

## **Appendix 2 – PCOPA (POSTAL COMMON OPERATIONAL PROCEDURES AGREEMENT)**

**Amended on 1 June 2012**

**The Postal Operators specified in Schedule 1**

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## **Postal Common Operational Procedures Agreement**

**Dated 2006**

**Between the Postal Operators listed in Schedule 1**

### **Recitals**

- A. Postal Operators may convey letters subject to various Regulatory Conditions, including, in the case of Royal Mail, an obligation to provide a universal postal service in the United Kingdom.
- B. Regulatory Conditions include a Code which sets out standards in accordance with which Regulated Postal Operators are to deal with misdirected and miscollected mail (and misdirected complaints or other enquiries).
- C. Regulatory Conditions also require Regulated Postal Operators to be party to this Agreement.
- D. This Agreement sets out the terms and conditions on which Regulated Postal Operators are to treat misdirected and miscollected mail and approach related issues insofar as Regulated Postal Operators do not have alternative arrangements in place which meet the requirements of the Code (including the Code Objectives).

### **It is agreed:**

#### **1. General Interpretation and application**

- 1.1 Nothing in this Agreement shall be interpreted or construed as compromising the requirements of the Code (including the Code Objectives).
- 1.2 In this Agreement, unless the context otherwise requires:
  - (a) references to this Agreement means this Agreement as amended, novated, modified or supplemented from time to time;
  - (b) references to clauses, Schedules and paragraphs are to clauses, Schedules and paragraphs of this Agreement;
  - (c) references to a party means a party to this Agreement;
  - (d) references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other statutory provisions from time to time and shall include references to any statutory provisions of which they are re-enactments (whether with or without modification);
  - (e) references to an agreement or instrument are to that agreement or instrument as amended, novated, modified, supplemented or replaced from time to time;
  - (f) the headings and references to headings are included for convenience of reference only and shall be disregarded in construing this Agreement;

- (g) use of the singular includes the plural and vice versa;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) the words **include**, **including** and **in particular** shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of the foregoing words; and
- (j) **delivered** or **delivered to an addressee** shall be interpreted in accordance with section 125(3)(c) of the Postal Services Act 2000.

1.3 This Agreement shall not apply insofar as:

- (a) inconsistent with, and it deals with matters provided for in, the terms and conditions of any Access Agreement, Royal Mail Access Agreement or Intermediary Agreement to which the relevant party to this Agreement is party;
- (b) inconsistent with, and it deals with matters provided for in, the terms and conditions of any Access Code;
- (c) a party has alternative arrangements in place with another party relating to the treatment of misdirected and miscollected mail provided that those arrangements enable, so far as may be necessary, compliance with and are not inconsistent with the Code.

1.4 For the avoidance of doubt, any "alternative arrangements" for the purposes of clause 1.3(c) are not required:

- (a) to be on the same terms and conditions set out in this Agreement;
- (b) to have been approved by Ofcom.

## 2. Definitions

In this Agreement, unless the context otherwise requires:

<b>Act</b>	means the Postal Services Act 2011;
<b>Access Agreement</b>	means an agreement (other than a Royal Mail Access Agreement) between Regulated Postal Operators which permits access to a Regulated Postal Operator's Postal Facilities;
<b>Accession Agreement</b>	means the agreement by which an Applicant Party accedes to this Agreement in accordance with clause 10, the form of which is set out in Schedule 3;
<b>Access Code</b>	means a code relating to access to Royal Mail's Postal Facilities established in accordance with regulatory condition USPA 2;
<b>Applicant Party</b>	has the meaning ascribed to it in clause 10.1;
<b>Affiliate</b>	means in relation to any company, a company which is either a holding company or a subsidiary of such

company, or a company which is a subsidiary of a holding company of which such company is also a subsidiary (such terms as defined in the Companies Act 2006);

<b><i>Change</i></b>	means a change to this Agreement effected in accordance with clause 12;
<b><i>Change Notice</i></b>	has the meaning ascribed to it in clause 12.2;
<b><i>Change Proposal</i></b>	means a proposal to change this Agreement submitted in accordance with clause 12.4;
<b><i>Charges</i></b>	means the charges payable for provision of the Services as set out in Schedule 2;
<b><i>Code</i></b>	means the code relating to common operational procedures entitled "Common Operational Procedures – A Code of Practice", set out in the Annex to CP 5, compliance with which is required by regulatory condition CP 5;
<b><i>Code Letter</i></b>	has the meaning ascribed to it in the Code;
<b><i>Code Objectives</i></b>	has the meaning ascribed to it in the Code;
<b><i>Commencement Date</i></b>	means 1 January 2006;
<b><i>Confidential Information</i></b>	means all information of a confidential nature disclosed, whether in writing, orally or by any other means (directly or indirectly) by one party to another party in respect of the subject matter of this Agreement;
<b><i>Discontinuance Date</i></b>	has the meaning ascribed to it clause 10.19;
<b><i>Discontinuing Party</i></b>	has the meaning ascribed to it in clause 10.18;
<b><i>Exchange Centre</i></b>	means a Royal Mail Centre or Operator Centre, as the case may be, which the relevant party will attend at least every other Working Day;
<b><i>Exchange Slot</i></b>	has the meaning ascribed to it in clause 5.9;
<b><i>Exchange Window</i></b>	has the meaning ascribed to it in clause 5.8;
<b><i>Expulsion Date</i></b>	has the meaning ascribed to it in clause 10.17;
<b><i>Expulsion Notice</i></b>	has the meaning ascribed to it in clause 10.17;
<b><i>Formula Year</i></b>	means a year ending on any 31 March during or immediately before the currency of this Agreement and for the purposes of this Agreement the Formula Years are numbered as follows:

t	to year 31 March
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0	2012
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1	2013
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2 2014

3 2015

with 1 added for each subsequent year;

***Intellectual Property Rights***

means any copyright, database rights, designs (registered and unregistered), patents and trade marks and including any inventions, processes, software, formulae, technology (whether patentable or not), data, drawings, specifications, semiconductor topography rights, business or trade secrets, technical information, confidential information, know-how, business names, trade names, brand names and get-up and any similar rights existing in any country and all legal equitable and other rights in any of them;

