Experts' Joint Statement on Matters Agreed and/or Disagreed in regard to Part 35 12 (3) CPR

IN THE HIGH COURT OF JUSTICE   CLAIM NO: XX-11-99aa
QUEEN'S BENCH DIVISION
TECHNOLOGY AND CONSTRUCTION COURT

B E T W E E N:

VERY CLEVER CONSULTANTS LIMITED
('VCC')
-and-

TOTALLY PREPARED INTERNATIONAL LIMITED
('TPI')

Experts' Joint Statement on Matters Agreed and/or Disagreed
in regard to Part 35 12 (3) CPR

The Experts,

Mr Colin Pearson, on behalf of the Claimant   **('CP')**
Dr Stephen Castell, on behalf of the Defendant   **('SC')**

have been appointed by their respective parties as experts in the field of computer software and systems design and development.

Introduction

This Joint Statement on Matters Agreed and/or Disagreed in regard to Part 35 12 (3) CPR, which the Court has directed the Experts are to produce by 8pm on 29 September 2011, represents the best understandings and consensus that **CP** and **SC** have been able to reach in the time available for reporting.

Supplemental Witness Statements had not been served during the preparation of this Joint Statement and have not been taken into account herein.

CP and **SC** respectfully request the Court to refer definitively to their final analyses, conclusions and opinions as will be provided in their respective Expert Reports.

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A. AGREEMENT ON THE ISSUES FOR EXPERTS

A.1 CP and **SC** have agreed, and pursuant to Counsel for both parties, at the direction of the Court, subsequently conferring and agreeing, **CP** and **SC** have been directed, that the principal issues for the experts to consider and upon which to reach their opinions to assist the Court are as follows:

Issue 1: Were the specification(s) of requirements for the DoGood software adequate for a project of this nature, to what extent (if any) did they change during the course of the project, and what was the impact (if any) on the project?

Issue 2: (i) How were the respective roles and responsibilities of the parties defined, particularly in relation to the prioritization of work and direction of the overall project? (ii) Were these respective roles and responsibilities sufficiently well fulfilled and carried out for a project of this nature?

Issue 3: Were adequate and timely Input Data, Expected Results and Acceptance Criteria requested and/or provided for the project?

Issue 4: What was the nature, significance and effect of each of the alleged defects and were they capable of repair or resolution, and if so, estimate the time and effort it would take to repair a defect of that nature.

Issue 5: Were the project management arrangements, and the manner and standard to which they were in the event carried out, appropriate and adequate for a project of this nature?

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B. PRELIMINARY ASSESSMENT OF AND CURRENT POSITION ON AGREED ISSUES

B.1.1 <u>Issue 1</u>: Were the specification(s) of requirements for the DoGood software adequate for a project of this nature, to what extent (if any) did they change during the course of the project, and what was the impact (if any) on the project?

B.1.2 Relying primarily on a preliminary consideration of the Witness Statements of the Claimant (excluding Supplemental Witness Statements), SC's provisional view is that:

- The specification of requirements for the DoGood software was adequate for a project of this nature (by way of example, see paragraph 25 of Mr Smith's Witness Statement on behalf of the Claimant).

- The specification was subject to some changes during the project as a result of clarification and/or further detailing by the Defendant of the requirements already set out in the "DoGood Specification" document dated 25 November 2008 (see paragraphs 29 and 31 of Mr Smith's Witness Statement on behalf of the Claimant; and paragraph 102 of Mr Romanov's Witness Statement on behalf of the Claimant: "significant detail, which was not apparent initially, emerged over the course of the project").

- However, there appear to be no further updates to the detailed technical specifications written by the Claimant, upon which the Claimant relies, after October 2009 (see paragraph 86 of Mr Smith's Witness Statement on behalf of the Claimant).

- There appears to be no evidence put forward in the Claimant's Witness Statements that the requirements specification documents produced during the course of the project defined any significantly more complex system than was apparent from the "Dogood Specification" document dated 25 November 2008.

