Early Extraction terms and conditions

Royal Mail agrees to provide the Customer with the Services in accordance with the following terms and conditions:

1 Definitions and interpretation

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

“Act” means the Postal Services Act 2000;

“Address A” means in the case of any Diversion, the address identified as such in the Preface and Address B, Address C and so on will mean the addresses identified as such in the Preface;

“Addressee” means any other trading name of the Customer (other than the Customer’s registered company name) or any named third party identified as such in the Preface and the addresses for that Addressee identified in Annex 1 to the Preface;

“Affiliate” means a subsidiary or holding company of a Party or a subsidiary of such holding company; “subsidiary” and “holding company” will be as defined in the S736 Companies Act 1985;

“Agreed Volume(s)” means the agreed number of Mail items to be processed, as set out in the Preface;

“Agreement” means this Agreement for the provision of the Services and which comprises these Terms and Conditions, the Preface sheet and the Schedules and Annexes attached;
“Authorised Representatives” means in the case of Royal Mail, the account manager identified in the Preface, and in the case of the Customer, the person named as such in the Preface, or such other persons as nominated by the respective Parties from time to time in writing and notified to the other Party;

“Available Mail” means any Mail that has arrived at the Delivering Office and that has undergone Royal Mail’s internal operational processing at the Delivering Office so that it is readily identifiable by Royal Mail specifically as the Mail in order to enable Royal Mail to aggregate it and carry out the Services in time for each relevant Collection Time and/or Delivery Time;

“Basic Charges” means the amounts identified as such in the Preface;

“Charges” means the amounts identified as such in the Preface or which are otherwise specified as payable by the Customer under this Agreement, including the Basic Charges, the Excess Volume Charge and the Demurrage Charge;

“Collection” means collection of Mail by the Customer as specified in paragraph 5 of Schedule 1 and provided for under this Agreement;

“Collection Point” means the part of the Delivering Office identified as such in the Preface;

“Collection Time” means the time for Collection as specified in the Preface;

“Commencement Date” means the date identified as such in the Preface;

“Credit Account” means Royal Mail credit account facility as made available from time to time by Royal Mail for the payment of Charges;

“Daily Charge” means the Basic Charge applicable to the relevant Location divided by the number of Working Days in the relevant Year;
“Delivering Office” means the Royal Mail premises identified as such in the Preface;

“Delivery Time” means the time or times as set out in the Preface for a Delivery;

“Delivery” means the delivery of Mail as specified in paragraph 4 of Schedule 1 and provided for under this Agreement (and for the avoidance of doubt this excludes any Standard Daily Delivery) and “Deliver” and “Delivering” will be construed accordingly;

“Demurrage” means where at the Customer’s request, Royal Mail leaves a Customer a loaded Royal Mail vehicle or trailer at the Location or other premises after Delivery for the Customer to unload at a later time as set out in paragraph 4.5 of Schedule 1;

“Demurrage Charge” means the charges identified as such in the Preface;

“Diversion” means the diversion service as specified in paragraph 3 of Schedule 1 and provided for under this Agreement;

“Diverting Office” means the Royal Mail premises identified as such in the Preface;

“Excess Volume Charge” means the amount identified as such in the Preface;

“Force Majeure Event” means any circumstances outside Royal Mail’s control, including but not limited to, any fire, flood, explosion, accident, adverse weather conditions, traffic congestion, mechanical breakdown, shortage or failure of supplies, obstruction of any public or private highway, riot, Government Act, acts of war, acts of terrorism, any act of God or from any industrial dispute (including industrial action short of strikes) or strike whatsoever (including by Royal Mail employees);

“Forecast” means for the first Year the volume forecast as set out in Annex 2 (and then as amended by Royal Mail for each subsequent Year according to the procedure set out in paragraph 6.12 of Schedule
1) setting out the Agreed Volumes for each calendar or part calendar month of each Year;

“FOIA” means the Freedom of Information Act 2000 or where applicable in respect of the Customer, equivalent legislation in Scotland or Northern Ireland;

“Location” means the premises identified as such in the Preface;

“Mail” means any mail addressed to the Customer or any Addressee (carried by Royal Mail but excluding mail carried by “Parcelforce Worldwide”) and the subject of this Agreement;

“Mail Collect” means the mailing service provided by Royal Mail from time to time known as “Mail Collect”;

“Party” means either Royal Mail or the Customer and “Parties” will be construed accordingly;

“Payment Date” means the date shown on the relevant invoice;

“Preface” means the page entitled “Agreement Preface” attached to these Terms and Conditions;

“Proposed Forecast” means the forecast proposed by the Customer and prepared in accordance with paragraph 6.12 of Schedule 1 for the subsequent Year of the Agreement;

“Ratio” means the ratio of mechanically to manually Mail as set out in the Preface (or otherwise notified to the Customer) that is to be subject to any Sortation;

“Relevant Scheme” means the relevant statutory scheme or schemes relating to inland letter and parcels made from time to time under Section 89 of the Act, and any amendments to such scheme or schemes, as published from time to time on Royal Mail’s website;

“Residual Mail” means any Mail that is (a) not Available Mail for a particular Delivery or Collection but becomes
available in time for Royal Mail to process in time to make a later collection or delivery (within its ordinary working hours on a Working Day) or (b) Available Mail for a Collection which the Customer does not collect during the Collection Time;

“Residue Selection” means any Mail which cannot be readily identified by Royal Mail as belonging to a particular Selection (including Mail which is misaddressed, illegible, not clearly addressed with a correct and clearly identifiable postcode) but for the avoidance of doubt excluding mail that is not addressed to the Customer or an Addressee;

“Royal Mail Intellectual Property” means the Royal Mail cruciform logo, the mark Royal Mail, images of postage stamps, postal indicia and any other trade mark, copyright design rights (registered or otherwise) and including any intellectual property rights recorded or embodied in any design documents relating to the Royal Mail Intellectual Property or any part of the technical information in each case in any part of the world and in the case of any intellectual property rights whether or not registered or registrable, and any other intellectual property right owned by Royal Mail or any Affiliate of Royal Mail;

