

INVITATION TO TENDER

APPENDIX A

# Standard Licensing Terms and Conditions

THIS AGREEMENT is made on

2019

## BETWEEN

- (1) THE KEEPER OF PUBLIC RECORDS for and on behalf of THE NATIONAL ARCHIVES of Kew, Richmond, Surrey TW9 4DU ('the Licensor'); and
- (2) [...], a company registered in England & Wales No. [...] whose registered office is [...] ('the Publisher').

## INTRODUCTION

- (A) The Publisher wishes to produce and publish the Digitised Licensed Material for the purpose of forming the Publication.
- (B) Some or all of the Licensed Material may not exist in digital or other surrogate form meaning the Digitised Licensed Material must be created directly from the Licensed Material.
- (C) The Licensor has agreed to allow the Publisher to create the Digitised Licensed Material directly from the Licensed Material and to grant the Publisher the Rights in accordance with the terms of this Agreement as detailed below.

## IT IS AGREED:

### 1. Definitions

- 1.1 In this Agreement the following words and expressions shall have the following meanings:

**'Account Period'** means each 12 calendar month period ending on 31 March, 30 June, 30 September and 31 December of each Year, commencing with the first such period or part period ending after the Effective Date;

**'the Acknowledgement'** means a statement in the form set in Schedule 1, or as otherwise advised by the Licensor from time to time;

**'Agreed Image Format'** means 300dpi 24-bit colour TIFF (Version 6) format file converted from RAW files

**'Agreed Metadata Format'** means a series of folders for each Department: Department>Series number>Piece number>Item or sub-piece number (using '0' if there is no item or sub-piece number). Images should be numbered consecutively, i.e. 0001, 0002 etc., within a given piece, item or sub-piece. Example structure:

HO/17/4/0/0001.tiff (Department/Series number/Piece number/Item or sub-piece number/Image number);

**‘Approved Location’** means the rentable scanning area within the Licensor’s Premises detailed in Schedule 4 and provided by the Licensor for the digitisation of the Licensed Material in accordance with this Agreement.

**‘Associate’** means any company which is at any time a subsidiary or the holding company of the Publisher, “subsidiary” and holding company having the meaning given in section 1159 of the Companies Act 2006.

**‘Authorised Scanning Contractor’** means [...]

**‘Business Day’** means any day on which banks in the City of London are open for business;

**‘Commercially Sensitive Information’** means a subset of Confidential Information listed in Schedule 5 comprised of information:

- (a) which is provided by the Publisher to the Licensor in confidence; and/or
- (b) that constitutes a trade secret;

**‘Confidential Information’** means any information which has been designated as confidential by either party in writing or that ought to be considered to be confidential (however it is conveyed or on whatever media it is stored) including information which relates to business, affairs, goods, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data within the meaning of the Data Protection Act 1998 and the Commercially Sensitive Information;

**‘Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer’** take the meaning given in the GDPR;

**‘Data Loss Event’** means any event that results, or may result, in unauthorised access to Personal Data held by the Publisher under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

**‘Data Protection Legislation’** means (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

**‘Data Protection Impact Assessment’** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

**'Data Subject Access Request'** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**'DPA 2018'** means the Data Protection Act 2018;

**'the Effective Date'** means the date of signature of this Agreement as written above;

**'GDPR'** means the General Data Protection Regulation (Regulation (EU) 2016/679);

**'Law'** means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply;

**'LED'** means the Law Enforcement Directive (Directive (EU) 2016/680);

**'Net Receipts'** means revenue from sales of each Publication after the deduction of any bona fide trade discounts and VAT and other relevant sales taxes, such formula for calculation to be defined in Schedule 6;

**'Intellectual Property Rights'** means any current and future intellectual property rights, including without limitation copyrights, trade marks, trade names, domain names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how including commercial know-how, design rights, patents, utility models, semi-conductor topographies, all rights of whatsoever nature in computer software and data, rights in databases, privacy rights; and all intangible rights and privileges of a nature similar, analogous or allied to any of the above in every case in any part of the world and whether or not registered, including, in relation to the above all renewals, reversions or extensions; the right to sue for damages for past infringement; and all forms of protection of a similar nature which may subsist anywhere in the world.

**'the Licensed Material'** means the material more particularly detailed in Schedule 2;

**'Pro-Rated'** means the amount of Licensed Material present in the Publication as a percentage of the total material in the Publication as a whole, as calculated according to the formula detailed in Schedule 6;

**'Protective Measures'** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring

that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;

**‘the Publication’** means the product provided by the Publisher provisionally titled [...] permitting access over the Internet to the Licensed Material, either on its own or together with the Publisher’s and/or third party copyright material and database materials;

**‘the Publisher’s Conservator’** means a professional paper conservator selected and trained by the Licensor’s Collection Care department and hired and paid for in full by the Publisher;

**‘the Publisher Personnel’** means all directors, officers, employees, agents, consultants and contractors of the Publisher and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement;

**‘the Rights’** means the non-exclusive and (subject to Clause 14.2) non-transferable right during the currency of this Agreement throughout the Territory and in all languages:

- i) To image the Licensed Material so as to create the Digitised Licensed Material;
- ii) To edit the Digitised Licensed Material by enhancing the image quality;
- iii) To adapt the Digitised Licensed Material into machine-readable form and to use the whole or any part of it to develop and produce the Publication and to reproduce the Digitised Licensed Material as part of the Publication.
- iv) To publish, sell and distribute the whole or any part of the Digitised Licensed Material as part of the Publication;
- v) Subject to prior written approval of the Licensor, to publish, sell and distribute the whole or any part of the Digitised Licensed Material as a part of any other secondary service offered by the Publisher.
- vi) To transcribe (and to have transcribed), extract, reformat and edit the Digitised Licensed Material in order to develop and produce the Publication;
- vii) To create copies of the Digitised Licensed Material for the back-up and archive purposes of the Publisher

**‘the Royalty’** means the royalty payable to the Licensor in consideration of the grant of the Rights set out in Clause 6;

**“the Site”** means the Publisher’s website(s) at the URL [http://www.\[please insert URL\]](http://www.[please insert URL]) and any other website owned and/or operated by the Publisher from time to time.

**“the Subscription Services”** means the Publication which charges Users a subscription fee in return for the ability to search view and download documents from a collection of material;

**‘Sub-processor’** means any third Party appointed to process Personal Data on behalf of the Publisher related to this Agreement;

**‘the Territory’** means the world;

**“Third Party Costs”** means, without limitation, applicable VAT or other sales taxes, duties, credit or debit card charges any other like payment due to any third party.

**‘Transcriptions’** means any transcriptions of the Digitised Licensed Material made by or for the Publisher pursuant to this Agreement.

**“User”** means a user of the Publication.

**‘Year’** means the period of 12 calendar months from the Effective Date and each subsequent consecutive period of 12 calendar months during the currency of this Agreement.

