5.4 Describe what provision the applicant has made to indemnify suppliers it conducts testing for, and/or the DLM Forum in the event of any legal or other dispute (e.g. professional indemnity insurance up to a particular amount); and
- 1.5.5 Attach documentation to support your claims (e.g. the organisation's most recent Annual Report).
- 1.6 Membership of the DLM Forum:
 - 1.6.1 Indicate when the organisation joined the DLM Forum and the category of membership held; **OR (if not currently a member)**
 - 1.6.2 Confirm that the organisation is simultaneously applying for membership of the DLM Forum.

2. TECHNICAL CAPABILITIES

- 2.1 Information provided in this section must state that the applicant is skilled in records and information management, capable of understanding and applying the MoReq2010 specification, and fully able to undertake testing of a supplier's product or site installation.
 - 2.2 List the countries and languages in which the applicant can provide MoReq2010 testing services (note that all test reports must be submitted to the DLM Forum in English);
 - 2.3 Explain and demonstrate the skill level of the applicant in the field of records and information management showing the applicants understanding, awareness of, and involvement with records and information management applications and software;
 - 2.4 List the applicant's membership and date of joining of any trade and other associations connected to the fields of records and information management and software testing, and indicate any positions held in these associations (including its membership of the DLM Forum);
 - 2.5 State any skills and experience held in addition to software testing, such as consultancy and training;
 - 2.6 Explain the applicant's experience and approach to software testing, including details of other testing programmes to which the applicant belongs or has previously contributed;
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- 2.7 List and describe the facilities that the applicant provides, or will provide, to support software testing in general, and MoReq2010 testing in particular;
- 2.8 List the MoReq2010 core services and modules for which the applicant can provide testing services (this list may change after accreditation if additional modules to MoReq2010 are published or the applicant extends its testing capacity); and
- 2.9 Attach supporting documentation in the form of biographies of key staff who will direct and undertake the testing of suppliers on behalf of the applicant (following accreditation, these personnel may change over time).

3. QUALITY MANAGEMENT

- 3.1 Information given in this section must provide assurance of the applicant's approach to quality management of testing and related procedures.
- 3.2 State the applicant's approach to quality management and explain how the applicant has implemented and maintains high quality processes within its organisation (include in the response any standards the organisation adheres to and has been independently audited against);
- 3.3 In relation to the applicant's software testing procedures in particular, indicate how they have been established and are maintained (include in the response any standards to which the applicant's software testing procedures conform and have been independently audited against);
- 3.4 Attach supporting documentation (e.g. copies of the applicant's quality management policies, software testing procedures and/or certificates of conformance received from independent third parties).

4. CONFLICTS OF INTEREST

- 4.1 Information provided in this section must indicate that the applicant is aware of the potential for conflicts of interest between itself and suppliers, is able to identify such conflicts or potential conflicts, and has in place appropriate measures to resolve and mitigate such conflicts when they arise.
-

- 4.2 Give details of any conflicts of interest or potential conflicts of interest that might prevent the applicant from providing testing services for a given supplier or a particular type of supplier; and
- 4.3 Explain what provisions the applicant has put in place to identify potential conflicts of interest with its clients and what policies and procedures are applicable to resolving such conflicts or potential conflicts.

5. DISPUTE RESOLUTION

- 5.1 Information provided in this section must show that the applicant has in place suitable processes for resolving disputes with suppliers and is able to exercise them.
- 5.2 Provide and explain the applicant's dispute resolution and dispute escalation procedures with its clients.
- 5.3 Indicate whether the applicant's dispute resolution procedures have ever been used?
- 5.4 If possible, give a previous example of the use of the applicant's dispute resolution procedures and indicate how the dispute was resolved.

6. REFERENCES

- 6.1 Information provided in this section must allow the DLM Forum to independently verify the applicant's claims if this is deemed to be necessary.
 - 6.2 Provide the names and contact details of at least two organisations that can give independent references in support of the statements made by the applicant in this application;
 - 6.3 Ensure that each reference organisation is able to provide relevant corroboration of the technical and other capabilities of the applicant;
 - 6.4 State the nature of the relationship between each of the reference organisations and the applicant organisation, noting in the statement all past and present services provided by the applicant for the reference organisations and by each of the reference organisations for the applicant; and
-

- 6.5 Confirm that the reference organisations are willing to provide information to a representative of the DLM Forum and that they are neither being remunerated nor coerced for providing such information.