“Royal Mail Property” means any property belonging to Royal Mail including but not limited to trays, bags, cages, vehicles, trailers, containers and other equipment provided or made available by Royal Mail to the Customer under this Agreement;

“Selection” means the criteria set out in Annex 1 to which Mail is to be sorted by Royal Mail prior to Collection or Delivery (excluding the Residue Selection);

“Senior Representatives” means the persons identified in the Preface as the Senior Representative for each Party or such other person as is nominated by the relevant Party from time to time;

“Services” means those services set out in Schedule 1 which are identified as Services in the Preface;

“Signed For” means the mailing services from time to time
provided by Royal Mail under the name “Signed For” or “Recorded”;

“Sortation” means any sortation of Mail to Selections provided for under this Agreement;

“Special Delivery” means the mailing services from time to time provided by Royal Mail under the name “Special Delivery”;

“Standard Daily Delivery” means any delivery Royal Mail may be required to make to the Location (or the address to which mail for the Customer is addressed, where this is not the Location) under Section 4 of the Act at any time on a Monday to Saturday each week (excluding bank or public holidays);

“Working Day” means days identified as such in the Preface;

“Year” means the period of 12 months from the Commencement Date or each anniversary of the Commencement Date during the term of this Agreement and in relation to the last Year means the period from the Commencement Date or anniversary of the Commencement Date until the date of the expiry or termination.

1.2 In this Agreement unless the context otherwise requires:

1.2.1 any reference to a Clause or Schedule is to the relevant Clause or Schedule of this Agreement and any reference to a paragraph is to the relevant paragraph of the Schedule in which it appears;

1.2.2 Clause headings are for convenience only and will not affect the construction of this Agreement;

1.2.3 any reference to an enactment or statutory provision is a reference to it as it may have been or may from time to time be amended, modified, consolidated or re-enacted;

1.2.4 references to “persons” will include references to individuals, bodies corporate (wherever incorporated), unincorporated associations and partnerships; and
1.2.5 the words “include”, “including” and “in particular” will be construed as being by way of illustration or emphasis and will not limit or prejudice the generality of the preceding words.

2 Duration

2.1 This Agreement will commence on the Commencement Date and continue in force until terminated by either Party in accordance with the terms of this Agreement.

3 Services required

3.1 Royal Mail will provide the Customer with the Services in consideration of the payment by the Customer of the Charges in accordance with this Agreement.

3.2 Any Standard Daily Delivery carried out by Royal Mail to deliver Residual Mail or Special Delivery mail or Signed For mail does not form part of the Services required to be performed under this Agreement and is not a Delivery for the purposes of this Agreement.

3.3 Royal Mail is not obliged to provide the Services in relation to any Mail which does not comply with the Relevant Scheme.

4 Charges

4.1 The Customer must pay the Charges to Royal Mail.

4.2 All prices, rates and Charges in the Agreement exclude Value Added Tax (“VAT”) unless otherwise stated. The Customer must pay VAT chargeable on each sum, as applicable at the rates prescribed by law or regulation from time to time.

4.3 For the avoidance of doubt the Charges do not include any postage charge or charges for any other postal services not identified in the Preface and set out in Schedule 1 which are used to carry the Mail (including any Response Services, PO Box, Admail and any surcharges on Mail).

5 Customer warranties and obligations

5.1 The Customer warrants that it is the addressee of the Mail or has full authority from each Addressee to whom Mail is addressed to collect or receive and process such Mail and to enter into this Agreement for the Services in respect of such Mail.
5.2 The Customer will ensure that Royal Mail and each of its employees, contractors, representatives and agents is given safe and secure access to the Location as necessary to make any Deliveries or collect any Royal Mail Property.

5.3 The Customer agrees to fully indemnify and hold harmless Royal Mail from and against any and all costs (including legal costs) expenses, claims, losses, damages and awards suffered or incurred by Royal Mail as a result of a breach of Clauses 5.1 or 5.2.

5.4 The Customer must prior to the Commencement Date open and throughout the period of this Agreement maintain a Credit Account with Royal Mail in accordance with Royal Mail’s terms and conditions for Credit Accounts from time to time.

6 Invoice and accounting arrangements

6.1 Royal Mail will send invoices detailing:
   6.1.1 the Basic Charges and, (if applicable) the Demurrage Charge, monthly in advance; and
   6.1.2 the Excess Volume Charge (if applicable) monthly in arrears, to the Customer’s Authorised Representative or to any other address of the Customer notified by the Customer to Royal Mail.

6.2 The Customer must pay invoices in full by the Payment Date.

6.3 In the event of any dispute as to the amount of an invoice, save in the case of a manifest clerical error, the Customer must settle the amount in full pending the resolution of any dispute. Royal Mail will make any adjustment due promptly following such resolution.

6.4 Without prejudice to any other right or remedy available to Royal Mail, if the Customer fails to pay any Charges to Royal Mail under this Agreement by the relevant Payment Date, Royal Mail may:
   6.4.1 suspend the performance or further performance of its obligations under this Agreement without liability to the Customer; and
   6.4.2 charge daily interest on all amounts not paid under the Agreement until payment is received in full at the rate equal to 4% above Bank of England base rate as current during the period of the overdue debt.

