

CONTRACT

The National Archives

- and -

SciSys UK Ltd

CONTRACT

relating to

the provision of Software Application Solutions

CR01082

Version 1.0

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THIS CONTRACT is made on the 25th day of October 2010

BETWEEN

- (1) The National Archives** of Kew, Richmond, LONDON, TW9 4DU (the **"CUSTOMER"**); and
- (2) SciSys UK Ltd** a company registered in England under company number 4373530 and whose registered office is at Methuen Park, Chippenham, Wiltshire, SN14 0GB (the **"SERVICE PROVIDER"**).

WHEREAS

- a) The Lords Commissioners of Her Majesty's Treasury as represented by Buying Solutions being a separate trading fund of Her Majesty's Treasury without separate legal personality (the **"AUTHORITY"**) selected service providers, including the SERVICE PROVIDER, to provide software application solutions.
- b) The SERVICE PROVIDER undertook to provide the same on the terms set out in a framework agreement number RM713/L2 dated 17/12/2009 (the **"Framework Agreement"**).
- c) The AUTHORITY established a set of framework agreements, including the Framework Agreement, in consultation with and for the benefit of public sector bodies. The AUTHORITY has overall responsibility for management of those framework agreements.
- d) The AUTHORITY and the SERVICE PROVIDER agree that public sector bodies within the UK may enter into contracts under the Framework Agreement.
- e) The CUSTOMER is granted rights by the AUTHORITY in accordance with the Contracts (Rights of Third Parties) Act 1999 to enter into a contract under the Framework Agreement pursuant to an Order served by the CUSTOMER on the SERVICE PROVIDER.
- f) The CUSTOMER served an Order for the software application solutions on the SERVICE PROVIDER on 25th October 2010
- g) The SERVICE PROVIDER confirmed its agreement to the terms of the Order and its acceptance of the Order and hereby duly executes this Contract.
- h) The terms of this Contract replace the terms of any documentation leading to the execution of this Contract.

IT IS AGREED AS FOLLOWS:

1. INTERPRETATIONS

1.1 As used in this Contract:

- 1.1.1 the terms and expressions set out in Schedule 2-1 shall have the meanings ascribed therein;
- 1.1.2 the masculine includes the feminine and the neuter;
- 1.1.3 the singular includes the plural and vice versa;
- 1.1.4 the Recitals shall form part of and be incorporated into this Contract; and
- 1.1.5 the words "include", "includes", "including" "for example", "in particular" and words of similar effect are to be construed as if they were immediately followed by the words "without limitation".

1.2 A reference to any statute, enactment, order, regulation or other similar instrument

shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

- 1.3 A reference to any document other than as specified in Clause 1.2 shall be construed as a reference to the document as at the Effective Date.
- 1.4 Headings are included in this Contract for ease of reference only and shall not affect the interpretation or construction of this Contract.
- 1.5 References to "Clauses" and "Schedules" are, unless otherwise provided, references to the Clauses of and Schedules to this Contract. References to "paragraphs" are, unless otherwise provided, references to paragraphs of the Schedule in which the references are made.
- 1.6 Terms or expressions contained in this Contract which are capitalised but which do not have an interpretation in Schedule 2-1 shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.
- 1.7 Without prejudice to Clause 3.2, in the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:
 - 1.7.1 the Clauses, including Annex A thereto;
 - 1.7.2 Schedule 2-1; and
 - 1.7.3 the remaining Schedules.

2. SOFTWARE APPLICATION SOLUTIONS

- 2.1 This Contract governs the overall relationship of the SERVICE PROVIDER and the CUSTOMER with respect to the provision of the Ordered Software Application Solutions. The CUSTOMER has ordered the Ordered Software Application Solutions specified in Schedule 2-2 and the SERVICE PROVIDER shall provide those Ordered Software Application Solutions:
 - 2.1.1 in accordance with the provisions of this Contract if those Ordered Software Application Solutions are to be sold by the SERVICE PROVIDER and purchased by the CUSTOMER; and
 - 2.1.2 in accordance with the provisions of this Contract and any other terms and conditions as are agreed between the CUSTOMER and the SERVICE PROVIDER and any third party (if any) if the Ordered Goods are to be leased to the CUSTOMER.
- 2.2 Nothing in this Contract shall create an exclusive relationship between the SERVICE PROVIDER and the CUSTOMER for the provision of any or all Software Application Solutions.
- 2.3 The SERVICE PROVIDER shall provide the Ordered Software Application Solutions in accordance with:
 - 2.3.1 any agreed timetable and Implementation Plan; and
 - 2.3.2 the relevant Service Levels at all times throughout the Term of this Contract.
- 2.4 In the provision of the Ordered Software Application Solutions, should the

SERVICE PROVIDER become aware of any breach in its provision of the Ordered Software Application Solutions, the SERVICE PROVIDER shall, where such breach is capable of remedy, at its own expense use all reasonable endeavours to remedy the same as soon as is reasonably practicable.

- 2.5 If required by the CUSTOMER, the SERVICE PROVIDER shall prepare a Service Transfer Plan for review by the CUSTOMER no later than three (3) months after the Effective Date and at regular intervals thereafter as specified in Schedule 2-11.
- 2.6 The SERVICE PROVIDER accepts responsibility for all damage to, shortage or loss of, the Ordered Goods if:
 - 2.6.1 the same is notified to the SERVICE PROVIDER within three (3) Working Days of receipt of the Ordered Goods by the CUSTOMER; and
 - 2.6.2 the Ordered Goods have been handled by the CUSTOMER in accordance with the SERVICE PROVIDER's instructions.
- 2.7 Where the SERVICE PROVIDER accepts responsibility under Clause 2.6 it shall, at its sole option, replace or repair the Ordered Goods (or part thereof) which have been proven, to the SERVICE PROVIDER's reasonable satisfaction, to have been lost or damaged in transit.
- 2.8 The SERVICE PROVIDER shall not replace any parts or components of the Ordered Goods used for the provision of the Ordered Software Application Solutions with parts or components that are of lower quality or which are unsuitable for use in their designed purpose either by a CUSTOMER or a replacement service provider, prior to the expiry or termination (howsoever arising) of this Contract.

3. STANDARDS AND REGULATIONS

- 3.1 The SERVICE PROVIDER shall provide the Ordered Software Application Solutions and meet its responsibilities and obligations hereunder in accordance with the Standards and Regulations.
- 3.2 The SERVICE PROVIDER shall discuss with the CUSTOMER any conflict that the SERVICE PROVIDER reasonably believes that there is or will be between any of the Standards and Regulations or between any of the Standards and Regulations and any other obligation under this Contract, and shall comply with the CUSTOMER's decision on the resolution of that conflict.

4. ACCEPTANCE AND TITLE AND RISK

- 4.1 The Acceptance Procedures for the Ordered Software Application Solutions are set out in Schedule 2-5.
- 4.2 The ownership and passing of title and risk from one party to another is specified in Schedule 2-13.

5. CHARGES

- 5.1 Charges
 - 5.1.1 The Charges for the Ordered Software Application Solutions are set out in Schedule 2-3.
 - 5.1.2 In consideration of the SERVICE PROVIDER's provision of the Ordered Software Application Solutions as set out in the Order and in accordance with the terms and conditions of this Contract, the CUSTOMER shall pay the Charges to the SERVICE PROVIDER.

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- 5.1.3 The SERVICE PROVIDER shall invoice the CUSTOMER for the Charges in accordance with the provisions of Schedule 2-4. All such invoices shall be payable by the CUSTOMER within twenty eight (28) Days of the date of issue of the invoice.
- 5.1.4 The Charges are exclusive of Value Added Tax. The CUSTOMER shall pay the Value Added Tax on the Charges at the rate and in the manner prescribed by law from time to time.
- 5.1.5 The SERVICE PROVIDER shall continuously indemnify the CUSTOMER against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the CUSTOMER at any time in respect of the SERVICE PROVIDER's failure to account for or to pay any Value Added Tax relating to payments made to the SERVICE PROVIDER under this Contract. Any amounts due under this Clause 5.1.5 shall be paid in cleared funds by the SERVICE PROVIDER to the relevant authority not less than five (5) Working Days before the date upon which the tax or other liability is payable by the CUSTOMER.
- 5.1.6 Interest shall be payable on any late payments of the Charges under this Contract in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.1.7 The SERVICE PROVIDER shall accept payment electronically via BACS.
- 5.1.8 If at any time during the Term the SERVICE PROVIDER reduces its charges for any Software Application Solutions offered under the Framework Agreement in accordance with the terms of the Framework Agreement, the SERVICE PROVIDER shall immediately reduce the Charges for such Software Application Solutions (where such Software Application Solutions form part of the Ordered Software Application Solutions) under this Contract by the same amount.
- 5.2 Euro
- 5.2.1 In the event that the United Kingdom joins the Economic and Monetary Union (and provided always that the exchange rate for conversion between Sterling and the Euro has been fixed), the CUSTOMER shall at any time thereafter upon three (3) months notice to the SERVICE PROVIDER, be entitled to require the SERVICE PROVIDER at no additional charge to convert the Charges from Sterling into Euros (in accordance with EC Regulation number 1103/97). The SERVICE PROVIDER shall thereafter submit valid invoices denominated in Euros.
- 5.3 Charges Variation
- 5.3.1 The Charges may only be varied in accordance with the provisions of the Charges Variation Procedure.
- 5.4 Benchmarking
- 5.4.1 The parties shall comply with their obligations set out in Schedule 2-3 in relation to benchmarking (if this is required by the CUSTOMER) of the Ordered Software Application Solutions (or any part thereof).

6. CONTRACT MANAGEMENT

- 6.1 The SERVICE PROVIDER and the CUSTOMER shall comply with their respective contract management obligations set out in Schedule 2-6.

7. ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES

- 7.1 The Alternative Clauses and/or Additional Clauses specified in Annex A to the Clauses shall apply.

8. AMENDMENTS TO THIS CONTRACT

- 8.1 No amendment to the provisions of this Contract, other than a variation of the Charges in accordance with the Charges Variation Procedure, shall be effective unless made in accordance with the Contract Change Procedure specified in Schedule 2-7.