***Intermediary Agreement***

means an agreement between a Regulated Postal Operator and Royal Mail (other than a Royal Mail Access Agreement) under which that Regulated Postal Operator delivers Postal Packets to Royal Mail for subsequent conveyance;

***Intended Operator***

means the Regulated Postal Operator which, in accordance with arrangements agreed between that Regulated Postal Operator and its customer, is responsible for the conveyance and delivery of the relevant Code Letters;

***Letter***

has the meaning ascribed to it in the Act but excludes parcels;

***Miscollected Code Letters***

means Code Letters which have been collected in error by a party which is not the Intended Operator;

***Misdirected Code Letters***

means Code Letters, other than Miscollected Code Letters (but, for the avoidance of doubt, including Misposted Code Letters), which have entered the Postal Facilities of a party which is not the Intended Operator in respect of those Code Letters;

***Misposted Code Letters***

means Code Letters which due to customer error have entered the Postal Facilities of a party which is not the Intended Operator in respect of those Code Letters and which have not been delivered to the relevant addressee;

***Non-Exchange Centre***

means a Royal Mail Centre or Operator Centre, as the case may be, in respect of which Misdirected Code Letters should be returned in accordance with clause 7.5;

***Ofcom***

has the meaning ascribed to it in the Act;

***Operator Centres***

has the meaning ascribed to it in clause 5.11;

***Operator Exchange Slot***

means in respect of an Operator Centre that is an

	Exchange Centre, the period of time within (or co-terminous with) the Operator Exchange Window agreed in accordance with clause 5.13;
<b><i>Operator Exchange Window</i></b>	means in respect of an Operator Centre that is an Exchange Centre, the period of time agreed in accordance with clause 5.13;
<b><i>Party Details</i></b>	has the meaning ascribed to it in clause 10.8;
<b><i>Pool</i></b>	has the meaning ascribed to it in clause 7.12;
<b><i>Postal Facilities</i></b>	means the physical and human resources deployed by a Regulated Postal Operator (and, where relevant, by its contractors and agents) for the purpose of providing Postal Services;
<b><i>Postal Operator</i></b>	has the meaning ascribed to it in the Act;
<b><i>Postal Packet</i></b>	has the meaning ascribed to it in the Act but excludes parcels;
<b><i>Postal Services</i></b>	has the meaning ascribed to it in the Act;
<b><i>Prohibited Code Letters</i></b>	means any Postal Packet (including parcels) which contains items and/or material prohibited or restricted by the Scheme;
<b><i>Proposer</i></b>	has the meaning ascribed to it in clause 12.4;
<b><i>Public Holiday</i></b>	has the meaning ascribed to it in s.125(1) of the Postal Services Act 2000;
<b><i>Receiving Operator</i></b>	has the meaning ascribed to it in clause 6.2;
<b><i>Regulated Postal Operator</i></b>	has the meaning ascribed to it under the Definitions of the Regulatory Conditions;
<b><i>Regulatory Condition</i></b>	means a condition imposed by Ofcom under the Act;
<b><i>Relevant Code Letters</i></b>	means Miscollected Code Letters or Misdirected Code Letters, as the case may be;
<b><i>Retail Price Index</i></b>	means the General Index of Retail Prices (for all items) published by the Office of National Statistics (or by any body to which the functions of that Office may be transferred) and if that index is not published for any month, means any substituted index or index figures published by that Office for that month; and in the absence of any substituted index, such other index as Ofcom may, after consultation with the parties, determine;
<b><i>Return Manifest</i></b>	has the meaning ascribed to it in clause 7.7;
<b><i>Royal Mail Access Agreement</i></b>	means an agreement between Royal Mail and a Regulated Postal Operator or customer entered into pursuant to USPA 1 or USPA 2 which permits access to Royal Mail's Postal Facilities;

<b><i>Royal Mail</i></b>	means Royal Mail Group Ltd registered in England and Wales with company number 4138203 and having its registered office at 100 Victoria Embankment London EC4Y 0HQ;
<b><i>Royal Mail Centres</i></b>	means Royal Mail's mail centres
<b><i>Scheme</i></b>	means the Successor Postal Services Company Inland Letter Post Scheme 2001 made pursuant to section 89 of the Postal Services Act 2000;
<b><i>Secretary</i></b>	has the meaning ascribed to it in clause 11.1;
<b><i>Sender</i></b>	in relation to any letter or other communication, means the person whose communication it is;
<b><i>Services</i></b>	means the services of identification, extraction and repatriation of and otherwise dealing with Misdirected Code Letters more particularly described in clauses 6 and 7;
<b><i>Standard Payment Terms</i></b>	means in respect of each party, that party's standard terms as to payment of invoices or charges (including the frequency with which invoices may be rendered, the period of time in which an invoice must be paid, and any interest which may be charged in respect of late payment) which it offers its customers;
<b><i>Users</i></b>	has the meaning ascribed to it in the Act;
<b><i>USPA Condition</i></b>	means a condition imposed by Ofcom under section 38 of the Act;
<b><i>Withdrawal Date</i></b>	has the meaning ascribed to it in clause 10.12;
<b><i>Withdrawal Notice</i></b>	has the meaning ascribed to it in clause 10.11;
<b><i>Withdrawing Party</i></b>	has the meaning ascribed to it in clause 10.11;
<b><i>Working Day</i></b>	means any day which is not a Sunday or Public Holiday.

### **3. General Obligations**

#### ***Good Faith***

- 3.1 The parties shall, in exercising their respective rights and complying with their respective obligations under this Agreement, at all times act in good faith.

#### ***Standard of Conduct***

- 3.2 Without prejudice to all other obligations of the parties under this Agreement, each party shall, in its dealings with each other party for the purpose of, and in the course of, performance of its obligations under this Agreement, act with due efficiency and economy and in a timely



manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced Regulated Postal Operator acting in accordance with the Code (including the Code Objectives).

#### **4. Commencement and duration**

4.1 This Agreement shall have effect on and from the Commencement Date.

4.2 This Agreement shall have no fixed duration.

#### **5. Designation of Centres**

##### *Royal Mail Centres*

5.1 Subject to the other provisions of this clause 5, each party shall be entitled to give Royal Mail 20 Working Days' notice of those Royal Mail Centres which are to constitute, as the case may be:

(a) Exchange Centres; and

(b) Non-Exchange Centres.