7 Limitation of liability

Loss or Damage
7.1 Royal Mail will be liable on the following basis that:

7.1.1 an item of Mail that is in Royal Mail's possession under this Agreement prior to any Collection by or Delivery to the Customer or the Customer’s representative will be treated the same as in the case of an ordinary letter under the Relevant Scheme for inland letters and, in particular, Royal Mail does not in either case keep detailed records of posting, conveyance or delivery;

7.1.2 in the event of loss of or damage to any Mail item dealt with by Royal Mail under this Agreement, Royal Mail will subject to satisfactory proof of posting and the Customer’s loss being provided by the Customer, pay compensation for such loss or damage up to the maximum amount of compensation which Royal Mail may pay under the Relevant Scheme for inland letters in respect of any ordinary letter of the type in question;

7.1.3 except as provided in Clauses 7.1.2 and 7.3 neither Royal Mail nor its officers, servants, or agents will be liable to the Customer or to any other person for:

7.1.3.1 any loss of or damage to any Mail item dealt with by Royal Mail under this Agreement; or

7.1.3.2 any loss or damage arising from any delay in the collection, conveyance or delivery of any such Mail item however any such loss or damage was caused and whether caused by negligence of Royal Mail, its officers, servants or agents or otherwise;

7.1.4 Royal Mail will not be liable for refusing to process, deliver, sort or make available Mail which does not comply with the Relevant Scheme; and

7.1.5 Royal Mail will not be liable for loss or damage to any item of Mail which does not comply with the Relevant Scheme;

7.1.6 where the Customer has a claim for loss or damage to an item of Mail as set out in this Clause 7.1 the Customer may either claim under this Agreement, or if applicable, under the Relevant Scheme, but not both.

**Delay and failure to sort**

7.2 It is acknowledged by the Parties that:

7.2.1 Royal Mail has an obligation to provide a universal postal service under Section 4 of the Act and under its licence granted under the Act to provide postal services:
7.2.2 from time to time it is possible that Royal Mail may be required to use all its resources to meet its obligations to provide a universal service including those used to provide the Services;

7.2.3 delays may occur to the Mail before it reaches the Delivering Office at which the processing of the Mail will be carried out;

7.2.4 Royal Mail cannot guarantee times for Delivery or Collection and can only accept limited liability for loss or damage the Customer may suffer as a result of any delays to the Delivery or Collection of Mail or for any failure to carry out Sortation;

7.2.5 the Customer is paying Royal Mail the Charges in order for it to process and Deliver or prepare the Mail for Collection and carry out Sortation as set out in the Agreement;

7.2.6 Royal Mail will pay compensation to the Customer for not meeting its obligations to meet a Delivery Time or Collection Time as set out in Clause 7.3 and for not performing Sortation in relation to all Available Mail as set out in Clause 7.5;

7.2.7 the limitations set out are fair and reasonable limitations and that the compensation is a genuine pre-estimate of likely losses; and

7.2.8 the Charges are calculated on the basis of the limitations upon Royal Mail’s liability for losses and damages as set out in this Agreement.

7.3 The Customer may claim compensation for delay, in the following circumstances:

7.3.1 the Customer must apply to Royal Mail for compensation no later than fourteen working days from and including the day of the late Delivery or Collection;

7.3.2 Royal Mail will not be liable for and will not consider any compensation applications made later than the time limits set out in Clause 7.3.1;

7.3.3 subject to clause 7.3.4, Royal Mail will pay (in accordance with clause 7.3.6) to the Customer an amount equal to 1% of the monthly instalment of the annual Basic Charges that applies to a Location for each Delivery or Collection under this Agreement that is delayed as a result of a breach of this Agreement by Royal Mail for more than thirty minutes after the relevant Collection Time or Delivery Time for such Location;

7.3.4 where the Customer applies for compensation for more than one Delivery or Collection for a Location in any single calendar month, Royal Mail will pay in accordance with clause 7.3.6 up to 5% of the monthly instalment of the
annual Basic Charges for that Location for all delayed or missed Deliveries or Collections in that calendar month;

7.3.5 Royal Mail will only pay the compensation in accordance with clause 7.3.6 and subject to proof to Royal Mail’s satisfaction that the Delivery Time or Collection Time was delayed by Royal Mail by thirty minutes or more; and

7.3.6 Royal Mail will make any compensation payments by crediting the Customer’s Credit Account, within 30 days of acceptance by Royal Mail that the Customers’ claim is valid, unless agreed otherwise between the Customer and Royal Mail.

7.4 For the avoidance of doubt, Royal Mail will not be liable to pay compensation under Clause 7.3 where:

7.4.1 Royal Mail delivered Mail early;

7.4.2 the Customer or Customer’s representative chooses not to collect the Available Mail at a Collection Time but waits at a Delivering Office for further Mail to become available;

7.4.3 the Customer or Customer’s representative asks Royal Mail to make a later delivery on any Working Day to receive more mail than the Available Mail;

7.4.4 the Customer or Customer’s representative misses the time by which a Collection must be made;

7.4.5 where Mail is received in excess of the Agreed Volumes; or

7.4.6 in respect of deliveries that fall outside of this Agreement, including any Residual Mail delivered as part of the Standard Daily Delivery.

7.5 If Sortation comprises a Service to be performed under this Agreement by the Royal Mail, the Customer may claim compensation for a failure by Royal Mail to perform the Sortation Service, as required under this Agreement, in the following circumstances:

7.5.1 the Customer must apply to Royal Mail for compensation no later than fourteen working days from and including the day of the Delivery or Collection of the Mail concerned;

7.5.2 Royal Mail will not be liable for and will not consider any compensation applications made later than the time limits set out in Clause 7.5.1;

7.5.3 Subject to Clause 7.5.4, Royal Mail will pay (in accordance with Clause 7.5.5) to the Customer an amount equal to the following percentages of the Daily
Charge that applies to a Location to which Mail has been Delivered or for which Mail has been made available for Collection and in relation to such Mail, Royal Mail has failed to carry out Sortation as required under this Agreement as a direct result of a breach of this Agreement by Royal Mail:

<table>
<thead>
<tr>
<th>Percentage of Mail Delivered or made available for Collection in one Working Day to which the Sortation process has not been applied</th>
<th>Percentage of the Daily Charge payable in accordance with Clause 7.5.5</th>
</tr>
</thead>
<tbody>
<tr>
<td>90% or more</td>
<td>0%</td>
</tr>
<tr>
<td>75% to 89%</td>
<td>25%</td>
</tr>
<tr>
<td>51% to 74%</td>
<td>50%</td>
</tr>
<tr>
<td>50% or less</td>
<td>100%</td>
</tr>
</tbody>
</table>

7.5.4 Royal Mail will only pay the compensation in accordance with Clause 7.5.5 and subject to proof to Royal Mail’s satisfaction that the Mail concerned was Delivered or made available for Collection without Sortation; and

7.5.5 Royal Mail will make any compensation payments by crediting the Customer’s Credit Account, within 30 days of acceptance by Royal Mail that the Customer’s claim is valid, unless agreed otherwise between the Customer and Royal Mail.