9. COMMUNICATIONS

- 9.1 Except as otherwise expressly provided, no communication from one party to the other shall have any validity under this Contract unless it is signed and made in writing by or on behalf of the party sending such communication.
- 9.2 Except as otherwise expressly provided, any notice or other communication whatsoever which either the CUSTOMER or the SERVICE PROVIDER is required or authorised by this Contract to give or make to the other shall be given or made by first class post in a prepaid letter, addressed to the other at the address specified in Clause 9.3. If that letter is not returned as being undelivered, that notice or communication shall be deemed, for the purposes of this Contract, to have been given or made two (2) Working Days after dispatch by the sender.

9.3

Redacted under
FOI exemption
36 (2) (c) (i).

10. TERM AND TERMINATION

- 10.1 This Contract shall take effect on the Effective Date and shall expire on:
- 10.1.1 the date specified in the Order; or
 - 10.1.2 three (3) years after the Effective Date,
- whichever is the earlier, unless terminated earlier pursuant to this Clause 10.
- 10.2 The CUSTOMER may at any time by notice in writing terminate this Contract as from the date of service of such notice, or a later date specified in such notice, if any of Termination Events occur.
- 10.3 Termination Events
- 10.3.1 A change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the SERVICE PROVIDER or its Parent Company where the proposed new owner has:
 - 10.3.1.1 been convicted of a criminal offence relating to the conduct of its business or profession; or
 - 10.3.1.2 committed an act of grave misconduct in the course of its business or profession; or
 - 10.3.1.3 failed to comply with any obligations relating to the payment of any taxes or social security contributions; or
 - 10.3.1.4 made any serious misrepresentations in the tendering process for any project or matter in which the public sector has or had a significant participation; or
 - 10.3.1.5 failed to obtain any necessary licences or membership of any relevant body.
 - 10.3.2 A change of control, as defined in Clause 10.3.1 and there are reasonable grounds for the CUSTOMER to withhold its consent relating to the financial standing of the new owner, any security concerns arising from the new ownership or issues relating to the provision of the Ordered Software Application Solutions by the new owner.
 - 10.3.3 Any of the events listed in Clauses 10.3.1.1 to 10.3.1.5 (inclusive) occur in relation to or in respect of the SERVICE PROVIDER itself, or if the CUSTOMER has reasonable grounds to object to the SERVICE PROVIDER arising from security concerns in respect of the SERVICE PROVIDER.
 - 10.3.4 The SERVICE PROVIDER:
 - 10.3.4.1 being an individual, or where the SERVICE PROVIDER is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport so to do, or appears unable to pay or to have no reasonable prospect of being able to

- pay a debt within the meaning of Section 268 of the Insolvency Act 1986, or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993, or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him on behalf of his creditors, or any similar event occurs under the law of any other jurisdiction; or
- 10.3.4.2 being a company, passes a resolution, or the Court makes an order that the SERVICE PROVIDER or its Parent Company be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator on behalf of a creditor is appointed in respect of the business or any part thereof of the SERVICE PROVIDER or its Parent Company (or an application for the appointment of an administrator is made or notice to appoint an administrator is given in relation to the SERVICE PROVIDER or its Parent Company), or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the SERVICE PROVIDER or its Parent Company is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (except where the claim is made under Section 123(1)(a) and is for an amount of less than ten thousand pounds (£10,000)) or any similar event occurs under the law of any other jurisdiction.
- 10.3.5 Where the circumstances detailed in Clauses 17.19.1 or 30.2 or paragraph 2.7.2 of Schedule 2-5 arise.
- 10.3.6 Failure to remedy a breach of warranties in accordance with the provisions of Clause 12.2.
- 10.4 For the purposes of Clause 10.3.1, the following shall be disregarded:
- 10.4.1 any change in beneficial or legal ownership of any shares that are listed on a stock exchange resulting in the relevant shareholding being less than or equal to five per cent (5%) of the total issued share capital; and
- 10.4.2 any transfer of shares or of any interest in shares by a person to its Affiliate where such transfer forms part of a bona fide reorganisation or restructuring.
- 10.5 Without prejudice to the provisions of Clause 10.2 or 10.6, the CUSTOMER may at any time by notice in writing terminate this Contract or any part of the Ordered Software Application Solutions forthwith if the SERVICE PROVIDER is in material Default of any obligation under this Contract and:
- 10.5.1 the material Default is capable of remedy and the SERVICE PROVIDER shall have failed to remedy the material Default within thirty (30) Days of written notice to the SERVICE PROVIDER specifying the material Default and requiring its remedy; or
- 10.5.2 the material Default is not capable of remedy.

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- 10.6 Without prejudice to the provisions of Clause 10.2 or 10.5, where the CUSTOMER considers that the SERVICE PROVIDER has committed a Persistent Breach in relation to this Contract or any part thereof (including any part of the Ordered Software Application Solutions), the CUSTOMER shall be entitled to serve a notice on the SERVICE PROVIDER:
- 10.6.1 specifying that it is a formal warning notice;
 - 10.6.2 giving reasonable details of the breach; and
 - 10.6.3 stating that such breach is a breach which, if it recurs or continues, may result in a termination of this Contract or that part of the Ordered Software Application Solutions affected by such breach.
- 10.7 If, thirty (30) Days after service of a formal warning notice as described in Clause 10.6, the SERVICE PROVIDER has failed to demonstrate to the satisfaction of the CUSTOMER that the breach specified has not continued or recurred and that the SERVICE PROVIDER has put in place measures to ensure that such breach does not recur, then the CUSTOMER may deem such failure shall be a material Default not capable of remedy for the purposes of Clause 10.5.2.
- 10.8 The SERVICE PROVIDER shall promptly notify the CUSTOMER in writing on each occasion of the occurrence of any of the events specified in Clause 10.3.1.
- 10.9 The CUSTOMER shall only be permitted to exercise its rights pursuant to Clause 10.3.1 for six (6) months after service of a notice by the SERVICE PROVIDER pursuant to Clause 10.8 relative to each such change of control and shall not be permitted to exercise such rights where the CUSTOMER has agreed in advance in writing to the particular change of control and such change of control takes place as proposed.
- 10.10 The termination (howsoever arising) or expiry of this Contract pursuant to this Clause 10 shall be without prejudice to any rights of either the CUSTOMER or the SERVICE PROVIDER that shall have accrued before the date of such termination or expiry.
- 10.11 Save as aforesaid, the SERVICE PROVIDER shall not be entitled to any payment from the CUSTOMER after the termination (howsoever arising) or expiry of this Contract.

11. CONSEQUENCES OF TERMINATION AND EXPIRY

- 11.1 Notwithstanding the service of a notice to terminate this Contract or any part thereof, the SERVICE PROVIDER shall continue to provide the Ordered Software Application Solutions until the date of expiry or termination (howsoever arising) of this Contract (or any part thereof) or such other date as required under this Clause 11 and the provisions of Schedule 2-11.
- 11.2 Within ten (10) Working Days of the earlier of the date of expiry or termination (howsoever arising) of this Contract, the SERVICE PROVIDER shall return to the CUSTOMER any data (including CUSTOMER Data) and CUSTOMER Confidential Information in the SERVICE PROVIDER's possession, power or control, either in its then current format or in a format nominated by the CUSTOMER (in which event the CUSTOMER will reimburse the SERVICE PROVIDER's pre-agreed and reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the CUSTOMER, save that it may keep one copy

of any such data or information for a period of up to twelve (12) months to comply with its obligations under Clause 11.5, or such period as is necessary for such compliance.

- 11.3 Within ten (10) Working Days of the date of expiry or termination (howsoever arising) of this Contract, the SERVICE PROVIDER shall return to the CUSTOMER any sums prepaid in respect of Ordered Software Application Solutions not provided by the date of expiry or termination (howsoever arising).
- 11.4 The CUSTOMER and the SERVICE PROVIDER shall comply with the Exit and Service Transfer Arrangements.
- 11.5 The CUSTOMER shall for a period of twelve (12) months following expiry or termination (howsoever arising) of this Contract (or until the date on which the SERVICE PROVIDER fulfils all its duties and responsibilities pursuant to the Exit and Service Transfer Arrangements, if later) be entitled to require access to data or information arising from the Ordered Software Application Solutions from the SERVICE PROVIDER.
- 11.6 The provisions of:
 - 11.6.1 Clauses 1, 11 to 21 (inclusive), 23, 25, 28, 29, 30 32, 34, 35, 38 to 41 (inclusive);
 - 11.6.2 Schedules 2-1, 2-9 and 2-11; and
 - 11.6.3 any other Clause or Schedule of this Contract which by its terms is to be performed or observed notwithstanding termination (howsoever arising) or expiry or which is expressed or by implication is to survive termination or expiry),shall survive the termination (howsoever arising) or expiry of this Contract.

12. WARRANTIES AND REPRESENTATIONS

- 12.1 The SERVICE PROVIDER warrants and represents that:
 - 12.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform this Contract and that this Contract is executed by a duly authorised representative of the SERVICE PROVIDER;
 - 12.1.2 this Contract shall be performed in compliance with all Laws as amended from time to time;
 - 12.1.3 it shall perform its obligations hereunder (including the provision of the Ordered Software Application Solutions) by using appropriately experienced, qualified and trained SERVICE PROVIDER Personnel and Sub-Contractors;
 - 12.1.4 it shall discharge its obligations hereunder (including the provision of the Ordered Software Application Solutions) with all due skill, care and diligence including in accordance with Good Industry Practice and its own established internal procedures;
 - 12.1.5 for the duration of the Term, all SERVICE PROVIDER Personnel used to provide the Ordered Software Application Solutions will be vetted in accordance with Good Industry Practice, the Security Policy and the Standards and Regulations;

- 12.1.6 it owns, has obtained or shall obtain valid licences for all Intellectual Property Rights that are necessary for the performance of this Contract and the use of the Ordered Software Application Solutions by the CUSTOMER;
- 12.1.7 it has taken and shall continue to take all steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any Malicious Software) into the Ordered Software Application Solutions, systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, the CUSTOMER;
- 12.1.8 it shall take all measures to avoid any and all data loss and data corruption during the provision of the Ordered Software Application Solutions in accordance with Good Industry Practice;
- 12.1.9 it shall take all measures to avoid the failure or reduced performance (in whole or in part) of the Ordered Software Application Solutions;
- 12.1.10 the Ordered Software Application Solutions are and will continue to be during the Term:
 - 12.1.10.1 of satisfactory quality;
 - 12.1.10.2 in conformance with the relevant specifications set out in this Contract, the relevant Order and (if applicable) the manufacturer's specifications and documentation;
 - 12.1.10.3 free from material programming errors and material defects in design, manufacture or materials throughout the applicable warranty period, as specified in the Catalogue; and
 - 12.1.10.4 where Ordered Goods are supplied by way of sale and purchase they shall be supplied with full title guarantee.
- 12.1.11 this Contract is established on the terms and conditions of the Model Contract without amendment thereto save for the necessary information to complete that Model Contract as specified in the Order placed by the CUSTOMER. In the event and to the extent only of any conflicts between this Contract and the Model Contract:
 - 12.1.11.1 where the conflict is due to the addition of Special Terms, this Contract shall prevail over the Model Contract; otherwise
 - 12.1.11.2 the Model Contract shall prevail over this Contract.
- 12.2 The SERVICE PROVIDER acknowledges that any breach of the warranties in Clause 12.1 shall be remedied as a matter of urgency at no cost to the CUSTOMER. Failure to remedy (if capable of remedy) such to comply with Clause 12.1 within five (5) Working Days of notification by the CUSTOMER shall constitute a breach of this Contract entitling the CUSTOMER to terminate in accordance with Clause 10.3.6.
- 12.3 Except as expressly stated in this Contract, all warranties and conditions, whether express or implied by statute, common law or otherwise (including fitness for purpose) are hereby excluded to the extent permitted by Law.
- 12.4 The CUSTOMER and the SERVICE PROVIDER each warrants to the other that it has undertaken all requisite corporate and other action to approve the entering into and performance of this Contract.

