

Dated: XXX

THE NATIONAL ARCHIVES (1)
(*NAME OF COMPANY PLC/LTD*) (2)

LICENCE AGREEMENT

THIS AGREEMENT is made on

2022

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) **(FULL NAME OF COMPANY)**, a company registered in England and Wales
No [company no.] whose registered office is [address] (**'the Publisher'**).

INTRODUCTION

- (A) The Publisher wishes to produce and publish the Digitised Licensed Material for the purpose of the Publisher's Online Service.
- (B) Some or all of the Licensed Material may not exist in microfilm 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 month/3 months period ending on 31 XXXXXXXX of each Year, commencing with the first such period or part period ending after the Effective Date;

'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 TIFF (Version 6) format converted from RAW files. Image resolution must be 300dpi for standard documents (e.g. letters, paper documents without illustration) 600 dpi for documents with illustrations and photographs (can be higher if preferred). Colour documents must be scanned in 24-

bit colour using the Enumerated sRGB colourspace profile. Microform material must be scanned in 8 bit grayscale using the Enumerated greyscale colourspace profile;

'Agreed Folder Structure and File Naming Convention' means a series of folders for each Department code and series number as detailed fully in SCHEDULE 3 > DIGITISATION METHODOLOGY>Part Five: Production of Images. This also details the batch naming convention and the provision of a directory list for each batch;

'Approved Location' means the rentable scanning area within the Licensor's Premises detailed in Schedule 3 and provided by the Licensor for the digitisation of the Licensed Material in accordance with this Agreement.

'Associate' in relation to a body corporate, means any body corporate in the same Group as that body;

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

'Change of control' means a change of Control in the Publisher;

'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;

'Companies Act' means the Companies Act 1985 and, to the extent relevant, the Companies Act 2006 and all other statutes and subordinate legislation from time to time in force concerning companies and other bodies corporate;

'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 UKGDPR and the Data Protection Act 2018 and the Commercially Sensitive Information;

'Control' means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares or otherwise);

'Controller, Processor, Data Subject, Personal Data, Special Category Personal Data, Personal Data Breach, 'Data Protection Officer' take the meaning given in the UKGDPR;

'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 UKGDPR and the Data Protection Act 2018; (ii) 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;

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

'Digitised Licensed Material' means the digital images of the Licensed Material in machine-readable form created by or for the Publisher pursuant to this Agreement;

'Distributable Revenue' means the gross revenue obtained by the Publisher from the sale of the Publisher's Online Service less refunds and Third Party Costs but before deduction of any settlement or prompt payment discounts;

'DPA 2018' means the Data Protection Act 2018;

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

'Environmental Information Regulations' means the Environmental Information Regulations 2004;

'FOIA means the Freedom of Information Act 2000' and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

'Free Search Facility' means that part of the Online Service which allows Users to search various indexes to document collections free of charge;

'Group' in relation to a body corporate, means the body corporate, any other body corporate which is its Holding Company or Subsidiary and any other body corporate which is a Subsidiary of that Holding Company;

'Holding Company' has the meaning given in section 1159 of the Companies Act 2006 and in this instance means [*name of holding company*];

'Image View' means a single image view as seen by the unique User each time a browser requests such image page from the Publisher's servers including where an image view has been downloaded into another area on The Site and is subsequently accessed by a unique User following a browser request of the image view from the Publisher's server SAVE where the image is already cached on the local machine so that the browser can display it again without making another server request, it will not be counted again;

'Intellectual Property Rights' means any current and future intellectual property rights, including without limitation copyrights, trademarks, 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.