1.2 Headings used in this Agreement are for ease of reference only and shall not affect its interpretation.

1.3 References to:

1.3.1 the parties, clauses, sub-clauses and recitals are to the parties, clauses, sub-clauses and recitals to this Agreement.

1.3.2 any act or regulation will be construed as referring also to any amendment or re-enactment (whether before or after the date of this Agreement)

1.4 In the event of a conflict between the Schedules and the Clauses to this Agreement the Clauses shall prevail.

## **2. Grant of Rights; Reversion of Rights**

2.1 In consideration of the payment to the Licensor by the Publisher of the Royalty and subject to the approval of the Licensor’s Collection Care department of the Licensed Material’s suitability for scanning, the Licensor hereby grants the Rights to the Publisher for the duration of this Agreement.

2.2 The Publisher shall release the Publication on the Site in accordance with the timetable set out in Schedule 3. If the Publisher fails through no fault of the Licensor so to release the Publication on or before the dates specified, the Licensor may give

written notice to the Publisher requesting the Publisher to do so, and if the Publisher fails to release the Publication within 6 months thereafter the Rights granted by this Agreement shall immediately revert to the Licensor without further notice and this Agreement shall automatically terminate without prejudice to any claim which the Licensor may have for damages or otherwise.

- 2.3 The Publisher shall not acquire any Intellectual Property Rights in the Licensed Material or the Digitised Licensed Material or any adaptation thereof (that is any adaptation of the images but adaptation shall not include the extraction of the data thereon) except as specifically granted under this Agreement.
- 2.4 The Licensed Material may only be used for purposes directly relating to the exploitation of the Rights.
- 2.5 All Intellectual Property Rights in the Digitised Licensed Material shall vest in the Publisher upon creation. The Publisher hereby assigns to the Licensor, where appropriate by way of present assignment of future rights, such Intellectual Property Rights in the Digitised Licensed Material with effect from the date hereof or, if later, the date on which such rights come into existence and shall procure the assignment of all such Intellectual Property Rights by any maker employed or otherwise contracted to the Publisher who may acquire such rights by operation of law or otherwise.
- 2.6 The Publisher shall, to the extent permitted by law, use its reasonable endeavours to procure the waiver in favour of the Licensor of any moral rights in the Digitised Licensed Material.
- 2.7 The Publisher hereby covenants that it will at the request and reasonable expense of the Licensor execute all such documents and do all such further acts as the Licensor may require to perfect the rights assigned to the Licensor in Clause 2.5 above.
- 2.8 The Licensor shall endeavour to give clear guidance to the Publisher as to any sensitive personal information contained within the Licensed Material that may be in breach of the Data Protection Act. The Licensor reserves the right to request redaction or removal of such sensitive personal information due to such information breaching Intellectual Property Rights or data protection legislation or for any other reason deemed as sensitive by the Licensor at its sole discretion. The Publisher agrees to immediately redact or remove all such information within every document image within the Digitised Licensed Material within the Publication.

- 2.9 The Publisher acknowledges that nothing in this Agreement shall entitle the Publisher to use the name or logo of 'The Public Record Office' or 'The National Archives' except in the Acknowledgement referred to in Schedule 1.
- 2.10 For the avoidance of doubt, if the Publisher acquires images in any way which are not part of the Digitised Licensed Material in which the Intellectual Property Rights are owned by the Crown and managed by the Licensor and the Publisher intends to use such images in accordance with the Rights granted to it under this Agreement then such usage shall be subject to the Licensor's prior express written consent and the payment of the relevant Royalties under this Agreement.
- 2.11 For the avoidance of doubt, if the Publisher intends to swap any image sets from the Digitised Licensed Material with other image sets held by a third party in which the Intellectual Property Rights are owned by the Crown and managed by the Licensor then the Publisher's usage of such third party's image sets shall be subject to the Licensor's prior express written consent and the payment of the relevant Royalties under this Agreement.

### **3. Duration of Agreement**

This Agreement shall commence on the Effective Date and, unless terminated earlier in accordance with this Agreement, shall remain in effect for an initial period of 10 years from the Effective Date (the '**Term**'). The Term shall automatically be extended for a further 10 years at the end of each period of 10 years unless the Licensor gives written notice to the Publisher before the end of the ninth year of such end period that it will not extend the Agreement.

### **4. Provision of Licensed Material**

- 4.1 The Publisher will create the Digitised Licensed Material directly from the Licensed Material. The Licensor agrees to provide the Publisher with access to the Licensed Material in accordance with the terms of the scanning procedures in Schedule 4, or the provisions of the relevant Services Schedule, as appropriate.
- 4.2 Risk in any of the Licensed Material managed under this Clause 4 shall pass to the Publisher upon uplift of the same from the storage area within the Approved Location to undertake digitisation in accordance with the provisions of Schedule 4 to this Agreement (or any subsequent Services Schedule as appropriate) and shall remain with the Publisher until such Licensed Material is delivered back to the storage area within the Licensor's Premises in accordance with the provisions of Schedule 4 to this Agreement (or any subsequent Services Schedule as



appropriate) where the risk will return to the Licensor. Uplift and return of the Licensed Material for the purposes of this Clause shall be deemed to occur upon signature by the relevant party of the booking in/out paperwork. Uplift and return of the Licensed Material for the purposes of this clause shall be monitored using the Licensor's electronic stock management system "DORIS".

- 4.3 The Publisher acknowledges that the Licensor cannot guarantee any existing copy of the Licensed Material will meet any of the Publisher's pre-defined technical and/or quality standards.
- 4.4 The Publisher agrees to reimburse all costs and expenses properly incurred by the Licensor for all work undertaken by the Licensor to meet the Publisher's pre-determined technical and/or quality standards for the Licensed Material where no existing copy of the Licensed Material meets the Publisher's pre-determined technical and/or quality standards, such costs to be at the Statutory Instrument rate prevailing at the time where that work is undertaken by staff directly employed by the Licensor. If the Licensor sub-contracts any such work to a third party all charges and other costs incurred by the Licensor in connection with that contract will be reimbursed by the Publisher. All payments due to the Licensor under this Clause 4.4 will be paid by the Publisher within 15 Business Days of the date of invoice.
- 4.5 The Publisher acknowledges the right of the Licensor to continuously assess the storage, handling and digitisation of the Licensed Material within the Approved Location.
- 4.6 The Licensor shall have the right to suspend with immediate effect the provision, storage or digitisation of the Licensed Material if it considers that the Approved Location is no longer suitable for the storage of the Licensed Material, or if the Licensor deems at its sole discretion any aspect of the Publisher's storage, handling and digitisation of the Licensed Material to be unsuitable. The Licensor shall provide written notice to the Publisher of such decision to suspend stipulating the functions to be suspended, the reasons for suspension, and if relevant the remedial work to be undertaken and the duration of such remedial work prior to the suspension being lifted.
- 4.7 The Licensor undertakes to provide the Licensed Material in accordance with target turnaround times quoted in the Licensor's published Corporate and Business Plans, and shall not accept any obligation to provide the Licensed Material in any shorter period, unless agreed in writing in advance of the relevant order being placed, and

the Publisher agrees to pay the full costs so incurred by the Licensor whether by the Licensor or if sub-contracted, the sub-contractor's cost.