- In any event, the Claimant's case is essentially that "the software system developed by the Claimant under the Contract would have been completed, and all outstanding issues would have been resolved, within a reasonable time but for the Defendant's repudiation of the Contract by its failure and/or refusal to pay monies properly due to the Claimant in breach of the contract"; and "The Claimant admits that the software was incomplete when work stopped on the project in June 2010 ... Consequently, it is admitted that there are some elements of functionality which had not yet been completely implemented, some outstanding bugs that remained to be fixed, and that – inevitably – there was some instability in parts of the incomplete system. It is averred that, but for the Defendant's breach of Contract, the DoGood Version 3 system would have been completed satisfactorily with all specified functionality within a reasonable time and would have been fit for purpose. The Claimant was prevented from completing the system and resolving all outstanding issues by reason of the Defendant's repudiatory breach of the Contract" (paragraphs 1 & 46, R&DCC). This implies that the Claimant considered itself to be perfectly well capable of meeting whatever it believed constituted the totality of specification of requirements for the DoGood software, however complicated. That is, whether or not the sophistication or complexity of the required system had increased during the course of the project, such hypothetical sophistication or convolution appears not to be material to the Claimant's case, and is thus not something that experts can proportionately examine further.

- It is difficult to arrive at an answer as to what was the impact (if any) on the project of any changes in specification, since the Claimant itself confirms that it was not the Claimant's practice on this project to carry out impact assessments of change requests (see for example paragraphs 39 and 104 of Mr Romanov's Witness Statement).

- Notwithstanding the Claimant's lack of carrying out, or providing to the Defendant, any assessments of impact of change requests, it appears that the Defendant did agree that more time and effort, and therefore cost, than could have been anticipated at the outset could be necessary to complete the project (see e.g. "I accepted that on a time-and-materials basis, the cost had increased to £226,000 from the

originally estimated approximately £160,000, for delivering versions of 3.01 and 3.02", paragraph 51 of Mr Bossman's Witness Statement on behalf of the Defendant).

- Furthermore, the Defendant accordingly accepted the need for some appropriate additional payment, as and when such work was properly done (see e.g. "I replied ... that it was my intention to pay for all work completed according to specification and when correctly invoiced"; "I said that TPI therefore intended to pay all invoice amounts over and above the £100,000 ceiling as and when they accrued"; "I ... re-iterated that TPI would pay for any decent work done by any VCC programmer"; "I ... added that TPI intended to pay fully for the developers' ... time developing DoGood"; "I detailed ... how there were likely to be additional unaccounted days invoiced that I was prepared to overlook"; respectively paragraphs 77, 84, 102, 110 and 177 of Mr Bossman's Witness Statement on behalf of the Defendant).

B.1.3 CP views, based on consideration of the disclosed documents and witness statements:

- I consider that the requirements specification documents produced during the course of the project cumulatively represented a significantly more sophisticated system than was apparent from the "Dogood Specification" document dated 25 November 2008.

- The parties expected that the requirements would be subject to further elaboration following that initial specification, but I consider that the Defendant's specification process continued for too long; it should have been "frozen" at times. As a result, the project required more time and effort than could have been anticipated at the outset.

- I agree that the impact of the specification changes is difficult to quantify.

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B.2.1 Issue 2: (i) How were the respective roles and responsibilities of the parties defined, particularly in relation to the prioritization of work and direction of the overall project? (ii) Were these respective roles and responsibilities sufficiently well fulfilled and carried out for a project of this nature?

B.2.2 Relying primarily on a preliminary consideration of the Witness Statements of the Claimant (excluding Supplemental Witness Statements), SC's provisional view is that:

(i) (a) The respective roles and responsibilities of the parties were defined at the outset and remained materially constant throughout (albeit with certain exceptions which are more appropriately dealt with in respect of **Issue 5** below). In particular, in relation to the prioritization of software development work and direction of the overall project, the roles and responsibilities of Rheinhardt Smith of the Claimant included those of "project manager", "managing the software development", "development of the technical architecture of the software package", "writing the technical documents and specifications", "day to day running of the project", "setting up and managing various systems on the project, including the version control system, the issues database, and the daily build process", authoring the "installation software", and managing "the process for testing and producing monthly reports" (see paragraph 13 of Mr Smith's Witness Statement on behalf of the Claimant).

(i) (b) It seems clear that, given the comprehensive range and nature of roles and responsibilities confirmed by the Claimant for Mr Smith, whatever may in the event have been the Defendant's involvement in identification of work prioritization and of bugs in delivered software (which identification role is to be expected in a project of this scale and nature), the Claimant was to be ultimately, and intimately, responsible for the management, control and prioritization of all software development work. Such responsibility on the part of a software developer like VCC is normal and to be expected in projects of this nature and would include: responsibility for functional and QA testing (and thus development of associated criteria for acceptability of software quality), timely delivery of demonstrably fit-for-purpose software, direction of the overall project, and proper (auditable) financial accountability of software construction process time, tasks and deliverables in order that commercial queries and arrangements could be discussed and resolved in good order.