7.5.6 For the avoidance of doubt, Royal Mail will not make any compensation payments or have any liability for not providing Sortation of Residual Mail delivered or made available unsorted where the Agreement indicates in the Preface that Residual Mail will be delivered or made available without Sortation.

**General**

7.6 Except as expressly provided by this Agreement and without prejudice to the Customers’ obligations to pay the Charges, neither Party will be liable to the other Party in contract, tort (including negligence) or otherwise, in respect of:

7.6.1 any loss of profit, business, contracts, revenues, anticipated savings, reputation or goodwill;

7.6.2 any loss, damage, cost or expenses of an indirect or consequential nature suffered or incurred in connection with this Agreement or damage to the other Party’s property (including both real and personal property).

7.7 For the avoidance of doubt, nothing in this Agreement excludes liability for either Party for personal injury or death caused by reason of the negligence of that Party, its servants, employees or agents or any fraudulent misrepresentation.
8    Employment

8.1 The Customer will ensure that any and all of its staff (or those of a contractor) at present employed in delivering any services the same or equivalent to the Services will be re-deployed to other duties by the Customer (or contractor) by the Commencement Date. If this is not possible and any such employee is dismissed or given redundancy terms by the Customer (or contractor) or their employment transfers to Royal Mail, then the Customer will indemnify and hold harmless Royal Mail against all claims and liability Royal Mail may incur to or in respect of such employee including under the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 and/or the Acquired Rights Directive (Directive No. 77/187 of the European Council of Ministers).

8.2 Without prejudice to clause 8.1, the Customer will indemnify and hold harmless Royal Mail against all costs (including legal costs) expenses, damages, awards and losses arising out of or in connection with any claim by an employee of the Customer or its contractors against Royal Mail for any remedy as a result of anything done or omitted to be done in relation to such employee’s employment prior to the Commencement Date and against all costs, expenses, damages, awards, claims and losses arising out of the dismissal or redundancy of such employee by Royal Mail after the Commencement Date.

9    Force Majeure

9.1 Royal Mail will not be liable (whether for payment of compensation or refunds or otherwise) for any failure to perform, or delay in the performance of its obligations under this Agreement where such failure or delay results from a Force Majeure Event.

9.2 Royal Mail will use reasonable endeavours to promptly notify the Customer of the nature and extent of any Force Majeure Event which impacts on the provision of the Services.

10   Termination

10.1 Royal Mail may terminate this Agreement by giving to the Customer no less than six (6) calendar months’ notice in writing. The Customer may terminate this Agreement by giving to Royal Mail no less than one (1) calendar month’s notice in writing.
10.2 Either Party may terminate this Agreement immediately by giving written notice to the other in the event that the other Party is in material breach of any of its obligations under this Agreement and

(a) the relevant breach is not capable of remedy; or

(b) the relevant breach is capable of remedy but that Party fails to remedy the breach within seven days of written notice to do so.

10.3 Loss of, damage or delay to any single item of Mail or any single Delivery or Collection is not a material breach of this Agreement.

10.4 Royal Mail may terminate this Agreement by giving the customer not less than seven calendar days’ notice in writing if:

10.4.1 the Customer fails to pay any Charges by the Payment Date; or

10.4.2 the Customer is in breach of the terms of the Credit Account;

10.5 Royal Mail may terminate this Agreement immediately if the Customer becomes bankrupt or insolvent or is unable to pay its debts as they fall due or passes a resolution for winding up or if a Court makes an order that the Customer is to be wound up (in either case other than for the purposes of reconstruction) or if a receiver, manager or an administrator is appointed over any or all of the assets of the Customer or if the Customer makes any composition or arrangement with or for the benefit of its creditors or if any analogous event occurs in any other jurisdiction in which the Customer carries out its business.

10.6 Any termination of this Agreement will not prejudice any accrued rights, remedies or liabilities of either Party as at the date of termination. Clauses 1, 10, 11, 12, 13, 14, 16 and Schedule 2 will survive termination of this Agreement for any reason.

10.7 On termination of this Agreement for any reason, the Customer must return to Royal Mail all Royal Mail Property by the expiry of this Agreement, the expiry of any earlier notice to terminate the Agreement or in the case of immediate termination of the Agreement, within two Working Days of the termination.

10.8 Unless the Parties agree otherwise, on termination of this Agreement Royal Mail will resume its Standard Daily Delivery (where applicable) for Mail addressed to the Customer (or to any Addressees) which had been the subject of this Agreement and that Mail will be delivered without the benefit of any of the Services or the processing which is the subject of this Agreement.

11 Freedom of information
11.1 Royal Mail is a public authority (as defined under the FOIA) and as such may be required to disclose information held by it in relation to this Agreement or any other information to anyone who makes a valid request under the FOIA. Information held by Royal Mail may only be withheld in limited categories of circumstances which may include where it is exempt information, where the cost of providing the information exceeds the appropriate limit or where the request is vexatious or repeated. Royal Mail can only withhold information under the FOIA if it is satisfied that the information genuinely falls under one of these categories.

