

Between XXXXX and Swiss Post Solutions for the provision of XXXXXXXX and associated services



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**Service Agreement** — Between XXXXX and Swiss Post Solutions for the provision of XXXXXXXX and associated services

Document Title:

1.0 Version No.:

Owner: Commercial Department

Approved By:

ISF 17 August 2017 Date of Issue:

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# THIS AGREEMENT is made on [

#### **BETWEEN**

- 1) SWISS POST SOLUTIONS LIMITED (registered in England and Wales under number 04482213) the registered office of which is at Parkshot House, 5 Kew Road, Richmond Upon Thames, Surrey TW9 2PR (hereinafter "Swiss Post Solutions"); and
- **2)** Federal Express European Services (registered in Brussels), the registered office of which is at Cantersteen 47, 1000 Brussels, Belgium (hereinafter the "**Customer**").

## INTRODUCTION

The Customer wishes to appoint Swiss Post Solutions to provide the Services (defined below), and Swiss Post Solutions wishes to provide the Services, on the terms of this Agreement.

#### IT IS AGREED:

# 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

In this Agreement including the Schedules, the following words shall have the following meanings:

#### "Agreement"

means this Agreement including its schedules, as amended from time to time;

#### "Applicable Data Protection Legislation"

means (a) the Data Protection Act 1998; or (b) from 25 May 2018, the GDPR, and any applicable legislation that supersedes or replaces the GDPR in the United Kingdom;

#### "Business Day"

means a day other than a day which is a Saturday, Sunday or public holiday in England;

#### "Charges"

means the fixed charges and additional charges, if any, set out in Schedule 4 including Software Licence Fees if applicable;

#### "Claim"

means any direct or indirect action, proceeding, claim, demand, cost, expense (including legal expenses), damages, liability and penalty whatsoever;

## "Commencement Date"

means the date specified in Schedule 1 or, if no such date is specified, on which Swiss Post Solutions commences supply of the Services pursuant to this Agreement;

#### "Controller"

shall have the meaning provided for under the GDPR;

# "Customer Data"

means all data, information, text, drawings, statistics, analysis and other materials embodied in any form relating to the Customer or any member of the Customer's Group (and/or their respective customer) and which may be supplied by Swiss Post Solutions, the Customer or any member of the Customer's Group and/or which Swiss Post Solutions (and/or any Sub-Contractors) generates, collects, processes, stores or transmits in connection with this Agreement;

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#### "Data Protection Particulars"

means, in relation to any processing of Personal Data under this Agreement:

- a) the subject matter and duration of the processing;
- **b)** the nature and purpose of the processing;
- c) the type of Personal Data being processed; and
- d) the categories of data subjects,

further details of which are set out in Schedule [11];

#### "Effective Date"

the Commencement Date:

#### "Employee Liability Information"

shall have the meaning provided for under the Employment Regulations;

#### "Employees"

those employees whose contracts of employment transfer to Swiss Post Solutions from the Customer as at the Effective Date, being those employees who are listed in Schedule 10;

#### "Employment Regulations"

the Transfer of Undertakings (Protection of Employment) Regulations 2006;

#### "Force Majeure"

means the following:

- a) Acts of God;
- b) outbreak of hostilities, riot, civil disturbance, acts of terrorism;
- an act of any government or authority (including refusal or revocation of any licence or consent);
- d) fire, explosion, flood;
- **e)** power failure, failure of telecommunication lines, failure or breakdown of plant, machinery or vehicles: and
- f) any cause or circumstances whatsoever beyond the reasonable control of a party;

#### "GDPR"

means the General Data Protection Regulation ((EU) 2016/679);

# "Goods"

means the items or materials, if any, to be supplied by Swiss Post Solutions to the Customer under this Agreement as set out in Schedule 1 ("Services");

#### "Group Member"

means, at any relevant time, in relation to any undertaking, a "group undertaking" (as defined in section 259 of the Companies Act) of that undertaking and "Member of its Group", in relation to any undertaking means any group undertaking as so defined of that undertaking;