- 4.8 The Publisher accepts that the Licensor's use of the Licensed Material for any project undertaken or initiated by the Licensor or undertaken on behalf of the Licensor by a third party will take priority over any other use of the Licensed Material.
- 4.9 The Publisher shall deposit with the Licensor a full set of all the Digitised Licensed Material produced in accordance with Clauses 4 and 5 of this Agreement within either (i) 6 (six) months of the completion of scanning of the relevant Licensed Material at the Approved Location or (ii) 6 (six) months from the launch of the Digitised Licensed Material within the Publication, whichever is the sooner and such copy of the Digitised Licensed Material shall be deposited with the Licensor in the Agreed Image Format with appropriate index information in the Agreed Metadata Format on a medium to be agreed in advance between the Publisher and the Licensor.
- 4.10 If the Publisher fails to deposit the Digitised Licensed Material with the Licensor then the Licensor may give written notice to the Publisher requesting the Publisher to make such deposit. If the Publisher fails to deposit the Digitised Licensed Material with the Licensor within a further three (3) months of receipt of such notice, the Rights granted by this Agreement shall be suspended until such deposit of the Digitised Licensed Material has been made.

## **5. Obligations of the Publisher**

- 5.1 The Publisher shall at its own expense:
  - 5.1.1 ensure that the work of imaging the Licensed Material for use in the Publication is carried out by competent persons with appropriate skills, security clearance and experience working at all times in strict accordance with the Scanning Procedures agreed between the parties and attached hereto as Schedule 4;
  - 5.1.2 ensure that the work of converting the Licensed Material into machine-readable form for use in the Publication is carried out by a competent person with appropriate data processing skills and experience;
  - 5.1.3 ensure that no scanning is undertaken until the Publisher's Conservator has approved and where appropriate prepared the Licensed Materials for digitisation;

- 5.1.4 ensure that the software development work required to produce the Publication is carried out by a competent person with appropriate software development skills and expertise;
- 5.1.5 ensure that the work of transcribing and indexing the Licensed Material for use in the Publication is carried out by competent persons with appropriate skills, security clearance and experience;
- 5.1.6 ensure that the Acknowledgement appears on the Site in such location and size as accords with the Publisher's customary practice in this regard but in any event no less prominently than afforded any third party or the Publishers own copyright acknowledgement;
- 5.1.7 inform the Licensor of the intended first release of the Publication to enable the Licensor to review and approve the presentation and the Publisher shall not make available the Publication until such approval has been notified expressly in writing, which approval shall not be unreasonably delayed or withheld;
- 5.1.8 provide access authorisation to the Digitised Licensed Material within the Publication free of charge to Licensor immediately on launch of the Digitised Licensed Materials within the Publication and solely for use by the Licensor and its individual visitors. For the avoidance of doubt this access will only be available in The National Archives' staff and public reading rooms and will not be published externally or on the internet.
- 5.1.9 be responsible for obtaining all licences, clearances, consents and permissions from third parties (including licences to use any third party's Intellectual Property Rights) in respect of the Publication including tracing the owners of any copyright which may subsist in the Collection either collectively or individually (a copy of which written consents must be passed to the Licensor) and for performing any processes required under the Copyright Acts currently in force in cases where the owners of a copyright cannot be traced. The Publisher shall indemnify and hold harmless the Licensor from and against all costs, claims, damages, losses and expenses incurred by the Licensor arising as a result of any claim or action made against the Licensor, in connection with any infringing material and shall immediately remove any content from the Site if instructed to do so by the Licensor due to such content breaching Intellectual Property Rights or data protection legislation or for any other reason deemed as sensitive by the

Licensors. The Publisher shall be further responsible for all expenses, charges, liabilities or legal actions arising from copyright consideration.

5.1.10 comply at all time during the term of the Agreement with any instructions of the Licensors relating to the treatment of any personal data contained within the Publication, including (but not limited to) the redaction of any item of personal data from the Publication;

5.1.11 On request to transfer all image data and metadata to The National Archives on removable hard drives, encrypted and with each file accompanied by an appropriate digital digest using a standard to be agreed between the parties

5.2 The Publisher undertakes to include in its standard terms and conditions for the Publication a stipulation prohibiting its customers from any use of the Digitised Licensed Material beyond that laid down in the Agreement, and without limitation, the Publisher will not authorise or permit any customer to re-sell the Digitised Licensed Material or any part of it except as individual images printed and sold as part of a professional research result to an individual customer of the researcher.

5.3 The Publisher undertakes to include in its privacy notice information as to how data subjects in the Licensed Material may exercise their rights under the Data Protection Legislation

5.4 All advertising, promotional or support material issued by the Publisher containing representations of or references to the Licensors or the Digitised Licensed Material, but not merely to the Publication itself, shall be subject to the prior written approval of the Licensors not to be unreasonably withheld or delayed and working to a target turnaround time of 10 Business Days from the receipt of such material. Once the Licensors has granted its approval of a form of advertising or promotional or support materials, the Publisher may use such form without further approval in further materials provided that any material changes to such approved forms are submitted for further approval. The Publisher shall ensure that in the course of distribution and promotion of the Publication the Publisher will not infringe the Consumer Protection from Unfair Trading Regulations 2008 or any other applicable laws or regulations or codes which are in force in any country in the Territory.

## **6. Payment**

6.1 In consideration of the Rights granted to the Publisher under this Agreement, the Publisher shall pay a royalty to the Licensors at the rate of % (per cent) of Pro-Rated

Net Receipts on all sales during the Account Period, according to the formula outlined in Schedule 6. The Digitised Licensed Material under this Agreement will constitute around % of the Publication.

