

# SOFTWARE APPLICATION SOLUTIONS FRAMEWORK AGREEMENT

<b>Contract Change Procedure</b>	means the contract change procedure specified in Schedule 2-7 for making changes to this Contract.
<b>Contract Generated Intellectual Property Rights</b>	means any Intellectual Property Rights created by the SERVICE PROVIDER as a result of the performance by the SERVICE PROVIDER of its obligations under this Contract including the Specially Written Software.
<b>Contracting Authority</b>	means a contracting authority as listed in the OJEU Notice or Regulation 3 of the Public Contracts Regulations 2006.
<b>Crown Body</b>	means any department, office or agency of the Crown and "Crown Bodies" shall be construed accordingly.
<b>CUSTOMER Confidential Information</b>	means all Personal Data, CUSTOMER Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the CUSTOMER, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.
<b>CUSTOMER Data</b>	means (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are: (i) supplied to the SERVICE PROVIDER by or on behalf of the CUSTOMER; or (ii) which the SERVICE PROVIDER is required to generate, process, store or transmit pursuant to this Agreement; or (b) any Personal Data for which the CUSTOMER is the Data Controller.
<b>CUSTOMER Furnished Items</b>	means any items issued or otherwise furnished in connection with this Contract by or on behalf of the CUSTOMER.
<b>CUSTOMER Premises</b>	means premises owned, controlled or occupied by the CUSTOMER or any Crown Body which are made available for use by the SERVICE PROVIDER or its Sub-Contractors for provision of Ordered Software Application Solutions (or any of them) on the terms set out in this Contract or any separate agreement or licence.
<b>CUSTOMER System</b>	means the CUSTOMER's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the CUSTOMER or the SERVICE PROVIDER in connection with this Contract which is owned by or licensed to the CUSTOMER by a third party and which interfaces with the SERVICE PROVIDER System or which is necessary for the CUSTOMER to receive the Ordered Software Application Solutions.
<b>Data Controller</b>	has the same meaning as set out in the Data Protection Act 1998.

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<b>Data Processor</b>	has the same meaning as set out in the Data Protection Act 1998.
<b>Data Protection Legislation</b>	means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.
<b>Data Subject</b>	has the same meaning as set out in the Data Protection Act 1998.
<b>Days</b>	means calendar days.
<b>Default</b>	means any breach of the obligations of any party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of any party, it's employees, agents or Sub-Contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other.
<b>Disaster</b>	means the occurrence of one or more events which, either separately or cumulatively, mean that the Ordered Software Application Solutions, or a material part of it will be unavailable for period of 3 months or which is reasonably anticipated will mean that the Ordered Software Application Solutions or a material part will be unavailable for that period.
<b>Disaster Recovery</b>	means the process of restoration of the Ordered Software Application Solutions by the provision of the Disaster Recovery Services.
<b>Disaster Recovery Plan</b>	has the meaning set out in Schedule 2-15.
<b>Disaster Recovery Services</b>	means the disaster recovery and/or business continuity services (as the context may require) to be provided by the SERVICE PROVIDER pursuant to Schedule 2-15.
<b>Disaster Recovery Systems</b>	means the system identified by the SERVICE PROVIDER in the SERVICE PROVIDER Solution which shall be used for the purpose of delivering the Disaster Recovery Service.
<b>Effective Date</b>	means the date on which this Contract is signed by both parties.

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<b>Employee Liabilities</b>	means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination or discrimination on the grounds of religion, belief or sexual orientation or claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims whether in tort, contract or statute or otherwise, demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation), and any expenses and legal costs on an indemnity basis.
<b>Environmental Information Regulations</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such regulations.
<b>Exit and Service Transfer Arrangements</b>	means the arrangements set out in Schedule 2-11 which shall apply in the event of the expiry or termination (howsoever arising) of this Contract.
<b>Expert</b>	means the person appointed by the parties in accordance with paragraph 7.27 of Schedule 2-3.
<b>FOIA</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such legislation.
<b>Force Majeure Event</b>	has the meaning ascribed to it in Clause 36.1 of this Contract.
<b>Framework Agreement</b>	means the meaning ascribed to it in Recital b) of this Contract.
<b>Further Competition Procedure</b>	means the further competition procedure specified in paragraph 2.2 of schedule 5 of the Framework Agreement as may be updated from time to time by the AUTHORITY).
<b>General Principles</b>	has the meaning ascribed to it in Schedule 2-15.
<b>Good Industry Practice</b>	means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

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<b>Goods</b>	means any goods used in the provision of the Software Application Solutions including hardware and software. Such goods may have been provided by the SERVICE PROVIDER, the CUSTOMER, a lessor or another third party. When a specific item of goods is the subject of an Order by a Customer, it will be referred to in the ensuing Contract as Ordered Goods.
<b>ICT Environment</b>	means the CUSTOMER System and the SERVICE PROVIDER System.
<b>Implementation Plan</b>	means the plan specified in the CUSTOMER's Order, and incorporated with Schedule 2-2, necessary to implement provision of the Ordered Software Application Solutions within their organisation.
<b>Indexing</b>	has the meaning ascribed to it in Schedule 2-3.
<b>Information</b>	has the meaning given under section 84 of the Freedom of Information Act 2000.
<b>Intellectual Property Rights</b>	means patents, patent applications, trade marks, service marks, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights or obligations whether registrable or not in any country (including the United Kingdom).
<b>Invoicing Procedure</b>	means the procedure by which the SERVICE PROVIDER invoices the CUSTOMER, as set out in Schedule 2-4.
<b>ISMS</b>	means the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Ordered Software Application Solutions.
<b>Law</b>	means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of Court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body including the Security Policy Framework, the Code and the Workforce Code.
<b>Malicious Software</b>	means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence.
<b>Materials</b>	has the meaning ascribed to it in Clause 17.9 of this Contract.
<b>Mediator</b>	has the meaning ascribed to it in Schedule 2-9.

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<b>Model Contract</b>	means the model contract for software application solutions (version 1.0) published by the AUTHORITY on its website.
<b>Notice of Arbitration</b>	means the formal notice from the SERVICE PROVIDER or the CUSTOMER to the other party referring a dispute to arbitration in accordance with the provisions of Schedule 2-9.
<b>OJEU Notice</b>	means the contract notice issued by the AUTHORITY in respect of the Framework Agreement.
<b>Open Source Ordered Software</b>	means the open software source listed in Schedule 2-17.
<b>Order</b>	means an order for Software Application Solutions served by the CUSTOMER on the SERVICE PROVIDER.
<b>Ordered Goods</b>	means a Catalogue Entry for Goods selected by the CUSTOMER and included in Schedule 2-2 of this Contract pursuant to an Order.
<b>Ordered Software Application Solutions</b>	means a Catalogue Entry for Software Application Solutions selected by the Customer and included in Schedule 2-2 of this Contract pursuant to an Order.
<b>Parent Company</b>	means any company which is the ultimate Holding Company of the SERVICE PROVIDER or any other company of which the ultimate Holding Company of the SERVICE PROVIDER is also the ultimate Holding Company and which is either responsible directly or indirectly for the business activities of the SERVICE PROVIDER or which is engaged in the same or similar business to the SERVICE PROVIDER. The term " <b>Holding Company</b> " shall have the meaning ascribed by the Companies Act 2006 or any statutory re-enactment or amendment thereto.
<b>Payment Profile</b>	means the profile of payments to be made by the CUSTOMER to the SERVICE PROVIDER under the terms of this Contract as set out in Schedule 2-4.
<b>Persistent Breach</b>	means the SERVICE PROVIDER is in any breach of this Contract or any part thereof continuously for twenty (20) Working Days or more.
<b>Personal Data</b>	has the same meaning as set out in the Data Protection Act 1998.
<b>Pre-Existing Intellectual Property Rights</b>	means any Intellectual Property Rights vested in or licensed to: a) the SERVICE PROVIDER prior to or independently of the performance by the SERVICE PROVIDER of its obligations under this Contract; and b) the CUSTOMER prior to or independently of the performance by the CUSTOMER of its obligations under this Contract.