(ii) (a) It was not the Claimant's practice on this project to keep detailed project management and time or task accounting records (see for example paragraphs 67, 68 and 137 of Mr Romanov's Witness Statement on behalf of the Claimant: "we had no mechanism for recording time spent on individual development tasks..."; "It would not have been possible ... to apportion work to the tasks because we did not have the information at the necessary level of granularity ..."; "VCC did not record time spent on a per issue basis. Therefore, it is not possible to state how much time was spent working on each issue..."). It is thus difficult, because of the lack of such project records, to assess whether or not the respective roles and responsibilities were in the main sufficiently well fulfilled and carried out. However, the project did fail, and for that reason alone it may be inferred that such fulfillment was not to the most exacting standard of custom and practice in the software engineering profession and industry, further consideration of which is more appropriately dealt with in respect of **Issue 5** below.

(ii) (b) It is no justification for this project failure that the project was a relatively small one (compared to some IT systems development) for which it might be suggested that there would therefore be an expectation that the Claimant need not, or could not cost-effectively, keep detailed project management and time and task accounting records. To the contrary, it is common experience in IT project management of small(er) projects that, precisely because of the much reduced scale and complexity of staff, activities and project data, it is all the easier for any competent project manager, with the (multiple) roles and responsibilities confirmed by the Claimant for Mr Smith, to maintain, with little effort or cost overhead, the clear, complete and up-to-date details needed for management, control and progress reporting of such a (modest) project.

B.2.3 CP views, based on consideration of the disclosed documents and witness statements:

- I agree that the respective roles and responsibilities of the parties were defined at the outset, including that prioritization of work and functional testing were to be carried out by TPI. It seems to me that TPI

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assumed a greater role in the direction of the overall project as it progressed, probably as a result of that prioritisation role.

- I would not expect the Claimant to keep detailed project management and time or task accounting records on a small project of this nature, in which it was understood that overhead costs were to be minimised.

- There were deficiencies in both parties' fulfillment of their respective roles, but in my view none was critically instrumental in the failure of the project – the cause of which appears to lie more in commercial than technical or project management considerations. In that regard, it appears to me from the correspondence between the parties between October 2009 and June 2010 that the project could have continued to a successful conclusion it the Defendant had agreed to the discounted and renegotiated terms offered by the Claimant – which in my opinion offered a satisfactory and fair outcome.

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B.3.1 Issue 3: Were adequate and timely Input Data, Expected Results and Acceptance Criteria requested and/or provided for the project?

B.3.2 Relying primarily on a preliminary consideration of the Witness Statements of the Claimant (excluding Supplemental Witness Statements), SC's provisional view is that:

- Adequate and timely Input Data and Expected Results were provided, to the extent that they were perceived by the Claimant, as the software developer, to be required at all (see for example paragraphs 76 and 78 of Mr Romanov's Witness Statement on behalf of the Claimant: "There was an adequate set of files for the purpose of testing"; and "We did not ... require ... output test data, because we did not consider the absence of sample output data to be ... detrimental to the project").

- Beyond that, it appears that the Claimant makes no case that it was the Defendant who could or should have otherwise or further defined and approved Input Data and Expected Results materials (to the extent, if any, that they were considered by the Claimant to be absent, or lacking in way); or that it was the Defendant who was responsible for further producing and explaining them to the Claimant.

- There was a lack of well-defined Acceptance Criteria for the project (see paragraph 93 of Rheinhardt Smith's Witness Statement on behalf of the Claimant) and the Defendant's documented Acceptance Criteria were not sought by the Claimant until towards the end of the project (see paragraph 97 of Mr Romanov's Witness Statement on behalf of the Claimant: "we now had to extract acceptance criteria from TPI in order to understand where we stood ... these were only issued on 26/5/10").