5.2 Pending expiry of the notice period of 20 Working Days provided for in clause 5.1, Royal Mail Centres in respect of the relevant notifying party shall, unless otherwise agreed, be deemed to constitute Non-Exchange Centres.

5.3 If a party makes no notification in accordance with clause 5.1, that party shall be deemed to have notified Royal Mail that all of the Royal Mail Centres in respect of that party continue to constitute Non-Exchange Centres.

5.4 If a party requires to change its designation of a Royal Mail Centre as an Exchange Centre or Non-Exchange Centre, as the case may be, made pursuant to clause 5.1, it shall give Royal Mail 10 Working Days' notice of the revised designation.

##### *Changes to Royal Mail Centres*

5.5 If Royal Mail requires to change the list of Royal Mail Centres, Royal Mail shall give 20 Working Days' notice of the proposed changes to each party and Ofcom.

5.6 On receipt of any notice in accordance with clause 5.5, a party shall be entitled to notify Royal Mail of any changes to that party's designation of a Royal Mail Centre as an Exchange Centre or as a Non-Exchange Centre, as the case may be, made pursuant to clause 5.1, as a result of the notified changes to the Royal Mail Centres and shall give Royal Mail 10 Working Days' notice of any revised designation.

5.7 If, in respect of any changed or new Royal Mail Centres notified in accordance with clause 5.5, a party makes no notification in accordance with clause 5.6 that party shall be deemed to have notified Royal Mail that the changed or new Royal Mail Centres constitute Non-Exchange Centres.

##### *Exchange Window and Slot for Royal Mail Centres*

- 5.8 The hours between 07.30 and 12.00 on any Working Day shall (unless otherwise agreed) constitute the **Exchange Window** in respect of an Exchange Centre which is a Royal Mail Centre.
- 5.9 The **Exchange Slot** shall (unless otherwise agreed) be the period of 60 minutes within the Exchange Window of which such period a party shall give Royal Mail at least 5 Working Days' notice before using that Exchange Slot for the first time.
- 5.10 If a party requires to change the Exchange Slot notified in accordance with clause 5.9 at any time, it shall give Royal Mail one Working Day's notice of the revised Exchange Slot and Royal Mail shall use all reasonable endeavours to make that revised Exchange Slot available. If Royal Mail is unable to make that revised Exchange Slot available, it shall make available an Exchange Slot which is as close as reasonably practicable to that revised Exchange Slot.

#### *Operator Centres*

- 5.11 A party (including Royal Mail where Royal Mail may constitute an Intended Operator) may agree with another party geographical locations or regions (**Operator Centres**) for the purposes of designating those locations or regions as between those parties as Exchange Centres or Non-Exchange Centres, as the case may be.
- 5.12 A party shall be entitled to notify another party which Operator Centres as between those parties shall constitute, as the case may be:
- (a) Exchange Centres; and
  - (b) Non-Exchange Centres.
- 5.13 A party may agree with another party the period of time on any Working Day which will constitute an **Operator Exchange Window** and the period of time within (or co-terminous with) the Operator Exchange Window which will constitute the **Operator Exchange Slot** in each case in relation to any Exchange Centres notified in accordance with clause 5.12.
- 5.14 If a party requires to change the Operator Exchange Slot agreed in accordance with clause 5.13, that party shall give the other party one Working Day's notice of the revised Operator Exchange Slot and the other party shall use all reasonable endeavours to make that revised Operator Exchange Slot available. If the other party is unable to make that revised Operator Exchange Slot available, it shall make available an Operator Exchange Slot which is as close as reasonably practicable to that revised Operator Exchange Slot.
- 5.15 If the parties are unable to agree:
- (a) Operator Centres pursuant to clause 5.11; or
  - (b) Operator Exchange Windows and Operator Exchange Slots, as the case may be, in accordance with clause 5.13,

the provisions of clause 7.5 shall continue to apply and neither party shall have recourse to any form of dispute resolution pursuant to clause 16 in respect of that failure to agree.

## **6. Identification of Relevant Code Letters**

- 6.1 Each party shall use all reasonable endeavours to identify Relevant Code Letters in respect of which that party is not the Intended Operator as soon as reasonably practicable following those Relevant Code Letters entering that party's Postal Facilities.
- 6.2 Where Relevant Code Letters enter the Postal Facilities of a party in respect of which that party is not the Intended Operator, that party for the purposes of this Agreement shall constitute the ***Receiving Operator***.
- 6.3 The Receiving Operator shall, where relevant, sort the Misdirected Code Letters to the Intended Operator of the Misdirected Code Letters pending collection by or return to the Intended Operator in accordance with clause 7.
- 6.4 Miscollected Code Letters identified in accordance with clause 6.1 shall be dealt with in accordance with clauses 7.20 and 7.21.
- 6.5 Misposted Code Letters identified in accordance with clause 6.1 the Intended Operator of which is not clear, shall be dealt with in accordance with clauses 7.22 to 7.25.
- 6.6 Prohibited Code Letters identified in accordance with clause 6.1 shall be dealt with in accordance with clause 7.26.

## **7. Repatriation of Relevant Code Letters**

### *Exchange Centres*

- 7.1 In respect of Misdirected Code Letters identified pursuant to clause 6.1 in an Exchange Centre designated by the Intended Operator of those Misdirected Code Letters, the Receiving Operator shall use all reasonable endeavours to make those Misdirected Code Letters available for collection by the Intended Operator during the immediately following Exchange Slot or Operator Exchange Slot, as the case may be, in respect of that Exchange Centre.
- 7.2 If the Intended Operator does not collect the Misdirected Code Letters within two Working Days of those Misdirected Code Letters being made available for collection at the Exchange Centre, the Receiving Operator shall be entitled to return those Misdirected Code Letters to the relevant Intended Operator in accordance with clause 7.6.

### *Non-Exchange Centres*

- 7.3 In respect of Misdirected Code Letters identified pursuant to clause 6.1 in a Non-Exchange Centre, the Receiving Operator shall return the Misdirected Code Letters to the Intended Operator in accordance with clause 7.5.