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<b>Private Authority</b>	means a commercial organisation to whom service provision has been outsourced by a Contracting Authority, which assumes the role and responsibilities of the CUSTOMER under a Contract.
<b>Processing</b>	has the same meaning as set out in the Data Protection Act 1998.
<b>Protectively Marked</b>	has the meaning as set out in the Security Policy Framework.
<b>Quarter</b>	means a three (3) month period beginning on 1 <sup>st</sup> January, 1 <sup>st</sup> April, 1 <sup>st</sup> July or 1 <sup>st</sup> October. The term “ <b>Quarterly</b> ” shall be similarly construed.
<b>Regulatory Bodies</b>	means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the CUSTOMER and “ <b>Regulatory Body</b> ” shall be construed accordingly.
<b>Related Service Provider</b>	means any person who provides services to the CUSTOMER in relation to the CUSTOMER’s project from time to time which persons include without limit as at the Effective Date 22 September 2010
<b>Relevant Transfer</b>	means a transfer of employment to which TUPE applies or is treated as applying.
<b>Reports</b>	means reports submitted by the SERVICE PROVIDER to the CUSTOMER as specified in Schedule 2-6.
<b>Requests for Information</b>	means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
<b>Review Report</b>	has the meaning ascribed to it in paragraph 6.2 of Schedule 2-15.
<b>Scope of Work</b>	Means the software and services to be delivered as stated in the documents comprising Schedule 20
<b>Security Policy Framework</b>	means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division).
<b>Service Commencement Date</b>	means the date of commencement of the provision of the Ordered Software Application Solutions by the SERVICE PROVIDER in accordance with the Order.
<b>Service Credits</b>	means the service credits specified in Schedule 2-2 which shall be payable to the CUSTOMER by the SERVICE PROVIDER in the event that the Service Levels are not met in respect of Ordered Software Application Solutions.
<b>Service Levels</b>	means the levels of service defined in Schedule 2-2.

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<b>SERVICE PROVIDER Confidential Information</b>	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the SERVICE PROVIDER, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information.
<b>SERVICE PROVIDER Equipment</b>	means the hardware, computer and telecoms devices and equipment supplied by the SERVICE PROVIDER or its Sub-Contractors (but not hired, leased or loaned from the CUSTOMER) for the provision of the Ordered Software Application Solutions.
<b>SERVICE PROVIDER Personnel</b>	means all employees, agents, consultants and contractors of the SERVICE PROVIDER and/or of any Sub-Contractor.
<b>SERVICE PROVIDER Proposals</b>	has the meaning ascribed to it in paragraph 6.2.3 of Schedule 2-15.
<b>SERVICE PROVIDER Software</b>	means the proprietary software of the SERVICE PROVIDER as set out in an Order and incorporated within Schedule 2-2.
<b>SERVICE PROVIDER Solution</b>	means the SERVICE PROVIDER's solution to the CUSTOMER's requirements as set out in Schedule 2-2.
<b>SERVICE PROVIDER System</b>	means the information and communications technology system used by the SERVICE PROVIDER in providing the Ordered Software Application Solutions including the Software, the SERVICE PROVIDER Equipment and related cabling (but excluding the CUSTOMER System).
<b>Sites</b>	means any premises from which Ordered Software Application Solutions are provided or from which the SERVICE PROVIDER manages, organises or otherwise directs the provision or the use of Ordered Software Application Solutions or where any part of the SERVICE PROVIDER System is situated or where any physical interface with the CUSTOMER System takes place.
<b>Software</b>	means any Specially Written Software, SERVICE PROVIDER Software and Third Party Software.

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<b>Software Application Solutions</b>	means the software application solutions specified in the Catalogue that the SERVICE PROVIDER shall make available to Customers. Such software application solutions may also include the provision of Goods. When a specific software application solution (and any Goods) is the subject of an Order by a Customer, it will be referred to in the ensuing Contract as Ordered Software Application Solution.
<b>Software Application Solutions Contract Manager</b>	means Chris Mumby of the CUSTOMER and Stephen Harper of the SERVICE PROVIDER.
<b>Special Terms</b>	means additional Customer specific terms, to which the SERVICE PROVIDER's agreement is sought by a Customer under the Further Competition Procedure.
<b>Specially Written Software</b>	means any software created by the SERVICE PROVIDER (or by a third party on behalf of the SERVICE PROVIDER, including by any Sub-Contractor) specifically for the purposes of this Contract.
<b>Staff Vetting Procedures</b>	means the CUSTOMER's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989.
<b>Staffing Information</b>	means written information about each of the SERVICE PROVIDER's or its subcontractor's staff as referred to in paragraph 6.1.1 of Schedule 2-11 including in particular: the percentage of working time spent by each of them in the provision of the services; job title, remuneration (meaning salary and benefits and any enhanced redundancy terms), age, length of service, notice period, particulars of employment in accordance with section 1 of the Employment Rights Act 1996, the applicability of any collective agreement to such staff, any disciplinary action taken against any of them in the preceding two (2) years, details of any grievances raised by any of them in the preceding two (2) years, any Court or employment tribunal proceedings brought by any of them in the preceding two (2) years, any potential proceedings which the SERVICE PROVIDER's or its subcontractor reasonably considers may be raised by any of them, and information about any of them who have been absent from work for one (1) month or more regardless of the reason at the time the staffing information is requested.
<b>Standards and Regulations</b>	means the standards and regulations as set out in Schedule 2-12 with which the SERVICE PROVIDER shall comply in the provision of the Ordered Software Application Solutions and its responsibilities and obligations hereunder.