- However, the Claimant confirms that the Claimant was responsible for writing and maintaining the detailed technical specifications for the software (see paragraphs 34, 37, 46, 47, 50, 60, 70, 80, 83, 84, 85 and 86 of Rheinhardt Smith's Witness Statement on behalf of the Claimant), and for Quality Assurance of the software as built by the Claimant (see paragraph 67 of Rheinhardt Smith's Witness Statement on behalf of the Claimant: "I would check to see that bugs ... genuinely were fixed"; and paragraph 70 of Mr Romanov's Witness Statement: "Rheinhardt Smith ... performed QA reviews on the software...").

- It therefore follows that the Claimant must have been capable of developing, had the information in order to develop, and in any event (if only as a matter of normal custom and practice in software engineering) certainly had a responsibility to develop, criteria by which the Claimant could judge and discover for itself the acceptable quality (or otherwise) of the software which the Claimant was building for the Defendant from time to time, i.e. the extent to which the software did (or did not) contain bugs and/or meet the detailed technical specifications (as written by the Claimant itself) of the software's requirements.

B.3.3 CP views, based on consideration of the disclosed documents and witness statements:

- Input Data, Expected Results and Acceptance Criteria are required for software testing purposes. Since the Defendant had assumed responsibility for functional testing at the commencement of the project, and only the Defendant could realistically define and approve these materials, it seems to me that the Defendant was responsible for producing and explaining them to VCC.

- Problems arose in interpreting the results when the software processed the supplied input files, and no doubt these would have been eased if TPI had prepared Expected Results and Acceptance Criteria. It appears to me, however, that the dynamic nature of the project and the evolutionary nature of the system requirements would probably have caused Expected Results and Acceptance Criteria to become quickly outdated.

- The Acceptance Criteria supplied by TPI on 26 May 2010 following requests by VCC in February/March 2010 were in the event too late to be useful.

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B.4.1 <u>**Issue 4:**</u> What was the nature, significance and effects of each of the alleged defects and were they capable of repair or resolution, and if so, estimate the time and effort it would take to repair a defect of that nature.

B.4.2 (1) SC's provisional view is that consideration of the nature, significance and effect of each of the alleged defects, as pleaded by the Defendant, and whether or not each such pleaded defect was capable of repair or resolution, and if so, the time and effort it would take to repair a defect of that nature, amounts to assessment of the pleaded alleged defects as to whether or not they were *material defects*. In making such assessment, **SC** considers that it may be worthwhile for the Experts to take into account and develop further the following sample representative data, which **SC** has extracted from the project documents, as a basis for objective analysis in arriving at their conclusions and opinions on this Issue:

Item No. and Short Title	Brief Description of Alleged Defect or Deficiency	Item Ref(s): Defendant's Pleadings etc.	Item Ref(s): Claimant's Pleadings etc.	Relevant VCC Issue No(s), from 'Clearup' Tracking System	Elaps-ed Days per VCC Issue	
1. System Unstable and Crashes	Handling of fast-channel data flow is unstable resulting in frequent crashing and loss of work.	(i) Gap/Fault Document, 15 June 2010, Page 2, Robustness. (ii) D&CC, Para 19.	(i) R&DCC, Para 27. (ii) R&DCC, Para 47: "it is admitted that there was ... instability in parts of the ... system"	(1) #1027	(1) 6	(1) Clearly not resolved – 'Status' says "in-progress". *See also e.g #1015, #1018, #1019, #1027, #1053, #1060 & #1081.*
2. Numerical Results and FlowData Units Incorrect	Numerical results are frequently nonsensical which casts doubts on all numerical output.	(i) Gap/Fault Document, 15 June 2010, Page 10, "numerals need to be as specified". (ii) D&CC, Para 20.	R&DCC, Para 48: "... errors had arisen ... towards the end of the project ... the Claimant was able to ... focus on crashes and numerical errors...".	(1) #603 (2) #662 Created on **2009-11-30** last changed **2010-01-17** "**2010-01-13** `This doesn't work exactly as it should`" (3) #1001 Created on **2010-04-01** last changed **2010-05-31** "**2010-04-01** `The lastknown value logic was not working for undecimated`"	(1) 70 (2) 48 (3) 61	(1) 'Status' says "resolved", but probably not? *See also #1021* "**Title** Bucketing, Interpolation & Filtering" (2) 'Status' says "resolved", but probably not? (3) Clearly not resolved – 'Status' says "testing". Note also "**2010-04-01** `from 995:`" - #995 thus also needs to be examined.