11.2 Subject to Clause 11.3, in respect of any request by a third party for the information of the Customer under the FOIA, if the Customer has previously identified in writing such information to be confidential information by the Customer to which this Clause 11.2 should apply and if Royal Mail is satisfied that the information requested is genuinely exempt information, it will not disclose that information without the Customer’s prior agreement in writing, unless compelled by law, regulation or where required to do so by the Information Commissioner.

11.3 Royal Mail will endeavour to consult with the Customer prior to the disclosure of any confidential information of the Customer as identified by the Customer in accordance with Clause 11.2. Royal Mail may not be able to consult with the Customer or conclude any consultation with the Customer within the timescales for replying to a request for information under the FOIA and shall not be liable to the Customer for any failure to consult with the Customer in such circumstances.

11.4 If the Customer is a public authority as defined under the FOIA, it must comply with Clauses 12.1 to 12.3 as if it is Royal Mail and Royal Mail is the Customer, in respect of any information request made to it under the FOIA that relates to Royal Mail or Royal Mail’s Confidential Information.

12 Royal Mail Property

12.1 Royal Mail may supply to the Customer Royal Mail Property as set out in Schedule 2. The Customer must only use any Royal Mail Property in accordance with the provisions of Schedule 2.

12.2 Any Royal Mail Property supplied by Royal Mail to the Customer remains Royal Mail’s property at all times.

13 Royal Mail Intellectual Property

13.1 The Customer may not use any Royal Mail Intellectual Property without the prior written approval of Royal Mail, which may be withheld or granted on such conditions as Royal Mail requires in its absolute discretion.
13.2 Royal Mail Intellectual Property in any documents, software materials or other items provided to the Customer under this Agreement and all other Royal Mail Intellectual Property remain the property of Royal Mail. The Customer acknowledges the ownership and proprietary rights in Royal Mail Intellectual Property.

13.3 The Customer must not register or attempt to register in any jurisdiction any rights in the Royal Mail Intellectual Property or the Royal Mail Property or any trade marks, designs, patents, domain name, trading name or business name that are similar to any Royal Mail Intellectual Property and the Customer may not use or adopt or attempt to register any name, logo, trade mark, design or domain name which may cause confusion with any name, logo, trade mark, design or domain name of Royal Mail or which may cause detriment to the distinctive character of any such Royal Mail Intellectual Property.

14 Notices

14.1 Any Notice required under this Agreement must be given in writing in English and sent to the Authorised Representative or the registered office of the Party to whom it is intended to be given, or other address notified to the other Party from time to time for that purpose.

14.2 Notices must be sent either pre-paid first class post, personally or by courier or by fax.

14.3 Subject to Clause 14.4, notices are deemed to be received:

14.3.1 if sent by fax, courier or by hand, on receipt (except if the time of receipt is outside of 09.00 to 17.00 on any Working Day, the notice is deemed to be received at 09.00 the following Working Day) in the place to which it is sent, or

14.3.2 if sent by post, two Working Days from the date of posting.

14.4 Notices sent by fax transmission and for which the sender has received an automatic report that the fax was not successful are deemed not to have been received.

14.5 If the Customer’s Authorised Representative or registered company address is not based in the United Kingdom the Customer must notify to Royal Mail a physical address for service of notices, claims and legal process under or in respect of this Agreement in the United Kingdom at the Commencement Date and must maintain a physical address for service in the United Kingdom during this Agreement. Service of notices claims or legal process upon such address will be deemed valid service upon the Customer for all purposes.
15 **Variations**

15.1 The Authorised Representatives of each Party will use their reasonable endeavours to meet approximately eight months after the Commencement Date (and after each subsequent anniversary of the Commencement Date) to discuss and assess all aspects of the Agreement including but not limited to volume usage and weight, pricing, performance and Customer satisfaction.

15.2 Royal Mail reserves the right to vary the Charges at any time in upon giving the Customer three (3) month’s notice.

15.3 Without prejudice to Clause 15.2, and subject to Clause 15.4, Royal Mail may vary the terms of this Agreement upon giving the Customer at least three calendar months’ prior notice in writing.

15.4 Royal Mail may vary the terms of this Agreement upon giving the Customer no less than one calendar month’s notice if a change is necessary because of changes to Royal Mail’s operational network, routings (including transport connections), the location of any Delivering Office or structural or procedural changes affecting a Delivering Office or relevant inward mail centre.

15.5 When giving notice of a variation to the terms of this Agreement under Clause 15.4, Royal Mail will where reasonably practicable to do so give greater advance notice than one calendar month to the Customer.

16 **Dispute resolution**

16.1 If any dispute, difference or question (“Dispute”) between Royal Mail and the Customer arises out of or in connection with this Agreement, the Parties must give notice in writing to the other (the “Dispute Notice”) to escalate the Dispute to the Authorised Representative. If the Dispute remains unresolved for fourteen days from the date of the notice to the Authorised Representative, the Dispute must be escalated to the Senior Representatives who must use their reasonable endeavours to resolve the Dispute within thirty days of the date of the escalation to them.

16.2 Without prejudice to Clause 16.1, if any Dispute is not resolved within the timescales for the referral to the final level of escalation set out in Clause 16.1, then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) model conditions. To initiate the mediation a Party must give a notice in writing (the “Mediation Notice”) to the other Party requesting a mediation in accordance with this Clause. The referring Party must send a copy of the Mediation Notice to CEDR.
16.3 Any mediation is to take place not later than 28 days after the date of service of the Mediation Notice. If there is any issue on the conduct of the mediation which the Parties cannot agree within 14 days after the date of the Mediation Notice then CEDR will, at the request of either Party, decide the issue. If the Dispute is not resolved within 42 days after the date of service of the Mediation Notice then the parties may litigate the Dispute in accordance with Clause 18.1.