'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;

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

'Licensor's Representative' means the Licensor's Head of Licensing and Publishing;

'Page Views' means all types of page view as seen by the unique User each time a browser requests a page from the Service Provider's server in respect of the Publisher's Online Service and in the event that the page is already cached on the local machine so that the browser can display it again without making another server request it will not be counted again and for the avoidance of doubt Page Views shall relate to the Digitised Licensed Material, Service Provider and third party copyright and database material available for searching, viewing and downloading on the Publisher's Online Service;

‘Party’ means a Party to this Agreement;

‘Pay-Per-View Services’ means the online service provided by the Publisher or its Associates or any Group company which permits access over the Internet to the Licensed Material, on its own or together with the Publisher's and/or third party copyright material, and which charges Users, by means of a micropayment system, a particular amount for each individual document downloaded or viewed;

‘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;

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

‘Publisher’s Online Service’ means the Pay-Per-View and/or Subscription Services and / or Free Search Facility and such other replacement or additional services and payment structures provided by the Publisher and provisionally titled ‘*[collection title]*’ permitting access over the Internet to the Digitised Licensed Material on its own or together with the Publisher’s and/or third party copyright material and database materials together with the ability of Users to search view and download documents but excluding for the avoidance of doubt the viewing and downloading of documents and Image Views (of the Digitised Licensed Materials or otherwise) by Users or third parties who are providing maintenance and/or services to the Service Provider such as creating indexes, Transcriptions or databases;

‘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;

‘Publisher’s Representative’ means such person designated by the Publisher who is responsible for liaising directly with the Licensor;

‘Restricted Transfer’ means a transfer which is covered by Chapter V of the UK GDPR;

‘the Rights’ means the non-exclusive and (subject to Clause 15.2) 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 Publisher’s Online Service and to reproduce the Digitised Licensed Material as part of the Publisher’s Online Service;
- iv) To publish sell and distribute the whole or any part of the Digitised Licensed Material as part of the Publisher’s Online Service directly or using Associates as the case may be;
- v) Upon 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 provided that no part of the Digitised Licensed Material shall be published or sold within any such services without the Licensor’s written consent;
- vi) To transcribe, and have transcribed, extract, reformat and edit the Digitised Licensed Material in order to develop and produce the Publisher’s Online Services;
- vii) To create copies of the Digitised Licensed Material for the back-up and archive purposes of the Publisher.

‘Royalty’ means the royalty payable to the Licensor in consideration of the grant of the Rights set out in Clause 7;

‘Services Schedule’ means a schedule similar in form to Schedule 3 to this Agreement, completed in respect of any subsequent record series or package of record series as may be agreed between the parties and incorporated into this Agreement during the Term;

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

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

‘Subscription Services’ means an online service provided by the Publisher or any of its Associates or any Group company which permits access via the Internet to the

Digitised Licensed Material, on its own or together with the Publisher's and/or third party copyright material, and which charges Users a subscription fee in return for the ability to search, view and download documents from a stipulated collection of material during a set period of time;

'Subsidiary' has the meaning given in section 1159 of the Companies Act 2006;

'Term' means the term of this Agreement as detailed in Clause 3;

'Territory' means the world;

'Third Party Costs' means, without limitation, applicable VAT or other sales taxes, duties, credit or debit card charges, bona fide trade discounts or any other like payment due to any third party and for the avoidance of doubt, this shall not include any costs incurred by the Publisher in the development hosting promotion or distribution of the Publisher's Online Services or any revenue share or other payment to any co-brand distributor or other partner;

'Transcriptions' means any transcriptions of the Digitised Licensed Material made by or for the Publisher pursuant to this Agreement;

'UKGDPR' means the General Data Protection Regulation (Regulation (EU) 2016/679) as made into UK law;

'User' means a user of the Publisher's Online Service; and

'Year' means the period of 12 months from the Effective Date and each subsequent consecutive period of 12 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 the recitals are to the parties clauses sub-clauses of 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 for the benefit of the Publisher and on approval of the Licensor all members of its Group. The Publisher shall notify the Licensor of any Group company that wishes to take advantage of the rights prior to publication of the Digitised Licensed Material on any Group company website.