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<b>Sub-Contractor</b>	means any supplier selected, appointed and managed by the SERVICE PROVIDER in accordance with the provisions of Schedule 2-8, including the Sub-Contractors specified in Schedule 2-8. The terms “ <b>Sub-Contract</b> ” and “ <b>Sub-Contracting</b> ” shall be similarly construed.
<b>Term</b>	means the term of this Contract as set out in Clause 10.1 of this Contract, subject to early termination (howsoever arising) pursuant to Clause 10.
<b>Termination Events</b>	means each of the events specified in Clause 10.3 of this Contract.
<b>Third Party Software</b>	means software which is proprietary to any third party other than an Affiliate of the SERVICE PROVIDER which is or will be used by the SERVICE PROVIDER for the purposes of providing the Ordered Software Application Solutions, including the software specified as such in Schedule 2-2.
<b>Transferee Employer</b>	means any employer of Transferring Service Provider Employees immediately after a transfer which is a Relevant Transfer of any Service.
<b>Transferring Service Provider Employees</b>	has the meaning ascribed to it in Schedule 2-11 (Exit and Service Transfer Arrangements).
<b>TUPE</b>	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.
<b>Value Added Tax</b>	means value added tax as provided for in the Value Added Tax Act 1994 and any other applicable sales tax.
<b>Working Days</b>	means Monday to Friday inclusive, excluding English public and bank holidays.
<b>Year</b>	means a period of twelve (12) months.

**SCHEDULE 2-2**

**THE ORDERED SOFTWARE APPLICATION SOLUTIONS, SERVICE LEVELS,  
SERVICE CREDITS AND IMPLEMENTATION PLAN**

**1. INTRODUCTION**

- 1.1. This Schedule specifies:
  - 1.1.1. the Ordered Software Application Solutions;
  - 1.1.2. the Implementation Plan

**2. THE ORDERED SOFTWARE APPLICATION SOLUTIONS**

- 2.1. as specified in:
  - 2.1.1. The National Archives Functional Solution Design\_V1\_5;
  - 2.1.2. dotMailerSubscriptionSynchronisation\_V1\_3;

and attached as Schedule 20.

**3. SERVICE LEVELS**

- 3.1. as specified in the Support document provided with the tender submission made 2<sup>nd</sup> June 2010, Appendix D Further Support Service Information.

**4. SERVICE CREDITS**

- 4.1. not used

**5. IMPLEMENTATION PLAN**

- 5.1. As specified in TNA DotMailer and MS CRM Implementation Project Plan V1.7 as attached as Schedule 20.

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43 (2).

Framework Agreement.

**6. IMPLEMENTATION OF ADJUSTED CHARGES**

- 6.1. Charges varied in accordance with the provisions of this Schedule shall be amended by the SERVICE PROVIDER to take effect on the relevant date.
- 6.2. Notwithstanding paragraph 6.1 of this Schedule, no amendment to the Charges pursuant to the provisions of paragraph 4.1 of this Schedule, shall be made during the first three (3) months after the Effective Date.

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43 (2).

**SCHEDULE 2-4**

**INVOICING PROCEDURE**

**1. INTRODUCTION**

1.1. This Schedule sets out the Invoicing Procedure that shall apply to this Contract.

**2. INVOICING PROCEDURE**

2.1. The SERVICE PROVIDER shall, in accordance with the Payment Profile, submit invoices directly to:

Finance Department, The National Archives, Bessant Drive, Kew, Richmond,  
Surrey TW9 4DU

2.2. Invoices shall specify:

- 2.2.1. the unique Order reference CR01082;<sup>1</sup>
- 2.2.2. the delivery milestone (if any) within this Contract to which the invoice relates and a summary of the corresponding Ordered Software Application Solutions;
- 2.2.3. any Service Credits due;
- 2.2.4. the line value;
- 2.2.5. total value excluding Value Added Tax;
- 2.2.6. the Value Added Tax percentage
- 2.2.7. the total value including Value Added Tax;
- 2.2.8. the tax point date relating to the rate of Value Added Tax shown; and

**3. INVOICE PAYMENT**

3.1. The CUSTOMER shall pay all valid invoices submitted by the SERVICE PROVIDER in accordance with the provisions of this Schedule in accordance with the provisions of Clause 5 of this Contract.

3.2. In the event of a disputed invoice, the CUSTOMER shall make payment in respect of any undisputed amount in accordance with the provisions of Clause 5 of this Contract and return the invoice to the SERVICE PROVIDER within ten (10) Working Days of receipt with a covering statement proposing amendments to the invoice and/or the reason for any non-payment. The SERVICE PROVIDER shall respond within ten (10) Working Days of receipt of the returned invoice stating whether or not the SERVICE PROVIDER accepts the CUSTOMER's proposed amendments. If it does then the SERVICE PROVIDER shall supply with the response a replacement valid invoice. If it does not then the matter shall be dealt with in accordance with the provisions of Clause 21 of this Contract.

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**SCHEDULE 2-5**

**ACCEPTANCE PROCEDURES**

**1. INTRODUCTION**

- 1.1 This Schedule specifies the Acceptance Procedures and the Acceptance Test Criteria to be used in the acceptance of the Ordered Software Application Solutions.

**2. ACCEPTANCE PROCEDURES – BASIC PARAMETERS**

- 2.1 The SERVICE PROVIDER shall, during the Acceptance Test Period, make available the Ordered Software Application Solutions to the CUSTOMER (including any products supplied by the SERVICE PROVIDER necessary to enable the provision of those Ordered Software Application Solutions) for the Acceptance Procedures to be performed.
- 2.2 The CUSTOMER will conduct Acceptance Tests on the Ordered Software Application Solutions to test whether they meet the requirement specified in the Order and meet the appropriate Service Levels.
- 2.3 The CUSTOMER will perform the Acceptance Procedures in respect of each Ordered Software Application Solution (including any applicable delivery milestones stated within the Implementation Plan of this Contract).
- 2.4 The Acceptance Procedures shall be recorded as successful and the SERVICE PROVIDER notified accordingly where all the Acceptance Test Criteria are met.
- 2.5 The Acceptance Procedures shall be recorded as unsuccessful and the SERVICE PROVIDER notified accordingly where any of the Acceptance Test Criteria are not met.
- 2.6 In the event that the Acceptance Procedures in respect of each Ordered Software Application Solution or any part thereof, have not been recorded as successful pursuant to paragraph 2.4 of this Schedule by the end of the relevant Acceptance Test Period, the CUSTOMER will extend the Acceptance Test Period by a period of ten (10) Working Days (or such other period as the parties may agree) during which the SERVICE PROVIDER shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed.
- 2.7 In the event that after the CUSTOMER has extended the Acceptance Test Period pursuant to paragraph 2.6 of this Schedule the relevant Acceptance Procedures have not been recorded as successful by the end of that period, the CUSTOMER shall, without prejudice to its other rights and remedies, be entitled to:
- 2.8 extend the Acceptance Test Period for a further period (or periods) specified by the CUSTOMER during which the SERVICE PROVIDER shall correct the faults which caused the Acceptance Procedures to be recorded as unsuccessful and the Acceptance Procedures shall be re-performed; or
- 2.9 reject the Ordered Software Application Solution (or any part thereof), terminate this Contract and receive a full refund of all sums paid under this Contract in respect of Ordered Software Application Solutions so rejected.
- 2.10 If the CUSTOMER fails to carry out the relevant Acceptance Tests within the Acceptance Test Period and such failure is wholly and solely due to the actions or inactivity of the CUSTOMER, the Acceptance Tests shall be deemed to have been

completed successfully.

