



A Legal Template
Agile Business Conference 2016

Agenda

- Why do we need a contract template?
- Commercial challenges
- Template structure
- Main features
- Questions

Lawyers like certainty!

- Lawyers like certainty
 - outcome, cost, time, etc
 - conservative approach
 - predictability
- Impact on contract drafting
 - risk allocation
 - rigid requirements
 - inflexibility
 - resistance to change
- Contracts are “lose-lose” – failure generates
 - claims for damages
 - lack of a solution

Additional barriers to Agile

- Myths
 - lack of financial control
 - uncertainty of outcome
- Lack of contractual templates
 - Norwegian PS-2000 contract
 - Danish K03 contract
 - Flexlite
 - GDS DOS
- Need for cultural change
 - collaboration
 - risk ownership
 - employee empowerment

Commercial Challenges

- Preserving balance between flexibility and certainty
 - Agreement on scope
 - Collaboration
 - allocation of duties and responsibilities
 - IP ownership
 - Risk and liability
 - Consequences of interim acceptance
 - Governance and control measures
 - performance monitoring – velocity, cadence, etc
 - quality control
 - Commercial models – controlling the cost
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Template structure

- Assumptions
- Drafting notes
- Variable provisions
- The “health warning” – this is a template; *not a finished contract!*
- Structure
 - Operational provisions
 - “Boiler-plate”
 - Schedules

Flexibility & certainty

- Terms of Reference & Solution Architecture Definition

- Project Approach

“the Terms of Reference and the Solution Architecture Definition may be developed by the Parties during the ... Foundations Phase” (2.2.3)

“Subject to Change, ... the quality of the Solution shall be fixed on completion of the Foundations Phase.” (2.4)

- Change Management Approach

- Contract or PRL
- Two alternatives

- Delivery Plan

Collaboration

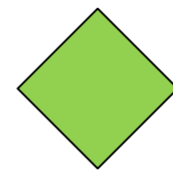
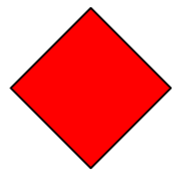
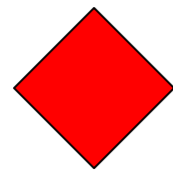
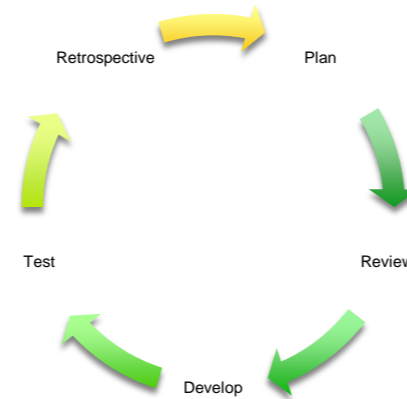
“The Parties acknowledge and agree ... to collaborate in good faith and to comply with the principles of the DSDM Project Approach ...” (2.1.2)

- “good faith”
- Ownership of IPR
- Employee participation & empowerment

Risk & liability

- Who bears the risk of failure?
- Acceptance Testing – Customer choices (8.4)
 - reject Solution Increment
 - accept Solution Increment
 - partial acceptance
- Consequences of rejection (8.5)
- Consequence of interim acceptance