13. LIMITATION OF LIABILITY

- 13.1 Neither the CUSTOMER nor the SERVICE PROVIDER excludes or limits liability to the other for:
- 13.1.1 death or personal injury caused as a result of its negligence;
 - 13.1.2 any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
 - 13.1.3 fraud or fraudulent misrepresentation; or
 - 13.1.4 any other liability which cannot be excluded or limited by Law.
- 13.2 Nothing in this Clause 13 shall be taken as limiting the liability of the SERVICE PROVIDER in respect of Clauses 5.1.5, 15 to 18 (inclusive) and 28 and the TUPE indemnities under Schedule 2-11.
- 13.3 In respect of any claims of liability arising out of the wilful default (including wilful Default) of the SERVICE PROVIDER, its Sub-Contractors or the SERVICE PROVIDER Personnel, the SERVICE PROVIDER will have unlimited liability for all reasonably foreseeable loss suffered by the CUSTOMER as a result of such act, omission or event giving rise to the claim.
- 13.4 Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, the aggregate liability of either the CUSTOMER or the SERVICE PROVIDER to the other for each year of this Contract under or in relation to this Contract:
- 13.4.1 for all direct loss of or damage to the tangible property of the other shall in no event exceed five (5) million pounds; and
 - 13.4.2 in respect of all other claims, losses or damages, whether arising from breach of contract, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed a sum equivalent to one hundred and twenty five percent (125%) of the Charges paid or payable to the SERVICE PROVIDER in the year of this Contract, as calculated as at the date of the event giving rise to the claim under consideration (or if such event occurs in the first twelve (12) months of the Term, the amount estimated to be paid in the first twelve (12) months of the Term).
- 13.5 Subject always to the provisions of Clauses 13.1, 13.2 and 13.3, in no event shall either the CUSTOMER or the SERVICE PROVIDER be liable to the other for:
- 13.5.1 indirect, incidental, punitive or consequential loss or damage; and/or
 - 13.5.2 loss of profits, business, revenue or goodwill,
- and in both cases, even if that party was aware of the possibility of such loss or damage to the other.
- 13.6 Subject always to the provisions of Clauses 13.1, 13.2, 13.3 and 13.4, the provisions of Clause 13.5 shall not be taken as limiting the right of either the CUSTOMER or the SERVICE PROVIDER to claim from the other for:
- 13.6.1 additional operational and administrative costs and expenses;
 - 13.6.2 any costs or expenses rendered nugatory; and/or
 - 13.6.3 damage due to the loss of data, but only to the extent that such losses relate to the costs of working around any loss of data and the direct costs of

recovering or reconstructing such data, only when data resides on DotMailer's platform and not on the CUSTOMER's infrastructure, resulting directly from any act or omission of the other party.

- 13.7 For the purposes of this Clause 13, "year of this Contract" shall mean a period of twelve (12) months commencing on the Effective Date or on any anniversary of that date thereafter.
- 13.8 The CUSTOMER and the SERVICE PROVIDER expressly agree that should any limitation or provision contained in this Clause 13 be held to be invalid under any Law it shall to that extent be deemed omitted but if either of them thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

14. CUSTOMER DATA

- 14.1 The SERVICE PROVIDER shall not delete or remove any proprietary notices contained within or relating to the CUSTOMER Data.
- 14.2 The SERVICE PROVIDER shall not store, copy, disclose, or use the CUSTOMER Data except as necessary for the performance by the SERVICE PROVIDER of its obligations under this Contract or as otherwise expressly authorised in writing by the CUSTOMER.
- 14.3 To the extent that CUSTOMER Data is held and/or processed by the SERVICE PROVIDER, the SERVICE PROVIDER shall supply that CUSTOMER Data to the CUSTOMER as requested by the CUSTOMER in the format specified in Schedule 2-6.
- 14.4 The SERVICE PROVIDER shall take responsibility for preserving the integrity of CUSTOMER Data and preventing the corruption or loss of CUSTOMER Data
- 14.5 The SERVICE PROVIDER shall perform secure back-ups of all CUSTOMER Data and shall ensure that up-to-date back-ups are stored off-site in accordance with the BCDR Plan.
- 14.6 The SERVICE PROVIDER shall ensure that any system on which the SERVICE PROVIDER holds any CUSTOMER Data, including back-up data, is a secure system that complies with the dotmailer Network Security Policy.
- 14.7 If the CUSTOMER Data is corrupted, lost or sufficiently degraded as a result of the SERVICE PROVIDER's Default so as to be unusable, the CUSTOMER may:
- 14.7.1 require the SERVICE PROVIDER (at the SERVICE PROVIDER's expense) to restore or procure the restoration of CUSTOMER Data to the extent and in accordance with the requirements specified in the BCDR Plan.
- 14.7.2 itself restore or procure the restoration of CUSTOMER Data, and shall be repaid by the SERVICE PROVIDER any reasonable expenses incurred in doing so .
- 14.8 If at any time the SERVICE PROVIDER suspects or has reason to believe that CUSTOMER Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the SERVICE PROVIDER shall notify the CUSTOMER immediately and inform the CUSTOMER of the remedial action the SERVICE PROVIDER proposes to take.

15. PROTECTION OF PERSONAL DATA

- 15.1 With respect to the parties' rights and obligations under this Contract, the parties agree that the CUSTOMER is the Data Controller and that the SERVICE PROVIDER is the Data Processor.
- 15.2 The SERVICE PROVIDER shall:
- 15.2.1 Process the Personal Data only in accordance with instructions from the CUSTOMER (which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the CUSTOMER to the SERVICE PROVIDER during the Term);
 - 15.2.2 Process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Software Application Solutions or as is required by Law or any Regulatory Body;
 - 15.2.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
 - 15.2.4 take reasonable steps to ensure the reliability of any SERVICE PROVIDER Personnel who have access to the Personal Data;
 - 15.2.5 obtain prior written consent from the CUSTOMER in order to transfer the Personal Data to any Sub-Contractors or Affiliates for the provision of the Ordered Software Application Solutions;
 - 15.2.6 ensure that all SERVICE PROVIDER Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 15;
 - 15.2.7 ensure that none of the SERVICE PROVIDER Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the CUSTOMER;
 - 15.2.8 notify the CUSTOMER (within five (5) Working Days) if it receives:
 - 15.2.8.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 15.2.8.2 a complaint or request relating to the CUSTOMER's obligations under the Data Protection Legislation;
 - 15.2.9 provide the CUSTOMER with full cooperation and assistance in relation to any complaint or request made, including by:
 - 15.2.9.1 providing the CUSTOMER with full details of the complaint or request;
 - 15.2.9.2 complying with a data access request within the relevant timescales set out in the Data Protection Legislation and in accordance with the CUSTOMER's instructions;
 - 15.2.9.3 providing the CUSTOMER with any Personal Data it holds in relation to a Data Subject (within the timescales required by the CUSTOMER); and

- 15.2.9.4 providing the CUSTOMER with any information requested by the CUSTOMER;
- 15.2.10 permit the CUSTOMER (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, in accordance with Clause 35, the SERVICE PROVIDER's data Processing activities (and/or those of its agents, subsidiaries and Sub-Contractors) and comply with all reasonable requests or directions by the CUSTOMER to enable the CUSTOMER to verify and/or procure that the SERVICE PROVIDER is in full compliance with its obligations under this Contract;
- 15.2.11 provide a written description of the technical and organisational methods employed by the SERVICE PROVIDER for processing Personal Data (within the timescales required by the CUSTOMER); and
- 15.2.12 not Process or otherwise transfer any Personal Data outside the European Economic Area. If, after the Effective Date, the SERVICE PROVIDER (or any Sub-Contractor) wishes to Process and/or transfer any Personal Data outside the European Economic Area, the following provisions shall apply:
 - 15.2.12.1 the SERVICE PROVIDER shall submit an Contract Change Note to the CUSTOMER which shall be dealt with in accordance with the Contract Change Procedure and Clauses 15.2.12.2 to 15.2.12.4 below;
 - 15.2.12.2 the SERVICE PROVIDER shall set out in its Contract Change Note (and/or impact assessment) details of the following:
 - (a) the Personal Data which will be Processed and/or transferred outside the European Economic Area;
 - (b) the country or countries in which the Personal Data will be Processed and/or to which the Personal Data will be transferred outside the European Economic Area;
 - (c) any Sub-Contractors or other third parties who will be Processing and/or transferring Personal Data outside the European Economic Area; and
 - (d) how the SERVICE PROVIDER will ensure an adequate level of protection and adequate safeguards (in accordance with the Data Protection Legislation and in particular so as to ensure the CUSTOMER's compliance with the Data Protection Legislation) in respect of the Personal Data that will be Processed and/or transferred outside the European Economic Area;
 - 15.2.12.3 in providing and evaluating the Contract Change Note, the parties shall ensure that they have regard to and comply with then-current CUSTOMER, Government and Information Commissioner Office policies, procedures, guidance and codes of practice on, and any approvals processes in connection with, the Processing and/or transfers of Personal Data outside the European Economic Area and/or overseas generally; and
 - 15.2.12.4 the SERVICE PROVIDER shall comply with such other instructions and shall carry out such other actions as the

CUSTOMER may notify in writing, including:

- (a) incorporating standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation) in this Contract or a separate data processing agreement between the parties; and
- (b) procuring that any Sub-Contractor or other third party who will be Processing and/or transferring the Personal Data outside the European Economic Area enters into a direct data processing agreement with the CUSTOMER on such terms as may be required by the CUSTOMER, which the SERVICE PROVIDER acknowledges may include the incorporation of standard and/or model clauses (which are approved by the European Commission as offering adequate safeguards under the Data Protection Legislation).