- 6.2 No costs incurred in the development, hosting, promotion, distribution or exploitation of the Publication shall be deductible from any sums payable by the Publisher.
- 6.3 The Publisher shall prepare an account of all monies received from the Publication with the royalties due in respect of each Account Period and shall deliver the same to the Licensor within 30 days of the end of the relevant Account Period. The Publisher shall at the same time remit the full amount of the Royalties to the Licensor whose receipt shall be sufficient discharge.
- 6.4 The account referred to in Clause 6.3 above shall include a complete statement showing all sales made by the Publisher during the relevant period and a statement of the calculation of the Net Receipts and the royalty payment due in respect of the Publication. The form of such statements will be agreed between the parties prior to launch of the Digitised Licensed Material on the Publication.
- 6.5 All amounts payable to the Licensor under this Agreement shall be paid together with VAT or any other sales tax that may be payable thereon.
- 6.6 The Publisher undertakes to keep and preserve for not less than seven years following the end of the financial year in which this Agreement expires accurate accounting records and invoices covering all transactions relating to the subject matter of this Agreement. The Licensor and/or its authorised representatives shall be entitled at its own expense to inspect such records and to take extracts and copies from them for the purpose of verifying any statement delivered to the Licensor by the Publisher. If any such inspection demonstrates an underpayment by the Publisher the costs incurred by the Licensor in carrying out such inspection shall be reimbursed by the Publisher forthwith together with the full amounts underpaid. In the event that such inspection demonstrates an overpayment of Royalties, the Publisher shall not be entitled to be reimbursed by the Licensor for the amount(s) overpaid. The Publisher shall keep confidential and shall not disclose to any third parties (other than professional advisers where necessary) the results of any such inspection or audit or any of the terms of this Agreement or any matters incidental to or relating to the business of the Licensor.
- 6.7 In the event that the Publisher's inspection of its accounting records and invoices demonstrates an overpayment of Royalties, the Publisher shall not be entitled to be

reimbursed for the amounts overpaid and/or the costs incurred by the Publisher in carrying out such inspection.

- 6.8 The receipt or acceptance of any payment or any statement made or delivered to the Licensor shall not stop or prevent the Licensor disputing any such payment or statement at any time and the receipt or acceptance of any payment with knowledge of a breach of any provisions of this Agreement or of any default by the Publisher shall not be deemed to waive such breach or default.
- 6.9 In the event that the payment of royalties is not made by the due date as set out in Clause 6.1, interest shall be payable thereon at 8% above the base rate chargeable by National Westminster Bank PLC from time to time, calculated from the date the payment was due until the date payment is actually made.
- 6.10 The Licensor shall not be billed for its own use of the Publication for testing or any other purpose.
- 6.11 Pounds Sterling (£) shall be the currency of account for Royalties payable.
- 6.12 The Publisher will pay to the Licensor re-imbursement of the direct costs of facilitating the onsite scanning operation, according to prices in force at the time of commencement of scanning. The current costs are as follows, and are subject to variation: in payments made up as follows:
- i) Space rental at £26.64 per square metre per month, pro-rated for the duration of the onsite scanning operation;
  - ii) Document Services Department charge at £136.70 per scanning station per month, pro-rated for the duration of the onsite scanning operation;
  - iii) Publisher's Conservator's annual salary of £32,000, pro-rated for the duration of the Publisher's Conservator's contract; and
  - iv) Materials used by the Publisher's Conservator to prepare and repair the Licensed Material for scanning. This fee is only applicable where a conservator is required.
  - v) Access charge at 33.33% of the space rental per square metre per month, pro-rated for the duration of the onsite scanning operation;
  - vi) Broadband provision at £44.64 per station per month, pro-rated for the duration of the onsite scanning operation;
  - vii) Shelf space at £2.35 per linear metre per month, at 5 metres per station, pro-rated for the duration of the onsite scanning operation. Additional

requirement for shelf space will be charged at the aforementioned rate of £2.35 per linear metre per month;

viii) Storage at £26.96 per square metre per month, pro-rated for the duration that scanning equipment is on TNA's premises;

ix) Services charge at £10.36 per month, pro-rated for the duration of the onsite scanning operation;

Such payments shall be due and payable quarterly

## **7. Confidential Information**

7.1 Each party to this agreement:

7.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and

7.1.2 shall not disclose any Confidential Information belonging to the other party to any other person without the prior written consent of the other party, except to such persons and to such extent as may be necessary for the performance of the Agreement or except where disclosure is otherwise expressly permitted by the provisions of this Agreement.

7.2 Each party shall take all necessary precautions to ensure that all Confidential Information obtained from the other party under or in connection with the Agreement:

7.2.1 is given only to such of the staff and professional advisors or consultants engaged to advise it in connection with the Agreement as is strictly necessary for the performance of the Agreement and only to the extent necessary for the performance of the Agreement;

7.2.2 is treated as confidential and not disclosed (without prior written approval from the disclosing party) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the Agreement.

7.3 Each party shall ensure that staff or its professional advisors or consultants are aware of their confidentiality obligations under this Agreement.

7.4 Neither party shall use any Confidential Information it receives from the other party other than for the purposes of this Agreement.

7.5 The provisions of Clauses 7.1 to 7.4 shall not apply to any Confidential Information received by one party from the other:

- 7.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause 7);
- 7.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
- 7.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 7.5.4 is independently developed without access to the Confidential Information; or
- 7.5.5 which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 ("FOIA") or the Environmental Information Regulations (EIR).
- 7.6 The Licensors shall not be in breach of its obligations under this Clause 7 where it can show that any disclosure of information is made solely and to the extent necessary to comply with its obligations under the FOIA or EIR save that in respect of Commercially Sensitive Information the Licensors shall consult with the Publisher as appropriate to determine whether the Commercially Sensitive Information and/or any other Confidential Information:
- 7.6.1 is exempt from disclosure in accordance with the provisions of the FOIA and/or EIR;
- 7.6.2 is to be disclosed in response to a request for information made under the FOIA and/or EIR.
- 7.7 The Publisher accepts that the Licensors' use of the Licensed Material or any part thereof, in relation to the Licensors' statutory obligations (including to comply with its obligations under the FOIA and EIR) will take priority over the Publisher's access to the Licensed Material.
- 7.8 The Publisher acknowledges that the Licensors are a data controller in respect of the Digitised Licensed Material.
- 8. The Licensors' Warranty**
- 8.1 The Licensors warrants that the Licensors has the right to license the Rights granted to the Publisher under this Agreement.
- 8.2 The warranty set out in Clause 8.1 above is in lieu of all warranties terms and conditions whether implied by or arising under statute or common law custom trade



usage or course of dealing between the parties or otherwise all of which are hereby excluded to the fullest extent permitted by law.

**9. The Publisher's Warranty**

**9.1** The Publisher warrants that:

- 9.1.1 it has the right to enter into this Agreement; and
- 9.1.2 the Publication will not infringe the Intellectual Property Rights or any other rights of any third party; and
- 9.1.3 the Publication will not contain any material which is obscene, illegal, blasphemous or defamatory (apart from any such material present on the Licensed Material and scanned as part of the Digitised Licensed Material).