16.4 Except where required to preserve the legal rights of Royal Mail or the Customer or to obtain interim relief, neither Royal Mail nor the Customer may commence Court proceedings unless the Dispute remains unresolved after having followed the dispute resolution process in this Clause 16 or any other alternative means of resolving the Dispute chosen by the Parties under Clause 16.5.

16.5 After a failure of any part of the dispute resolution process set out above to resolve the Dispute the Parties may elect by agreement in writing to pursue any other means of alternative dispute resolution.

17 **Subcontracting and assignment etc**

17.1 Subject to Clause 17.2, the Customer may not subcontract any of its obligations or assign or transfer the whole or any part of this Agreement without the prior written consent of Royal Mail.

17.2 Subject to Clause 17.3 of the Agreement, the Customer may subcontract its obligations to make a Collection of Mail for delivery to the Customer to a subcontractor or in relation to its obligations for Delivery it may use a subcontractor to receive a Delivery to process Mail for the Customer. The Customer must notify Royal Mail when it is subcontracting its obligation in this way and identify the subcontractor in writing to Royal Mail prior to the commencement of the subcontracting.

17.3 In relation to permitted subcontracting under Clause 17.2 or if Royal Mail agrees to any request by the Customer to subcontract the whole or part of this Agreement, the Customer:

- 17.3.1 retains liability for all its obligations under the Agreement and will be liable for the acts or omissions of the subcontractor;

- 17.3.2 must ensure that the subcontractor complies with the obligations in this Agreement including but not limited to Clause 13;

- 17.3.3 must ensure that any subcontractor has any necessary licences for postal service required under the Act in order to collect or deliver Mail for the Customer.
18. **General**

18.1 This Agreement is subject to English Law. The Parties agree to submit to the exclusive jurisdiction of the English courts.

18.2 The failure of either Party to enforce or to exercise, at any time or for any period, any term of, or right arising under to this Agreement does not constitute, and will not be construed as a waiver of such term or right and will not affect the Party’s rights later to enforce or exercise it.

18.3 For the avoidance of doubt, a person who is not Party to this Agreement has no right under the Contracts (Rights of Third Parties Act) 1999 to enforce any term of this Agreement.

18.4 Unless agreed otherwise in writing, this Agreement and the documents referred to in this Agreement supersede any previous agreements or arrangements between the Parties and embody the entire understanding between the Parties. There are no additional terms or obligations other than those contained in this Agreement.

18.5 If any Clause or part of a Clause of this Agreement is or is found by any authority or court of competent jurisdiction to be, invalid, illegal or unenforceable, any invalidity, illegality or unenforceability will not effect the other Clauses or parts of such Clauses of this Agreement, all of which will remain in full force and effect.

18.6 This Agreement may be signed in counterparts, each of which will together constitute one and the same instrument.
Schedule 1
Service description

1 Service overview

1.1 Royal Mail will provide the Services for the Location on Working Days.

1.2 Royal Mail will only process and Deliver or make available for Collection Available Mail and the Customer acknowledges that:

(a) Royal Mail does not guarantee the volume of Available Mail for each Delivery or Collection; and

(b) mail arrives at the Delivering Offices at variable times each Working Day and so volumes of Available Mail may fluctuate each Working Day.

1.3 This paragraph applies if the Preface indicates that Residual Mail will be held over for the Customer to collect using Mail Collect:

1.3.1 The Customer must apply for a Mail Collect service and agree to and comply with its terms. The terms and conditions for the Mail Collect service will apply to any collection or non collection by the Customer of Mail in connection with that Mail Collect service.

1.3.2 The Customer must notify Royal Mail separately under this Agreement if the Customer's Mail Collect service ends for any reason. Any alternative arrangements for Residual Mail may incur additional charges under this Agreement.

1.4 This paragraph 1.4 applies if the Preface indicates Special Delivery Mail will not be Delivered or made available for Collection under this Agreement. Royal Mail will deliver items of Mail sent by Special Delivery in accordance with the terms of the relevant Special Delivery service and will not be a Delivery under this Agreement or otherwise subject to this Agreement.

1.5 This paragraph 1.5 applies if the Agreement Preface indicates Special Delivery items will be Delivered or made available for a Collection as part of this Agreement. Royal Mail will Deliver or make available for a Collection items of Mail sent by Special Delivery that are Available Mail in accordance with the Services. Any Special Delivery Mail that is Residual Mail will be delivered in accordance with the specification of the relevant Special Delivery service and, will not be a Delivery under this Agreement. Royal Mail will not hold any Special Delivery items as part of the instructions for other Residual Mail given by the Customer.

1.6 This paragraph 1.6 applies if the Preface indicates Signed For items will not be Delivered or made available for Collection under this Agreement. Royal Mail will
deliver items of Mail sent by Signed For in accordance with the terms of the relevant Signed For service (in order to obtain signature) and will not be a Delivery under this Agreement or otherwise subject to this Agreement.

1.7 This paragraph 1.7 applies if the Preface indicates Signed For items will be Delivered or made available for a Collection as part of this Agreement. Royal Mail will Deliver items of Mail sent by the Signed For that are Available Mail as set out below in Schedule 1. Any Signed For Mail that is Residual Mail will be delivered in accordance with the specification of the relevant Signed For service and will not be a Delivery under this Agreement. Royal Mail will not hold any Signed For items as part of the instructions for other Residual Mail given by the Customer.

2 Sortation

2.1 This paragraph 2 only applies if the Preface indicates that Sortation will be provided.

2.2 Royal Mail will sort Available Mail into the Selections (including the Residue Selection). This will include any Residual Mail held over from the previous Working Day if the Preface indicates Residual Mail will be held over in this way.

2.2 The Customer may apply to Royal Mail to increase or decrease the number, name or type of Selections as appropriate using the relevant application or change request form available from Royal Mail. The ability of Royal Mail to implement any such changes will be dependent on the information provided by the Customer, and the complexity of the requirements. Royal Mail will be entitled amend the Charges to accommodate any changes in the number of Selections. Implementation of any change will require at least four weeks’ notice and is subject to the agreement of Royal Mail. Changes may take longer than four weeks and if this is the case, Royal Mail will advise the Customer accordingly.