7. STATEMENT OF CONFORMANCE

- 7.1 By including a statement of conformance the applicant formally acknowledges that it has answered all questions throughout this application to the best of its ability.
- 7.2 One or more persons legally eligible to represent the applicant must sign the following statement of conformance:
- 7.3 I/we hereby declare that the information provided with this application is true, accurate and complete to the best of my/our knowledge and hereby authorise and allow the DLM Forum to use this information to evaluate the application, and to request further information as required.**
- 7.4 The declaration must be signed by the representative(s), dated, and the name and position within the organisation of the representative(s) given.
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ANNEX 2

Responsibilities

PART 1. OVERVIEW OF TESTING AND CERTIFICATION PROCESS

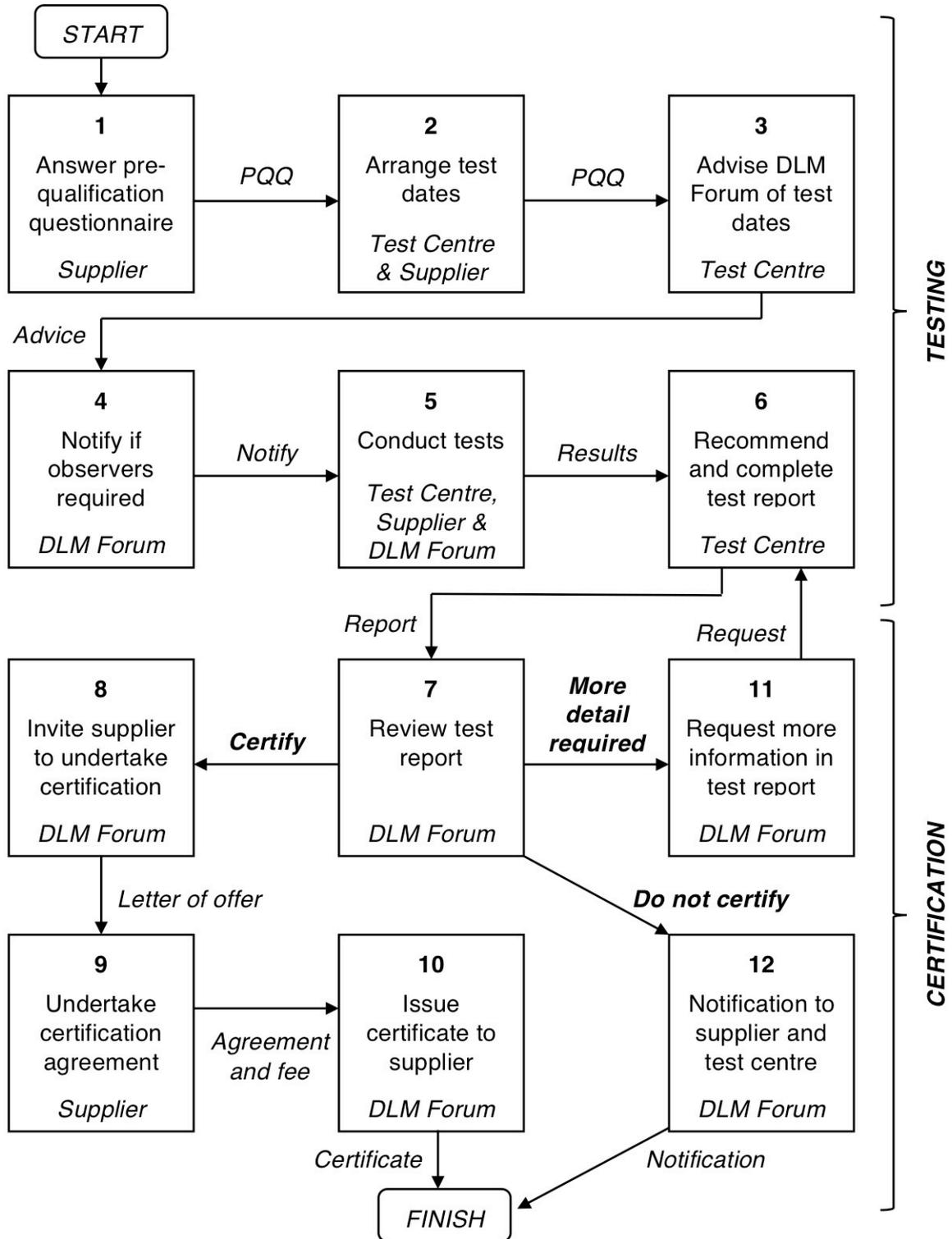


Diagram of the Testing and Certification Process

1. ANSWER PRE-QUALIFICATION QUESTIONNAIRE (PQQ)

- 1.1 Before a Test Centre can undertake testing on behalf of a supplier they must first enter into an agreement or understanding.
- 1.2 The agreement between Test Centre and supplier is separate to and outside the agreement covering accreditation between the DLM Forum and the Test Centre. However, it must include the mandatory flow-down provisions listed in Annex 4.
- 1.3 Once an agreement is in place the supplier initiates the testing and certification process by completing the pre-qualification questionnaire (PQQ) included with the MoReq2010 Test Materials (see Annex 3).
- 1.4 The completed PQQ is then forwarded to the Test Centre.

2. ARRANGE TEST DATES

- 2.1 Upon receipt of the completed PQQ from the supplier, the Test Centre must determine if the PQQ has been completed satisfactorily and whether the Test Centre is able to provide the necessary testing service.
- 2.2 Should the Test Centre deem that it has received sufficient information from the supplier, they may then go ahead and arrange for testing on a suitable date.

3. ADVISE DLM FORUM OF TEST DATES

- 3.1 Once test dates have been finalised the Test Centre must inform the DLM Forum.
 - 3.2 The dates chosen under 2.2, above, must be sufficient to give the DLM Forum the necessary notice period required under clause 6.3 of this contract.
 - 3.3 The purpose of the notice period is to allow the DLM Forum to arrange for its own observer(s) to be present at testing under clause 6.2.
 - 3.4 When notifying the DLM Forum of arranged test dates, the Test Centre must simultaneously forward a full copy of the PQQ, completed by the supplier under 1.3 above, to the DLM Forum. The DLM Forum may use the completed PQQ for monitoring under clause 6.1 or selecting suitable observers under clause 6.2.