# "Intellectual Property Rights"

means patents, inventions, know-how, trade secrets and other confidential information, registered designs, copyrights, database rights and design rights, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing-off;

#### "Insolvency Event"

in relation to a party means any of the following events:



- a) a meeting of creditors of that party being held or an arrangement or composition with or for the benefit of its creditors being proposed by or in relation to that party;
- **b)** a chargeholder, receiver, administrative receiver or other similar person taking possession of or being appointed over or any distress, execution or other process being levied or enforced on the whole or a material part of the assets of that party;
- c) that party ceasing to carry on business or being deemed to be unable to pay its debts within the meaning of section 123 Insolvency Act 1986;
- **d)** that party or its directors or the holder of a qualifying floating charge giving notice of their intention to appoint, appointing or making an application to the court for the appointment of, an administrator;
- **e)** a petition being presented (and not being discharged within 28 days) or a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of that party; or
- **f)** the happening in relation to that party of an event analogous to any of the above in any jurisdiction in which it is incorporated or resident or in which it carries on business or has assets;

#### "Personal Data"

shall have the meaning provided for under the GDPR;

#### "Personal Data Breach"

shall have the meaning provided for under the GDPR;

#### "Processor"

shall have the meaning provided for under the GDPR;

#### "Replacement Services"

any services which are the same as or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the termination or expiry of this Agreement whether in whole or in part and whether those services are provided by the Customer internally or by any Replacement Supplier.

#### "Replacement Supplier"

any third party supplier of Replacement Services appointed by the Customer from time to time.

#### "Services"

means the services to be supplied by Swiss Post Solutions under this Agreement as set out in Schedule 1; and

# "Service Transfer Date"

the date on which the Services (or any part of the Services), for whatever reason transfer from Swiss Post Solutions to the Customer or any Replacement Supplier.

#### "Site(s)"

the premises specified in Schedule 1 at which the Goods are to be delivered and/or the Services are to be performed under this Agreement.

#### "Specification"

the specification for the Services as set out in Error! Reference source not found.;

#### "Staffing Information"

in relation to all persons detailed on the Swiss Post Solutions Provisional Staff List, the following information (subject to the Applicable Data Protection Legislation and in an anonymised format):

a) their ages, dates of commencement of employment or engagement and gender;



- **b)** details of whether they are employees, workers, self-employed, contractors or consultants, agency workers or otherwise;
- c) the identity of their employer or relevant contracting party;
- **d)** their relevant notice periods and any other terms relating to termination of employment or engagement;
- **e)** the current wages, salaries, profit sharing, incentive and bonus arrangements applicable to them;
- **f)** details of other employment-related benefits including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schemes applicable to them;
- **g)** any outstanding contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims); and
- **h)** copies of relevant contracts of employment or engagement (or relevant standard contracts if applied generally in respect of such individuals) and any staff handbook or other employment policies.

#### "Supervisory Authority"

shall have the meaning provided for under the GDPR;

#### "Swiss Post Solutions Final Staff List"

the list of all Swiss Post Solutions Personnel engaged in or wholly or mainly assigned to the provision of the Services or any part of the Services at the Service Transfer Date.

#### "Swiss Post Solutions Personnel"

all employees, staff, other workers, agents and consultants of Swiss Post Solutions who are engaged in the provision of the Services from time to time.

#### "Swiss Post Solutions Provisional Staff List"

a list prepared and updated by Swiss Post Solutions of all Swiss Post Solutions Personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of preparation of the list.

#### "Transferring Employees"

those employees whose contract of employment will be transferred to the Customer or a Replacement Supplier pursuant to the Employment Regulations on expiry or termination of this Agreement (whether in whole or in part).