- 2.11 The right to reject and terminate in paragraph 2.7.2 of this Schedule shall apply to each Ordered Software Application Solution so that the CUSTOMER can reject and terminate parts of the Ordered Software Application Solution rather than the entire Ordered Software Application Solutions if it so wishes.
- 2.12 The SERVICE PROVIDER shall provide such assistance as the CUSTOMER requires in relation to the conducting of the Acceptance Tests.

### **3 ACCEPTANCE PROCEDURES & ACCEPTANCE TEST CRITERIA**

- 3.1 The Acceptance Procedures pertaining to the Ordered Software Application Solution, as specified and agreed in the Order shall be agreed by the parties within 2 weeks of the Contract effective date.

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**SCHEDULE 2-6****CONTRACT AND SERVICE MANAGEMENT****1. INTRODUCTION**

- 1.1. This Schedule specifies the requirements in respect of Contract and service management issues.

**2. IMPLEMENTATION**

- 2.1. If required by the CUSTOMER's Order, both parties shall perform all their obligations under this Contract in accordance with the Implementation Plan.
- 2.2. In the event that the SERVICE PROVIDER fails, due to its Default, to fulfil an obligation by the date specified in the Implementation Plan for such fulfilment, the SERVICE PROVIDER shall notify the CUSTOMER of such failure and, at the request of the CUSTOMER and without prejudice to the Customer's other rights and remedies, arrange all such additional resources as are necessary to fulfil the said obligation as early as practicable thereafter at no additional charge to the CUSTOMER.
- 2.3. In the event that any obligation of the SERVICE PROVIDER specified in the Implementation Plan is delayed as a result of a Default by the CUSTOMER then:
- 2.3.1. the date associated with the relevant obligation(s) as specified in the Implementation Plan (and the dates similarly associated with any subsequent obligation(s) specified in the Implementation Plan) shall be amended by a period of time equal to the period of such CUSTOMER Default (or other such period as the parties agree);
- 2.3.2. both parties shall use all reasonable endeavours to mitigate the impact of such delay and to recover any resultant delay to the performance of the Ordered Software Application Solutions; and
- 2.3.3. the CUSTOMER shall reimburse those reasonable costs of the SERVICE PROVIDER which are both reasonably and necessarily incurred by the SERVICE PROVIDER as a direct result of such delay.

**3. REPORTS**

- 3.1. When requested by the CUSTOMER, the SERVICE PROVIDER shall provide Reports electronically to the CUSTOMER at [REDACTED]
- 3.2. Such Reports, in respect of each month, shall be submitted monthly by the 3rd Day of the following month.
- 3.3. Reports shall include:
- 3.3.1. a record of the Ordered Software Application Solutions provided to the CUSTOMER;
- 3.3.2. a record of the invoices raised by the SERVICE PROVIDER;
- 3.3.3. a record of any failures to provide Ordered Software Application Solutions in accordance with this Contract;
- 3.3.4. details of the number and nature of any complaints from the CUSTOMER; and
- 3.3.5. details of any Sub-Contractors used;

**4. REVIEW MEETINGS**

4.1.

**5. CUSTOMER DATA**

5.1. Format as agreed between the CUSTOMER and the SERVICE PROVIDER.

5.2. Not used.

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

**SCHEDULE 2-7**

**CONTRACT CHANGE PROCEDURE**

**1. INTRODUCTION**

- 1.1. This Schedule sets out the Contract Change Procedure to be used by the CUSTOMER and the SERVICE PROVIDER to effect changes to this Contract.

**2. PRINCIPLES**

- 2.1. The CUSTOMER and the SERVICE PROVIDER shall conduct discussions relating to proposed changes to this Contract in good faith. Neither party shall unreasonably withhold or delay consent to the other party's proposed changes to this Contract.
- 2.2. Until such time as a Contract Change Note (CCN) has been signed by both parties, the SERVICE PROVIDER shall continue to provide and make available to the CUSTOMER the Ordered Software Application Solutions in accordance with this Contract.
- 2.3. Any work undertaken in connection with any changes to this Contract by the SERVICE PROVIDER, its Sub-Contractors or agents (other than that which has previously been agreed in accordance with the provisions of paragraph 2.2 of this Schedule) shall be undertaken entirely at the expense and liability of the SERVICE PROVIDER unless otherwise agreed between the CUSTOMER and the SERVICE PROVIDER in advance.
- 2.4. Any discussions, negotiations or other communications which may take place between the parties in connection with any proposed changes to this Contract, including the submission of any written communications, prior to the signing by both parties of the relevant CCN, shall be without prejudice to the rights of either party.

**3. PROCEDURE**

- 3.1. Should either party wish to propose a change to this Contract, that party shall submit a draft CCN detailing the proposed change to the other party using the proforma at Annex A to this Schedule in accordance with Clause 9 of this Contract.
- 3.2. Within ten (10) Working Days of the submission of a draft CCN (or such other period as may be agreed between the parties) the receiving party shall respond to the draft CCN in accordance with Clause 9 of this Contract. If appropriate, the parties shall enter into discussions to discuss the draft CCN.
- 3.3. Discussion between the parties following the submission of a draft CCN shall take place within five (5) Working Days (or such other period as agreed by the parties) and result in either:
- 3.3.1. agreement between the parties on the changes to this Contract to be made (including agreement on the date upon which the changes to this Contract are to take effect (the "**CCN Effective Date**")) within five (5) Working Days (or such other period as agreed by the parties), such agreement to be expressed in the form of proposed revisions to the text of the relevant parts of this Contract; or
- 3.3.2. no further action being taken on that draft CCN.
- 3.4. Where agreement is reached in accordance with paragraph 3.3.1 of this Schedule, the party submitting the draft CCN shall prepare a final CCN for execution by both parties within five (5) Working Days (or such other period as agreed by the parties). The final CCN, the content of which has been agreed between the parties in

accordance with paragraph 3.3.1 of this Schedule, shall be uniquely identified by a sequential number allocated by the CUSTOMER.

- 3.5. The SERVICE PROVIDER sign two (2) copies of each CCN and submit these to the CUSTOMER not less than ten (10) Working Days prior to the CCN Effective Date.
- 3.6. Subject to the agreement reached in accordance with paragraph 3.3.1 of this Schedule remaining valid, the CUSTOMER shall sign both copies of the approved CCN within five (5) Working Days of receipt by the CUSTOMER. Following signature by the CUSTOMER, one (1) copy of the signed CCN shall be returned to the SERVICE PROVIDER by the CUSTOMER.
- 3.7. A CCN signed by both parties shall constitute an amendment to this Contract pursuant to Clause 8 of this Contract.

**Annex A**

**Contract Change Note for the Contract Change Procedure**

Sequential Number: [to be allocated by the CUSTOMER]

Title: .....

Originator: ..... for the [CUSTOMER/SERVICE PROVIDER]

Date change first proposed: .....

Number of pages attached: .....

WHEREAS the SERVICE PROVIDER and the CUSTOMER entered into a Contract for the provision of Software Application Solutions dated [date] and now wish to amend that Contract as follows:

**Reason for proposed change**

[Party proposing change to complete]

**Full details of proposed change**

[Party proposing change to complete]

**Details of likely impact, if any, of proposed change on other aspects of the Contract**

[Party proposing change to complete]

**IT IS AGREED** as follows:

1. With effect from [date] the Contract shall be amended as set out below:

[Details of the amendments to the Contract to be inserted here – to include the explicit changes required to the text in order to effect the change, i.e. Clause/Schedule/paragraph number, required deletions and insertions etc]

2. Save as herein amended, all other terms and conditions of the Contract inclusive of any previous CCNs shall remain in full force and effect.