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4. NOTIFY IF OBSERVERS REQUIRED

- 4.1 Following the receipt of notice of testing under 3.1 above the DLM Forum must inform the Test Centre if it intends to send observers to monitor testing under clause 6.2.
- 4.2 The DLM Forum must communicate with the Test Centre, confirmation of its intention to send observers within the notice period set out in clause 6.4.

5. CONDUCT TESTS

- 5.1 The Test Centre and the supplier carry out the tests as detailed in the MoReq2010 Test Materials (see Annex 3).
- 5.2 Testing may cover the core services of MoReq2010 or any of the extension modules, provided the core services and other prerequisites have previously been tested.
- 5.3 If observers from the DLM Forum are present at testing then they must be given access to all documentation under clause 6.7 and must be allowed to make their own observations during testing.

6. RECOMMEND AND COMPLETE TEST REPORT

- 6.1 The test centre completes the full test report as detailed in the MoReq2010 Test Materials.
 - 6.2 The test report must include, at least:
 - 6.2.1 For each test undertaken a completed test result form including whether the test was passed or failed and the Test Centre's observations describing how the test was conducted;
 - 6.2.2 The completed PQQ from the supplier and for each supplier response in the PQQ the Test Centre's observations on the accuracy and completeness of the supplier's responses;
 - 6.2.3 The Test Centre's overall summary of the test results and how the tests were conducted; and
 - 6.2.4 The Test Centre's recommendation to the DLM Forum for certification (or otherwise).
 - 6.3 The Test Centre then forwards the test report to the DLM Forum.
-

- 6.4 Following the completion of the test report, the Test Centre must not publish nor indicate in any way that the supplier's product or installation is certified against MoReq2010, or is suitable for such, until and unless a certificate is issued by the DLM Forum under 10.1, below.

7. REVIEW TEST REPORT

- 7.1 Upon receipt of the completed test report from the Test Centre, the DLM Forum will conduct a review.
- 7.2 The DLM Forum's review may include additional submissions or information obtained from other sources, for example, the independent report of observer's present at testing under 5.3 above.
- 7.3 In conducting its review, the DLM Forum may act otherwise to the recommendation made by the Test Centre in the test report.
- 7.4 The outcome of the DLM Forum review will be one of the following:
- 7.4.1 The supplier is invited to undertake certification (see 8. below);
 - 7.4.2 The supplier is not invited to undertake certification (see 12. below); or
 - 7.4.3 The DLM Forum decides that the test report is incomplete or insufficient to make a decision on certification (see 11. below).