**10. Termination**

**10.1** This Agreement in addition to the provisions for termination in Clause 2.2 may be terminated:

- 10.1.1 by either party by giving 28 days notice in writing to the other party if the other party commits any material or persistent breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed within 30 days after the receipt of a written request from the party seeking to terminate the Agreement to remedy the same;
- 10.1.2 forthwith by the Licensor by giving notice in writing:
  - a. if the Publisher shall fail to pay any sum due to the Licensor within 10 Business Days of the due date;
  - b. if the Publisher shall become insolvent or enter into any composition or arrangement with its creditors or has a receiver, liquidator or similar officer appointed over any of its assets or if steps are taken in its winding up (except for the purpose of amalgamation or an agreed reconstruction);
  - c. if control of the Publisher is transferred to any person or persons not being the person or persons in control at the date hereof and the Publisher shall be under an obligation to inform the Licensor of any such change of control within 5 Business Days after it takes effect.

10.1.3 by the Licensor by giving 28 days notice in writing if control (as defined in Section 416 of the Income and Corporation Taxes Act 1988) of the Publisher shall be transferred to any person or persons not being the person or persons in control at the date hereof and the Licensor shall only be entitled to terminate within the period of 60 days after the Company shall have been notified in writing of the change in control.

## **11. Effect of Termination**

11.1 On termination of this Agreement for any reason:

11.1.1 all rights and obligations of the parties under it (other than any accrued rights of action and liabilities or obligations which expressly or by implication are to come into or continue in force on or after termination of this Agreement including without limitation Clause 7 to Clause 9 inclusive and this Clause 11) shall automatically cease and terminate;

11.1.2 any agreements between the Publisher and its customers for supply of the Publisher's Products and the Publication as permitted under this Agreement that are in force at the date of termination may continue in force in accordance with their terms.

11.2 Subject to the provisions of this Clause 11, the Publisher may continue to display the Licensed Material through the end of one period of twelve calendar months to those customers who purchased access to the material prior to termination of the Agreement but not to new customers, and will pay royalties due as a result of that display, and thereafter undertakes that it will forthwith remove or erase from the Site all Licensed Material and will inform all customers that the Licensed Material may not be used in any way thereafter.

## **12. Force Majeure**

Neither the Publisher nor the Licensor shall be liable for any loss or damage arising from a failure on its part to perform any obligation under this Agreement where such failure arises solely due to causes beyond its control including acts of God wars or other hostilities terrorist acts industrial disputes or other supervening events of a similar nature to the foregoing.

13.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Licensor is the Controller and the Publisher is the Processor. The only processing that

the Publisher is authorised to do is determined by the Licensor and may not be determined by the Publisher.

13.2 The Publisher shall notify the Licensor immediately if it considers that any of the Licensor's instructions infringe the Data Protection Legislation.

13.3 The Publisher shall provide all reasonable assistance to the Licensor in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Licensor, include:

- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
- (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

13.4 The Publisher shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with the instructions of the Licensor, unless the Publisher is required to do otherwise by Law. If it is so required the Publisher shall promptly notify the Licensor before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which have been reviewed and approved by the Licensor as appropriate, to protect against a Data Loss Event having taken account of the:
  - (i) nature of the data to be protected;
  - (ii) harm that might result from a Data Loss Event;

- (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
  - (i) the Publisher Personnel do not process Personal Data except in accordance with this Agreement;
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Publisher Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Publisher's duties under this clause;
    - (B) are subject to appropriate confidentiality undertakings with the Publisher or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Licensor or as otherwise permitted by this Agreement; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Licensor has been obtained and the following conditions are fulfilled:
  - (i) the Licensor or the Publisher has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Licensor;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Publisher complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to

any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Licensor in meeting its obligations); and

(iv) the Publisher complies with any reasonable instructions notified to it in advance by the Licensor with respect to the processing of the Personal Data, and any further instructions as set out in Schedule 7;

(e) at the written direction of the Licensor, delete or return Personal Data (and any copies of it) to the Licensor on termination of the Agreement unless the Publisher is required by Law to retain the Personal Data.

13.5 Subject to clause 13.6, the Publisher shall notify the Licensor immediately if it:

(a) receives a Data Subject Access Request (or purported Data Subject Access Request);

(b) receives a request to rectify, block or erase any Personal Data;

(c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;

(d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

(e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or

(f) becomes aware of a Data Loss Event.

13.6 The Publisher's obligation to notify under clause 13.5 shall include the provision of further information to the Licensor in phases, as details become available.

13.7 Taking into account the nature of the processing, the Publisher shall provide the Licensor with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under

clause 13.5 (and insofar as possible within the timescales reasonably required by the Licensor) including by promptly providing:

- (a) the Licensor with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Licensor to enable the Licensor to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Licensor, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by the Licensor following any Data Loss Event;
- (e) assistance as requested by the Licensor with respect to any request from the Information Commissioner's Office, or any consultation by the Licensor with the Information Commissioner's Office.

13.8 The Publisher shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Publisher employs fewer than 250 staff, unless:

- (a) the Licensor determines that the processing is not occasional;
- (b) the Licensor determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Licensor determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

13.9 The Publisher shall allow for audits of its Data Processing activity by the Licensor or the Licensor's designated auditor.

13.10 The Publisher shall designate a data protection officer if required by the Data Protection Legislation.

13.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Publisher must:

- (a) notify the Licensor in writing of the intended Sub-processor and processing; obtain the written consent of the Licensor;
- (b) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 13 such that they apply to the Sub-processor; and
- (c) provide the Licensor with such information regarding the Sub-processor as the Licensor may reasonably require.

13.12 The Publisher shall remain fully liable for all acts or omissions of any Sub-processor.

13.13 The Licensor may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

13.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Licensor may on not less than 30 Working Days' notice to the Publisher amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **14. General**

14.1 Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of principal and agent between the parties.

14.2 Neither party may assign or sub-license any of its rights or obligations under this Agreement without the prior written consent of the other. This Agreement shall bind each party's successors and permitted assignees.

14.3 Neither the waiver by either party of a breach or default of any of the provisions of this Agreement by the other party nor the failure of either party to enforce any provision or otherwise avail itself of any right on any one occasion shall affect its right to enforce another provision or otherwise avail itself of any right against the other on a different occasion.

- 14.4 If any term condition or other provision of this Agreement is held to be invalid void or unenforceable or to render this Agreement or any part of it void or unenforceable then that provision shall be severable from the remaining terms conditions and provisions of this Agreement which will continue in force and be construed as if such provision had never been contained in this Agreement.
- 14.5 Any notice served by a party to this Agreement may be sent by ordinary first-class pre-paid post by recorded delivery or by facsimile transmission to the address of the other set out above and if so sent shall be deemed to have been served in respect of pre-paid post ten working days after the date of posting and in respect of facsimile transmission (provided a confirmatory hard copy is sent by first class post on the date of transmission) at the time of such transmission.
- 14.6 This Agreement (including the Schedules) supersedes all previous agreements and understandings made between the Licensor and the Publisher in relation to the Publication and embodies the entire agreement of the parties. In particular no statement representation or warranty made by either party (whether before or after the signing of this Agreement and whether such statement representation or warranty induced either party to enter this Agreement) shall be effective or enforceable or give rise to any legal remedy unless it is repeated in this Agreement. Provided that nothing in this Clause 14.6 shall serve to exclude the liability of either the Licensor or the Publisher in respect of any fraudulent pre-contractual statement or misrepresentation.
- 14.7 This Agreement shall be governed by and construed according to the laws of England and the parties submit to the jurisdiction of the English Courts.
- 14.8 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 14.9 This Agreement constitutes the entire understanding of both parties with respect to its subject matter and supersedes all previous agreements, arrangements and understandings, written or oral, relating to that subject matter. No waiver of modification shall be valid or binding unless in writing and signed by both parties.