15.3 The SERVICE PROVIDER shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the CUSTOMER to breach any of its applicable obligations under the Data Protection Legislation.

16. SECURITY REQUIREMENTS AND STAFF VETTING

- 16.1 The SERVICE PROVIDER shall comply, and shall procure the compliance of the SERVICE PROVIDER Personnel, with the Security Policy and the Security Management Plan and the SERVICE PROVIDER shall ensure that the Security Management Plan produced by the SERVICE PROVIDER fully complies with the Security Policy.
- 16.2 The CUSTOMER shall notify the SERVICE PROVIDER of any changes or proposed changes to the Security Policy.
- 16.3 If the SERVICE PROVIDER believes that a change or proposed change to the Security Policy will have a material and unavoidable cost implication to the Ordered Software Application Solutions it may submit a Contract Change Note. In doing so, the SERVICE PROVIDER must support its request by providing evidence of the cause of any increased costs and the steps that it has taken to mitigate those costs. Any change to the Charges shall then be agreed in accordance with the Contract Change Procedure.
- 16.4 Until and/or unless a change to the Charges is agreed by the CUSTOMER pursuant to Clause 16.3 the SERVICE PROVIDER shall continue to provide the Ordered Software Application Solutions in accordance with its existing obligations.
- 16.5 The SERVICE PROVIDER shall, as an enduring obligation throughout the Term, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor to check for, contain the spread of, and minimise the impact of Malicious Software in the ICT Environment (or as otherwise agreed by the parties).
- 16.6 Notwithstanding Clause 16.5, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of CUSTOMER Data, assist each other to mitigate any losses and to restore the Ordered Software

Application Solutions to their desired operating efficiency.

- 16.7 Any cost arising out of the actions of the parties taken in compliance with the provisions of Clause 16.6 shall be borne by the parties as follows:

16.7.1 by the SERVICE PROVIDER where the Malicious Software originates from the SERVICE PROVIDER Software, the Third Party Software supplied by the SERVICE PROVIDER (except where the CUSTOMER has waived the obligation set out in Clause 16.5) or the CUSTOMER Data (whilst the CUSTOMER Data was under the control of the SERVICE PROVIDER) unless the SERVICE PROVIDER can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the CUSTOMER when provided to the SERVICE PROVIDER; and

16.7.2 by the CUSTOMER if the Malicious Software originates from the CUSTOMER Software (in respect of which the CUSTOMER has waived its obligation set out in Clause 16.5) or the CUSTOMER Data (whilst the CUSTOMER Data was under the control of the CUSTOMER).

- 16.8 The SERVICE PROVIDER shall comply with the Staff Vetting Procedures in respect of all SERVICE PROVIDER Personnel employed or engaged in the provision of the Ordered Software Application Solutions. The SERVICE PROVIDER confirms that all SERVICE PROVIDER Personnel employed or engaged by the SERVICE PROVIDER at the Effective Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
- 16.9 The SERVICE PROVIDER shall provide training on a continuing basis for all SERVICE PROVIDER Personnel employed or engaged in the provision of the Ordered Software Application Solutions in compliance with the Security Policy and Security Management Plan.

17. INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY

- 17.1 Save as granted under this Contract, neither the CUSTOMER nor the SERVICE PROVIDER shall acquire any right, title or interest in the other's Pre-Existing Intellectual Property Rights. The SERVICE PROVIDER acknowledges that the CUSTOMER Data is the property of the CUSTOMER and the CUSTOMER hereby reserves all Intellectual Property Rights which may subsist in the CUSTOMER Data.
- 17.2 The SERVICE PROVIDER shall ensure that no unlicensed software or open source software (other than the Open Source Ordered Software) is interfaced with or embedded within any software which is proprietary to the CUSTOMER or which is developed by or on behalf of the SERVICE PROVIDER under this Contract.
- 17.3 The CUSTOMER acknowledges that the Open Source Ordered Software is subject to the open source licensing terms set out in Schedule 2-17 and that the Intellectual Property Rights in the Open Source Ordered Software are owned by a variety of third parties.
- 17.4 The SERVICE PROVIDER will convey to the CUSTOMER the Open Source Ordered Software and associated documentation (including technical specifications, user manuals, operating manuals, process definitions and procedures) on the applicable open source licence terms set out in Annex B of Schedule 2-17.
- 17.5 All Contract Generated Intellectual Property Rights shall be proprietary to and

owned by the SERVICE PROVIDER. The SERVICE PROVIDER hereby grants to the CUSTOMER a royalty-free, irrevocable, non-exclusive licence to use such of the SERVICE PROVIDER's Contract Generated Intellectual Property Rights and for such term as the CUSTOMER shall require solely for the purposes of this Contract and such other purposes as it shall reasonably require that relate to the use and provision of the Ordered Software Application Solutions, together with the ability to sub-licence the same.

- 17.6 Where the applicable open sourcing licensing terms set out in Annex B of Schedule 2-17 require that relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms the CUSTOMER shall take all steps necessary to comply with the licensing terms, including making available the source code of the Contract Generated Intellectual Property Rights where required by the applicable open source licensing terms.
- 17.7 Where the applicable open source licensing terms set out in Schedule 2-17 do not require that any relevant Contract Generated Intellectual Property Rights shall be subject to licensing on the same terms as set out in such open source licensing terms, the CUSTOMER shall be entitled at its discretion either:
- 17.7.1 to take all steps necessary to place the Contract Generated Intellectual Property Rights into open source, including complying with the applicable licensing terms and making available the source code of the Contract Generated Intellectual Property Rights; or
- 17.7.2 otherwise (in which case the CUSTOMER will licence the SERVICE PROVIDER to use and modify the Contract Generated Intellectual Property Rights to the extent necessary to perform its obligations under this Contract).
- 17.8 The SERVICE PROVIDER:
- 17.8.1 hereby grants to the CUSTOMER a licence to use the SERVICE PROVIDER Software on its standard licence terms (set out in Annex A to Schedule 2-17);
- 17.8.2 shall procure that the owners or the authorised licensors of any Third Party Software hereby grant a licence to the CUSTOMER on the Third Party Software owner's standard licence terms (as set out in Annex B of Schedule 2-17); and
- 17.8.3 hereby grants to the CUSTOMER a non-exclusive licence to copy the descriptions of the Ordered Software Application Solutions, including technical specifications, user manuals, operating manuals, process definitions and procedures, for any purpose that is connected with or otherwise incidental to the exercise of the rights granted to the CUSTOMER under this Clause 17.8.
- 17.9 To the extent that the SERVICE PROVIDER creates any materials (in whatever form or media), outside the scope of the open source licensing terms, including training, marketing, promotional or publicity materials, relating to the provision of the Ordered Software Application Solutions ("**Materials**") it shall provide copies of all Materials to the CUSTOMER promptly and the SERVICE PROVIDER hereby grants to the CUSTOMER a royalty free, irrevocable, non-exclusive licence for such term as the CUSTOMER shall require to use all and any Intellectual Property

Rights in the Materials as it shall reasonably require with the ability to sub-licence the same.

- 17.10 The SERVICE PROVIDER shall ensure and procure that the availability, provision and use of the Catalogue and Ordered Software Application Solutions and the performance of the SERVICE PROVIDER's responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 17.11 The SERVICE PROVIDER shall indemnify the CUSTOMER against all claims, demands, actions, costs, expenses (including legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including the defence of such alleged infringement) of any Intellectual Property Right by the:
- 17.11.1 availability, provision or use of the Catalogue and/or Ordered Software Application Solutions (or any parts thereof); and
- 17.11.2 performance of the SERVICE PROVIDER's responsibilities and obligations hereunder.
- 17.12 The SERVICE PROVIDER shall promptly notify the CUSTOMER if any claim or demand is made or action brought against the SERVICE PROVIDER for infringement or alleged infringement of any Intellectual Property Right that may affect the availability, provision or use of the Catalogue and/or Ordered Software Application Solutions (or any parts thereof) and/or the performance of the SERVICE PROVIDER's responsibilities and obligations hereunder.
- 17.13 The CUSTOMER shall promptly notify the SERVICE PROVIDER if any claim or demand is made or action brought against the CUSTOMER to which Clause 17.10 may apply. The SERVICE PROVIDER shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the CUSTOMER hereby agrees to grant to the SERVICE PROVIDER exclusive control of any such litigation and such negotiations.
- 17.14 The CUSTOMER shall at the request of the SERVICE PROVIDER afford to the SERVICE PROVIDER all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the CUSTOMER to which Clause 17.10 may apply or any claim or demand made or action brought against the SERVICE PROVIDER to which Clause 17.12 may apply. The SERVICE PROVIDER shall reimburse the CUSTOMER for all costs and expenses (including legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 17.15 Except where required by Law, the CUSTOMER shall not make any admissions that may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 17.10 may apply or any claim or demand made or action brought against the SERVICE PROVIDER to which Clause 17.12 may apply.
- 17.16 If a claim or demand is made or action brought to which Clause 17.10, 17.12 and/or 17.13 may apply, or in the reasonable opinion of the SERVICE PROVIDER is likely to be made or brought, the SERVICE PROVIDER may at its own expense and within a reasonable time either:
- 17.16.1 modify any or all of the affected Catalogue and/or Ordered Software Application Solutions without reducing the performance and functionality of the same, or substitute alternative goods and/or services of equivalent performance and functionality for any or all of the affected Catalogue