8. INVITE SUPPLIER TO UNDERTAKE CERTIFICATION

- 8.1 Where the DLM Forum decides under 7.4.1, above, to invite the supplier to undertake certification, the DLM Forum will then communicate directly with the supplier with information about the benefits of certification and inviting the supplier to become certified on payment to the DLM Forum of the appropriate certification fee.
- 8.2 Certification fees shall be set by the DLM Forum and published on the DLM Forum website.
- 8.3 The Test Centre is not involved in this process between the DLM Forum and the supplier.
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9. UNDERTAKE CERTIFICATION AGREEMENT

- 9.1 A supplier that has been invited to certify under 8.1, above, must first pay the appropriate certification fee to the DLM Forum.
- 9.2 The Test Centre is not involved in this process between the DLM Forum and the supplier.

10. ISSUE CERTIFICATE TO SUPPLIER

- 10.1 Upon receipt of the certification fee under 9.1, above, the DLM Forum then issues a certificate of MoReq2010 compliance to the supplier. The supplier is allowed limited use of the MoReq2010 Certified Records System Logo.
- 10.2 The Test Centre is not involved in this process between the DLM Forum and the supplier.

11. REQUEST MORE INFORMATION IN TEST REPORT

- 11.1 Where the DLM Forum decides under 7.4.3, above, that the test report is incomplete or insufficient for the purposes of certification it shall so inform the Test Centre.
- 11.2 The communication from the DLM Forum will indicate those areas in which the test report is not suitable and request appropriate remedial measures, such as the provision of more information, or in some cases, re-testing.
- 11.3 Should the Test Centre not be able to rectify the test report to the satisfaction of the DLM Forum within a suitable timeframe set by the DLM Forum, then the supplier will not be invited to undertake certification and the process will complete with 12.1, below.
- 11.4 Should the Test Centre dispute the DLM Forum's analysis of the test report then the matter may be escalated using the dispute resolution mechanism described in Annex 5 (Governance).

12. NOTIFICATION TO SUPPLIER AND TEST CENTRE

- 12.1 Where the DLM Forum decides under 7.4.2, above, not to invite the supplier to undertake certification, the DLM Forum will then notify the supplier directly of its decision and the reasons behind it.
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- 12.2 The Test Centre is not involved in this process between the DLM Forum and the supplier.

PART 2. RESPONSIBILITIES

13. TEST CENTRE RESPONSIBILITIES

The test centre is responsible for the following:

- 13.1 Ensuring there is no conflict of interest between itself and the supplier;
- 13.2 Including the mandatory flow-down provisions (see Annex 4) in its agreement with the supplier;
- 13.3 Checking the completeness and the suitability of the supplier's completed PQQ before arranging dates for testing;
- 13.4 Ensuring that all tests are conducted in a suitable test environment;
- 13.5 Only agreeing to conduct those tests for which it can provide a suitable level of testing expertise;
- 13.6 Notifying the DLM Forum of test dates, location and session times;
- 13.7 Providing access by appointed DLM Forum observers to all tests and test documentation;
- 13.8 Conduct of the testing and recording of test results;
- 13.9 Undertaking testing using the most current version of the MoReq2010 specification and its test materials;
- 13.10 Seeking clarification from the DLM Forum of any ambiguities in how tests should be conducted and notifying the DLM Forum of any mistakes in the MoReq2010 test materials;
- 13.11 Representing the best interests of the DLM Forum and the MoReq2010 specification during testing;
- 13.12 Compiling and completing the test report;
- 13.13 Recommending whether or not a supplier should be invited for certification; and
-

- 13.14 Amending the test report, if so requested, and providing any additional information specified by the DLM Forum, including if necessary conducting additional testing.