#### 1.2. Interpretation

In this Agreement:

#### 1.2.1. reference to:

- a) any statute or statutory provision includes a reference:
  - to that statute or statutory provision as from time to time consolidated, modified, re-enacted (with or without modification) or replaced by any statute or statutory provision; and
  - ii) any subordinate legislation made under the relevant statutory provision;
- b) the singular includes the plural and vice versa and any gender includes other genders;
- c) a party or the parties means a party or the parties to this Agreement;
- **d)** "writing" and "written" includes typing, printing, lithography, photography and other modes of representing or reproducing words in a legible and non-transitory form and includes electronic mail;

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- 1.2.2. the words "include", "including" and "in particular" are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;
- 1.2.3. the words "other" and "otherwise" are not to be construed as being limited by any words preceding them; and
- 1.2.4. the headings to clauses and schedules are to be ignored in construing this Agreement.

# 2. APPOINTMENT AND SCOPE OF SERVICES

- **2.1.** With effect from the Commencement Date and in consideration for payment of the Charges, Swiss Post Solutions shall provide the Services specified in the Specification.
- **2.2.** To the extent Swiss Post Solutions provides software to the Customer, the terms of Schedule 10 shall apply.

# 3. CHARGES AND PAYMENT TERMS

- **3.1.** The Customer shall pay Swiss Post Solutions the Charges in the manner and in accordance with the times set out in this clause and in Schedule 3.
- 3.2. In consideration of Swiss Post Solutions providing the Services, Customer shall pay to Swiss Post Solutions the Charges. The Charges shall be (unless expressly agreed in writing to the contrary) payable by the Customer within 30 days of the date of an invoice from Swiss Post Solutions. Swiss Post Solutions shall submit each invoice at the beginning of the month to which the invoice relates.
- **3.3.** All sums due to Swiss Post Solutions under this Agreement are exclusive of VAT, if any, which shall be paid by the Customer in addition thereto in accordance with the relevant regulations in force from time to time.
- **3.4.** Swiss Post Solutions shall, upon thirty (30) days' written notice to the Customer and in every successive period of twelve (12) months during the currency of this Agreement, be entitled to vary the Charges by an amount equal to the higher of 5% and the rate of increase in RPI.
- **3.5.** If Swiss Post Solutions incur additional costs as a result of a Change of Law or regulatory requirements, then Swiss Post Solutions will be entitled to an adjustment to the contract price, to that effect, subject to providing thirty (30) days' written notice to the Customer.
- **3.6.** If the Customer fails to pay Swiss Post Solutions any sum within 15 days of the due date then, without prejudice to any right or remedy available to Swiss Post Solutions:
- **3.6.1.** at its sole discretion, Swiss Post Solutions shall be entitled to suspend or terminate the provision of any Services immediately; and
- 3.6.2. Swiss Post Solutions shall charge daily interest on any outstanding amounts validly due and payable until payment is received in full at the rate equal to 5% per annum above Barclays Bank Base Lending Rate current from time to time whether before or after judgment. Interest shall continue to accrue notwithstanding termination of this Agreement unless such termination is due to a breach of this Agreement by Swiss Post Solutions. Swiss Post Solutions reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

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- **3.7.** All amounts due under this Agreement shall be paid in full without any set-off, restriction, condition, withholding or deduction.
- **3.8.** Should additional pricing be required for any additional services Swiss Post Solutions shall provide a proposal to the Customer for negotiation and agreement in accordance with the provisions laid out in this Agreement.
- **3.9.** Should the existing work specifications be amended, by mutual agreement, in any way that increases costs to Swiss Post Solutions in providing the Services, the Charges shall be increased by the relevant amount to the Customer.
- **3.10.** The Customer shall also be responsible for paying any and all applicable third party software licence fees, as may be specified in the Charges schedule.
- **3.11.** To the extent Swiss Post Solutions provide Support Services, these shall be subject to annual increases pursuant to Clause 3.4.