**Signed for and on behalf of the SERVICE PROVIDER**

By .....

Name .....

Title .....

## SOFTWARE APPLICATION SOLUTIONS FRAMEWORK AGREEMENT

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**Date** .....

**Signed for and on behalf of the CUSTOMER**

**By** .....

**Name** .....

**Title** .....

**Date** .....

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**Schedule 2-9**

**DISPUTE RESOLUTION PROCEDURE**

**1. INTRODUCTION**

- 1.1. This Schedule sets out the mediation and arbitration dispute resolution procedure governing disputes under this Contract.
- 1.2. In the event that a dispute cannot be resolved by the CUSTOMER and SERVICE PROVIDER representatives nominated under Clause 21.3 of this Contract within a maximum of ten (10) Working Days (or such other period as agreed by the parties) after referral, the dispute shall be further referred to mediation in accordance with the provisions of Clause 21.4 of this Contract.
- 1.3. Subject always to the provisions of Clause 21 of this Contract, nothing in this dispute resolution procedure shall prevent the CUSTOMER or the SERVICE PROVIDER from seeking from any Court of the competent jurisdiction an interim order restraining the other party from doing any act or compelling the other to do any act.

**2. MEDIATION**

- 2.1. The procedure for mediation pursuant to Clause 21.5 of this Contract and consequential provisions relating to mediation shall be as follows:
  - 2.1.1. a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the CUSTOMER and the SERVICE PROVIDER or, if they are unable to agree upon the identity of the Mediator within ten (10) Working Days after a request by one party to the other, or if the Mediator agreed upon is unable or unwilling to act, either party shall within ten (10) Working Days from the date of the proposal to appoint a Mediator or within ten (10) Working Days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“**CEDR**”) to appoint a Mediator; and
  - 2.1.2. the CUSTOMER and the SERVICE PROVIDER shall within ten (10) Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. The parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure.
- 2.2. Unless otherwise agreed by the CUSTOMER and the SERVICE PROVIDER, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
- 2.3. In the event that the CUSTOMER and the SERVICE PROVIDER reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on both parties once it is signed by Leo Harper and Dave Gawthorpe.
- 2.4. Failing agreement, either the CUSTOMER or SERVICE PROVIDER may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Contract or otherwise without the prior written consent of both parties.
- 2.5. The CUSTOMER and the SERVICE PROVIDER shall each bear their own costs in

relation to any reference made to the Mediator and the fees and all other costs of the Mediator shall be borne jointly in equal proportions by both parties unless otherwise directed by the Mediator.

- 2.6. Work and activity to be carried out under this Contract shall not cease or be delayed during the mediation process.
- 2.7. In the event that the CUSTOMER and the SERVICE PROVIDER fail to reach agreement in the structured negotiations within forty (40) Working Days of the Mediator being appointed, or such longer period as may be agreed, then any dispute or difference between them may, subject to the agreement of both parties, be referred to arbitration in accordance with the provisions of Clause 21.5 of this Contract.

### **3. ARBITRATION**

- 3.1. In the event that a dispute between the CUSTOMER and the SERVICE PROVIDER, or a claim by one against the other, pursuant to the terms of this Contract is not resolved pursuant to paragraph 2 of this Schedule, the parties may, in accordance with the provisions of Clause 21.5 of this Contract and subject to paragraph 2.7 of this Schedule, refer the matter to arbitration in accordance with this Schedule.
- 3.2. The party seeking to initiate the arbitration shall give a written Notice of Arbitration to the other party. The Notice of Arbitration shall specifically state:
  - 3.2.1. that the dispute is referred to arbitration;
  - 3.2.2. the particulars of this Contract; and
  - 3.2.3. a brief summary of the subject of the dispute.
- 3.3. Unless otherwise agreed in writing by the CUSTOMER and the SERVICE PROVIDER, the provisions of the Arbitration Act 1996 shall govern the arbitration commenced pursuant to this Schedule.
- 3.4. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, if referred to arbitration in accordance with this Schedule shall be resolved by arbitration under the procedural rules of the London Court of International Arbitration (which are deemed to be incorporated into this Contract save that in the event of any conflict between those rules and this Contract, this Contract shall prevail).
- 3.5. It is agreed between the CUSTOMER and the SERVICE PROVIDER that for the purposes of the arbitration, the decision of the arbitrator shall be binding on the parties (in the absence of any material failure by the arbitrator to comply with the London Court of International Arbitration procedural rules).
- 3.6. The arbitration process and anything said, done or produced in or in relation to the arbitration process (including any awards) shall be confidential between the parties, except as may be lawfully required in judicial proceedings relating to the arbitration or otherwise. No report relating to anything said, done or produced in or in relation to the arbitration process may be made to any body other than the tribunal, the CUSTOMER and the SERVICE PROVIDER, their legal representatives and any person necessary to the conduct of the proceedings, without the agreement of all parties to the arbitration.
- 3.7. The arbitration proceedings shall take place in London and in the English language and the arbitration proceedings shall be governed by, and interpretations made in accordance with, the laws of England. The arbitration tribunal shall consist of a sole arbitrator to be agreed by the parties and in the event that the parties fail to agree the

- appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the London Court of International Arbitration.
- 3.8. The CUSTOMER and the SERVICE PROVIDER shall each bear their own costs in relation to any reference made to the arbitrator and the fees and all other costs of the arbitrator shall be borne jointly in equal proportions by both parties unless otherwise directed by the arbitrator.
- 3.9. In the event that the CUSTOMER and the SERVICE PROVIDER do not agree to refer the matter to arbitration, then any dispute or difference between them may be referred to the Courts in accordance with the provisions of Clause 39 of this Contract.

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**SCHEDULE 2-11**

**NOT USED**

**SCHEDULE 2-12**

**STANDARDS AND REGULATIONS**

**1. INTRODUCTION**

- 1.1. This Schedule sets out the Standards and Regulations with which the SERVICE PROVIDER shall comply in its provision of the Ordered Software Application Solutions.

**2. TECHNICAL**

- 2.1.1. Government Connect Code for Connection Compliance ("CoCo");  
2.1.2. e-Government Interoperability Framework;  
2.1.3. Technical Standards Catalogue;  
2.1.4. e-Government Metadata Standard (e-GMS).

**3. SECURITY**

- 3.1. The SERVICE PROVIDER shall ensure that security is maintained to the level required by Schedule 2-16, and subject to the relevant audit rights at Clause 35 of this Contract.

**4. ENVIRONMENT**

- 4.1. The SERVICE PROVIDER undertakes to follow a sound environmental management policy so that its activities comply with all applicable environmental legislation and regulations and that its products or services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of, in ways that are appropriate from an environmental protection perspective.

**5. PROJECT MANAGEMENT**

- 5.1. The SERVICE PROVIDER shall generally make use of PRINCE2 methodology or similar, supplemented where appropriate by the tools and methods of the SERVICE PROVIDER's own project management methodologies.