### *No Operator Centres*

- 7.4 In respect of Misdirected Code Letters identified pursuant to clause 6.1 where:
- (a) no Exchange Centre or Non-Exchange Centre has been notified in accordance with clause 5.12; or

- (b) in respect of any Exchange Centre (which is an Operator Centre) an Operator Exchange Window or Operator Exchange Slot has not been agreed in accordance with clause 5.13,

the Receiving Operator shall return the Misdirected Code Letters to the Intended Operator in accordance with clause 7.5.

*Standard Return Service*

- 7.5 In respect of Misdirected Code Letters identified pursuant to clause 6.1 in a Non-Exchange Centre or where clause 7.4 applies, the Receiving Operator shall return the Misdirected Code Letters to the Intended Operator such that those Misdirected Code Letters should be received by the Intended Operator within three Working Days of their identification by the Receiving Operator in accordance with clause 6.1.

*Default Return Service*

- 7.6 If clause 7.2 applies, the Receiving Operator shall return the Misdirected Code Letters to the Intended Operator such that those Misdirected Code Letters should be received by the Intended Operator within one Working Day of the time by which by the Intended Operator should have collected such Misdirected Code Letters.

*Hand back of Misdirected Code Letters*

- 7.7 Where a Receiving Operator makes Misdirected Code Letters available for collection in accordance with clause 7.1, the Receiving Operator shall provide to the Intended Operator's driver (or other relevant personnel) a Return Manifest indicating, as relevant:

- (a) the number of Misdirected Code Letters being handed back;
- (b) the number of bags of Misdirected Code Letters being handed back; and
- (c) the location, date and time of hand back.

- 7.8 The Return Manifest may be in electronic form with a paper copy or print out.

- 7.9 The Intended Operator's driver (or other relevant personnel) shall be entitled to:

- (a) check the accuracy of the Return Manifest as to the information required to be indicated on the Return Manifest pursuant to clause 7.7; and
- (b) following any such check, make any corrections (in agreement with the Receiving Operator's relevant personnel) to the Return Manifest which are reasonably necessary.

- 7.10 The Intended Operator's driver (or other relevant personnel) and the Receiving Operator's relevant personnel shall sign the Return Manifest and each retain a copy.

- 7.11 The Return Manifest signed in accordance with clause 7.10 shall constitute hand back of the Misdirected Code Letters by the Receiving Operator to the Intended Operator.

#### *Vehicle access at Exchange Centres*

- 7.12 An Intended Operator shall notify the Receiving Operator of the **Pool** of drivers from which the Intended Operator will select drivers to make collections of Misdirected Code Letters and the vehicle registrations of the vehicles which such drivers will use.
- 7.13 Subject to clause 7.14, the Intended Operator shall only be entitled to use drivers and vehicles to make collections who or which, as the case may be, are selected from the Pool.
- 7.14 If a driver or vehicle in the Pool is unavailable for a reason beyond the Intended Operator's reasonable control, including driver illness, the Intended Operator shall be entitled to use a driver or vehicle not selected from the Pool provided that the Intended Operator notifies the Receiving Operator of the identity of that driver or vehicle registration of that vehicle, as the case may be, at least 1 hour before that driver or vehicle arrives to collect the Misdirected Code Letters.
- 7.15 The Intended Operator shall ensure that its drivers:
- (a) comply with the relevant queuing and other operating procedures of the Receiving Operator; and
  - (b) load their vehicles in accordance with the reasonable requirements of the Receiving Operator.

#### *Security*

- 7.16 In respect of all of the Intended Operator's drivers or other personnel who are to collect Misdirected Code Letters, the Intended Operator shall:
- (a) undertake such security checks that a reasonable and prudent employer or contractor would undertake in the circumstances; and
  - (b) issue identification badges (or other form of identification) which in either case includes a photograph of the driver or other personnel.
- 7.17 The Intended Operator shall procure that its drivers or other personnel show to the Receiving Operator on request the identification issued in accordance with clause 7.16(b).
- 7.18 The Intended Operator shall provide to the Receiving Operator details of an individual (including name and telephone number) who may be contacted in any 24 hour period to address security issues.
- 7.19 The Intended Operator shall co-operate with all reasonable requests by the Receiving Operator in relation to security issues.

#### *Miscollected Code Letters*

- 7.20 If a Receiving Operator identifies Miscollected Code Letters in accordance with clause 6.1, it shall deliver those Miscollected Code Letters to:

- (a) the relevant Intended Operator's customer from whom the Code Letters were miscollected; or
- (b) the Intended Operator of the Miscollected Code Letters

in either case, as soon as reasonably practicable.

- 7.21 If a Receiving Operator elects to deliver Miscollected Code Letters to the relevant customer in accordance with clause 7.20(a), it shall notify the Intended Operator as soon as reasonably practicable that it collected the relevant Miscollected Code Letters and will deliver (or has delivered) them to the relevant customer.

*Misposted Code Letters where Intended Operator or Customer not clear*

- 7.22 If a Receiving Operator identifies Misposted Code Letters in accordance with clause 6.1 the Intended Operator of which is not clear, it shall take all reasonable steps with a view to identifying the relevant Intended Operator or customer.
- 7.23 If the Receiving Operator identifies the relevant Intended Operator in accordance with clause 7.22, it shall:
- (a) notify the Intended Operator that it has the relevant Misposted Code Letters;
  - (b) comply with the reasonable requests of the Intended Operator as to the return or making available for collection of those Misposted Code Letters; and
  - (c) be entitled to charge the Intended Operator for the reasonable costs properly and reasonably incurred by the Receiving Operator in identifying the Intended Operator and returning or making available for collection, as the case may be, the relevant Misposted Code Letters.
- 7.24 If the Receiving Operator identifies the relevant customer in accordance with clause 7.22, it shall:
- (a) notify the customer that it has the relevant Misposted Code Letters;
  - (b) comply with the reasonable requests of the customer as to the return or making available for collection of those Misposted Code Letters; and
  - (c) be entitled to charge the Intended Operator of the Misposted Code Letters, if known, for the reasonable costs properly and reasonably incurred by the Receiving Operator in identifying the customer and returning or making available for collection, as the case may be, the relevant Misposted Code Letters.
- 7.25 If the Receiving Operator is unable to identify the relevant Intended Operator or customer in accordance with clause 7.22, it shall:
- (a) use all reasonable endeavours to deliver (or procure delivery of) the relevant Misposted Code Letters to the relevant addressee; and

- (b) be entitled to charge the relevant addressee for such delivery on the same basis that it would be entitled to charge if it were the Intended Operator of the relevant Misposted Code Letters.