- 2.2 The Publisher shall release the Publisher's Online Service 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 Publisher's Online Service 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 Publisher's Online Service 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 best 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 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.
- 2.9 The Publisher shall not be entitled to sub-license any of its rights under this Agreement to any third party.
- 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 consent pursuant to this Agreement 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 consent pursuant to this Agreement and the payment of the relevant Royalties under this Agreement.
- 2.12 For the avoidance of doubt, the Publisher shall be liable for Royalties in respect of all sales by any member of the Publisher's Group which uses the Licensed Material in accordance with the Rights as if such sales were sales by the Publisher itself. The Publisher shall pay all Royalties in respect of usage by Group companies as set out in Clause 7 of this Agreement and such Royalties shall be accounted for separately in the Royalty Statement Form (as defined in Clause 7.3).

3. Duration of Agreement

This Agreement shall commence on the Effective Date unless terminated earlier in accordance with this Agreement and 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 2 years thereafter and at the end of each successive period of 2 years unless either the Licensor gives written notice to the Publisher or the Publisher gives written notice to the Licensor at least 6 months before the end of the duration of each such period, that either of them will not extend the Agreement and specifies reasonable cause for such refusal to extend. For the avoidance of doubt, 'reasonable cause' shall be taken to mean a material or persistent breach of the Terms of this Agreement.

4. Provision of Licensed Material from digital copies

- 4.1 Where the Licensor holds digital copies of any Licensed Material, which are satisfactory in quality to the Publisher, the Publisher shall purchase copies of such Licensed Material from the Licensor at the appropriate Statutory Instrument rate prevailing at the time. The Publisher acknowledges that the Licensor cannot lend, loan or otherwise provide the Publisher access to microfilm of the Licensed Material for the purposes of this Agreement, on any other basis and the Licensor hereby confirms the same.
- 4.2 Subject to Clause 4.1 above, the Licensor shall as soon as practicable supply to the Publisher the Licensed Material subject to the provisions of clause 4.3 to 4.6.
- 4.3 Where the Publisher has particular technical and/or quality standards for the delivery of the Licensed Material, these must be stated by the Publisher and agreed in writing with the Licensor in advance of the relevant order for the Licensed Material being placed by the Publisher
- 4.4 The Publisher agrees to reimburse all pre-agreed 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 pre-agreed 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 where they have been agreed beforehand. All payments due to the Licensor under this clause 4.4 will be paid by the Publisher within 30 Business Days of the date of invoice.
- 4.6 The Publisher accepts that the Licensor's use of any generation of the Licensed Material in relation to the Licensor's Statutory obligations (including to comply with its obligations under the Freedom of Information Act 2000) will take priority over any other use of the Licensed Material.

5. Provision of Licensed Material for On-Site Digitisation by the Publisher

- 5.1 Where no digital surrogate exists for the Licensed Material, the Licensor shall provide the Publisher with access to such Licensed Material in accordance with the

- terms of the scanning procedures in Schedule 5, as appropriate, at the Approved Location.
- 5.2 Where the Publisher acknowledges that no copy or surrogate of the Licensed Material exists in any format other than original form, the Digitised Licensed Material will be created directly from the Licensed Material and the Licensor therefore cannot guarantee any part of the Licensed Material will meet any of the Publisher's pre-defined technical and/or quality standards or expectations.
- 5.3 Where the Publisher has particular technical and/or quality standards for the delivery of the Licensed Material, these must be stated by the Publisher and agreed in writing with the Licensor in advance of the relevant order for the Licensed Material being placed by the Publisher.
- 5.4 Risk in any in any of the Licensed Material shall pass to the Publisher under this Agreement upon the Publisher taking possession of the same from the storage area within the Approved Locations ("Uplift") to undertake digitisation in accordance with the provisions of Schedule 3 to this Agreement 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 3 of this Agreement 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".
- 4.5 The Publisher acknowledges the right of the Licensor to continually assess the storage, handling and digitisation of the Licensed Material within the Approved Location.
- 5.6 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. 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.
- 5.7 The Publisher accepts that the Licensor's use of any generation of the Licensed Material for any project (including to comply with its obligations under the Freedom of Information Act 2000) 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.