**6. VERSION CONTROL**

- 6.1. The SERVICE PROVIDER shall develop or evidence procedures which ensure that only the correct release or version of a Deliverable can be delivered to the CUSTOMER. The SERVICE PROVIDER shall provide a copy of the draft procedures to the CUSTOMER for its approval. On receipt of such approval, the SERVICE PROVIDER shall then operate those procedures.

**SCHEDULE 2-13**

**TITLE AND RISK**

**1. INTRODUCTION**

This Schedule specifies the ownership and passing of title and risk from one party to another under certain circumstances during and following the Term of this Contract.

**2. CONTRACT COMMENCEMENT**

2.1 Ordered Goods and CUSTOMER Furnished Items to be used in the provision of the Ordered Software Application Solutions may (as applicable) be provided by the SERVICE PROVIDER, the CUSTOMER, a lessor or a previous service provider of the CUSTOMER. Subject always to the provisions of paragraph 3 of this Schedule, title and risk in those Ordered Goods and CUSTOMER Furnished Items shall be as specified in this paragraph 0 of this Schedule.

2.2 Where any Ordered Goods are provided by the SERVICE PROVIDER (other than Ordered Goods which are leased, loaned or hired by a third party in accordance with paragraph 2.4 of this Schedule):

2.2.1 they shall remain the property of the SERVICE PROVIDER and such Ordered Goods (if required) shall be licensed to the CUSTOMER or its authorised agents;

2.2.2 if the Ordered Goods are licensed in accordance with paragraph 2.2.1 of this Schedule, the CUSTOMER undertakes the safe custody, and the due return, of those Ordered Goods; and further

2.2.3 the CUSTOMER shall be responsible for any deterioration in those Ordered Goods, fair wear and tear excepted.

2.3 Where any CUSTOMER Furnished Items are provided by the CUSTOMER (other than CUSTOMER Furnished Items which are provided by a previous service provider in accordance with paragraph 2.5 of this Schedule):

2.3.1 title remains with the CUSTOMER and such CUSTOMER Furnished Items (if required) shall be licensed to the SERVICE PROVIDER or its Sub-Contractors for use only for the purposes of this Contract;

2.3.2 the SERVICE PROVIDER undertakes the safe custody, and the due return, of all such Ordered Goods;

2.3.3 the SERVICE PROVIDER shall be responsible for any deterioration in such CUSTOMER Furnished Items, fair wear and tear excepted; and

2.3.4 neither the SERVICE PROVIDER, nor any Sub-Contractor, nor any other person shall have a lien on such CUSTOMER Furnished Items for any sum due to the SERVICE PROVIDER, any Sub-Contractor or any other person and the SERVICE PROVIDER shall take all reasonable steps to ensure that the title of the CUSTOMER and the exclusion of any such lien are brought to the notice of all Sub-Contractors and other people dealing with such CUSTOMER Furnished Items.

2.4 Where any Ordered Goods are provided by a lessor, title to those Ordered Goods shall remain with the lessor and risk shall be determined in accordance with the relevant lease.

2.5 Where any CUSTOMER Furnished Items are provided by a previous service provider,

it shall remain the property of the previous service provider and shall be licensed to the CUSTOMER, its authorised agents, or the SERVICE PROVIDER, as agreed between the parties concerned.

### **3 DURING THE TERM**

- 3.1 Where ownership of any Ordered Goods and/or CUSTOMER Furnished Items to be used in the provision of the Ordered Software Application Solutions changes during the Term, the passing of title and risk in those Ordered Goods and CUSTOMER Furnished Items shall be as specified in this paragraph 3 of this Schedule.
- 3.2 Title in all Ordered Goods provided by the SERVICE PROVIDER shall pass to the CUSTOMER on the earlier of:
  - 3.2.1 payment for such Ordered Goods; or
  - 3.2.2 such Ordered Goods successfully passing the Acceptance Tests.
- 3.3 Notwithstanding paragraph 3.2.1 of this Schedule, risk in Ordered Goods provided by the SERVICE PROVIDER shall pass to the CUSTOMER when such Ordered Goods successfully pass the Acceptance Tests. If the CUSTOMER has paid for the Ordered Goods prior to conclusion of the Acceptance Tests, the SERVICE PROVIDER shall promptly repay the amounts paid by the CUSTOMER if the Ordered Goods (or any part thereof) do not successfully pass the Acceptance Tests.
- 3.4 Where, at the CUSTOMER's request, any Ordered Goods provided by the SERVICE PROVIDER are to be transferred to a lessor, it shall remain the property of the SERVICE PROVIDER until such time as the relevant lease specifies the passage of title in such Ordered Goods. At such time, the risk in such Ordered Goods shall be determined in accordance with the relevant lease.
- 3.5 Where title and risk in any CUSTOMER Furnished Items is to transfer to the SERVICE PROVIDER, the CUSTOMER and the SERVICE PROVIDER shall agree the terms of such transfer in accordance with the Contract Change Procedures.

### **4 SERVICE TRANSFER**

- 4.1 Title and risk in the Ordered Goods after the Term shall be determined as specified in the Service Transfer Plan.

**SCHEDULE 2-14**

**NOT USED**

**SCHEDULE 2-15**

**BCDR PLAN**

**PURPOSE OF THIS SCHEDULE**

This Schedule sets out the CUSTOMER's requirements for ensuring continuity of the business processes and operations supported by the Ordered Software Application Solutions in circumstances of service disruption or failure and for restoring the Ordered Software Application Solutions through business continuity and as necessary disaster recovery procedures. It also includes the requirement on the SERVICE PROVIDER to ensure that its subcontractor dotMailer has developed, will review, test, change, and maintain a BCDR Plan in respect of the Ordered Software Application Solutions

The dotMAILER BCDR Plan is provided separately to the CUSTOMER:

The BCDR Plan shall detail the processes and arrangements which the SERVICE PROVIDER shall follow to ensure continuity of the business processes and operations supported by the Ordered Software Application Solutions following any failure or disruption of any element of the Ordered Software Application Solutions and the recovery of the Ordered Software Application Solutions in the event of a Disaster.

**2. DEVELOPMENT OF BCDR PLAN**

- 2.1 The BCDR Plan shall unless otherwise required by the CUSTOMER in writing, be based upon and be consistent with the provisions of paragraphs 3, 4 and 5 of this Schedule.
- 2.2 The SERVICE PROVIDER shall ensure that its Sub-Contractors' dotMAILER disaster recovery and business continuity plans are integrated with the BCDR Plan.