As witness this Agreement has been signed by the authorised representatives of the parties on the date first written above.

Signed by:

---

for and on behalf of the **Licensor**

Name:.....

Position:.....

Signed by:

---

for and on behalf of the **Publisher**

Name:.....

Position.....

## **SCHEDULE 1**

### **ACKNOWLEDGEMENT**

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**SCHEDULE 2**  
**LICENSED MATERIAL:**

<b>Record Series:</b>	<b>Piece/s:</b>
<b>[...]</b>	<b>[...]</b>

**SCHEDULE 3**  
**TIMETABLE FOR RELEASE OF**  
**PUBLICATION**

Digitised Licensed Material to go live on the Site: [...]

Date of Licensor Approval: [...]

Date of Launch: [...]

## **SCHEDULE 4**

### **DIGITISATION METHODOLOGY**

In order to exercise the licence granted in this Agreement, the Publisher will need to produce **digital** images of the Licensed Material. Since no film or facsimile copy of the Licensed Material exists, the Publisher will need to be provided access to the original **copies** of the Licensed Material. This Schedule sets out the principles and procedures upon which the parties have agreed to allow the digitisation of the Licensed Material to take place in a stipulated area of the Licensor's Premises.

For the purposes of this Schedule, the "Implementation Phase" shall be a period not exceeding 3 months from the Effective Date, during which the parties shall confirm the detailed processes and procedures referred to in this Schedule prior to commencing digitisation in line with this Agreement. Processes and procedures to be so developed include but shall not be limited to, Booking, Scanning Procedures, Document tracking and Audit Trail Procedures, Detailed Document Handling Techniques and Project Specific Security and Disaster Recovery Plans.

Release to and storage of the Licensed Material within the Approved Location as outlined in this Schedule shall not be permitted until the Publisher confirms and documents their agreement to such processes and procedures, though the Licensor will permit the Publisher access to such samples of the Licensed Material as may be necessary during the Implementation Phase.

The Publisher will remain solely responsible and liable to the Licensor in respect of the safety and security of the Licensed Material at all times while under the Publisher's control during the scanning process.

Following a review by the Licensor's Head of Document Services the Licensor will designate suitable areas as non-exclusive rentable scanning space within the basement at the Licensor's premises (the "Approved Location") configured in accordance with the approved specification for the finite period required to scan the Licensed Material on a case-by-case basis. A scanning team of no more than **x (insert number)** camera operators will be employed by the Publisher for the scanning of the Licensed Material. The Licensor's Conservation Manager will assess each collection within the Licensed Material on a case by case basis and will advise where preparation of the material is required prior to scanning. If so advised by the Licensor's

Conservator that a Project Conservator is required, the Publisher shall pay for the hire of a Project Conservator to be approved by the Licensor for the duration required to complete the work to the material identified. For the duration of the Project Conservator's contract he or she will also be available on call to the scanning team.

Following a review of the proposed equipment and layout to be used in the scanning area of the Approved Location by the Licensor's Preservation Officer, and subject to the agreement of detailed document handling techniques as outlined in Part 3 of this Schedule below, the Publisher undertakes to digitise the Licensed Material at the Approved Location, using only the Approved Equipment (as defined in Part 3 of this Schedule below) according to the principles and procedures outlined below:

### **Part One: Preparation of documents for scanning**

1. Following a condition survey by The Licensor's Conservation Team, each series of Licensed Material detailed in Schedule 2 to this Agreement shall be:
  - Agreed as in a fit condition to scan without conservation or special preparation in advance, SAVE THAT following proper training, all scanning operators will flag up to the Licensor's Conservation Manager any items discovered during the scanning process which could be deemed as unfit for scanning and will not scan said items until further approval is given by the Licensor.
  - Agreed as in a fit condition to scan following minor preparation to be carried out by the Publisher's scanning team at the Approved Location and monitored by the Licensor.
  - Agreed as possible to scan following more involved preparation or conservation work to be carried out by Licensor (or a third party approved by the Licensor) at Publisher's cost.
  - Agreed as in a condition unfit to scan.
- 1.1. Publisher and Licensor will agree a priority and order of material to be delivered to the Approved location for scanning based on the above.
- 1.2. Scanning staff engaged by the Publisher to carry out the work of scanning in the Approved Location must receive document handling training from the Licensor prior to working with the Licensed Material. The training may be refreshed annually or

supplemented as deemed necessary by the Licensor. Scanning staff not adhering to handling rules may be removed from the project

## **Part Two: Control of the Licensed Material**

2. The Licensor undertakes to transfer as much of each document series comprising the Licensed Material as is practicable to store adjacent to the Approved Location at the start of the Implementation Phase of the project and during the Production Phase in a timely fashion so as not to interrupt the work flow of the digitisation process.
- 2.1 The Licensor undertakes to transfer each day's files to the care of the Publisher at 9am, and to take delivery of each day's files at the end of each scanning shift at 5pm, so as to minimise the time during which files are unavailable to the public in the Licensor's Reading Rooms.
- 2.2 Detailed "Booking In" and "Booking Out" procedures will be agreed between the parties during the Implementation Phase, designed so as to include amendment of the status of the material on the Licensor's DORIS electronic database system. The Publisher shall make available suitably qualified staff to be present during the Implementation Phase to enable such procedures to be developed. These agreed procedures shall be documented and attached hereto as Appendix A of this Schedule on completion of the Implementation Phase, and prior to the booking out of the initial batch of the Licensed Material from the Licensor's repositories to the basement.
- 2.3 Detailed "Document Tracking and Audit Trail" procedures shall be developed and agreed between the parties during the Implementation Phase. The Licensor and the Publisher shall ensure, and the Publisher shall procure, that the Authorised Scanning Contractor shall make available suitably qualified staff to be present during the Implementation Phase to enable such procedures to be developed. These procedures shall be documented and attached hereto as Appendix B of this Schedule following completion of the Implementation Phase, and prior to the booking out of the initial batch of Licensed Material into the control of the Authorised Scanning Contractor.
- 2.4 Full and complete responsibility and risk for the Licensed Material will transfer from the Licensor to the Publisher at the moment at which each day's inventory is booked out

for processing by the Licensor from the storage area within the Approved Location in accordance with the detailed procedures agreed and attached as Appendix A to this Schedule.