#### 4. CONFIDENTIALITY

- **4.1.** Each party undertakes to the other to treat as confidential and not to make use of any information relating to the business of the other which comes to its knowledge as a result of this Agreement and its performance and shall exercise proper commercial prudence in preserving such confidentiality.
- **4.2.** Neither party shall use or disclose any information of the other which is disclosed or otherwise comes into its possession under or in respect of this Agreement and which is of a confidential nature save as may be necessary for the provision of the Services and subject to the receipt of prior written consent for such disclosure PROVIDED THAT this obligation shall not apply to information which the recipient can prove was in its possession at the date it was received or obtained or which the recipient obtains from some other person with good legal title thereto or which is in or comes into the public domain otherwise than through the default or negligence of the recipient or which the recipient is compelled to disclose to a court or other body having similar authority or pursuant to government, stock exchange or other regulations.
- **4.3.** Swiss Post Solutions shall promptly notify the Customer of any security breach and shall provide details of any contact made to it in relation to the Services.

# TERM AND TERMINATION

- **5.1.** This Agreement shall commence on the Commencement Date and, unless terminated in accordance with Clause 5.3, shall continue for the Initial Term provided that the parties may, by written agreement, extend the term for successive periods of no less than two years.
- **5.2.** Notwithstanding any other provision of this Agreement, following the expiry of the Initial Term, either party may, upon not less than 6 months' written notice, terminate this Agreement.
- **5.3.** This Agreement may be terminated:
- 5.3.1. forthwith by either party upon giving written notice to the other if the other commits any material breach of this Agreement and which (in the case of a breach capable of remedy) shall not have been remedied within thirty (30) days of a written request to remedy the same (and non-payments of sums when due to Swiss Post Solutions shall be a material breach);



- 5.3.2. forthwith by either party upon giving written notice to the other party if an Insolvency Event occurs in relation to the other party.
- **5.4.** Any termination of this Agreement (however occasioned) shall not operate so as to affect any accrued rights or liabilities of either party.
- **5.5.** Within fourteen (14) days of the termination of this Agreement (howsoever and by whomsoever occasioned) the Licensee shall return or destroy (as Swiss Post Solutions shall instruct) all materials belonging to Swiss Post Solutions in its possession and a duly authorised officer of the Licensee shall certify in writing to Swiss Post Solutions that the Licensee has complied with such obligation.

# 6. REPLACEMENT OF SWISS POST SOLUTIONS' EMPLOYEES AND/OR AGENTS

- **6.1.** Swiss Post Solutions agrees to give proper consideration to any request by the Customer to remove and/or replace a member of Swiss Post Solutions Personnel who is engaged in providing the Services pursuant to this Agreement. Swiss Post Solutions will use its reasonable endeavours to comply with any such request but failure to comply with the request will not constitute a breach of the terms of this Agreement.
- 6.2. In the event that Swiss Post Solutions complies with a request by the Customer as referred to in clause 6.1 above, the Customer shall indemnify Swiss Post Solutions in full in respect of any Claim by the member of Swiss Post Solutions Personnel who is the subject of the request, which arises as a result of Swiss Post Solutions complying with the Customer's request. For the avoidance of doubt, this includes any Claim arising out of the transfer off the member of Swiss Post Solutions Personnel elsewhere within Swiss Post Solutions or the termination of the employment or engagement of the member of Swiss Post Solutions Personnel in the event an alternative role cannot be found for that individual.
- **6.3.** Without prejudice to clause 6.2 above, in the event Swiss Post Solutions transfers a member of Swiss Post Solutions Personnel elsewhere within Swiss Post Solutions pursuant to a request made in accordance with clause 6.1 above, an administration fee of £2,500 (plus VAT) per person will be payable to Swiss Post Solutions by the Customer.

# 7. FORCE MAJEURE

- **7.1.** Neither party shall be liable for any delay in performing or failure to perform its obligations in connection with this Agreement if such delay or failure is due to Force Majeure.
- **7.2.** Such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented provided that if such delay or failure persists for ninety (90) days or more, the party not affected may, at its option and if it is reasonable for it to do so, terminate this Agreement by giving fourteen (14) days written notice to the other party.