- and/or Ordered Software Application Solutions, so as to avoid the infringement or the alleged infringement, provided that:
- 17.16.1.1 the terms herein shall apply mutatis mutandis to such modified or substituted goods and/or services;
 - 17.16.1.2 such substitution shall not increase the burden on the CUSTOMER; and
 - 17.16.1.3 such modified or substituted goods and/or services items shall be acceptable to the CUSTOMER, such acceptance not to be unreasonably withheld; or
- 17.16.2 procure a licence to use the Catalogue and/or Ordered Software Application Solutions on terms that are reasonably acceptable to the CUSTOMER; and
- 17.16.3 in relation to the performance of the SERVICE PROVIDER's responsibilities and obligations hereunder, promptly re-perform those responsibilities and obligations.
- 17.17 The provisions of Clauses 17.11 and 17.16 shall not apply insofar as any such claim or demand or action is in respect of any:
- 17.17.1 use by the CUSTOMER of the Catalogue and/or Ordered Software Application Solutions in combination with any item, good or service not supplied or approved by the SERVICE PROVIDER (or its Sub-Contractors) where such use of the Ordered Software Application Solutions directly gives rise to the claim, demand or action; or
 - 17.17.2 modification carried out by or on behalf of the CUSTOMER to the Catalogue and/or any Ordered Software Application Solutions provided under this Contract if such modification is not authorised by the SERVICE PROVIDER (or its Sub-Contractors) in writing; or
 - 17.17.3 use by the CUSTOMER of the Catalogue and/or Ordered Software Application Solutions in a manner not reasonably to be inferred from the specification or requirements of the CUSTOMER.
- 17.18 In the event that the SERVICE PROVIDER has availed itself of its rights to modify the Catalogue and/or Ordered Software Application Solutions or to supply substitute goods and/or services pursuant to Clause 17.16.1 or to procure a licence under Clause 17.16.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, then the SERVICE PROVIDER shall have no further liability in respect of the said claim, demand or action.
- 17.19 In the event that a modification or substitution in accordance with Clause 17.16.1 above is not possible so as to avoid the infringement, or the SERVICE PROVIDER has been unable to procure a licence in accordance with Clause 17.16.2:
- 17.19.1 the CUSTOMER shall be entitled to terminate this Contract pursuant to Clause 10.3.5; and
 - 17.19.2 the SERVICE PROVIDER shall be liable for the value of the additional costs incurred in implementing and maintaining replacement services.
- 17.20 Clauses 17.11 and 17.16 set out the entire financial liability of the SERVICE PROVIDER with regard to the infringement of any Intellectual Property Right by the availability, provision or use of the Catalogue and/or Ordered Software

Application Solutions (or any parts thereof) and/or the performance of the SERVICE PROVIDER's responsibilities and obligations hereunder. This shall not affect the SERVICE PROVIDER's financial liability for other Defaults or causes of action that may arise hereunder.

- 17.21 The CUSTOMER warrants that the SERVICE PROVIDER's use of any third party item supplied directly by the CUSTOMER in accordance with any instructions given by the CUSTOMER in connection with the use of such item shall not cause the SERVICE PROVIDER to infringe any third party's Intellectual Property Rights in such item.

18. CONFIDENTIALITY

- 18.1 Except to the extent set out in this Clause 18 or where disclosure is expressly permitted elsewhere in this Contract, each party shall:

18.1.1 treat the other party's Confidential Information as confidential and safeguard it accordingly; and

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

- 18.2 Clause 18.1 shall not apply to the extent that:

18.2.1 such disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to Clause 19;

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

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

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

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

- 18.3 The SERVICE PROVIDER may only disclose the CUSTOMER Confidential Information to the SERVICE PROVIDER Personnel who are directly involved in the provision of the Ordered Software Application Solutions and who need to know the information, and shall ensure that such SERVICE PROVIDER Personnel are aware of and shall comply with these obligations as to confidentiality.

- 18.4 The SERVICE PROVIDER shall not, and shall procure that the SERVICE PROVIDER Personnel do not, use any of the CUSTOMER Confidential Information received otherwise than for the purposes of this Contract.

- 18.5 The SERVICE PROVIDER may only disclose the CUSTOMER Confidential Information to the SERVICE PROVIDER Personnel and who need to know the information, and shall ensure that such SERVICE PROVIDER Personnel are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any SERVICE PROVIDER Personnel causes or contributes (or could cause or contribute) to the SERVICE PROVIDER breaching its obligations as to confidentiality under or in connection with this Contract, the SERVICE PROVIDER shall take such action as

may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any SERVICE PROVIDER Personnel, the SERVICE PROVIDER shall provide such evidence to the CUSTOMER as the CUSTOMER may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the SERVICE PROVIDER is taking appropriate steps to comply with this Clause 18, including copies of any written communications to and/or from SERVICE PROVIDER Personnel and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with SERVICE PROVIDER Personnel in connection with obligations as to confidentiality.

- 18.6 At the written request of the CUSTOMER, the SERVICE PROVIDER shall procure that those members of the SERVICE PROVIDER Personnel identified in the CUSTOMER's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 18.7 Nothing in this Contract shall prevent the CUSTOMER from disclosing the SERVICE PROVIDER Confidential Information:
- 18.7.1 to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
 - 18.7.2 to any consultant, contractor or other person engaged by the CUSTOMER or any person conducting an Office of Government Commerce gateway review;
 - 18.7.3 for the purpose of the examination and certification of the CUSTOMER's accounts; or
 - 18.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CUSTOMER has used its resources.
- 18.8 The CUSTOMER shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the SERVICE PROVIDER Confidential Information is disclosed pursuant to Clause 18.7 is made aware of the CUSTOMER's obligations of confidentiality.
- 18.9 Nothing in this Clause 18 shall prevent either party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.
- 18.10 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information, the CUSTOMER and the SERVICE PROVIDER acknowledge that any Confidential Information originating from:
- 18.10.1 the CUSTOMER, its employees, servants or agents is the property of the CUSTOMER; and

18.10.2 the SERVICE PROVIDER, its servants, agents or the SERVICE PROVIDER Personnel is the property of the SERVICE PROVIDER.

19. FREEDOM OF INFORMATION

- 19.1 The SERVICE PROVIDER acknowledges that the CUSTOMER is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the CUSTOMER to enable the CUSTOMER to comply with its Information disclosure obligations.
- 19.2 The SERVICE PROVIDER shall and shall procure that its Sub-Contractors shall:
- 19.2.1 transfer to the CUSTOMER all Requests for Information that it receives as soon as practicable and in any event within two (2) Working Days of receiving a Request for Information;
 - 19.2.2 provide the CUSTOMER with a copy of all Information in its possession or power in the form that the CUSTOMER requires within five (5) Working Days (or such other period as the CUSTOMER may specify) of the CUSTOMER's request; and
 - 19.2.3 provide all necessary assistance as reasonably requested by the CUSTOMER to enable the CUSTOMER to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.
- 19.3 The CUSTOMER shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Contract or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 19.4 In no event shall the SERVICE PROVIDER respond directly to a Request for Information unless expressly authorised to do so by the CUSTOMER.
- 19.5 The SERVICE PROVIDER acknowledges that (notwithstanding the provisions of this Clause 19) the CUSTOMER may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA or the Environmental Information Regulations to disclose information concerning the SERVICE PROVIDER or the Ordered Software Application Solutions:
- 19.5.1 in certain circumstances without consulting the SERVICE PROVIDER; or
 - 19.5.2 following consultation with the SERVICE PROVIDER and having taken their views into account,
- provided always that where Clause 19.5.1 applies the CUSTOMER shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the SERVICE PROVIDER advanced notice, or failing that, to draw the disclosure to the SERVICE PROVIDER's attention after any such disclosure.
- 19.6 The SERVICE PROVIDER shall ensure that all Information is retained for disclosure and shall permit the CUSTOMER to inspect such records as requested from time to time.
- 19.7 The SERVICE PROVIDER acknowledges that the Commercially Sensitive

Information listed in Schedule 2-10 is of indicative value only and that the CUSTOMER may be obliged to disclose it in accordance with Clause 19.5.

20. PUBLICITY

- 20.1 The SERVICE PROVIDER shall not:
- 20.1.1 make any press announcements or publicise this Contract in any way; or
 - 20.1.2 use the CUSTOMER's name or brand in any promotion or marketing or announcement of Orders,
- without the CUSTOMER's prior written consent. The SERVICE PROVIDER shall ensure the observance of the provisions of this Clause 20 by all SERVICE PROVIDER Personnel.
- 20.2 The CUSTOMER shall be entitled to publicise this Contract in accordance with any legal obligation upon the CUSTOMER, including any examination of this Contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.
- 20.3 The SERVICE PROVIDER acknowledges to the CUSTOMER that nothing in this Contract either expressly or by implication constitutes an endorsement of any goods and/or services of the SERVICE PROVIDER (including the Ordered Software Application Solutions) and the SERVICE PROVIDER agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

21. DISPUTE RESOLUTION

- 21.1 Subject to the provisions of Clause 21.2 and save for disputes arising:
- 21.1.1 under Clause 30 (which shall be dealt with in accordance with Clause 30.4);
 - 21.1.2 not used; and
 - 21.1.3 under Schedule 2-18,
- any dispute arising under, or in connection with this Contract shall be dealt with in accordance with this Clause 21, and neither the CUSTOMER nor the SERVICE PROVIDER shall be entitled to commence or pursue any legal proceedings under the jurisdiction of the Courts in connection with any such dispute, until the procedures set out in this Clause 21 have been exhausted.
- 21.2 Clause 21.1 shall be without prejudice to the rights of termination stated in Clause 10 and in addition shall not prevent the CUSTOMER or the SERVICE PROVIDER from applying for injunctive relief in the case of:
- 21.2.1 breach or threatened breach of confidentiality;
 - 21.2.2 infringement or threatened infringement of its Intellectual Property Rights; or
 - 21.2.3 infringement or threatened infringement of the Intellectual Property Rights of a third party, where such infringement could expose the CUSTOMER or the SERVICE PROVIDER to liability.
- 21.3 All disputes between the CUSTOMER and the SERVICE PROVIDER arising out of or relating to this Contract shall first be referred by Chris Mumby or Stephen Harper to the other for resolution.
- 21.4 If any dispute cannot be resolved by the representatives nominated under Clause 21.3 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 21.3, that dispute shall

then be referred to the Chris Mumby and Dave Gawthorpe for resolution.

21.5 If any dispute cannot be resolved by the representatives nominated under Clause 21.4 within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after it has been referred under Clause 21.4, that dispute shall:

21.5.1 first be further referred to mediation in accordance with the provisions of Schedule 2-9; and thereafter

21.5.2 if agreed by the parties, to arbitration in accordance with the provisions of Schedule 2-9; or

21.5.3 if arbitration is not agreed to by either party, to litigation in accordance with the provisions of Schedule 2-9.