3 Diversion

3.1 This paragraph 3 applies only if the Preface indicates that a Diversion service will be provided.

3.2 Royal Mail provide the following services:

3.2.1 Mail addressed to Address A will be collected from the Diverting Office and delivered to Address B each Working Day.

3.2.2 Only Available Mail for Address A at the Diverting Office that is available by on a Working Day will be diverted that Working Day to Address B. Any
Residual Mail for Address A will be held at the Delivering Office until the following Working Day.

3.2.3 If the Preface indicates that there are Addresses D and E, these will be diverted from Address D to E in the same way. This applies to Addresses F to G and so on.

4 Delivery

4.1 This paragraph applies if the Preface indicates that Royal Mail will make a Delivery or Deliveries under this Agreement.

4.2 Royal Mail will Deliver Available Mail to the Location each Working Day at the Delivery Times.

4.3 On each Delivery to the Location, the Royal Mail employee will collect any Royal Mail Property from the last Delivery which is available for collection. The Customer must ensure Royal Mail Property is ready for collection at that time.

4.4 The Customer must sign any weigh bill presented by the Royal Mail employee making the Delivery to acknowledge receipt of each Delivery.

4.5 If the Customer is unable to unload a Royal Mail vehicle on Delivery by Royal Mail, the Customer may request and Royal Mail may agree Demurrage. In these circumstances, the Customer must:

4.5.1 pay the Demurrage Charges;

4.5.2 make the trailers available for collection by Royal Mail for the next Delivery (and in the case of ad hoc requests for Demurrage either for the next Delivery or if permitted by Royal Mail within 72 hours of receipt of the trailer or vehicle);

4.5.3 comply with any other terms and conditions set by Royal Mail for the Demurrage at the time of request or during the period of Demurrage;

4.5.4 accept full responsibility and risk for all Royal Mail Property left with the Customer;

4.5.5 fully indemnify and keep Royal Mail fully indemnified in respect of any loss, theft or damage of or to the Royal Mail Property, including without limitation, the vehicle, trailer or its contents.
5 Collection

5.1 This paragraph 5 applies if the Preface indicates that Royal Mail prepare Available Mail for Collection under this Agreement.

5.2 Royal Mail will prepare for collection Available Mail for the Customer to collect from the Delivering Office at the Collection Point by the Collection Time on each Working Day.

5.3 The Customer must collect Available Mail from the Delivering Office by the time indicated in the Preface or it will be treated as Residual Mail.

5.4 The Customer’s representative must produce identification upon arriving at the Delivering Office as required by Royal Mail from time to time.

5.5 The Customer must ensure it returns any Royal Mail Property to Royal Mail at the next Collection.

5.6 The Customer must sign any weigh bill presented by the Royal Mail employee at the time of Collection.

6 Volumes

6.1 This paragraph 6 applies if the Preface indicates that Royal Mail will provide Sortation or otherwise indicates that there are Agreed Volumes for the Services.

6.2 The Service has been set up and the Basic Charges are agreed on the basis of the Agreed Volumes. The Parties acknowledge that as Royal Mail’s resources are planned according to the Agreed Volumes. Where Mail actually received significantly exceeds the Agreed Volumes expected on any particular Working Day, Royal Mail may not have resources in place to process that Mail. As a result, paragraphs 6.5 and 6.6 set out how Royal Mail may act in those circumstances.

6.3 Royal Mail will charge the Customer for any Mail received in excess of the Agreed Volumes on the basis of the Excess Volume Charge. If the total Volume of Mail per calendar month exceeds the Agreed Volumes Royal Mail may charge the Customer the Excess Volume Charge per 1000 additional items (or part 1000 additional items) by which the Mail exceeds the relevant Agreed Volumes that month.

6.4 Subject to paragraph 6.10, in the event that amount of Mail decreases below the Agreed Volumes, the Customer will continue to be charged the Basic Charges.

6.5 In addition to the rights Royal Mail has under paragraph 6.3, Royal Mail may exercise the rights set out in paragraph 6.6 if the amount of Mail of any Working Day is in excess of the Agreed Volumes (pro-rated for a Working Day) by either:
a) in the case of mechanically sorted mail, in excess of 20% of the mechanically processed part of the Agreed Volumes based on the Ratio; or

b) in the case of manually sorted mail, in excess of 10% of the manually processed part of the Agreed Volumes based on the Ratio.

6.6 Royal Mail may in the circumstances set out in paragraph 6.5:

6.6.1 hold over the Mail in excess of the Agreed Volumes for that day for processing on the next Working Day;

6.6.2 deliver Mail unsorted to the Customer;

6.6.3 deliver the Mail at a later time than the Collection Time or Delivery Time (even where the Customer is due to make a Collection); or

6.6.4 not process Mail in excess of the Agreed Volumes. Royal Mail will however use its reasonable endeavours to make the Mail available for the Customer to collect at such time and place as Royal Mail may specify.

6.7 The course of action which Royal Mail will take to manage excess volumes of Mail (under paragraph 6.5 and 6.6) has been agreed in advance with the Customer and is set out in the Preface.

6.8 The Customer must use its reasonable endeavours to give Royal Mail at least 30 days’ advance notice of any expected increase in volumes of Mail above 20% of the pro-rated Agreed Volumes for more than two Working Days. This is intended to allow Royal Mail to plan for appropriate additional staff resourcing to try and avoid Royal Mail needing to exercise its rights under paragraph 6.5 and 6.6. If the increase in volumes is to be for more than ten Working Days the Customer must give at least two months’ notice of any expected increase in volumes of Mail.