- 5.8 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 six (6) months of the completion of scanning of the relevant Licensed Material at the Approved Location, in the Agreed Image Format supplied with appropriate index information in the Agreed Metadata Format on a medium to be notified in advance to the Publisher by the Licensor.
- 5.9 If the Publisher fails to deposit the Digitised Licensed Material with the Licensor's Nominated Representatives 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.

6. Obligations of the Publisher

- 6.1 The Publisher shall at its own expense and shall ensure that its Group members and Associates shall:
- 6.1.1 ensure that the work of imaging the Licensed Material for use in the Publisher's Online Service is carried out by competent persons with appropriate skills and experience working at all times in strict accordance with the Scanning Procedures agreed between the parties and attached hereto as Schedule 3;
 - 6.1.2 ensure that the work of converting the Licensed Material into machine-readable form for use in the Publisher's Online Service is carried out by a competent person with appropriate data processing skills and experience;
 - 6.1.3 ensure that no scanning is undertaken until the Publisher's Conservator has approved and where appropriate prepared the Licensed Materials for digitisation;
 - 6.1.4 ensure that the software development work required to produce the Publisher's Online Service is carried out by a competent person with appropriate software development skills and expertise;
 - 6.1.5 ensure that the work of transcribing and indexing the Licensed Material for use in the Publisher's Online Services is carried out by competent persons with appropriate skills and experience;
 - 6.1.6 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 that afforded any third party or the Publishers own copyright acknowledgement and;

- 6.1.7 inform the Licensor of the intended first release of the Publisher's Online Service to enable the Licensor to review and approve the presentation and the Publisher shall not make available the Publisher's Online Service until such approval has been notified in writing, which approval shall not be unreasonably delayed or withheld.
 - 6.1.8 provide access authorisation to the Digitised Licensed Material within Publisher's Online Service free of charge to Licensor immediately after launch by the Publisher of the Digitised Licensed Materials within the Publisher's Online Service and solely for use by the Licensor and its individual visitors.
 - 6.1.9 offer Pay-Per-View services as an alternative to subscription access, in the online publication, which includes the facility to download or view digitised Licensed Material and/or transcribed indexes of the digitised Licensed Material.
- 6.2 The Publisher undertakes to include in its standard terms and conditions for the Publisher's Online Service a stipulation prohibiting its customers from any use of the 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 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. The same conditions shall be imposed on Group members and Associates by the Publisher.

7. Payment

- 7.1 In consideration of the Rights granted to the Publisher under this Agreement, the Publisher shall (subject to Clauses 7.12 and 7.13) pay the following Royalties to the Licensor:
- (i) in respect of the Pay-Per-View Services at the rate of 10% (ten percent) of the Distributable Revenue received for the Digitised Licensed Material during the Account Period and which is accessed through the Pay-Per-View Service (irrespective of any payments paid on account by Users) calculated by multiplying the charge per individual Image View of the Digitised Licensed Material (less any Third Party Costs) by the number of Image Views of the Digitised Licensed Material.

- (ii) In respect of the Subscription Services at the rate of 10% (ten percent) of the Distributable Revenue from the Subscription Service of which the Digitised Licensed Materials are part divided by Page Views received of the Digitised Licensed Material as a proportion of the total number of Page Views received by the Subscription Service of which the Digitised Licensed Material is part during the Account Period.

i.e. **10% (ten percent)** of:

$$\frac{A \times B}{C}$$

Where:

A = the Distributable Revenue received during the Account Period by the Publisher in respect of the Subscription Service;

B = the number of Page Views received during the Account Period under the Subscription Service by the Digitised Licensed Material; and

C = the total number of Page Views received during the Account Period by the Subscription Service (for Digitised Licensed Material and other content).