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Item No. and Short Title	Brief Description of Alleged Defect or Deficiency	Item Ref(s): Defendant's Pleadings etc.	Item Ref(s): Claimant's Pleadings etc.	Relevant VCC Issue No(s), from 'Clearup' Tracking System	Elaps-ed Days per VCC Issue	
				data"		
				(4) #1014 Created on **2010-04-29** last changed **2010-04-29** "**2010-04-29** The date 13-Dec-03 was being interpreted by Chart-X as 13-De^(c-03) (ie exponential"	(4) 0	(4) 'Status' says "resolved", but probably not?
3. Merging Partial Data Flows not Handled	Data often come in different segments from various sources that a user needs to be able to manually merge, and similarly it was required that algorithms should be able to process partial segments of data separately rather than entire flows.	(i) Gap/Fault Document, 15 June 2010, Page 6, QC. (ii) D&CC, Para 21(5).	R&DCC, Para 49.5: "... it is unclear what is meant by '*manually merge*' ".	(1) #603 Created **2009-10-21** last changed **2010-01-20** "**2010-01-19** Found a bug in calculations that was Causing data not to be written to the flow … when the bit initially not on bottom."	(1) 70	(1) 'Status' says "resolved", but probably not?
				(2) #800 Created on **2010-01-25** last changed **2010-03-01** "**2010-01-25** If a flow is (standalone) qualified twice. The flow does not appear to be overwritten but appended"	(2) 37	(2) 'Status' says "resolved", but probably not? "**2010-02-23** This has been completed under a different issue number" – which?
				(3) #1003 Created on **2010-04-06** last changed **2010-05-31** "**2010-04-06** Over writing of points in the flows	(3) 55	(3) Clearly not resolved – 'Status' says "testing".

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Item No. and Short Title	Brief Description of Alleged Defect or Deficiency	Item Ref(s): Defendant's Pleadings etc.	Item Ref(s): Claimant's Pleadings etc.	Relevant VCC Issue No(s), from 'Clearup' Tracking System	Elaps-ed Days per VCC Issue	
				module (used in filters, expecially interpolatio n) was actually appending the points" (4) #1007 Created on **2010-04-14** last changed **2010-05-31** "**2010-04-14** Merger flows were not iterating properly"	(4) 31	(4) Clearly not resolved – 'Status' says "testing".
4. Data Import and Analysis Algorithm Deficient	TPI provided a number of test data files in different formats for VCC to use to develop a flexible data analysis algorithm, but many of the supplied common data file structures are not all able to be imported.	(i) Gap/Fault Document, 15 June 2010, Page 5, Import, Para 1 ff. (ii) Gap/Fault Document, 6 June 2010, Page 5, Import, Para 11. (iii) D&CC, Para 19(1), 19(2) and 21(2).	R&DCC, Paras 47.1. 47.2 and 49.2: "... the messages ... are all a result of software errors ... if the system ... is unable ... to deal with the input at all ... this will lead to errors ...".	(1) #1015 Created on **2010-04-29** last changed **2010-05-13** "**2010-05-03** The initial picture for large data imports are occasionally wrong - and this is a very very old problem" (2) #1052 Created on **2010-05-19** last changed **2010-05-31** "**2010-05-19** Yet another import timing problem" (3) #1012 Created on **2010-04-26** last changed **2010-05-12** "**2010-05-12** … the problem with calculations for the Sun file are two time intervals … that … stall the calculation"	(1) 15 (2) 12 (3) 16	(1) Clearly not resolved – 'Status' says "in-progress". (2) Clearly not resolved – 'Status' says "testing". (3) Clearly not resolved – 'Status' says "testing".