- 2.5 Full and complete responsibility and risk for the Licensed Material will remain with the Publisher until booked back in after processing in accordance with the detailed procedures agreed and attached as Appendix A to this Schedule.
- 2.6 Responsibility to make good any damage or loss shall remain with the Publisher until such time as the Licensor provides its written confirmation that each batch of documents returned has been reviewed in relation to the Publisher's automated document tracking system ("DORIS") and is fully accounted for.
- 2.7 At no time should documents be moved or transferred separately, but rather, whole pieces, at box level, should always be kept together while under the control of the Publisher.

### **Part Three: Document Handling and Custody**

- 3. The Licensor has approved the following equipment to be used to scan the Licensed Material:  
**TBA**
- 3.1 Layout and configuration of the scanning facility at the Approved Location, and basic document imaging techniques to be approved by the Licensor following the document handling training of the Publisher's staff by the Licensor's Collection Care Department.
- 3.2 Detailed Document Handling Procedures for the Licensed Material (including procedures for the movement of Licensed Material from the storage area within the Approved Location to the scanning area), will be agreed by the parties during the Implementation Phase of the project, building on the guidelines and processes attached to this Schedule as Appendix C part 1. The Licensor shall make available suitably qualified staff to be present during the Implementation Phase and prior to commencement of digitisation. The Licensed Material will not be despatched until such procedures have been agreed and documented.



- 3.3 The Licensor shall have the right to nominate a member of staff to be present at the Approved Location at any time during the Publisher's custody of the Licensed Material, such staff to be provided at the Licensor's cost. The Licensor's staff member will have full responsibility to intervene if necessary to stop the scanning process if the Handling Procedures detailed in Appendix C of this Schedule are not being adhered to, or if the Licensed Material is or may become at risk.
- 3.4 If document types or conditions are encountered or any damage occurs during the scanning process which requires procedures beyond the remit of the Publisher's team conservator(s), the Authorised Scanning Contractor will immediately contact the Licensor's representative (as detailed in Part Six of this Schedule) to discuss the correct course of action. Such anomalous documents shall not be scanned until such time as a suitable procedure has been agreed between the parties.

#### **Part Four: The Approved Location**

4. The Approved Location will be maintained by the Publisher at all times in its approved state.
- 4.1 In the event that any material change to the layout of the Approved Location is proposed, the Publisher's representative will bring this to the attention of the Licensor's representative at the earliest opportunity so that the effect and impact of such material change on the safety and security of the Licensed Material can be ascertained.
- 4.2 Detailed security arrangements and procedures shall be developed and agreed between the parties. The Licensed Material will not be despatched by the Licensor to the basement storage area until such procedures have been agreed and documented.

#### **Part Five: Production of Images**

5. The Publisher shall procure that all images produced for supply to the Licensor under Clause 4.9 are in the Agreed Image Format. Images should be saved in a series of 4 folders within each series: series number, piece number, sub-piece number (using '0'

if there is no sub-piece number) and image number, with images numbered consecutively eg. 0001, 0002 etc within a given piece eg. HO 42/1/1/0001

- 5.1 The Licensor shall have the right to perform or have performed a quality assurance process on a sample of the digital images created pursuant to this Agreement. Upon request by the Licensor, the Publisher will send an agreed sample of images to the Licensor's representative to enable such a process to be carried out. Any issues arising out of this quality assurance process shall be dealt with in accordance with Part Six of this Schedule.

## **6. Part Six: Communication and Escalation Procedures**

6. Any issues regarding the handling procedures or document care, or regarding the condition of any of the Licensed Material should be referred in the first instance to *(Please insert)* for the Authorised Scanning Contractor and the Preservation Officer for the Licensor.
- 6.1 Any issues regarding delivery of and access to the Licensed Materials should be referred in the first instance to *(Please insert)* for the Authorised Scanning Contractor and the Head of Document Services for the Licensor.
- 6.2 Any issues regarding image quality or image capture equipment should be referred in the first instance to *(Please insert)* for the Authorised Scanning Contractor and the Licensing Manager for the Licensor.
- 6.3 In the event that the issue cannot be satisfactorily resolved in accordance with parts 6.1, 6.2 and 6.4 above, it will be referred to the Commercial Director for the Licensor and *(Please insert)* for the Publisher for resolution.

## **7. Part Seven: Return of the Licensed Material to the storage area within the Approved Location and availability for public usage**

7. Batches of documents together with a copy of the original completed manifest shall be prepared for delivery back to the storage area within the Approved Location by the

Authorised Scanning Contractor at the end of each working day by the Publisher in accordance with the detailed booking-out procedures developed and attached to this Schedule as Appendix A.

- 7.1 The parties will agree on the size of each batch with respect to the progress of the digitisation process, but also so as to minimise the number of documents unavailable for public consultation at any one time.
- 7.2 Agreed “Booking-in” and “Booking-out” and “Inventory Tracking System” procedures shall be observed at all times.
- 7.3 Responsibility to make good any damage or loss shall remain with the Publisher until such time as the Licensor confirms that each batch of documents booked back in to its custody has been reviewed against the despatch manifest and the Inventory Tracking System and is fully accounted for.

#### **Appendix A: Booking In/Out Procedures**

**TBA** and attached after the Implementation Phase

#### **Appendix B: Document Tracking and Audit Trail Procedures**

**TBA** and attached after the Implementation Phase

#### **Appendix C: Handling Procedures**

##### **(i) General Guidelines on Document Handling when Copying/Scanning**

These guidelines provide general guidance for copying original documents on-site. In the event of any conflict or inconsistency between these general guidelines and the Detailed Document Handling Procedures attached as part (ii) of this Appendix C, the latter shall prevail.

The Licensor shall have the right to approve any copying equipment before use. Any cleaning products used for maintenance of the equipment should be approved by the Licensor. The decision of whether or not volumes may be unbound for copying lies with the Licensor.

All Licensed Material must be cleared as either fit to scan or fit to scan on the basis that any unfit or query-able items are immediately flagged to the Licensor's Conservation Team for repair prior to scanning. A representative sample of documents leaving the repository will be surveyed in order to determine whether or not the material is fit for scan. If not, any necessary conservation or preservation procedures will be carried out by the Conservation Department prior to the documents leaving the Licensor.

### **Publisher's Responsibilities**

The Publisher shall procure that it or any sub-contractor ensures that:

- The area where the Licensed Materials are consulted should be kept tidy, and without food or drink.
- Clean dry hands are used to handle the Licensed Materials to prevent transfer of dirt and grease to the Licensed Materials.
- Staff do not apply hand cream before consulting the Licensed Materials as this too will transfer oils to the Licensed Materials.