# 8. INTELLECTUAL PROPERTY RIGHTS

**8.1.** All Intellectual Property Rights produced by Swiss Post Solutions in the execution of the Services shall be vested and remain vested in Swiss Post Solutions.



- **8.2.** The images stored by Swiss Post Solutions on behalf of the Customer will remain the property of the Customer and shall be returned to the Customer upon request. The Customer agrees to pay any reasonable costs incurred by Swiss Post Solutions for such migration.
- **8.3.** The Customer retains all Intellectual Property Rights which may, at any time, subsist in the Customer Data and/or the above-detailed documentation or images stored by Swiss Post Solutions on behalf of the Customer.

## 9. WARRANTY AND LIMITATION OF LIABILITY

- **9.1.** Swiss Post Solutions warrants it will perform the Services with reasonable skill and care and in accordance with the Specification.
- **9.2.** Subject to the foregoing all conditions, warranties, terms, representations (unless fraudulent) and undertakings express or implied, statutory or otherwise in respect of the Services are hereby excluded to the fullest extent permissible by law.
- 9.3. Without prejudice to Clause 9.5, and except as otherwise provided in this Agreement, the total liability of Swiss Post Solutions in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with this Agreement shall be limited in aggregate to the total fees paid and payable by the Customer under this Agreement in the twelve months up to and including the date of the claim.
- **9.4.** Without prejudice to Clause 9.5, in no event shall Swiss Post Solutions be liable to the Customer for loss of revenue, loss of anticipated savings, loss of profits, loss of data, damage to goodwill, loss of reputation or for any type of indirect, economic or consequential loss or damage whatsoever or howsoever caused.
- **9.5.** Neither party excludes or limits liability to the other for death or personal injury caused by its negligence or for fraud.

# 10. INSURANCE

- 10.1. Unless otherwise agreed in writing by Swiss Post Solutions the Customer will insure to their full value any goods, materials and any other property provided by or through the Customer to Swiss Post Solutions for Swiss Post Solutions use while they are in Swiss Post Solutions possession or in the possession of any carrier employed by Swiss Post Solutions.
- **10.2.** The Customer shall notify Swiss Post Solutions within 30 days of it becoming aware of any grounds giving rise to a claim or proceeding against Swiss Post Solutions arising out of or in connection with this Agreement.
- 10.3. Swiss Post Solutions shall maintain such policies or insurance as may be necessary to cover all Swiss Post Solutions liability, arising out of Swiss Post Solutions carrying out the work and executing this Agreement in accordance with this Agreement and Swiss Post Solutions shall at the Customer's request produce for inspection any such policy or policies or such documentary evidence of the same as the Customer may require.



# 11. HEALTH AND SAFETY

- **11.1.** In the performance of the Services, Swiss Post Solutions shall use reasonable endeavours to comply with such of the Customer's health and safety policies and procedures as are notified to Swiss Post Solutions.
- 11.2. The Customer shall ensure that all premises, facilities or other equipment made available to Swiss Post Solutions pursuant to this Agreement shall comply with all relevant health and safety legislation and other applicable laws and shall procure that its employees, agents and subcontractors comply with all relevant health and safety procedures.
- 11.3. The Customer warrants that in relation to any and all materials, products and items ("Items") which Swiss Post Solutions and its employees may come into contact with pursuant to this Agreement, such Items:
- 11.3.1. are not dangerous and do not pose a threat to safety;
- 11.3.2. pose no risk to third parties or to property, including but not limited to the risk of contamination;
- 11.3.3. do not contain any illegal, offensive, defamatory, derogatory, immoral, obscene or offensive material;
- 11.3.4. do not require any unusual safety precautions to be undertaken with regard to their handling.
- **11.4.** The Customer shall comply, and shall procure that its employees, agents and sub-contractors shall comply, with any and all instructions and operating procedures notified by Swiss Post Solutions from time to time relating to the handling and storage of Items.