Termination points

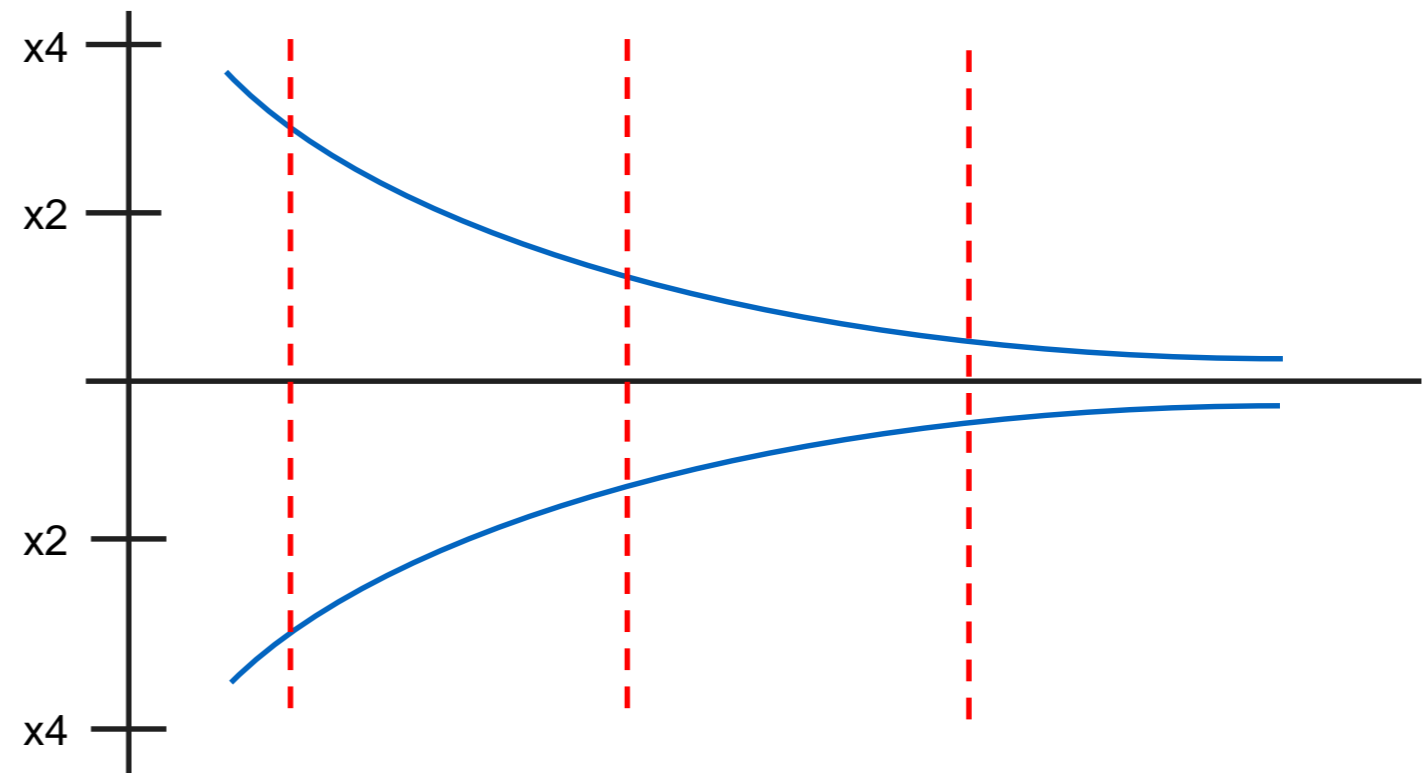


Decision Points

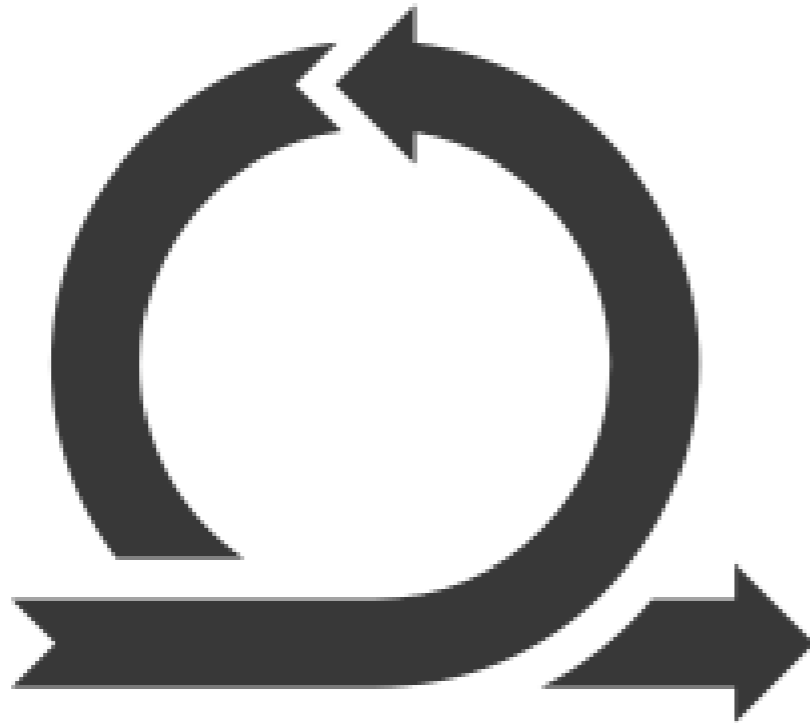
Minimum Useable
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Commercial model

- Fixed price
- Phasing
- Termination



Questions?



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