### **Working with documents**

- The Licensed Materials should be fully supported, and only soft leaded pencil (HB 2) should be used when working with documents.
- Glues, self-adhesive tape or correcting fluid must not be used in proximity to the Licensed Materials.
- Moisturisers, hand wipes with moisturisers, nail varnish and other cosmetic creams or liquids must not be used in proximity to the Licensed Materials.
- Glass cleaning products should be approved by the Licensor's conservators before use. Advice on alternatives can be provided.
- Particular care needs to be taken where the Licensed Materials are already damaged (e.g. tears) as these are more vulnerable to further damage. If in doubt, advice from the Licensor's conservators should be sought.
- Copying should not incur any further folds, tears, bends or creases.

- Leaning on Licensed Materials should be avoided since this can easily cause further damage.
- It is unacceptable to unbind or crease Licensed Materials in order to ease copying procedures unless specifically agreed otherwise with the Licensor.

### **Supporting Staff**

- The Publisher shall procure that all staff involved in the copying must receive regular training in appropriate handling procedures in transportation of documents, temporary storage and handling.
- Some Licensed Materials may be found to suffer from past or present mould growth. These Licensed Materials should be handled with extreme care. Operators should wear protective gloves and masks. The Licensor's Preservation staff should be informed as soon as mould is detected on any Licensed Materials.

### **Moving Documents**

The Publisher shall procure that:

- Any movement of document boxes should be carried out using trolleys, which are stable, easy to manoeuvre and fully support the material they carry; and
- Map trolleys should be used to accommodate oversized documents.
- Specially constructed folders are available to protect/support all maps and plans during transportation.

### **Storage**

The Publisher shall procure that

- Licensed Materials in temporary storage should be housed in a clean stable environment and within recommended temperature and humidity levels; and
- All shelving must provide safe and effective storage regardless of the size or shape of documents.

(See Appendix E for more details)

## Handling

The Publisher shall ensure that the Licensed Materials are handled in accordance with the following procedures:

Books: support all volumes when they are opened to prevent strain on the spine. Books must never be forced open. Help must be sought from the Licensor's Conservation team in case of problems.

- Tight back volumes may need a spine support; hollow back volumes will need some space to accommodate the back.
- No pressure should be put on an open book.
- Parchment is extremely sensitive to changing temperature and humidity levels and therefore must not be scanned. Copying of parchment should not expose the material to heat from lighting for any length of time
- Volume pages and sheets need to be turned individually
- Be sure to realign the file before placing it back in the box. This will prevent tears and folds along the edges.

Seals: Documents with seals should not be photocopied or scanned. Photographic images should be produced instead.

Files with treasury tags: the majority of tagged files are made of poor quality paper and are vulnerable given the hole in the upper left corner, which will easily tear if handled inappropriately. During imaging:

## Equipment

To ensure the best possible protection of Licensed Materials when copied, the scanner

- Shall be no smaller than A2 and no smaller than A0 for oversize documents. Shall minimise the pressure placed on the spine of a document with the appropriate support.
- Shall provide the option of a gentle mechanism to keep documents flat.
- Should include software to compensate for spine curvature if possible.
- Any lamps which exceed 10 $\mu$ W per lumen of ultraviolet radiation should be fitted with an effective UV filter cutting off light of wavelength shorter than 400nm.

- Any cleaning or lubricating products for the equipment should be kept well away from the documents to avoid staining or corrosion of documents.

**(ii) Detailed Document Handling Procedures:**

TBA and attached after the Implementation Phase

**Appendix D: Sample Inventory Tracking list**

TBA and attached after the Implementation Phase

**Appendix E: Security and Disaster Recovery**

The embedded document herewith refers to all onsite scanning projects



TNA LIA Security  
Procedures.doc

## **SCHEDULE 5 COMMERCIALLY SENSITIVE INFORMATION**

This commercially sensitive information comprises any information concerning the following, passed from one party to another:

- **business and marketing concepts**
- **marketing plans**, including but not limited to release dates, advertising copy, artwork and schedules, response rates, marketing channels, endorsements and affiliates, customer database segmentation
- **financial information**, including but not limited to earnings projections, capital investment plans, sales data, pricing details, costs, information supplied on or in connection with royalty statements, payment processes, commercial terms of contracts
- **technical information**, including but not limited to hardware, software, hosting, suppliers, performance statistics, database design
- **products and services**, including but not limited to schedules, release dates, pricing plans, terms and conditions, services, data, search facilities, product specifications, and plans to improve products and services, documents containing product formulas, drawings, webpage mock-ups.
- **business systems**
- **suppliers**
- **customers** including but not limited to personal details, aggregated user statistics, results of surveys, complaints, feedback, numbers of registered users, segmentations of
- **business partners**
- **personnel**
- **operations** including but not limited to administrative details, scanning and data capture methodologies and processes, testing plans

## **SCHEDULE 6**



## ROYALTY CALCULATION

1. In respect of Publications comprising solely the Licensed Material, the Royalty shall be calculated as follows:

Net Receipts from sales of the Publication × Royalty rate

### EXAMPLE

Net Quantity Publications Sold	Retail Price (£)	Net Receipts	Image Count (the Licensed Material)	Image Count (third party material)	Pro-Rated Percentage (%)	Royalty Rate (%)	Royalty Earnings (£)
14	20,000	280,000	70,000	0	100	15	42,000

2. In respect of Publications that contain the Licensed Material in combination with any third party material ("Combined Publications"), the Publisher shall pay a Royalty calculated as follows:

Net Receipts from the Combined Publication × Pro-Rated Percentage × Royalty rate

### EXAMPLE

Net Quantity Publications Sold	Retail Price (£)	Net Receipts from the Combined Publication	Image Count (the Licensed Material)	Image Count (third party material)	Pro-Rated Percentage (%)	Royalty Rate (%)	Royalty Earnings (£)
14	20,000	280,000	56,000	14,000	80	15	33,600

3. The Publisher shall be responsible for declaring the proportion of Licensed Material on the Date of Launch of the Publication, based solely on the volume of Licensed Material within that Publication and provided to the Licensor in writing. For the avoidance of doubt, the Pro-Rated Percentage shall refer to the volume of the Licensor's primary source material or secondary interpretive material within a Combined Publication, but shall not include metadata, machine code or other non-editorial content which may form part of the Publication.

**SCHEDULE 7**  
**PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

1. The Publisher shall comply with any further written instructions with respect to processing by the Licensor.
2. Any such further instructions shall be incorporated into this Schedule.

<b>Description:</b>	<b>Details:</b>
Subject matter of the processing	<i>Not used</i>
Duration of the processing	<i>Not used</i>
Nature and purposes of the processing	<i>Not used</i>
Type of Personal Data	<i>Not used</i>
Categories of Data Subject	<i>Not used</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>Not used</i>