- 7.3 No costs incurred in the development, hosting, promotion, distribution or exploitation of the Publisher's Online Service shall be deductible from any sums payable by the Publisher.
- 7.4 The Publisher shall prepare an account of all monies received from the Publisher's Online Service 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.
- 7.5 The account referred to in Clause 7.4 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 Distributable Revenue and the Royalty payment due in respect of the Publisher's Online Service. The form of such statements will be agreed between the parties prior to launch of the Publisher's Online Service, or as reasonably required by the Licensor.
- 7.6 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.

- 7.7 The Publisher undertakes to keep and preserve accurate accounting records and invoices covering all transactions relating to the subject matter of this Agreement for a period of not less than seven years following the end of the financial year in which they were created. The Licensor or its authorised representatives shall be entitled, not more than once in any calendar year upon reasonable notice 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.
- 7.8 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.
- 7.9 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 Licensee shall not be deemed to waive such breach or default.
- 7.10 In the event that the payment of royalties is not made by the due date as set out in Clause 7.4, 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.
- 7.11 The Licensor shall not be billed for its own use of the Publisher's Online Service for testing.
- 7.12 Pounds sterling (£) shall be the currency of account for Royalties payable.
- 7.13 The Publisher will pay to the Licensor re-imbusement of the direct costs of facilitating the onsite scanning operation. The current costs are as follows, and are subject to variation: in payments made up as follows:

- i) Space rental at £26.96 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 charge of £35.32 per hour;
- 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.

8. Confidential Information

- 8.1 Each party to this agreement including the Publishers Group members and Associates:
 - 8.1.1 shall treat all Confidential Information belonging to the other party as confidential and safeguard it accordingly; and
 - 8.1.2 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.
- 8.2 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:

- 8.2.1 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;
- 8.2.2 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.
- 8.3 Each party shall ensure that staff or its professional advisors or consultants are aware of their confidentiality obligations under this Agreement.
- 8.4 Neither party shall use any Confidential Information it receives from the other party other than for the purposes of this Agreement.
- 8.5 The provisions of Clauses 8.1 to 8.4 shall not apply to any Confidential Information received by one party from the other:
 - 8.5.1 which is or becomes public knowledge (otherwise than by breach of this Clause 8);
 - 8.5.2 which was in the possession of the receiving party, without restriction as to its disclosure, before receiving it from the disclosing party;
 - 8.5.3 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - 8.5.4 is independently developed without access to the Confidential Information; or
 - 8.5.5 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
- 8.6 The Licensor shall not be in breach of its obligations under this Clause 8 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 SAVE that in respect of Commercially Sensitive Information the Licensor shall consult with the Publisher as appropriate to determine whether the Commercially Sensitive Information and/or any other Confidential Information:
 - 8.6.1 is exempt from disclosure in accordance with the provisions of the FOIA;
 - 8.6.2 is to be disclosed in response to a request for information made under the FOIA.
- 8.7 The Publisher accepts that the Licensor's use of the Licensed Material or any part

thereof, in relation to the Licensor's statutory obligations (including to comply with its obligations under the Freedom of Information Act 2000) will take priority over the Publisher's access to the Licensed Material.

9. Freedom of Information and Data Protection

- 9.1 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.
- 9.2 The Publisher shall notify the Licensor immediately if it considers that any of the Licensor's instructions infringe the Data Protection Legislation.
- 9.3 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.
- 9.4 The Licensor shall endeavour to give clear guidance to the Publisher as to any personal data contained within the Licensed Material where publication 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 as soon as is practically possible to redact or remove all such information within every document image within the Digitised Licensed Material within the Publisher's Online Service.

9.5 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 UK/EEA 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 UKGDPR Article 46) 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 6;
- (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.