14. DLM FORUM RESPONSIBILITIES

The DLM Forum is responsible for the following:

- 14.1 Notifying the Test Centre when and if observers will attend testing;
 - 14.2 Providing observers and arranging for them to attend testing sessions;
 - 14.3 Providing clarification of any issues or ambiguities raised by the Test Centre in relation to the MoReq2010 specification and test materials;
 - 14.4 Reviewing and verifying the test report;
 - 14.5 Notifying the Test Centre of any inconsistencies of additional information required in the test report;
 - 14.6 Inviting suppliers to apply for certification;
 - 14.7 Issuing certificates to suppliers and maintaining a list of certified products;
 - 14.8 Notifying suppliers, and the Test Centre, where certification standards have not been reached; and
 - 14.9 Safekeeping of and controlled access to the final test report.
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ANNEX 3

MoReq2010 Specification

The MoReq2010 Specification and Test Materials can be found at the DLM Forum website:

<http://www.dlmforum.eu/>

ANNEX 4

Mandatory flow-down provisions

1. The Test Centre shall ensure that each contract it has in place with any Supplier in respect of Testing includes the following:
 - 1.1 a provision requiring the Supplier to complete the Pre-Qualification Questionnaire and the Test Report in English;
 - 1.2 a provision requiring the Supplier to agree that the DLM Forum may be provided with copies of any Pre-Qualification Questionnaire and Test Report (whether or not the Supplier is successful), in accordance with the confidentiality provisions set out within this Agreement;
 - 1.3 a provision requiring the Supplier to attend any Governance or Dispute Resolution meetings as may be required by the DLM Forum;
 - 1.4 a provision requiring the Supplier not to use the MoReq2010 Certified Records System Logo or to state that it is certified until such accreditation is confirmed in writing by the DLM Forum together with commensurate third party right provisions; and
 - 1.5 a provision requiring both the Test Centre and the Supplier to be subject to confidentiality provisions that are commensurate with those set out in this Agreement.
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ANNEX 5

Governance

1. Introduction

- 1.1 This Annex 5 (Governance) sets out:
 - 1.1.1 the procedures and structure that will be used to govern the relationship between the DLM Forum and the Test Centre under this Agreement; and
 - 1.1.2 the processes for the resolution of a Dispute which may arise between the DLM Forum and the Test Centre.

PART 1: GOVERNANCE

2. The MoReq Governance Board

- 2.1 The DLM Forum has established the MoReq Governance Board (MGB) to safeguard the integrity of MoReq in its use and development. The MoReq Governance Board has the following tasks and responsibilities:
 - 2.1.1 Ensure MoReq brand name protection
 - 2.1.2 Ensure the consistency and quality of MoReq Chapter Zero content and translations of the MoReq specification
 - 2.1.3 Instigate and promote MoReq awareness, use and adoption in Europe, and beyond, through publications, training programmes and other communication channels and partners
 - 2.1.4 Provide an ongoing programme for the maintenance and testing of MoReq
 - 2.2 The MoReq Governance Board (MGB) has delegated responsibility for accreditation of test centres, testing and certification to an independent sub-committee which it has appointed to review all initial instances of any disputes which may arise between the DLM Forum and the Test Centre.
 - 2.3 The independent sub-committee will meet at least four times a year and is empowered to convene additional meetings when the need arises. The sub-committee reports to the MoReq Governance Board.
 - 2.4 The independent sub-committee will maintain a record of all disputes referred to it together with its decisions and recommendations for resolution. In response to a
-

specific dispute the conclusions of the sub-committee will be notified in writing to the Test Centre.

- 2.5 If a dispute is not resolved through the work of the sub-committee and remains outstanding the sub committee will remit the dispute to the Executive Committee of the DLM Forum which is the highest governing body of the DLM Forum..
- 2.6 The Executive Committee of the DLM Forum also meets at least four times a year and may convene additional exceptional meetings where necessary
- 2.7 The Executive Committee of the DLM Forum will maintain a record of all disputes referred to it together with its decisions and recommendations for resolution. In response to a specific dispute the conclusions of the Executive Committee will be notified in writing to the Test Centre.

PART 2: DISPUTE RESOLUTION PROCEDURE

3. Definitions

"Dispute Resolution Timetable" means timetable for the resolution of Disputes set out in the appendix to this annex;

"Expert" means the person appointed by the parties in accordance with paragraph 6.2 of schedule 6 (Dispute Resolution);

"Notice of Dispute" means a written notice served by one party on the other stating that the party serving the notice believes that there is a Dispute;

4. Dispute Resolution Procedure

- 4.1 Unless agreed otherwise, the parties shall continue to comply with their respective obligations under this Agreement regardless of the nature of a Dispute and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure.
- 4.2 Subject to paragraph 5.5, the parties shall seek to resolve Disputes firstly by commercial negotiation (as prescribed in paragraph 5 below), then by recourse to arbitration (as prescribed in paragraph 7). Specific issues may be referred to Expert Determination (as prescribed in paragraph 6 below) where the parties agree to such referral being made.
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- 4.3 The time periods set out in the Dispute Resolution Timetable shall apply to all Disputes unless the parties agree that an alternative timetable should apply in respect of a specific Dispute.
- 4.4 If at any point it becomes clear that an applicable deadline set out in the Dispute Resolution Timetable cannot be met or has passed, the parties may agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying start of the subsequent stages set out in the Dispute Resolution Timetable by the period agreed in the extension.