**3. PART A - GENERAL PRINCIPLES AND REQUIREMENTS**

- 3.1 The BCDR Plan shall:
  - 3.1.1 set out how the business continuity and disaster recovery elements of the BCDR Plan link to each other;
  - 3.1.2 provide details of how the invocation of any element of the BCDR Plan may impact upon the operation of the Ordered Software Application Solutions and any services provided to the CUSTOMER by a Related Service Provider;
  - 3.1.3 contain an obligation upon the SERVICE PROVIDER to liaise with the CUSTOMER and (at the CUSTOMER's request) any Related Service Provider with respect to issues concerning business continuity and disaster recovery where applicable;
  - 3.1.4 detail how the BCDR Plan links and interoperates with any overarching and/or connected disaster recovery or business continuity plan of the CUSTOMER and any of its other Related Service Providers as notified to the SERVICE PROVIDER by the CUSTOMER from time to time;
  - 3.1.5 contain a communication strategy including details of an incident and problem management service;
  - 3.1.6 contain a risk analysis, including:
    - 3.1.6.1 failure or disruption scenarios and assessments and estimates of

- frequency of occurrence;
- 3.1.6.2 identification of any single points of failure within the Ordered Software Application Solutions and processes for managing the risks arising therefrom;
- 3.1.6.3 identification of risks arising from the interaction of the Ordered Software Application Solutions with the services provided by a Related Service Provider; and
- 3.1.6.4 a business impact analysis (detailing the impact on business processes and operations) of different anticipated failures or disruptions;
- 3.1.7 provide for documentation of processes, including business processes, and procedures;
- 3.1.8 set out key contact details (including roles and responsibilities) for the SERVICE PROVIDER (and any Sub-Contractors) and for the CUSTOMER;
- 3.1.9 identify the procedures for reverting to "normal service";
- 3.1.10 set out method(s) of recovering or updating data collected (or which ought to have been collected) during a failure or disruption to ensure that there is no more than 0% of data loss and to preserve data integrity;
- 3.1.11 identify the responsibilities (if any) that the CUSTOMER has agreed it will assume in the event of the invocation of the BCDR Plan; and
- 3.1.12 not applicable
- 3.2 The BCDR Plan shall be designed so as to ensure that:
  - 3.2.1 the Ordered Software Application Solutions are provided in accordance with this Contract at all times during and after the invocation of the BCDR Plan;
  - 3.2.2 the adverse impact of any Disaster, service failure, or disruption on the operations of the CUSTOMER is minimal as far as reasonably possible;
  - 3.2.3 it complies with the relevant industry standards from time to time in force; and
  - 3.2.4 there is a process for the management of disaster recovery testing detailed in the BCDR Plan.
- 3.3 The BCDR Plan must be upgradeable and sufficiently flexible to support any changes to the Ordered Software Application Solutions or to the business processes facilitated by and the business operations supported by the Ordered Software Application Solutions.
- 3.4 The SERVICE PROVIDER shall not be entitled to any relief from its obligations under the Service Levels or to any increase in the Charges to the extent that a Disaster occurs as a consequence of any breach by the SERVICE PROVIDER of this Contract.

#### **4. PART B - BUSINESS CONTINUITY ELEMENT - PRINCIPLES AND CONTENTS**

- 4.1 The Business Continuity Plan shall set out the arrangements that are to be invoked

to ensure that the business processes and operations facilitated by the Ordered Software Application Solutions remain supported and to ensure continuity of the business operations supported by the Ordered Software Application Solutions including and unless the CUSTOMER expressly states otherwise in writing:

- 4.1.1 the alternative processes, (including business processes), options and responsibilities that may be adopted in the event of a failure in or disruption to the Ordered Software Application Solutions; and
  - 4.1.2 the steps to be taken by the SERVICE PROVIDER upon resumption of the Ordered Software Application Solutions in order to address any prevailing effect of the failure or disruption including a root cause analysis of the failure or disruption.
- 4.2 The Business Continuity Plan shall address the various possible levels of failures of or disruptions to the Ordered Software Application Solutions and the services to be provided and the steps to be taken to remedy to the different levels of failure and disruption. The Business Continuity Plan shall also clearly set out the conditions and/or circumstances under which the Disaster Recovery Plan is invoked.

## **5. PART C - DISASTER RECOVERY ELEMENT - PRINCIPLES AND CONTENTS**

- 5.1 The Disaster Recovery Plan shall be designed so as to ensure that upon the occurrence of a Disaster the SERVICE PROVIDER ensures continuity of the business operations of the CUSTOMER supported by the Ordered Software Application Solutions following any Disaster or during any period of service failure or disruption with, as far as reasonably possible, minimal adverse impact.
- 5.2 The Disaster Recovery Plan shall only be invoked upon the occurrence of a Disaster.
- 5.3 The Disaster Recovery Plan shall include the following:
  - 5.3.1 the technical design and build specification of the Disaster Recovery System;
  - 5.3.2 details of the procedures and processes to be put in place by the SERVICE PROVIDER and any Sub-Contractor in relation to the Disaster Recovery System and the provision of the Disaster Recovery Services and any testing of the same including but not limited to the following:
    - 5.3.2.1 data centre and disaster recovery site audits;
    - 5.3.2.2 backup methodology and details of the SERVICE PROVIDER's approach to data back-up and data verification;
    - 5.3.2.3 identification of potential disaster scenarios;
    - 5.3.2.4 risk analysis;
    - 5.3.2.5 documentation of processes and procedures;
    - 5.3.2.6 hardware configuration details;
    - 5.3.2.7 network planning including details of all relevant data networks and communication links;
    - 5.3.2.8 invocation rules;
    - 5.3.2.9 service recovery procedures; and

- 5.3.2.10 steps to be taken upon Service resumption to address any prevailing effect of the Service failure or disruption;
- 5.3.3 any applicable service levels with respect to the provision of Disaster Recovery Services and details of any agreed relaxation upon the Service Levels during any period of invocation of the Disaster Recovery Plan;
- 5.3.4 details of how the SERVICE PROVIDER shall ensure compliance with security standards ensuring that compliance is maintained for any period during which the Disaster Recovery Plan is invoked;
- 5.3.5 access controls to any disaster recovery sites used by the SERVICE PROVIDER or any Sub-Contractor in relation to its obligations pursuant to this Schedule; and
- 5.3.6 testing and management arrangements.

## 6. REVIEW AND AMENDMENT OF THE BCDR PLAN

- 6.1 The SERVICE PROVIDER shall review part or all of the BCDR Plan and the risk analysis on which it is based:
  - 6.1.1 on a regular basis and as a minimum once every six (6) calendar months;
  - 6.1.2 within three (3) months of the BCDR Plan (or any part) having been invoked pursuant to paragraph 8 of this Schedule; and
  - 6.1.3 where the CUSTOMER requests any additional reviews (over and above those provided for in paragraphs 6.1.1 and 6.1.2 of this Schedule) by notifying the SERVICE PROVIDER to such effect in writing, whereupon the SERVICE PROVIDER shall conduct such reviews in accordance with the CUSTOMER's written requirements. The costs of both parties for any such additional reviews will be met by the CUSTOMER.
- 6.2 Each review of the BCDR Plan pursuant to paragraph 6.1 of this Schedule shall be a review of the procedures and methodologies set out in the BCDR Plan and shall assess their suitability having regard to any change to the Ordered Software Application Solutions or any underlying business processes and operations facilitated by or supported by the Ordered Software Application Solutions which have taken place since the later of the original approval of the BCDR Plan or the last review of the BCDR Plan and shall also have regard to any occurrence of any event since that date (or the likelihood of any such event taking place in the foreseeable future) which may increase the likelihood of the need to invoke the BCDR Plan. The review shall be completed by the SERVICE PROVIDER within the period required by the BCDR Plan or if no such period is required within such period as the CUSTOMER shall reasonably require. The SERVICE PROVIDER shall, within twenty (20) Working Days of the conclusion of each such review of the BCDR Plan, provide to the CUSTOMER a report ("**Review Report**") setting out:
  - 6.2.1 the findings of the review;
  - 6.2.2 any changes in the risk profile associated with the Ordered Software Application Solutions; and
  - 6.2.3 the SERVICE PROVIDER's proposals ("**SERVICE PROVIDER Proposals**") for addressing any changes in the risk profile and its proposals for amendments to the BCDR Plan following the review detailing the impact (if any and to the extent that the SERVICE PROVIDER can

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reasonably be expected to be aware of the same) that the implementation of such proposals may have on any services or systems provided by a third party.