22. INSURANCE

22.1 During the Term and for a period of six (6) years following expiry or termination of this Contract, the SERVICE PROVIDER shall take out and maintain or procure the maintenance of the minimum insurances set out in Schedule 2-19.

22.2 The SERVICE PROVIDER shall produce to Chris Mumby, within five (5) Working Days of request, brokers letters for all insurance policies referred to in Clause 22.1 or such other evidence as agreed between the CUSTOMER and the SERVICE PROVIDER that will confirm the extent of the cover given by those policies, together with receipts or other evidence of payment of the latest premiums due under those policies.

22.3 The terms of any insurance or the amount of cover shall not relieve the SERVICE PROVIDER of any liabilities under this Contract. It shall be the responsibility of the SERVICE PROVIDER to ensure that the amount of insurance cover is adequate to enable it to satisfy all its potential liabilities subject to the limit of liability specified in Clause 13.

23. RECOVERY OF SUMS DUE

23.1 The CUSTOMER shall be permitted to deduct and withhold from any sum due to the SERVICE PROVIDER under this Contract any sum of money due from the SERVICE PROVIDER under:

23.1.1 this Contract;

23.1.2 any other agreement between the SERVICE PROVIDER and the CUSTOMER;

23.1.3 any other agreement between the SERVICE PROVIDER and the AUTHORITY; or

23.1.4 any other agreement between the SERVICE PROVIDER and any other Crown Body,

provided that the terms of such other agreement provide for sums of money due from the SERVICE PROVIDER under that agreement to be recovered by way of a deduction from sums of money due to the SERVICE PROVIDER under this Contract (albeit that this Contract may not be referenced specifically under that agreement).

24. STATUTORY REQUIREMENTS

24.1 The SERVICE PROVIDER shall notify the CUSTOMER of all statutory provisions

and approved safety standards applicable to the Ordered Software Application Solutions and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Contract.

- 24.2 The SERVICE PROVIDER shall inform the CUSTOMER if the Ordered Software Application Solutions are hazardous to health or safety and of the precautions that should be taken in respect thereto.
- 24.3 The SERVICE PROVIDER shall, and shall ensure that its Sub-Contractors and the SERVICE PROVIDER Personnel, take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Laws relating to health and safety, which may apply to those involved in the performance of this Contract.

25. STATUTORY INVALIDITY

- 25.1 The CUSTOMER and the SERVICE PROVIDER expressly agree that should any limitation or provision contained in this Contract be held to be invalid under any particular Law, it shall to that extent be deemed to be omitted but, if either the CUSTOMER or the SERVICE PROVIDER thereby becomes liable for loss or damage which would have otherwise been excluded, such liability shall be subject to the other limitations and provisions set out herein.

26. ENVIRONMENTAL REQUIREMENTS

- 26.1 The SERVICE PROVIDER shall comply in all material respects with all applicable environmental Laws in force from time to time in relation to the Ordered Software Application Solutions. Without prejudice to the generality of the foregoing, the SERVICE PROVIDER shall promptly provide all such information regarding the environmental impact of the Ordered Software Application Solutions as may reasonably be requested by the CUSTOMER.
- 26.2 The SERVICE PROVIDER shall meet all reasonable requests by the CUSTOMER for information evidencing compliance with the provisions of Clause 26.1 by the SERVICE PROVIDER.

27. DISCRIMINATION AND EQUALITY

- 27.1 The SERVICE PROVIDER shall not, and shall procure that the SERVICE PROVIDER Personnel and Sub-Contractors do not, unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Sexual Orientation) Regulations 2003, Employment Equality (Age) Regulations 2006 or any statutory modification or re-enactment thereof or any other Law relating to discrimination in employment.
- 27.2 The SERVICE PROVIDER shall, and shall procure that the SERVICE PROVIDER Personnel and its Sub-Contractors shall, operate in a manner and co-operate with the CUSTOMER so as to allow the CUSTOMER to comply with its statutory public sector equality duties which means any legislation in relation to the promotion of equality on the grounds of sex, sexual orientation, race, colour, ethnic or national origin, disability, religion or belief or age.
- 27.3 The SERVICE PROVIDER shall, and shall procure that the SERVICE PROVIDER Personnel and its Sub-Contractors, comply with the CUSTOMER's equality and diversity policy as may be amended from time to time, copies of which will be

provided by the CUSTOMER to the SERVICE PROVIDER at the SERVICE PROVIDER's written request.

28. TUPE (*For Contracts where TUPE is not intended to apply at commencement*)

28.1 The CUSTOMER and the SERVICE PROVIDER agree that the commencement of the provision of the Ordered Software Application Solutions by the SERVICE PROVIDER under this Contract will not be a "relevant transfer" to which TUPE will apply in relation to any employees of the Customer. In the circumstances, the CUSTOMER and the SERVICE PROVIDER agree that no employees of the CUSTOMER will transfer to the SERVICE PROVIDER by virtue of the operation of TUPE or the Acquired Rights Directive.

28.2 If any employee of the CUSTOMER claims or it is determined that his contract of employment has been transferred from the CUSTOMER to the SERVICE PROVIDER pursuant to TUPE or the Acquired Rights Directive then:

28.2.1 The SERVICE PROVIDER will, within seven (7) Days of becoming aware of that fact, give notice in writing to the CUSTOMER.

28.2.2 The CUSTOMER may offer employment to such person within twenty one (21) Days of the notification by the SERVICE PROVIDER or take such other steps as it considers appropriate to deal with the matter.

28.2.3 If such offer is accepted (or if the situation has otherwise been resolved by the CUSTOMER), the SERVICE PROVIDER shall immediately release the person from his employment.

28.2.4 If after the twenty one (21) Day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, the SERVICE PROVIDER may within seven (7) Days give notice to terminate the employment of such person.

28.2.5 Subject to Clause 28.3 and subject to the SERVICE PROVIDER acting in this way or in such other way as may be agreed between the CUSTOMER and the SERVICE PROVIDER, the CUSTOMER will indemnify the SERVICE PROVIDER against all Employee Liabilities arising out of such termination.

28.2.6 If such person is neither re-employed by the CUSTOMER nor dismissed by the SERVICE PROVIDER within the time scales set out in this Clause 28.2 such person will be treated as having transferred to the SERVICE PROVIDER by virtue of the operation of TUPE and the SERVICE PROVIDER shall comply with such obligations as may be imposed upon it under TUPE or otherwise by Law.

28.3 The indemnity in Clause 28.2.5 shall only apply where the notification referred to in Clause 28.2.1 is made by the SERVICE PROVIDER to the CUSTOMER within six (6) months of the Service Commencement Date.

29. OFFICIAL SECRETS ACTS

29.1 The SERVICE PROVIDER shall take all reasonable steps to ensure that all people employed by the SERVICE PROVIDER and its Sub-Contractors in connection with this Contract are aware of the Official Secrets Acts 1911 to 1989 and where

appropriate, with the provisions of the Atomic Energy Act 1946, and that these Acts apply to them during the execution of this Contract and after the expiry or termination (howsoever arising) of this Contract.

30. CORRUPT GIFTS AND PAYMENTS OF COMMISSION

30.1 The SERVICE PROVIDER shall not:

30.1.1 offer or give or agree to give any person working for, acting for or engaged by the CUSTOMER or any other Crown Body any gift or consideration of any kind as (or which could act as) an inducement or reward for any act or failure to act connected to this Contract or any other contract with any other Crown Body including its award to the SERVICE PROVIDER and any of the rights and obligations contained within it; or

30.1.2 enter into this Contract or any other contract with the CUSTOMER, any other Crown Body or any person acting for and on behalf of the CUSTOMER or any Crown Body in connection with which commission has been paid or agreed to be paid to any person working for or engaged by the CUSTOMER or any other Crown Body by him or on his behalf, or to his knowledge, unless before (as applicable) this Contract or any other contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to (as applicable) the CUSTOMER or any other Crown Body.

30.2 Any breach of Clause 30.1 by the SERVICE PROVIDER or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the SERVICE PROVIDER) or the commission of any offence by the SERVICE PROVIDER or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the SERVICE PROVIDER) under the Prevention of Corruption Acts 1889 to 1916, in relation to this Contract or any other contract with any other Crown Body shall entitle the CUSTOMER to terminate this Contract in accordance with Clause 10.3.5 and recover from the SERVICE PROVIDER the amount of any loss resulting from such termination and/or to recover from the SERVICE PROVIDER the amount or value of any such gift, consideration or commission.

30.3 Any termination under Clause 30.2 shall be without prejudice to any right or remedy which has already accrued, or subsequently accrues, to the CUSTOMER.

30.4 Any dispute, difference or question arising in respect of the interpretation of this Clause 30, the right of the CUSTOMER to terminate this Contract or the amount or value of any such gift, consideration or commission shall be decided by the CUSTOMER, whose decision shall be final and conclusive.

31. TRANSFER AND SUB-CONTRACTING

31.1 This Contract is personal to the SERVICE PROVIDER. Subject to the provisions of Clause 31.2, the SERVICE PROVIDER shall not assign, novate, sub-contract or otherwise dispose of this Contract or any part thereof without the previous consent in writing of the CUSTOMER.

31.2 Notwithstanding the provisions of Clause 31.1, the SERVICE PROVIDER shall be entitled to Sub-Contract its obligations hereunder to the Sub-Contractors listed in Schedule 2-8, however this shall not affect the SERVICE PROVIDER's obligations to the CUSTOMER and any liabilities under this Contract.