9.6 Subject to clause 9.7, 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.
- 9.7 The Publisher's obligation to notify under clause 9.6 shall include the provision of further information to the Licensor in phases, as details become available.
- 9.8 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 9.6 (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.
- 9.9 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 UKGDPR or Personal Data relating

to criminal convictions and offences referred to in Article 10 of the UKGDPR;
and

- (c) the Licensor determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

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

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

9.12 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 9 such that they apply to the Sub-processor;
- (c) provide the Licensor with such information regarding the Sub-processor as the Licensor may reasonably require; and
- (d) If the Publisher is acting as a Data Exporter by sending personal data outside of the UK/EEA for processing with the Sub-processor, it is the Publisher's responsibility to ensure that the restricted transfer is in accordance with Chapter 5 UKGDPR.

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

9.14 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).

9.15 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.

10. The Licensor's Warranty

- 10.1 The Licensor has the right to license the Rights granted to the Publisher under this Agreement.
- 10.2 The warranty set out in Clause 10.1 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.

11. The Publisher's Warranty

- 11.1 The Publisher warrants that:
 - 11.1.1 it has the right to enter into this Agreement; and
 - 11.1.2 the Publisher's Online Services will not infringe the Intellectual Property Rights or any other rights of any third party; and
 - 11.1.3 the Publisher's Online Services 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).

12. Termination

- 12.1 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 there is a Change of Control to which the Licensor objects except where the Licensor has given its prior consent to the particular Change of Control which takes place as proposed; or has not served its notice within 6 months of the later of the date on which the Change of Control took place or the date on which the Licensor was given notice of the Change of Control.

13. Effect of Termination

13.1 On termination of this Agreement for any reason:

13.1.1 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 Clauses 2.5, 2.7, 7.7 (as applicable for seven years following the end of the financial year in which this Agreement expires), 8 to 11 inclusive, 15.2, 15.4, 15.7 to 15.9 inclusive and this Clause 13) shall automatically cease and terminate;

13.1.2 any agreements between the Publisher and its customers for supply of the Publisher's Online Service as permitted under this Agreement that are in force at the date of termination may continue in force in accordance with their terms;

13.2 Subject to the provisions of this Clause 13, the Publisher may continue to display the Licensed Material through the end of one twelve month period 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.

14. 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.

15. General

- 15.1 Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of principal and agent between the parties.
- 15.2 Neither party may assign, novate 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.
- 15.3 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.
- 15.4 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.
- 15.5 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.
- 15.6 This Agreement (including the Schedules) supersedes all previous agreements and understandings made between the Licensor and the Publisher in relation to the Publisher's products 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 15.6 shall serve to exclude the liability of either the Licensor or the Publisher in respect of any fraudulent pre-contractual statement or misrepresentation.

- 15.7 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.
- 15.8 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.
- 15.9 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:.....

Signed by:

for and on behalf of the **Publisher**

Name:.....

SCHEDULE 1

Acknowledgement

Images reproduced by courtesy of The National Archives, London, England.

www.nationalarchives.gov.uk

The National Archives give no warranty as to the accuracy, completeness or fitness for the purpose of the information provided.

Images may be used only for purposes of research, private study or education. Applications for any other use should be made to The National Archives Image Library, Kew, Richmond, Surrey TW9 4DU.

The portion of the acknowledgement which is underlined above should be configured by Publisher as a hyperlink to the following page of the Licensor's website:

<http://www.nationalarchives.gov.uk/imagelibrary/>

SCHEDULE 2

LICENSED MATERIAL:

The images of the following records and documents:

SCHEDULE 3

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 date of signature of this Agreement, 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 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 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 Conservation Manager for the Licensor, and subject to the agreement of detailed document handling techniques as outlined in Part 3 of the 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 Schedule 3 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 CBD Conservation Team, each series of Licensed Material detailed in Part two of 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 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 permanent harm is being suffered by the Licensed Material.
- 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

- 5.1 The Publisher shall provide images to the Licensor according to the following guidance:

5.1.1 Folder structure

The folder structure should reflect the archival structure of the records and the piece and item levels should also be reflected in the file naming. If the records were from the series CAB 129 they should be grouped in folders as below (folder titles are in bold):

- Top level folder should reflect the dept code_series number e.g. CAB_129
- The next folder should be named content (with a small 'c'): content
- The next folder should reflect the piece number e.g. 179
- The next folder should reflect the item* number e.g. 7

The files for each item should be contained in the item folder to which they relate. Where there is no item the images will be contained in the piece folder to which they relate. As an example, the folder structure for the files from CAB 129/179/7 would look like this:

CAB_129	(Deptcode_seriesnumber)
content	(folder named 'content')
179	(piece level folder)
7	(item level folder)
179_7_0001.tif	(file 1)
179_7_0002.tif	(file 2)

* The item level is optional as it depends on the collection but sub series, sub sub series and sub items should not be represented in the folder structure.