5. Commercial Negotiations

- 5.1 Subject to paragraph 5.5, the parties shall use all reasonable endeavours to settle any Dispute between them in good faith and in accordance with the procedure set out in this paragraph 5.
- 5.2 In the first instance, the DLM Forum and the Test Centre will make reasonable endeavours to resolve all Disputes as soon as possible, at the lowest level in the project structure in which they can best be managed. Where either party considers that a Dispute cannot be resolved within acceptable timescales the dissatisfied party may escalate the Dispute to the following level:

Escalation Process
1. The relevant Sub-Committee of the MoReq Governance Board and Test Centre equivalent; then
2. The Executive Committee of the DLM Forum and Test Centre equivalent.

- 5.3 The speed of escalation and resolution of Disputes during this commercial negotiations stage will be judged by reference to the seriousness and operational impact of the issue and should be agreed between the parties (but in default of agreement at the discretion of the DLM Forum). The timescale for resolving Disputes by commercial negotiations shall be as set out in the Dispute Resolution Timetable.
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- 5.4 If the parties have not settled the Dispute in accordance with the Escalation Process and the time period provided in paragraph 5.2 of this schedule then the parties shall refer the matter to arbitration in accordance with paragraph 7 of this schedule.
- 5.5 If either party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuance of commercial negotiations, will not result in an appropriate solution or that the parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiations in accordance with this paragraph 5, that party shall serve a written notice to that effect and the parties shall proceed to arbitration in accordance with paragraph 7.

6. Expert Determination

- 6.1 If the Dispute relates to any aspect of the technology underlying the Testing or otherwise relates to an ICT technical, financial technical or other technical nature as the parties agree and the dispute has not been resolved using the Escalation Process, then the parties may, as an alternative final and binding means of dispute resolution, by written agreement, refer the Dispute to an Expert for determination.
- 6.2 The Expert shall be appointed by agreement in writing between the parties, but in the event of a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the Expert shall be appointed on the instructions of either the president of the British Computer Society (or any other association that the parties reasonably understand to have replaced it) in relation to a technical Dispute, or to the president of the Law Society in relation to all other Disputes.
- 6.3 The Expert shall act on the following basis:
- 6.3.1 he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;
 - 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the parties;
 - 6.3.3 the Expert shall decide the procedure to be followed in the determination and shall be requested to make his/her determination within 30 Working Days of his appointment or as soon as reasonably practicable thereafter and the parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
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- 6.3.4 any amount payable by one party to another as a result of the Expert's determination shall be due and payable within 20 Working Days of the Expert's determination being notified to the parties;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. Arbitration

- 7.1 In the event that a Dispute between the parties cannot be resolved by commercial negotiation in accordance with paragraph 5, then that Dispute (including, without limitation, any Dispute as to the existence, validity or termination of the Agreement) shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this paragraph.
- 7.2 The number of arbitrators shall be one.
- 7.3 The seat or legal place of arbitration shall be London.
- 7.4 The language to be used in the arbitral proceedings shall be English.

8. Urgent Relief

- 8.1 Nothing in this schedule 6 shall prevent either party from seeking injunctive relief at any time.

9. Sub-Contractors

- 9.1 The parties shall procure that any sub-contractor, agent or outsourcer (including the Contractor) involved in Testing which is the subject of a Dispute shall, at the request of either party, provide any assistance required in order to resolve the relevant Dispute, including the provision of any information, data or documentation and the attendance at any meetings or hearings.
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Appendix to Annex 5

DISPUTE RESOLUTION TIMETABLE

Disputes will be escalated in accordance with the following timetable:

Stage	Dispute Timetable
Time permitted for resolution of Dispute by commercial negotiations pursuant to paragraph 2 of this schedule from the date of the Notice of Dispute at each level	[10 Working Days]