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- 31.3 In selecting, appointing and managing Sub-Contractors, the SERVICE PROVIDER shall comply with the procedures specified in Schedule 2-8.
- 31.4 In the event that the SERVICE PROVIDER, in accordance with the terms of this Contract, enters into a Sub-Contract in connection with this Contract, the SERVICE PROVIDER shall ensure that a term is included in the Sub-Contract which requires the SERVICE PROVIDER to pay all sums due thereunder to the Sub-Contractor within a specified period, not to exceed thirty (30) Days, from the date of receipt of a valid invoice as defined by the terms of the Sub-Contract.
- 31.5 The SERVICE PROVIDER shall not enter into any Sub-Contract for the fulfilment of such responsibilities and obligations as are fulfilled by the principal Sub-Contractors listed in Schedule 2-8 by any sub-contractor not listed in Schedule 2-8 without the prior written approval of the CUSTOMER in accordance with the provisions of the Contract Change Procedure.
- 31.6 In the event that the SERVICE PROVIDER wishes to add or remove any Sub-Contractor, the SERVICE PROVIDER shall notify the CUSTOMER's Software Application Solutions Contract Manager in writing, which for the purposes of this notification may be via email, of such proposed additions to or removals from the list of Sub-Contractors. In the case of additions to the list of Sub-Contractors, such notification will contain confirmation that the selection and appointment of the Sub-Contractor is in accordance with the provisions of paragraph 3 of Schedule 2-8.
- 31.7 The SERVICE PROVIDER shall not remove or change any Sub-Contractor without giving prior written notice to, and receiving the approval of, the CUSTOMER in accordance with the provisions of the Contract Change Procedure.
- 31.8 The CUSTOMER reserves the right to veto or withdraw the approval of the use of any Sub-Contractor or partner in the provision of the Ordered Software Application Solutions. Such right shall not be exercised unreasonably, frivolously or vexatiously.
- 31.9 In the event that the CUSTOMER exercises its right pursuant to Clause 31.8 the SERVICE PROVIDER shall use all reasonable endeavours to maintain the provision of the Ordered Software Application Solutions and the CUSTOMER and the SERVICE PROVIDER shall enter into good faith negotiations to agree the impact of the situation on the provisions of this Contract.
- 31.10 The use of Sub-Contractors and any subsequent approval of other sub-contractors by the CUSTOMER under this Clause 31 shall not in any way constitute any form of recommendation by the CUSTOMER of the Sub-Contractor, whether implied or otherwise.
- 31.11 Subject to the provisions of Clause 31.13, the CUSTOMER shall be entitled to:
- 31.11.1 assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract and any associated third party licences to any other Contracting Authority; or
 - 31.11.2 novate this Agreement and any associated third party licences to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the CUSTOMER. If this transfer increases the burden of the SERVICE PROVIDER's obligations under this Contract the SERVICE PROVIDER shall be entitled to any additional Charges that are reasonable by way of compensation and
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which can be agreed through the Contract Change Procedure.

- 31.12 Subject to the provisions of Clause 31.13, any change in the legal status of the CUSTOMER such that it ceases to be a Contracting Authority shall not affect the validity of this Contract. In such circumstances, this Contract shall bind and inure to the benefit of any successor body to the CUSTOMER.
- 31.13 If this Contract is novated to a body which is not a Contracting Authority pursuant to Clause 31.11.2, or if a successor body which is not a Contracting Authority becomes the CUSTOMER pursuant to Clause 31.12 (in the remainder of this Clause 31 both such bodies are referred to as the “transferee”):
- 31.13.1 the rights of termination of the CUSTOMER in Clauses 10.3.4, 10.3.5, 10.3.6, 10.5 and 10.6 shall be available, mutatis mutandis, to the SERVICE PROVIDER in the event of the bankruptcy, insolvency, Default or Persistent Breach of the transferee;
 - 31.13.2 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under this Contract or any part thereof with the previous consent in writing of the SERVICE PROVIDER; and
 - 31.13.3 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if this Contract had been amended by the CUSTOMER and the SERVICE PROVIDER in accordance with Clause 8:
 - 31.13.3.1 the reference in Clause 11.6 to Clause 29 shall be deleted;
 - 31.13.3.2 Clauses 18.7.1 and 29 shall be deleted;
 - 31.13.3.3 in Clause 18.10, delete “Without prejudice to the application of the Official Secrets Acts 1911 to 1989 to any Confidential Information,”;
 - 31.13.3.4 at the end of Clause 23.1.2 insert “or”. At the end of Clause 23.1.3, delete “; or” and replace with “;”. Delete Clause 23.1.4;
 - 31.13.3.5 in Clause 30.1.1, the first reference to “or any other Crown Body” shall be deleted and the second and reference to “any other Crown Body” shall be replaced with “the CUSTOMER”;
 - 31.13.3.6 in Clause 30.1.2, the first reference to “, any other Crown Body”, the second reference to “or any Crown Body”, the third reference to “or any other Crown Body” and the fourth reference to “or any other Crown Body” shall be deleted;
 - 31.13.3.7 in Clause 30.2, the words “any other Crown Body” shall be replaced with “the CUSTOMER”;
 - 31.13.3.8 Clauses 31.11 and 31.13 shall be deleted; and
 - 31.13.3.9 in Schedule 2-1, delete the definition of “Crown Body”.
- 31.14 Unless otherwise stated to the contrary, any reference to the SERVICE PROVIDER in this Contract shall include the Sub-Contractor. Notwithstanding any Sub-Contracting permitted hereunder, the SERVICE PROVIDER shall remain primarily responsible for the acts and omissions of its Sub-Contractors as though they were its own.

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- 31.15 The CUSTOMER shall not be liable for any payment whatsoever to Sub-Contractors, the burden of which shall be solely with the SERVICE PROVIDER.

32. RIGHTS OF THIRD PARTIES

- 32.1 To the extent that this Contract is expressed to confer rights or benefits on a party who is not a party to this Contract, that party shall by virtue of the Contracts (Rights of Third Parties) Act 1999, be entitled to enforce those rights as if it was a party to this Contract. The consent of any person other than the CUSTOMER (or the SERVICE PROVIDER, as the case may be) is not required to vary or terminate this Contract or alter or extinguish any rights created under this Clause 32.1.
- 32.2 Except as provided in Clause 32.1, a person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This Clause 32.2 does not affect any right or remedy of any person that exists or is available otherwise than pursuant to that Act.
- 32.3 This Contract shall not create any rights under the Contracts (Rights of Third Parties) Act 1999 or otherwise for any Sub-Contractors.

33. ACCESS TO CUSTOMER PREMISES

- 33.1 Any CUSTOMER Premises (including temporary buildings) made available to the SERVICE PROVIDER, its Sub-Contractors and the SERVICE PROVIDER Personnel by the CUSTOMER in connection with this Contract shall be made available free of charge solely for the purpose of performing this Contract. The SERVICE PROVIDER shall have the use of the CUSTOMER Premises as licensee and shall vacate the same upon the expiry or termination (howsoever arising) of this Contract.
- 33.2 The CUSTOMER shall be responsible for maintaining the internal and external structure of the CUSTOMER Premises and the security of the CUSTOMER Premises in accordance with its security procedures. The SERVICE PROVIDER shall comply with all reasonable security requirements of the CUSTOMER while on the CUSTOMER Premises, and shall procure that all of its Sub-Contractors and the SERVICE PROVIDER Personnel shall likewise comply with such requirements. The CUSTOMER shall provide the SERVICE PROVIDER with copies of its security procedures upon request and shall afford the SERVICE PROVIDER an opportunity to inspect its physical security arrangements.

34. SEVERABILITY

- 34.1 Subject to the provisions of Clause 25, if any provision of this Contract is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Contract had been executed with the invalid provision eliminated. In the event of a holding of invalidity, illegality or unenforceability so fundamental as to prevent the accomplishment of the purpose of this Contract, the CUSTOMER and the SERVICE PROVIDER shall immediately commence good faith negotiations to remedy such invalidity, illegality or unenforceability.

35. AUDIT

- 35.1 Except where an audit is imposed on the CUSTOMER by a Regulatory Body, the CUSTOMER may, not more than twice in any Year, conduct an audit for the following purposes:
- 35.1.1 to verify the accuracy of Charges (and proposed or actual variations to them

- in accordance with this Contract), and/or the costs of all suppliers (including Sub-Contractors) of the Ordered Software Application Solutions;
- 35.1.2 to review the integrity, confidentiality and security of the CUSTOMER Data held or used by the SERVICE PROVIDER;
- 35.1.3 to review the SERVICE PROVIDER's compliance with the Data Protection Legislation in accordance with this Contract and any other Laws;
- 35.1.4 to review any books of account kept by the SERVICE PROVIDER in connection with the provision of the Ordered Software Application Solutions;
- 35.1.5 to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the CUSTOMER has used its resources;
- 35.1.6 to inspect the CUSTOMER's assets, including the Intellectual Property Rights, equipment, facilities and maintenance, for the purposes of ensuring that the CUSTOMER's assets are secure and that any register of assets is up to date; and/or
- 35.1.7 to ensure that the SERVICE PROVIDER is complying with the Standards and Regulations.
- 35.2 The CUSTOMER shall use its reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the SERVICE PROVIDER or delay the provision of the Ordered Software Application Solutions.
- 35.3 Subject to the CUSTOMER's obligations of confidentiality, the SERVICE PROVIDER shall on demand provide the CUSTOMER (and/or its agents or representatives) with all reasonable co-operation and assistance in relation to each audit, including:
 - 35.3.1 all information requested by the CUSTOMER within the permitted scope of the audit;
 - 35.3.2 reasonable access to any sites controlled by the SERVICE PROVIDER and to any equipment used (whether exclusively or non-exclusively) in the provision of the Ordered Software Application Solutions; and
 - 35.3.3 access to SERVICE PROVIDER, its Sub-Contractors and the SERVICE PROVIDER Personnel.
- 35.4 The SERVICE PROVIDER shall implement all measurement and monitoring tools and procedures necessary to measure and report on the SERVICE PROVIDER's performance of the Ordered Software Application Solutions against the applicable Service Levels at a level of detail sufficient to verify compliance with the Service Levels.
- 35.5 The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause, unless the audit identifies a Default by the SERVICE PROVIDER in which case the SERVICE PROVIDER shall reimburse the CUSTOMER for all the CUSTOMER's reasonable costs incurred in the course of the audit.
- 35.6 If an audit identifies that:
 - 35.6.1 the SERVICE PROVIDER has failed to perform its obligations under this Contract in any material manner, the parties shall agree and implement a

remedial plan within thirty (30) Days (or such other period as agreed by the parties). If the SERVICE PROVIDER's failure relates to a failure to provide any information to the CUSTOMER about the Charges, proposed Charges or the SERVICE PROVIDER's costs, then the remedial plan shall include a requirement for the provision of all such information;

35.6.2 the CUSTOMER has overpaid any Charges, the SERVICE PROVIDER shall pay to the CUSTOMER the amount overpaid within twenty (20) Working Days. The CUSTOMER may deduct the relevant amount from the Charges if the SERVICE PROVIDER fails to make this payment; and

35.6.3 the CUSTOMER has underpaid any Charges, the CUSTOMER shall pay to the SERVICE PROVIDER the amount of the under-payment less the cost of audit incurred by the CUSTOMER if this was due to a Default by the SERVICE PROVIDER in relation to invoicing within twenty (20) Working Days.