6.9 The Customer acknowledges that the Charges are based on the posting profile including but not limited to the Agreed Volumes, the Ratio, the format of mail and the number of Deliveries or Collections. The initial posting profile is based on the information provided by the Customer to Royal Mail or sampling by Royal Mail and is subsequently based on sampling traffic profile information gathered by Royal Mail or in the Forecast.

6.10 Royal Mail may vary the Charges in accordance with Clause 16.2 if:

6.10.1 the Excess Volume Charge applies over a consecutive three month period; or
6.10.2 the Customer notifies Royal Mail of a permanent increase (or decrease) in volumes of more than 10% of the monthly Agreed Volumes.

6.11 Royal Mail is only obliged to consider one request from the Customer in each Year of the Agreement to review or vary the Charges as a result of a permanent decrease in actual volumes as set out in paragraph 6.10.2 above.

6.12 This paragraph 6.12 only applies if the Preface indicates that the Agreed Volumes are as set out in the Forecast or where it does not, Royal Mail has agreed for subsequent Years of the Agreement that the Agreed Volumes will be on the basis of a Forecast prepared under this paragraph. The Forecast for the first Year will be as specified in Annex 2. The Customer must at least four months prior to the end of the Year submit its proposal for a Proposed Forecast to Royal Mail for the following Year ("Proposed Forecast"). Royal Mail will produce a Forecast to apply for the following Year in consultation with the Customer and taking into account the Proposed Forecast submitted by the Customer. Royal Mail may produce a Forecast that differs from the Proposed Forecast if, from its sampling over the preceding year of the Agreement, following and in discussion with the Customer, in its reasonable opinion, Royal Mail believes the amounts of Mail that will be received will be different from that indicated by the Proposed Forecast.

Schedule 2
Royal Mail Property

1 Loan of Royal Mail Property

1.1 Royal Mail may from time to time supply Royal Mail Property by way of loan for the purpose of facilitating Collection by the Customer or Delivery by Royal Mail.

1.2 Royal Mail has the final decision whether to supply Royal Mail Property (and the type of or quantities of Royal Mail Property to be supplied) to the Customer and may withhold its approval or grant it on such conditions it deems appropriate and in any case, any supply of Royal Mail Property is subject to availability of relevant Royal Mail Property in any Delivering Office.

1.3 Without prejudice to any other rights or remedies Royal Mail may have, if the Customer fails to comply with this Agreement or Schedule in any respect, Royal Mail may suspend provision of Royal Mail Property to the Customer.

2 Customer’s obligations

2.1 The Customer must use the Royal Mail Property for the sole purpose of transporting Mail or for the receipt of Mail from Royal Mail Delivering Offices to the Location (or other Customer premises as may be authorised in writing by Royal Mail).
2.2 Without prejudice to paragraph 2.1 above, the Customer must ensure that Royal Mail Property is not used to transport Mail or items between the Customer and any third party, between any third parties, between any premises (other than as authorised by Royal Mail in writing), for storage, for preparation of outgoing mail or items or for any purpose not specified in paragraph 2.1 above. In particular but without limitation, the Customer must not allow any Royal Mail Property to be used in connection with mail or items that are to be collected, conveyed or delivered by any third party except in respect of permitted subcontracting under this Agreement.

2.3 The Customer must keep the Royal Mail Property secure, in good condition, fair wear and tear permitted, and must report any loss or damage to the Royal Mail Property to Royal Mail immediately.

2.4 The Customer must ensure that its custody, use, management, loading, unloading and transportation of Royal Mail Property complies with all applicable health and safety laws and regulations. In particular it must comply with Royal Mail's health and safety procedures (as may be notified to the Customer from time to time) regarding the Royal Mail Property.

2.5 The Customer must not remove from the Royal Mail Property any labels or markings placed on Royal Mail Property by Royal Mail or the manufacturers of the Royal Mail Property and must not allow any other labels or markings of any kind to be placed on Royal Mail Property without the prior written consent of Royal Mail.

2.6 The Customer must not create or allow to be created any lien or charge over the Royal Mail Property nor may it sell, hire, lend, charge or otherwise dispose of or allow any party to use or take possession of the Royal Mail Property without the prior written consent of Royal Mail.

2.7 The Customer must sign any Royal Mail document presented to the Customer to acknowledge receipt of the Royal Mail Property in the quantities stated in the weighbill for each Collection or Delivery including any Royal Mail Property. Any error in the details shown on the weighbill must be agreed with Royal Mail and corrected at the time of the Collection or Delivery.

3 Liability for loss and damage

3.1 The Customer is liable for the reasonable costs incurred by Royal Mail in relation to all Royal Mail Property lost, stolen, damaged, destroyed or failed to return to Royal Mail whilst in the Customer’s custody, control or possession or that of its servants or agents, however that loss, damage or destruction was caused, except where it was caused as a result of the negligence or wilful act of Royal Mail, its servants or agents.
3.2 The Customer must maintain insurance in respect of its potential liability under this Schedule to an appropriate amount with a reputable insurer at its own expense and must produce evidence of such insurance to Royal Mail on request.

3.3 Without prejudice to its other obligations under this Agreement, in the event of a receiver, manager, liquidator, administrator or administrative receiver being appointed in respect of the Customer, the Customer must immediately inform such person that the Royal Mail Property is the property of Royal Mail and does not form part of the Customer’s assets or undertaking.

3.4 The Customer must indemnify and keep indemnified Royal Mail against any cost, liability, proceeding or expense suffered or incurred by Royal Mail as a result of the Customer’s custody, use or management of the Royal Mail Property (save where this arises as a result of any negligent act or omission on the part of Royal Mail) including without limitation as a result of any negligent or wrongful act or omission or any breach of statutory duty on the part of the Customer, its servants or agents in the custody, use or management of the Royal Mail Property or any of it or any breach by the Customer of its obligations under this Agreement.

3.5 All terms, conditions and warranties implied by statute or at law with regard to the Royal Mail Property are excluded from this Agreement.