*Prohibited Code Letters*

7.26 If a Receiving Operator identifies Prohibited Code Letters in accordance with clause 6.1, it shall:

- (a) notify the relevant Intended Operator;
- (b) comply with the reasonable requests of the relevant Intended Operator as to the return or making available for collection of those Prohibited Code Letters or such other action to be taken in respect of those Prohibited Code Letters; and
- (c) be entitled to charge the Intended Operator for the reasonable costs properly and reasonably incurred by the Receiving Operator in complying with sub-paragraphs (a) and (b) of this clause 7.26.

**8. Health and Safety**

*Adherence to policies*

- 8.1 Each party shall procure that its personnel and any contractors, agents or franchisees comply with the applicable health and safety policies and reasonable requests relating thereto of the Receiving Operator in relation to the collection of Misdirected Code Letters at a relevant Exchange Centre.
- 8.2 Each party shall provide to the other party a copy of any health and safety policies with which that party expects the other party to comply in accordance with clause 8.1.

*Indemnity*

- 8.3 A party shall indemnify another party against any liability, loss or claim suffered or incurred by that other party as a result of any breach by the party of clause 8.1.
- 8.4 If a party wishes to make a claim under the indemnity in clause 8.3, it shall;
  - (a) notify the other party of the relevant facts giving rise to that claim as soon as reasonably practicable (and in any event within 180 days) of it first becoming aware of those facts;
  - (b) consult with the other party as to the ways in which the circumstances giving rise to that claim and relevant losses connected with or arising from that claim may be prevented, mitigated or restricted;
  - (c) take all reasonable steps to prevent, mitigate and restrict any and all of the same;

- (d) where relevant, not make any admission of liability, agreement or compromise with any person, body or authority in relation to the potential claim without the prior written agreement of the other party;
- (e) where relevant, at all times disclose in writing to the other party all information and documents relating to the potential claim or the matters which will or are likely to give rise to such claim and, if requested by the other party, give the other party and its professional advisers reasonable access to its personnel as the case may be and to any relevant premises, chattels, accounts and records within its power, possession or control to enable the other party and its professional advisers to interview such personnel, and to examine such claim, premises, chattels, accounts, documents and records and to take copies or photographs thereof at the other party's own expense; and
- (f) where relevant, take such action as the other party may reasonably require (including the appointment of solicitors approved by the other party) to avoid, resist, contest or compromise the potential claim or the matters which will or are likely to give rise to such a claim provided the other party shall consult with it prior to taking any material decisions relating to such a claim and reimburse it for all reasonable costs reasonably and properly incurred by it in taking such action required by the other party.

## 9. Charges and payment terms

The Receiving Operator shall be entitled to charge for the Services in accordance with the provisions set out in Schedule 2.

## 10. Parties and Participation

### *Accession procedure*

- 10.1 A person wishing to accede to this Agreement (an **Applicant Party**) shall submit to the Secretary:
  - (a) its Party Details as at the time of application; and
  - (b) an undertaking from the Applicant Party that its Party Details are complete and accurate in all material respects.
- 10.2 On receipt of the items referred to in clause 10.1, the Secretary shall as soon as is reasonably practicable:
  - (a) notify each party of the name of the Applicant Party; and
  - (b) prepare an Accession Agreement for the Applicant Party and send it to the Applicant Party for execution.
- 10.3 On receipt of an Accession Agreement duly executed by an Applicant Party, the Secretary shall promptly:
  - (a) execute and deliver the Accession Agreement on behalf of all parties;



- (b) send a certified copy of the Accession Agreement, duly executed by the Applicant Party and the Secretary, to the Applicant Party; and
- (c) give notice of the accession of the Applicant Party to the Applicant Party, each party and Ofcom.

10.4 Subject to and in accordance with the provisions of this clause 10 (and, for the avoidance of doubt, clause 10.5 in particular), each party hereby irrevocably and unconditionally authorises the Secretary to execute and deliver on behalf of such party any Accession Agreement duly executed by an Applicant Party, and to admit the Applicant Party as a party to this Agreement.

*Disputes as to admission*

- 10.5 If:
- (a) there is any dispute as to whether an Applicant Party has fulfilled the requirements in clauses 10.1 to 10.4 and is entitled to be admitted as a party to this Agreement; and
  - (b) Ofcom determines that such Applicant Party has fulfilled such requirements and is entitled to be so admitted, such Applicant Party shall be admitted as a party to this Agreement and the Secretary shall forthwith execute and deliver an Accession Agreement, duly executed by the Applicant Party, in order to effect such admission (and shall comply with the other provisions of clause 10.3).

*Accession*

- 10.6 The accession of an Applicant Party to this Agreement shall be effective on and from the date of the Accession Agreement.
- 10.7 The admission of any person as a party to this Agreement shall not affect or limit in any way the responsibility of each party to ensure that it complies with each of the requirements of this Agreement applicable to such party, or the rights and obligations of the parties if a party fails so to comply.

*Party Details and Provision of Information to the Secretary*

- 10.8 For the purposes of this Agreement, the **Party Details** of a party (which shall include for the purposes of this clause an Applicant Party) are the following details and documentation of the party:
- (a) its full name and contact details (including principal place of business or registered office, where applicable);
  - (b) the name, address, email address and fax or telephone number of the person for whose attention notices given under this Agreement should be marked; and
  - (c) its Standard Payment Terms.

- 10.9 Each party shall provide its Party Details to the Secretary and ensure that its Party Details for the time being provided to the Secretary remain accurate and complete in all material respects.
- 10.10 The Secretary shall establish and maintain a list containing all Party Details and shall send a copy of that list (as revised and updated from time to time) to Ofcom.