36. FORCE MAJEURE

36.1 For the purposes of this Contract, the expression "**Force Majeure Event**" shall mean any cause affecting the performance by either the CUSTOMER or the SERVICE PROVIDER of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including acts of God, riots, war or armed conflict, acts of terrorism, acts of government, local government or Regulatory Bodies, fire, flood or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available but excluding any industrial dispute relating to the SERVICE PROVIDER, the SERVICE PROVIDER Personnel or any other failure in the SERVICE PROVIDER or the Sub-Contractor's supply chain.

36.2 Subject to the remaining provisions of this Clause 36, either party to this Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.

36.3 Any act, event, omission, happening or non-happening will only be considered a Force Majeure Event if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the Affected Party, its employees, servants or agents (including where the Affected Party is the SERVICE PROVIDER, its Sub-Contractors and the SERVICE PROVIDER Personnel) or the failure of either the CUSTOMER or the SERVICE PROVIDER to perform its obligations under this Contract. The SERVICE PROVIDER cannot claim relief from a Force Majeure Event to the extent that it is required to comply with the BCDR Plan but has failed to do so.

36.4 It is expressly agreed that any failure by the SERVICE PROVIDER to perform or any delay by the SERVICE PROVIDER in performing its obligations under this Contract which results from any failure or delay in the performance of its obligations by any person, firm or company with which the SERVICE PROVIDER shall have entered into any contract, supply arrangement or Sub-Contract or otherwise shall be regarded as a failure or delay due to a Force Majeure Event only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or Sub-Contract or otherwise as a result of circumstances of a Force Majeure Event.

36.5 If an Affected Party becomes aware of circumstances of a Force Majeure Event which give rise to or which are likely to give rise to any such failure or delay on its

part, it shall notify the other party by the most expeditious method available and shall inform the other party of the likely duration of any failure or delay caused by those circumstances. The notification shall include details of the Force Majeure Event together with evidence of its effect on the obligations of the Affected Party, and any action the Affected Party proposes to take to mitigate its effect.

- 36.6 In the event of a Force Majeure Event, the CUSTOMER and the SERVICE PROVIDER shall use all reasonable endeavours to continue to perform, or resume performance of, all of their obligations under this Contract.
- 36.7 Provided always that (as applicable) the CUSTOMER or the SERVICE PROVIDER use reasonable endeavours pursuant to the provisions of Clause 36.6, it shall not, in any circumstances, be liable to the other for any loss of any kind whatsoever, including any damages or abatement of Charges, whether directly or indirectly caused to, or incurred by, the other party by reason of any failure or delay in the performance of its obligations hereunder which is due to a Force Majeure Event.
- 36.8 As soon as practicable following the Affected Party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of this Contract. Where the SERVICE PROVIDER is the Affected Party, it shall take all steps in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 36.9 The Affected Party shall notify the other party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under this Contract. Following such notification, this Contract shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event unless agreed otherwise by the parties.
- 36.10 Subject to paragraph 2.3 of Schedule 2-6, it is hereby expressly declared that the only events that shall afford relief from liability for failure or delay shall be events recognised as Force Majeure Events under this Clause 36.

37. LEGISLATIVE CHANGE

- 37.1 The SERVICE PROVIDER shall bear the cost of ensuring that the Ordered Software Application Solutions comply with all Laws and any amendments thereto, except where any such amendment could not reasonably have been foreseen by the SERVICE PROVIDER at the Effective Date.
- 37.2 Where such reasonably unforeseeable amendments are necessary, the CUSTOMER and the SERVICE PROVIDER shall use all reasonable endeavours to agree upon reasonable adjustments to the Charges as may be necessary to compensate the SERVICE PROVIDER for such additional costs as are both reasonably and necessarily incurred by the SERVICE PROVIDER in accommodating such amendments.

38. WAIVER AND CUMULATIVE REMEDIES

- 38.1 The failure of the SERVICE PROVIDER or the CUSTOMER to insist upon strict performance of any provision of this Contract or to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Contract.

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- 38.2 A waiver of any default shall not constitute a waiver of any other default. Any failure to exercise or any delay in exercising a right or remedy by either party shall not constitute a waiver of that right or remedy or of any other rights or remedies.
- 38.3 No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver communicated by notice, in accordance with the provisions of Clause 9.
- 38.4 The rights and remedies provided by this Contract are cumulative and, unless a right or remedy of the CUSTOMER is expressed to be an exclusive right or remedy, the exercise of it by the CUSTOMER is without prejudice to the CUSTOMER's other rights and remedies provided at law or in equity or otherwise under this Contract.

39. LAW AND JURISDICTION

- 39.1 Subject to the provisions of Clause 21, the CUSTOMER and the SERVICE PROVIDER accept the exclusive jurisdiction of the English Courts and agree that this Contract is to be governed by and construed according to English law.
- 39.2 This Contract shall be binding upon the CUSTOMER and its successors and assignees and the SERVICE PROVIDER and the SERVICE PROVIDER's successors and permitted assignees.

40. ENTIRE AGREEMENT

- 40.1 This Contract, together with the documents attached to it, constitutes the entire agreement and understanding between the CUSTOMER and the SERVICE PROVIDER relating to the subject matter hereof and supersedes, cancels and nullifies any previous agreement between the parties to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 40.2 Each of the parties acknowledge and agree that in entering into this Contract and the documents attached to it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Contract. The only remedy available to either party in respect of any such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Contract.
- 40.3 Nothing in this Clause 40 shall operate to exclude any liability for fraud.


41. FURTHER ASSURANCES

- 41.1 At its own expense, each party shall and shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Contract.

42. RELATIONSHIP OF THE PARTIES

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

SOFTWARE APPLICATION SOLUTIONS FRAMEWORK AGREEMENT

<p>For and on behalf of the CUSTOMER</p> <p>Authorised signatory:</p>  <p>Name: <i>Chris Mumby</i></p> <p>Title: <i>Director, Customer and Business Development.</i></p> <p>Date: <i>25/10/2010.</i></p>	<p>For and on behalf of the SERVICE PROVIDER</p> <div data-bbox="971 576 1188 721" style="border: 1px solid black; padding: 5px; width: fit-content; margin: auto;"><p>1 page redacted under FOI exemption 43 (2).</p></div>
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ANNEX A TO THE CONTRACT CLAUSES

ALTERNATIVE CLAUSES AND ADDITIONAL CLAUSES

1. INTRODUCTION

- 1.1. This Annex A to the Contract Clauses specifies the Alternative Clauses and Additional Clauses that were requested in the Order and that shall apply to this Contract.

2. CLAUSES SELECTED

- 2.1. The CUSTOMER, in the Order, requested that the following Alternative Clauses should apply:

2.1.1. NOT USED

3. IMPLEMENTATION

- 3.1. The appropriate changes have been made in this Contract to implement the Alternative Clauses specified in paragraph 2.1 of this Schedule shall be deemed to be incorporated into this Contract.

4. ALTERNATIVE CLAUSES

- 4.1. NOT USED

SCHEDULE 2-1
INTERPRETATIONS

Acceptance Procedures	means the procedure of that name as specified in Schedule 2-5.
Acceptance Test	means a test to be conducted in accordance of the provisions of Schedule 2-5 and “ Acceptance Tests ” shall be construed accordingly.
Acceptance Test Criteria	means the test criteria specified in Schedule 2-5.
Acceptance Test Period	means the period during which the Acceptance Procedures shall be performed, pursuant to the provisions of Schedule 2-5.
Acquired Rights Directive	means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees’ rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended.
Additional Clauses	means the additional Clauses specified in paragraph 2.1 of Annex A to this Contract that were requested in the Order by the CUSTOMER and that shall apply to this Contract.
Affected Party	means the party seeking to claim relief in respect of a Force Majeure Event.
Affiliate	means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including subsidiaries that directly or indirectly are controlled by, or are under common control with the SERVICE PROVIDER or its Parent Company.
Alternative Clauses	means the alternative Clauses specified in paragraph 2.2 of Annex A to this Contract that were requested in the Order by the CUSTOMER and that shall apply to this Contract.
AUTHORITY	has the meaning ascribed to it in Recital a) of this Contract.
BACS	means the Banks Automated Clearing System.
BCDR Plan	means the plan consisting of general business continuity and disaster recovery principles, the Business Continuity Plan and Disaster Recovery Plan as further described in paragraph 1.2 of Schedule 2-15.

SOFTWARE APPLICATION SOLUTIONS FRAMEWORK AGREEMENT

Breach of Security	means the occurrence of: (a) any unauthorised access to or use of the Ordered Software Application Solutions, the CUSTOMER Premises, the Sites, the SERVICE PROVIDER System and/or any ICT, information or data (including the Confidential Information and the CUSTOMER Data) used by the CUSTOMER and/or the SERVICE PROVIDER in connection with this Contract; and/or (b) the unauthorised disclosure of any information or data (including the Confidential Information and the CUSTOMER Data), including any copies of such information or data, used by the CUSTOMER and/or the SERVICE PROVIDER in connection with this Contract.
Business Continuity Plan	has the meaning set out in Schedule 2-15.
Catalogue	means the catalogue of Software Application Solutions available for Order under the provisions of the Framework Agreement.
Catalogue Entry	means a Software Application Solution that has been approved by the AUTHORITY in accordance with the procedures set out in the Framework Agreement and listed in the Catalogue.
CCN Effective Date	has the meaning ascribed to it in paragraph 3.3.1 of Schedule 2-7.
CEDR	means the Centre for Effective Dispute Resolution.
Charges	means the rates and charges set out in Schedule 2-3.
Charges Variation Procedure	means the procedure for varying the Charges specified in Schedule 2-3.
Code	has the meaning ascribed to it in Clause 19.5 of this Contract.
Commercially Sensitive Information	means the information listed in Schedule 2-10 comprising the information of a commercially sensitive nature relating to the SERVICE PROVIDER, its Intellectual Property Rights or its business or which the SERVICE PROVIDER has indicated to the CUSTOMER that, if disclosed by the CUSTOMER, would cause the SERVICE PROVIDER significant commercial disadvantage or material financial loss.
Confidential Information	means the CUSTOMER Confidential Information and/or the SERVICE PROVIDER Confidential Information.
Contract	means the clauses of this contract together with the Schedules and annexes to it and any documents attached to it
Contract Change Note (CCN)	means the contract change note specified in Annex A of Schedule 2-7.