# 12. TRANSFER OF EMPLOYEES TO SWISS POST SOLUTIONS AT THE EFFECTIVE DATE

- **12.1.** The Customer and Swiss Post Solutions believe that, pursuant to the Employment Regulations, at the Effective Date, Swiss Post Solutions will become the employer of the Employees.
- **12.2.** The Customer represents, warrants and undertakes to Swiss Post Solutions that:
- 12.2.1. no persons are employed or engaged in the provision of the Services other than the Employees;
- 12.2.2. none of the Employees has given or received notice terminating their employment or will be entitled to give notice as a result of the provisions of this Agreement;
- 12.2.3. full particulars of the terms of employment of all the Employees (including all remuneration, incentives, bonuses, expenses and other payments and benefits whatsoever payable including pension benefits of any Employees) have been disclosed to Swiss Post Solutions;
- 12.2.4. there is not in existence any contract of employment with directors or employees of the Customer (or any contract for services with any individual) relating to the Services which cannot be terminated by three months' notice or less without giving rise to the making of a payment in lieu of notice or a claim for damages or compensation (other than a statutory redundancy payment or statutory compensation for unfair dismissal);
- 12.2.5. in relation to each of the Employees (and so far as relevant to each of its former employees who were employed or engaged in the provision of the Services) the Customer has:
  - **a)** complied with all obligations imposed on it by Articles of the Treaty of Rome, European Commission Regulations and Directives and all statutes, regulations and codes of conduct



- relevant to the relations between it and its employees or it and any recognised trade union or appropriate representatives;
- b) maintained adequate and suitable records regarding the service of each of its employees;
- c) complied with all collective agreements and customs and practices for the time being dealing with such relations or the conditions of service of its employees; and
- **d)** complied with all relevant orders and awards made under any statute affecting their conditions of service;
- 12.2.6. the Customer has not been involved in any industrial or trade disputes in the last three years and to the best of the Customer's knowledge, information and belief there are no circumstances which may result in any industrial dispute involving any of the Employees and none of the provisions of this Agreement including the identity of Swiss Post Solutions is likely to lead to any industrial dispute;
- 12.2.7. there is not outstanding any agreement or arrangement to which the Customer is party in relation to the Employees for profit sharing or for payment to any of the Employees of bonuses or for incentive payments or other similar matters;
- 12.2.8. the Customer has not entered into any recognition agreement with a trade union in relation to the Employees nor has it done any act which may be construed as recognition;
- 12.2.9. the Customer has complied with all recommendations made by the Advisory Conciliation and Arbitration Service in relation to the Employees and with all awards and declarations made by the Central Arbitration Committee in relation to the Employees;
- 12.2.10. there is no agreement, arrangement, scheme or obligation (whether legal or moral) for the payment of any pensions, allowances, lump sums or other like benefits on redundancy, on retirement or on death or during periods of sickness or disablement for the benefit of any of the Employees or former employees employed or engaged in the provision of the Services or for the benefit of dependants of such persons;
- 12.2.11. no amounts due to or in respect of any of the Employees (including PAYE and National Insurance and pension contributions) are in arrears or unpaid;
- 12.2.12. no monies or benefits other than in respect of contractual emoluments are payable to any of the Employees and there is not at present a claim, occurrence or state or affairs which may hereafter give rise to a claim against the Customer arising out of the employment or termination of employment of any of the Employees for compensation for loss of office or employment or otherwise and whether under contract or any statute or regulations or otherwise:
- 12.2.13. the Customer has provided the Employee Liability Information and notification of any changes to Swiss Post Solutions regarding each of the Employees in accordance with the Employment Regulations.
- **12.3.** The Customer shall indemnify Swiss Post Solutions in full for and against all Claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by Swiss Post Solutions including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 12.3.1. the termination by the Customer of the employment of any of the Employees;
- 12.3.2. anything done or omitted to be done in respect of any of the Employees which is deemed to have been done by Swiss Post Solutions by virtue of the Employment Regulations; and
- **12.3.3**. any failure by the Customer to comply with its obligations pursuant to the Employment Regulations;