#### *Withdrawal*

- 10.11 Subject to clause 10.13, any party (the **Withdrawing Party**) shall be entitled to withdraw from and cease to be a party to this Agreement by giving notice in writing (other than by email) (a **Withdrawal Notice**) to the Secretary.
- 10.12 The Withdrawal Notice shall specify the time and date (the **Withdrawal Date**), being not less than 15 Working Days after the date of the Withdrawal Notice, with effect from which the Withdrawing Party wishes to withdraw from and cease to be a party to this Agreement.
- 10.13 A party may not withdraw from or cease to be a party to this Agreement (and any Withdrawal Notice shall be of no effect) if, as at 1700 hours on the day which is 2 Working Days prior to the Withdrawal Date:
- (a) any sums accrued and payable under this Agreement by such party (whether or not due for payment and whether or not the subject of a dispute) remain, in whole or in part, to be paid by such party; or
  - (b) such party is subject to any Regulatory Condition by virtue of which it is required to be a party to this Agreement.

#### *Expulsion*

- 10.14 The Secretary shall be entitled to expel a party from this Agreement if
- Ofcom has given its prior written consent to such expulsion.
- 10.15 The Secretary shall notify (other than by email) Ofcom and each other party of its intention to expel a party, at least 20 Working Days before giving an Expulsion Notice to that party.
- 10.16 For the avoidance of doubt, where a party is subject to a Regulatory Condition by virtue of which it is required to be a party to this Agreement, the Secretary shall not be entitled to expel such party.
- 10.17 Where the Secretary is entitled in accordance with clause 10.14 to expel a party, such expulsion shall take effect (and the party shall cease to be a party to this Agreement) at the time and on the date specified by the Secretary in a notice (other than by email) (the **Expulsion Notice**) to such party provided that such date (the **Expulsion Date**) shall not be earlier than 20 Working Days after the date of such notice.

#### *Discontinuance*

- 10.18 Where a party (the **Discontinuing Party**):

- (a) withdraws from and ceases to be a party to this Agreement pursuant to clauses 10.11 to 10.13;
- (b) is expelled from and ceases to be a party to this Agreement pursuant to clause 10.14 to 10.17,

the provisions of clauses 10.19 to 10.22 shall apply.

10.19 With effect from the Withdrawal Date or the Expulsion Date (as the case may be) (the **Discontinuance Date**):

- (a) the Discontinuing Party shall, subject to the provisions of clause 10.20, be automatically released and discharged from all its obligations and liabilities under this Agreement; and
- (b) each other party shall, subject to the provisions of clause 10.20, be automatically released and discharged from all its obligations and liabilities to the Discontinuing Party under the Agreement.

10.20 Any release and discharge referred to in clause 10.19 shall not extend to the rights and liabilities (whether actual, contingent, accrued or otherwise) of a party as at the Discontinuance Date (including, in the case of the expulsion of a party, any accrued rights of each other party in respect of the circumstances giving rise to such expulsion).

10.21 Save as provided in clause 10.19, this Agreement shall, upon the withdrawal or expulsion (as the case may be) of any party, remain in full force and effect and be binding on each of the other parties.

10.22 The Secretary shall, where possible before, and in any event promptly upon, the withdrawal or expulsion of such party, notify the same to each other party and Ofcom.

#### *Amendments to Schedule 1*

10.23 The Secretary shall amend the list of parties specified in Schedule 1 to reflect the accession, withdrawal or expulsion of a party and provide an amended version of Schedule 1 to each party and Ofcom.

### **11. Secretary**

11.1 There shall be a secretary in relation to this Agreement (the **Secretary**) which shall have the powers, functions and responsibilities set out in this Agreement relating to accession, withdrawal and expulsion set out in clause 10.

11.2 The Secretary when acting in that capacity shall:

- (a) act impartially; and
- (b) ensure that this Agreement is given effect without undue discrimination between the parties.

11.3 The Secretary shall be such party as Ofcom may nominate from time to time.

## **12. Variations**

### *General*

12.1 No variation of this Agreement shall be effective unless in writing and (except in the case of any amendment to Schedule 1 made in accordance with clause 10.23) made and approved by Ofcom in accordance with this clause 12.

### *Effecting changes*

12.2 Upon service of a notice (other than by email) signed by Ofcom to the parties (a Change Notice) following any direction given pursuant to the relevant Regulatory Condition relating to the Code, this Agreement shall be changed in accordance with the terms of the Change Notice and a revised version of this Agreement incorporating the relevant changes shall be supplied to all parties.

12.3 A Change to this Agreement shall take effect from the time and date specified in the Change Notice.

### *Change Proposals*

12.4 A proposal to change this Agreement (a **Change Proposal**) may only be made by a party to this Agreement (the **Proposer**).

12.5 A Change Proposal shall be submitted in writing to Ofcom and shall contain the following information in relation to such Change Proposal:

- (a) the name of the Proposer;
- (b) reasonable particulars of the Change Proposal;
- (c) the proposed text to modify the Agreement in order to give effect to the Change Proposal;
- (d) supporting explanation in reasonable detail of the reasons for the Change Proposal;  
and
- (e) any other information or material which Ofcom may request.

## **13. Confidentiality**

13.1 Except as permitted by clause 13.2, any Confidential Information shall be treated as confidential by the parties and any Confidential Information shall not at any time be disclosed to any third party without the prior written consent of the party whose Confidential Information it is.

13.2 Each party shall be entitled in good faith to divulge any Confidential Information without the approval of the party whose Confidential Information it is:

- (a) to any Affiliate of such party;
- (b) to any officer, employee, agent or servant of the party in question or of that party's Affiliate upon obtaining an undertaking of strict confidentiality from such officer, employee, agent or servant;
- (c) to any professional advisers or consultants of such party or that party's Affiliate upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (d) to the extent required by the Act, any Regulatory Condition, the Financial Services and Markets Act 2000, any other applicable law, the rules of any stock exchange or regulatory body or any written request of any taxation authority or auditors of the relevant party;
- (e) to the extent that it has become available to the public other than as a result of any breach of obligation of confidence; and
- (f) to the extent ordered by any court or tribunal of competent jurisdiction.