5.1.2 Filenaming convention

Please note: Piece and item numbers are not zero padded, image numbers are padded to four digits.

The first image captured within a piece or item is always 0001 and the image number increases in ascending order e.g. 0002, 0003 etc. The image number of the last image in a previous piece or item has no impact on the image number of the first image of the next piece or item.

a) Single piece reference and no item:
piecenumbr_imagenumbr e.g. 207_0001.tiff

b) Single piece reference and item
piecenumbr_itemnumbr_imagenumbr e.g. 208_1_0001.tiff

5.1.3 **Batch delivery**

Each set of files must be delivered to TNA on a hard drive. A batch refers to all the folders, images and directory list contained within a single 2 TB hard drive and each batch has a code. A batch may contain multiple complete pieces, but no one piece should be split across multiple batches. A batch may be a very small amount of data, but will not exceed the amount of data which can be held on a single hard drive.

The batch code is unique and should be used as the volume label on the hard drive. The batch name is constructed 'series reference Y year batchno'. The batch number is padded to 3 digits after the B. e.g. Batch 1 for CAB 129 captured in 2019 would be CAB129Y19B001. The 20th batch would have the batch reference: CAB129Y19B020.

5.1.4 **Directory listing**

You must generate a complete directory list for each batch and save it as a text file within the relevant batch at the same level as the content folder. It should be assigned with the batch name_directorylist.txt e.g. CAB129Y19B001directorylist.txt.

5.2 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

5. 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

(*Name given*) for the Authorised Scanning Contractor and Sarah Noble for the Licensor.

- 6.1 Any issues regarding delivery of and access to the Licensed Materials should be referred in the first instance to (*Name given*) for the Authorised Scanning Contractor and Tom Gregan for the Licensor.
- 6.2 Any issues regarding image quality or image capture equipment should be referred in the first instance to (*Name given*) for the Authorised Scanning Contractor and Andrew Small 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 currently Gemma Maclagan Ram for the Licensor and (*Name given*) 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

6. 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

TBC and attached after the Implementation Phase

Appendix B: Document Tracking and Audit Trail Procedures

TBC 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 CBD 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 Preservation 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 well away from food and drinks.
- Clean dry hands are used to handle the Licensed Materials as this will help to prevent transfer of dirt and grease to the Licensed Materials.

- Staff avoid applying 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 should not be used in proximity to the Licensed Materials.
- Moisturisers, hand wipes with moisturisers, nail varnish and other cosmetic creams or liquids should not be used in proximity to the Licensed Materials.
- Glass cleaning products should be approved by the Licensors 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 μ 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:

Document Handling

Training Notes

Updated Version: 05/12/2018

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gov.uk**

Introduction

The National Archives is the UK government's official archive, containing over 1,000 years of history. It is our constitutional responsibility to protect records and make them available to both the public and ministers.

The majority of our collection is unique and irreplaceable so preservation is one of our core functions. After digitisation, records will still be available to readers for up to a year, possibly more so they must be preserved for access.

Security

If you have a paper pass, you are considered an 'Escorted Visitor' and must not be in any staff area unaccompanied by a staff member with a plastic access pass. You must never borrow anyone's pass. If you have a plastic access pass, you must never lend your pass to anyone. You must accompany them if they need to go somewhere. Contravention of either of these rules is a serious breach of security protocol and will invite consequences, including the possibility of withdrawal of your security clearance.