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Item No. and Short Title	Brief Description of Alleged Defect or Deficiency	Item Ref(s): Defendant's Pleadings etc.	Item Ref(s): Claimant's Pleadings etc.	Relevant VCC Issue No(s), from 'Clearup' Tracking System	Elaps-ed Days per VCC Issue	
5. Inability of DoGood 3 to Integrate Data -Manual Creation Dataflows	A feature of DoGood 2 is the ability to integrate data. Data often come in non-digital form and are then entered manually. VCC did not deliver this feature in DoGood 3.	(i) Gap/Fault Document, 15 June 2010, Page 8, Para 3. (ii) D&CC, Para 21(3) and 21(9).	R&DCC, Paras 49.3 and 49.9.5: "... integration ... was ... provided ... albeit not in the precise manner originally envisaged in the specification ...".	(1) #1045 Created on **2010-05-16** last changed **2010-05-16** "**2010-05-16** `Every 2000 lines were not being read from the input file`"	(1) 1	(1) Clearly not resolved – 'Status' says "testing".
				(2) #1026 Created on **2010-05-05** last changed **2010-05-05** "**2010-05-05** `During the renaming, the datagrid serialised had stopped working`"	(2) 1	(2) Clearly not resolved – 'Status' says "testing". Note also "**2010-05-05** `from 1021:`" - #1021 thus also needs to be examined.
6. Operational Mode Algorithm Inadequate	A fundamental feature of DoGood is to be able to determine the operational mode. Although this algorithm is implemented for when all required parameters are contained in the same file, often a user needs to combine data inputs from separate files - as with DoGood 2.	(i) Gap/Fault Document, 15 June 2010, Page 7. (ii) D&CC, Para 21(6).	R&DCC, Para 49.6: "... The matter referred to at Para 21(6) is ... caused by a ... bug ...".	(1) #603 Created **2009-10-21** last changed **2010-01-20** "**2010-01-19** `a bug in calculations that was Causing data not to be written to the flow … when the bit initially not on bottom.`"	(1) 70	(1) 'Status' says "resolved", but probably not?
				(2) #1060 Created on **2010-05-23** last changed **2010-06-02** "**2010-05-31** … `reproduced … same calculation problem … Sun data … Green modes should only happen when GOC is onbottom(1), … grey when HLA < 150, etc`"	(2) 10	(2) Clearly not resolved – 'Status' says "in-progress".

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B.4.2 (2)   The Claimant's 'FURTHER INFORMATION SERVED BY THE CLAIMANT IN RESPONSE TO AMENDED REQUEST FOR FURTHER INFORMATION MADE BY THE DEFENDANT PURSUANT TO CPR PART 18 ON 21 OCTOBER 2010', dated 8th November 2010, concludes under 'Claimant's Response in Summary' (on page 3) that "*The Claimant maintains that it is not in a significantly better position than the experts to give the requested estimates from today's perspective. This is because due to the length of time that has elapsed, all of the key technical staff involved in the project have since left the Claimant's employment. Any analysis / estimation process would therefore have to be made by individuals who are not familiar with the software, and who would therefore have to rely on the existing source code and documentation, all of which has been disclosed to the experts. Given the fact that any analysis performed by the Claimant would naturally be challenged by the Defendant as to its objectivity, the value of the Claimant performing such an analysis after the event would be minimal*". This is an admission that the Claimant cannot objectively establish if there is any truth in the Claimant's case that "*but for the Defendant's breach of Contract, the DoGood Version 3 system would have been completed satisfactorily with all specified functionality within a reasonable time and would have been fit for purpose*" (paragraph 46 of the Reply and Defence to Counterclaim).

B.4.2 (3)   Given the direction as to proportionality of expert effort for this case, the Court has made it clear that it is not for experts to do this work on behalf of the Claimant. In any event, the independent role of the expert within the CPR mandates that the expert is there to assist the Court by examining and analysing (including challenging), and giving opinion on, the relevant technical issues arising from the case put by a party, not to create or argue that case. With no substantive or objectively justifiable case being here put by the Claimant, indeed with the Claimant apparently seeking to excuse itself from having to put forward to the Court any such quantified, particularized evidence, for independent expert scrutiny, the expert conclusion can only be that the Claimant's position that "*… the DoGood Version 3 system would have been completed satisfactorily with all specified functionality within a reasonable time and would have been fit for purpose*" cannot be supported or sustained.

B.4.2 (4)   Further views on this issue have been given in **SC**'s individual Statement to the Court dated 05 November 2010, paragraphs B.4.1 to B.4.10, to which the Court is respectfully referred.

B.4.3 CP views are as follow:

- I will consider all the alleged deficiencies and the Claimant's responses in my report. Overall, I have not found anything to suggest that these defects were irreparable; the incidence, and general nature of the defects is commensurate with a project of this nature.

- As I have explained in my Statement to the Court dated 2nd November 2010, I believe it is unrealistic to expect anyone who is not well acquainted with this software to quantify reliably the level of effort that would be involved in fixing the alleged defects. For that reason I consider the Claimant's contemporaneous views of the time required to fix defects represent credible estimates, particularly since they were made as part of offers to fix the software at no further cost.