- 6.3 The SERVICE PROVIDER shall as soon as is reasonably practicable after receiving the CUSTOMER's approval of the SERVICE PROVIDER Proposals (having regard to the significance of any risks highlighted in the Review Report) effect any change in its practices or procedures necessary so as to give effect to the SERVICE PROVIDER Proposals. Any such change shall be at the SERVICE PROVIDER's expense unless it can be reasonably shown that the changes are required because of a material change to the Project's risk profile.

## **7. TESTING OF THE BCDR PLAN<sup>2</sup>**

- 7.1 The SERVICE PROVIDER shall test the BCDR Plan on a regular basis (and in any event not less than once in every Year). This may be the acting out of specific scenarios .
- 7.2 If the CUSTOMER requires an additional test of the BCDR Plan it shall give the SERVICE PROVIDER written notice and the SERVICE PROVIDER shall conduct the test in accordance with the relevant provisions of the BCDR Plan. The SERVICE PROVIDER's costs of the additional test shall be borne by the CUSTOMER unless the BCDR Plan fails the additional test in which case the SERVICE PROVIDER's costs of that failed test shall be borne by the SERVICE PROVIDER.
- 7.3 Following each test, the SERVICE PROVIDER shall send to the CUSTOMER a written report summarising the results of the test and shall promptly implement any actions or remedial measures which the CUSTOMER considers to be necessary as a result of those tests.
- 7.4 The SERVICE PROVIDER shall undertake and manage testing of the BCDR Plan in full consultation with the CUSTOMER and shall liaise with the CUSTOMER in respect of the planning, performance, and review, of each test, and shall comply with the reasonable requirements of the CUSTOMER in this regard. Each test shall be carried out under the supervision of the CUSTOMER or its nominee.
- 7.5 The SERVICE PROVIDER shall ensure that any use by it or any Sub-Contractor of "live" data in such testing is first approved with the CUSTOMER. Copies of live test data used in any such testing shall be (if so required by the CUSTOMER) destroyed or returned to the CUSTOMER on completion of the test.
- 7.6 The SERVICE PROVIDER shall, within twenty (20) Working Days of the conclusion of each test, provide to the CUSTOMER a report setting out:
- 7.6.1 the outcome of the test;
  - 7.6.2 any failures in the BCDR Plan (including the BCDR Plan's procedures) revealed by the test; and
  - 7.6.3 the SERVICE PROVIDER's proposals for remedying any such failures.
- 7.7 Following each test, the SERVICE PROVIDER shall take all measures requested by the CUSTOMER, (including requests for the re-testing of the BCDR Plan) to remedy any failures in the BCDR Plan and such remedial activity and re-testing shall be completed by the SERVICE PROVIDER, at no additional cost to the

CUSTOMER, by the date reasonably required by the CUSTOMER and set out in such notice.

7.8 For the avoidance of doubt, the carrying out of a test of the BCDR Plan (including a test of the BCDR Plan's procedures) shall not relieve the SERVICE PROVIDER of any of its obligations under this Schedule or otherwise.

7.9 The SERVICE PROVIDER shall also perform a test of the BCDR Plan as part of the commissioning of any new project forming part of this Agreement.

**8. INVOCATION OF THE BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN**

8.1 In the event of a complete loss of service or in the event of a Disaster at dotMAILER, the SERVICE PROVIDER shall ensure that dotMAILER shall immediately invoke the BCDR Plan (and shall inform the CUSTOMER promptly of such invocation).

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**SCHEDULE 2-17**

**SOFTWARE AND SOFTWARE LICENCE TERMS**

**1. INTRODUCTION**

- 1.1. This Schedule details the various elements of the Software and categorises them into Specially Written Software, SERVICE PROVIDER Software and Third Party Software.
- 1.2. Annexes A and B of this Schedule sets out the licence terms for the SERVICE PROVIDER Software and Third Party Software (including Open Source Ordered Software), respectively.
- 1.3. The SERVICE PROVIDER shall update this Schedule periodically to record any software subsequently acquired from third parties or developed for the delivery of the Ordered Software Application Solutions.
- 1.4. The Specially Written Software shall consist of any programs, codes and software written by or on behalf of the SERVICE PROVIDER for use by the CUSTOMER specifically in the provision of the Ordered Software Application Solutions (including any modifications or enhancements made to such software during the Term) and including any customised or bespoke elements of software detailed in the Proposal.

**2. SERVICE PROVIDER STANDARD SOFTWARE**

- 2.1. Not applicable

**3. THIRD PARTY SOFTWARE**

- 3.1. The Third Party Software shall include any modules or elements of software which the SERVICE PROVIDER supplies to the CUSTOMER in connection with this Contract and these modules or elements of software are as set out in the Proposal.

**Annex A**

**SERVICE PROVIDER Software**

**NONE**

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43 (2).

**SCHEDULE 2-18**

**NOT USED**

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**SCHEDULE 2-19****INSURANCES****1. INTRODUCTION**

- 1.1. This Schedule contains the list of insurances to be maintained by the SERVICE PROVIDER.
- 1.2. The SERVICE PROVIDER shall:
- 1.2.1. maintain these insurances with a reputable insurance company on terms that are as favourable to those generally available to a prudent service provider in respect of risks insured in the international insurance market; and
  - 1.2.2. not cancel these insurances or make any material change to them without the express written consent of the CUSTOMER.
- 1.3. The SERVICE PROVIDER shall procure that nothing is done which would entitle the relevant insurer to cancel, rescind or suspend any insurance or cover, or to treat any insurance, cover or claim as avoided in whole or part. The SERVICE PROVIDER shall use reasonable endeavours to notify the CUSTOMER (subject to third party confidentiality obligations) as soon as practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to, the relevant insurer to give notice to cancel, rescind, suspend or avoid any insurance, or any cover or claim under any insurance in whole or in part.

**2. LIST OF INSURANCE PROVISIONS**

<b>Class</b>	<b>Minimum Sum Insured</b>
Public Liability	Five million pounds (£5,000,000)
Employers Liability	Five million pounds (£5,000,000)
Professional Indemnity	Five million pounds (£5,000,000)
Property Damage Insurance	Five million pounds (£5,000,000)
Product Liability	Sufficient to cover all potential liabilities in respect of Product Liability
Business Continuity	Sufficient to cover all potential liabilities in respect of Business Continuity