#### **14. Intellectual Property**

- 14.1 Any Intellectual Property Rights arising from this Agreement shall vest in the party responsible for the creation of those rights. Where the Intellectual Property Rights have been created jointly the Intellectual Property Rights shall vest in the creating parties jointly.
- 14.2 Each party shall inform each other party of all applications for trade marks, patents or for registration of designs or any other acts regarding protection or exploitation in respect of all Intellectual Property Rights made as a result of the performance of its obligations under this Agreement. Where other parties have contributed to the creation of such Intellectual Property Rights, consent shall be sought prior to any application or other acts by the other parties and/or those parties shall be entitled to join in any such applications or other acts.
- 14.3 Each party undertakes (at its cost) to execute such further documents or perform such further acts as the other party may reasonably request to give effect to the provisions of this clause 14 and hereby irrevocably appoints the other party as its agent to execute such documents and perform such acts on its behalf should it fail to do so within a reasonable period following a request to do so from the other party.

#### **15. Liability and related issues**

- 15.1 For the purposes of this clause 15, references to a party include any of its officers, employees or agents.
- 15.2 The liability of one party to the other party under this Agreement (including under the indemnity in clause 8) shall not include:
  - (a) loss of profits or revenue;
  - (b) loss of business;

- (c) loss of contracts;
- (d) indirect, special, incidental or consequential loss or damage; and
- (e) claims of third parties for any of the matters referred to in sub-clauses (a) to (d) above.

15.3 Nothing in this Agreement shall exclude or limit the liability of a party for death or personal injury resulting from the negligence of such party.

15.4 Each party acknowledges and agrees that the other party holds the benefit of the provisions of this clause 15 for itself and as trustee and agent for its officers, employees and agents.

15.5 Each provision of this clause 15 shall be construed as a separate and severable contract term, and shall remain in force and effect and shall continue to bind the parties even if this Agreement is terminated.

15.6 Each party acknowledges and agrees that the provisions of this clause 15 are fair and reasonable.

## **16. Arbitration and Disputes**

### *Negotiation*

16.1 If a dispute arises out of or in connection with this Agreement, a party may, by notice (other than by email), require the other party with whom it is in dispute to seek to resolve the dispute by negotiation in good faith.

### *Arbitration*

16.2 If the parties fail to resolve any dispute under clause 16.1 within 28 days after the notice referred to in clause 16.1, either party may refer the dispute for determination by arbitration pursuant to the Chartered Institute of Arbitrators Arbitration Rules (2000 Edition) (as amended from time to time) and such dispute shall be determined by arbitration.

16.3 Notwithstanding clauses 16.1 and 16.2, if either party considers that the matter to be arbitrated requires urgent resolution, it shall:

- (a) give notice (other than by email) to the other party to that effect, with its reasons, and require the matter to be discussed between at least one director (or officer of similar status) of each party; and
- (b) if the relevant directors or officers have not met or have otherwise failed to resolve such dispute within two Working Days of the notice given under clause 16.1, the party who gave such notice shall be entitled to refer the matter forthwith for determination by arbitration and to apply to the arbitrator for rules of procedure which will lead to urgent resolution of the matter.

### *Mediation*

- 16.4 Notwithstanding clauses 16.1 to 16.3, the parties may agree to attempt to settle any dispute arising out of or in connection with this Agreement by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

*Interim Relief*

- 16.5 Nothing in this Agreement shall prevent a party from applying to the court for interim relief pending resolution of a dispute.

*Debt Recovery*

- 16.6 If a party fails to pay Charges in accordance with the relevant Standard Payment Terms, such unpaid Charges shall constitute a debt due and owing from the party which has failed to pay the Charges and:

- (a) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (b) clauses 16.2 to 16.4 shall not apply to any proceedings commenced under this clause 16.6.

**17. Third Parties**

- 17.1 Subject to clause 17.2, nothing in this Agreement is intended to confer on any person any benefit or any right to enforce any term of it which that person would not have had but for the operation of the Contracts (Rights of Third Parties) Act 1999.
- 17.2 Ofcom shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as it has been granted under this Agreement.

**18. General**

*Notices*

- 18.1 Save as otherwise expressly provided in this Agreement, any notice or other communication to be given by one party to another under or in connection with the matters contemplated by this Agreement shall be addressed to the recipient and sent to the address, fax number or email address of the relevant party provided under clause 18.3.
- 18.2 Such notice or other communication shall be in writing and shall be delivered by hand or sent by first class prepaid post or fax or email, as the case may be, and shall be deemed to have been received:
- (a) in the case of delivery by hand, when delivered;
  - (b) in the case of first class prepaid post, on the second day following the day of posting;
  - (c) in the case of fax (subject to confirmation of uninterrupted transmission by a transmission report) where such transmission occurs before 5.00 pm, on the day of and, in any other case, at 9.00 am on the day immediately following, transmission; or

- (d) in the case of email upon sending, subject to receipt by the sender of a "delivered" confirmation (provided that the sender shall not be required to produce a "read" confirmation).

*Contact details*

- 18.3 Each party shall provide to all other parties the name, address, email address and fax or telephone number of the person for whose attention notice given under this Agreement is to be marked.

*Assignment*

- 18.4 No party shall assign, transfer (or purport to assign or transfer) any of its rights or obligations under this Agreement.

*No Partnership or Agency*

- 18.5 Nothing in this Agreement is or shall be deemed to constitute a partnership between the parties nor, except as may be expressly set out in this Agreement, constitute either party the agent of the other party for any purpose.

*Waiver*

- 18.6 No delay by or omission of any party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof.

*Entire Agreement*

- 18.7 Subject to clause 1.3, this Agreement (including any Accession Agreements) contains or expressly refers to the entire agreement between the parties with respect to the subject matter thereof, and supersedes all previous agreements or understandings between the parties with respect thereto; and any warranty, condition or other term implied at law or by custom is (to the fullest extent permitted by law) expressly excluded therefrom.
- 18.8 Each party acknowledges that in entering into or acceding to this Agreement it does not rely on any representation, warranty or other understanding not expressly contained in this Agreement.

*Counterparts*

- 18.9 This Agreement may be executed in counterparts.