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B.5.1 Issue 5: Were the project management arrangements, and the manner and standard to which they were in the event carried out, appropriate and adequate for a project of this nature?

B.5.2 Relying primarily on a preliminary consideration of the Witness Statements of the Claimant (excluding Supplemental Witness Statements), SC's provisional view is that:

- The project management arrangements were broadly appropriate and adequate for a project of this nature, in particular, in respect of the roles and responsibilities that the Claimant evidently put in place as regards:
    - Rheinhardt Smith of the Claimant, which included those of "project manager", "managing the software development", "development of the technical architecture of the software package", "writing the technical documents and specifications", "day to day running of the project", "setting up and managing various systems on the project, including the version control system, the issues database, and the daily build process", authoring the "installation software", and managing "the process for testing and producing monthly reports" (paragraph 13 of Mr Smith's Witness Statement on behalf of the Claimant);
    - Jeremiah Sellers of the Claimant, who in October 2009 took over from Mr Smith after the latter relinquished his management responsibilities;   and
    - Kristoff Romanov of the Claimant who, throughout, oversaw the project generally (see paragraph 13 of Mr Romanov's Witness Statement).

- The manner and standard to which the project management arrangements were in the event carried out by the Claimant were clearly lacking. Examples are, in regard to:
    - *staffing* (see e.g. paragraph 89 of Rheinhardt Smith's Witness Statement on behalf of the Claimant; and paragraphs 58 and 79-82 of Mr Romanov's Witness Statement, with regard in particular to Jeremiah Sellers and Mikhael Billson; and see also the email from Jamey Simmer of VCC to Mr Bossman, of Fri, 26 Nov 2009 11:07:06 –0000: "Mikhael is now back in the office ... We will carefully verify his code and documentation before he finally leaves. We issued a very formal and stern letter to Mikhael threatening him with severe legal action ...");
    - *project planning and task accounting* (e.g. the lack of time and task accounting records as to what work was done by whom, when, on what parts of the software, with what achieved, and how that related to amounts invoiced from time to time to the Defendant; see for example paragraphs 67, 68 and 137 of Mr Romanov's Witness Statement on behalf of the Claimant: "we had no mechanism for recording time spent on individual development tasks..."; "It would not have been possible ... to apportion work to the tasks because we did not have the information at the necessary level of granularity ..."; "VCC did not record time spent on a per issue basis. Therefore, it is not possible to state how much time was spent working on each issue...");   and
    - *software Quality Assurance* (see e.g. paragraphs 67 and 93 of Rheinhardt Smith's Witness Statement on behalf of the Claimant, from which it emerges that, notwithstanding that for most of the duration of the project the Claimant had not developed nor otherwise had available any documented criteria for acceptable software quality, Mr Smith was supposedly responsible for the QA checking of software code).

- The Claimant makes repeated assertions that it was due to alleged disruptive changes by the Defendant in specification of requirements and prioritization and direction of work that the management of the project was perturbed and delays and deficiencies in deliverables occurred. However, the Claimant by its own admission never carried out any impact assessments of such alleged changes, or, therefore, the alleged disruption arising therefrom. The Claimant has therefore provided no objectively justifiable, let alone auditable, evidence to support such assertions capable of review by experts. In the circumstances, it would not be proportionate for experts to try and investigate this matter further in order to create evidence that the Claimant itself admits it never produced and does not have available. Absent such evidence, the expert conclusion can only be that the Claimant's position cannot be supported or sustained.

Experts' Joint Statement on Matters Agreed and/or Disagreed in regard to Part 35 12 (3) CPR

B.5.3 CP views, based on consideration of the disclosed documents and witness statements:

- I agree that the project management arrangements were broadly appropriate and adequate for a project of this nature.

- The management of the project was not perfect on either side, but the essentials were met and overall it was consistent with the informal approach that had been agreed. In my view, the major shortcoming in the management of the project arose from the continual evolution of the Defendant's system requirements and their dynamic prioritisation, which hampered progress towards system completion.

C. SIGNATURES OF EXPERTS

We agree that this document is an accurate record of our respective views and of points of agreement and disagreement between us about this matter.

Colin Pearson *World Expertise Solutions*	Dr Stephen Castell *TrumpetBlast Consulting*
29 September 2011	**29 September 2011**
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