The Digitisation Conservation Team

The Digitisation Conservation Team is part of the Collection Care Department that is responsible for the care of all the collections held at The National Archives.

The Digi Team's role is to survey and treat the collections that are required for a Digitisation Project. Treatments involve repairs (usually with Japanese tissue coated with gelatine), flattening (usually with a heated spatula) and cleaning (with smoke sponges) and are aimed mainly to stabilise the documents and aid their handling during the Imaging process.

General rules

- Use lockers for bags and coats – they are not allowed in the scanning area.
- No laptop bags. Clear plastic bags are available
- Hands must be clean
- No nail polish
- No food and drink of any sort to be consumed or stored in any document area, including chewing gum/mints/throat sweets. This also includes sealed food packages and dry foods.
- Use pencils with no erasers only – pens of any sort are prohibited
- Do not use moisturisers or wipes with moisturisers prior to handling documents
- Ensure your workstation is tidy and uncluttered to give yourself as much space as possible
- Maintain a clean workstation to prevent transfer of dirt
- Never put documents or their boxes on the floor.

NB This list is not exhaustive – common sense is required and action can be taken against poor handling that is not listed.

Handling rules:

Do Not:

- Use handling aids such as rubber thimbles. Plastic spatulas may be ok subject to approval
- Lick your fingers when turning pages
- Crease or fold any part of the document
- Pinch or put pressure on existing creases or fold back on themselves
- Turn pages or handle documents while holding a pencil
- Lean on documents or rest paper on notepads on documents or volumes while writing
- Place an open volume face down on any surface
- Use post-it notes or any kind of adhesive on documents
- Mark the documents in any way
- Remove staples. Contact a conservator.
- Remove items from Melinex sleeves. Items placed in a sleeve are usually fragile and should not be removed.
- Use pens
- Open volumes without supporting the covers
- Force a stiff or restricted opening, including use of any tools inserted in the spine to do so.
- Try and separate stuck documents. Call a conservator.
- Carry documents around individually, or separate from folder. Always replace in box/folder to transport.
- Leave items exposed on the table or scanner if you have to leave the area. Cover the files with the lid or base of the box
- Bring glass directly into contact with seals or pigments.

Do:

- Bring fragile or damaged items to the attention of the conservation team **BEFORE** you image them
- Call a conservator immediately if you suspect there is mould
- Wear mask and gloves (optional) if the book you are working on has red rot (Red Rot is a degradation process found in vegetable-tanned leather which manifests as a characteristic powdering of the leather's surface). If you don't want to wear any protection, please ensure you wash your hands after each scanning session, as Red Rot may be toxic.
- Open folded and rolled documents slowly. If there is any resistance, do not continue as the document will tear
- Ensure documents are fully supported flat on your work surface. No part should hang over the edge of your table. Get a bigger table or desk if necessary.

- Use book wedges and foam pads to support the covers of a volume when open
- Use gloves when handling photographic material
- Support seals and don't let them hang or knock against anything
- Work on one piece at a time and ensure all documents are returned to box before starting another
- Keep documents and files in the order in which you find them in the box
- Ask for assistance to move large, heavy or unwieldy items.

FAILURE TO ADHERE TO THE RULES IN THIS DOCUMENT AND IN THE VERBAL HANDLING TRAINING MAY RESULT IN AN IMMEDIATE PERMANENT BAN ON HANDLING TNA DOCUMENTS

Appendix D: Sample Inventory Tracking list

TBC and attached after the Implementation Phase

Appendix E: Security and Disaster Recovery



TNA LIA Security
Procedures.doc

SCHEDULE 4

TIMETABLE FOR RELEASE OF PUBLISHER'S ONLINE SERVICE

Publisher's Online Service:

Date of Licensor Approval:

Date of Launch:

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
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.

Description:	Details:
Subject matter of the processing	
Duration of the processing	
Nature and purposes of the processing	
Type of Personal Data	
Categories of Data Subject	
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	