*Governing Law*

- 18.10 This Agreement shall be governed by, and construed in all respects in accordance with, the laws of England and Wales.



## **Schedule 1 – Parties**

[•]

## Schedule 2 – Charges

### General

1. The Receiving Operator shall be entitled to make and the Intended Operator shall pay Charges calculated in accordance with the following provisions of this Schedule 2.
2. The Charges specified in this Schedule 2 are:
  - (a) expressed exclusive of VAT; and
  - (b) subject to adjustment in accordance with paragraphs 7 and 8 of this Schedule 2.
3. Payment of the Charges shall be made in accordance with the Standard Payment Terms of the Receiving Operator.

### Exchange Centre – Extraction Charge

4. In respect of collections of Misdirected Code Letters by an Intended Operator in accordance with clause 7.1, the Intended Operator shall pay an Extraction Charge calculated in accordance with the following formula:

$$EC = (MCL \times P) + (F \times C)$$

where:

EC is the relevant Extraction Charge;

MCL is the number of Misdirected Code Letters collected by the relevant Intended Operator in accordance with clause 7.1;

P is 9.48 pence and as amended from time to time in accordance with paragraph 8 of Schedule 2;

F is £2.13 and as amended from time to time in accordance with paragraph 8 of Schedule 2; and

C is the number of collections made by the Intended Operator.

### Exchange Centre – Default Return Charge

5. In respect of the return of Misdirected Code Letters to an Intended Operator in accordance with clause 7.6, the Intended Operator shall pay a Default Return Charge calculated in accordance with the following formula:

$$DRC = (MCL \times P) + FC$$

where:

DRC is the Default Return Charge;

MCL is the number of Misdirected Code Letters returned to the relevant Intended Operator in accordance with clause 7.6;

P is 9.48 pence and as amended from time to time in accordance with paragraph 8 of Schedule 2; and

FC is an amount which equals the amount which would be payable if the relevant Misdirected Code Letters were posted (on a consolidated basis per return) using Royal Mail's priority (public) service (from time to time).

#### **Non-Exchange Centre and/or no Operator Centre – Standard Return Charge**

6. In respect of the return of Misdirected Code Letters to an Intended Operator in accordance with clause 7.5, the Intended Operator shall pay a Standard Return Charge calculated in accordance with the following formula:

$$SRC = (MCL \times P) + SC$$

where:

SRC is the Standard Return Charge;

MCL is the number of Misdirected Code Letters returned to the relevant Intended Operator in accordance with clause 7.5;

P is 9.48 pence and as amended from time to time in accordance with paragraph 8 of Schedule 2; and

SC is an amount which equals the amount which would be payable if the relevant Misdirected Code Letters were posted (on a consolidated basis per return) using Royal Mail's standard (public) service (from time to time).

#### **Indexation**

7. The values of "P" (in paragraphs 4 to 6) and "F" (in paragraph 4) are stated as at January 2012 (i.e. Formula Year  $t=0$ ).
8. The values of "P" and "F" in subsequent Formula Years shall be published in January of each year of this agreement on Royal Mail Wholesale's website, prior to their coming into effect, with the Secretary notifying parties to the Agreement, and be calculated in accordance with the following formula:

$$PF_t = PF_{t-1} * \left( \frac{100 + RPI_t}{100} \right)$$

—

where

$PF_t$  is "P" and "F" in Formula Year t;

$RPI_t$  is the change in percentage points (whether of a positive or negative or zero value) in between the average of the levels of the Retail Price Index published or determined with respect to each of the twelve months up to and including September in Formula Year t-1 and the average of those levels with respect to each of the six months up to and including September in the preceding year; and

### **Interpretation**

9. Where in paragraphs 5 and 6 reference is made to "consolidated basis per return", by way of illustration only, if the Receiving Operator is returning 10 Misdirected Code Letters each weighing 50 grams, the relevant tariff would be calculated on the basis of a single Misdirected Code Letter weighing 500 grams.

### Schedule 3 – Form of Accession Agreement

**THIS ACCESSION AGREEMENT** is made on [•] between:

- (1) *[Insert details of Secretary authorised under the Agreement to sign the Accession Agreement on its own behalf and on behalf of all the other parties to the PCOP Agreement]* (the **Authorised Person**); and
- (2) *[Insert name of person wishing to be admitted to the PCOP Agreement]* (the **Applicant Party**) whose *[principal][registered]* office is at *[insert details, including company registration number, where relevant]*

**WHEREAS:**

- (A) The Postal Common Operational Procedures Agreement dated [•] (the **Agreement**) provides for the accession of new parties.
- (B) The Applicant Party has complied with the requirements of the Agreement as to accession and wishes to be admitted as a party.

In consideration of the rights and obligations contained in the Agreement **IT IS HEREBY AGREED** as follows:

1. In this Accession Agreement, words and expressions defined in or for the purposes of the Agreement and not otherwise defined in this Accession Agreement shall have the meanings ascribed to them under the Agreement.
2. The Authorised Person (acting on its own behalf and on behalf of each of the other parties) hereby admits the Applicant Party as an additional party under the Agreement with effect from the date of this Accession Agreement on the terms and conditions hereof.
3. The Applicant Party hereby accepts its admission as a party and undertakes with the Authorised Person (acting on its own behalf and on behalf of each of the other parties) to perform and to be bound by the Agreement as a party as from the date hereof.
4. For all purposes in connection with the Agreement the Applicant Party shall as from the date hereof be treated as if it had been a signatory to the Agreement from the date hereof, and as if this Accession Agreement were part of the Agreement from the date hereof, and the rights and obligations of the parties shall be construed accordingly.
5. This Accession Agreement and the Agreement shall be read and construed as one document and references (in or pursuant to the Agreement) to the Agreement (howsoever expressed) should be read and construed as references to the Agreement and this Accession Agreement.
6. This Accession Agreement may be executed in counterparts.

7. This Accession Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.

**IN WITNESS** whereof the parties hereto have executed this Accession Agreement the day and year first above written

[Add details as necessary]

**Signed** by [relevant name of signatory] )  
Duly authorised for and )  
On behalf of )  
**[Regulated Postal Operator in Schedule 1 etc.]** )