- 12.3.4. any claim made at any time by any person other than the Employees who claims to have become an employee of or have rights against Swiss Post Solutions by virtue of the Employment Regulations in connection with the appointment of Swiss Post Solutions in relation to the Services (including for the avoidance of doubt but without limitation as arises out of the termination of the employment or engagement of any such person by Swiss Post Solutions).
- **12.4.** All salaries and other emoluments including holiday pay, taxation and National Insurance contributions and contributions to retirement benefit schemes relating to the Employees shall be borne by the Customer up to and including the Effective Date and by Swiss Post Solutions with effect from the Effective Date.
- **12.5.** Swiss Post Solutions shall indemnify the Customer in full for and against all Claims, costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Customer including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
- 12.5.1. any failure by Swiss Post Solutions to comply with its obligations pursuant to the Employment Regulations (save where that directly or indirectly arises out of a failure by the Customer to provide complete or accurate information to Swiss Post Solutions concerning the Employees); and
- 12.5.2. anything done or omitted to be done by Swiss Post Solutions in respect of any of the Employees after the Effective Date.
- **12.6.** Swiss Post Solutions and the Customer agree that during the term of this Agreement and for a period of 12 months following termination of this agreement, neither will:
- 12.6.1. solicit or entice away from the employment of the other; or
- 12.6.2. employ or engage in any capacity; or
- 12.6.3. offer to employ or engage in any capacity;

any senior employee of the other, or any Swiss Post Solutions Personnel (in each case with whom the party in question has had material contact or about whom the party became aware or informed at any time during the currency of this Agreement).

# 13. EMPLOYMENT EXIT PROVISIONS

- 13.1. This Agreement envisages that subsequent to the commencement of this Agreement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part, or otherwise) resulting in a transfer of the Services in whole or in part (Service Transfer). If a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then in such event, the Customer or a Replacement Supplier would inherit liabilities in respect of the Transferring Employees and the provisions in this clause 13 shall apply.
- **13.2.** Swiss Post Solutions agrees that, subject to compliance with the Applicable Data Protection Legislation:
- 13.2.1. within 6 weeks of the earliest of:
  - **a)** receipt of a notification from the Customer of a Service Transfer or intended Service Transfer; and
  - b) receipt of the giving of notice of early termination of this agreement or any part thereof;

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- it shall provide the Swiss Post Solutions Provisional Staff List and the Staffing Information to the Customer or, at the direction of the Customer, to a Replacement Supplier;
- 13.2.2. at least 14 days prior to the Service Transfer Date, Swiss Post Solutions shall prepare and provide to the Customer and/or, at the direction of the Customer, to the Replacement Supplier, the Swiss Post Solutions Final Staff List. The Swiss Post Solutions Final Staff List shall identify which of the Swiss Post Solutions Personnel named are Transferring Employees;
- 13.2.3. the Customer shall be permitted to use and disclose the Swiss Post Solutions Provisional Staff List, the Swiss Post Solutions Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services which are substantially the same type of services (or any part thereof) as the Services; and
- 13.2.4. upon reasonable request by the Customer Swiss Post Solutions shall provide the Customer or at the request of the Customer, the Replacement Supplier, with access (on reasonable notice and during normal working hours) to such employment records of Swiss Post Solutions Personnel (and provide copies) as the Customer reasonably requests.
- **13.3.** From the date of the earliest event referred to in 13.2.1, Swiss Post Solutions agrees that it shall not without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed) or otherwise than in the normal course of business:
- 13.3.1. assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Swiss Post Solutions Provisional Staff List:
- 13.3.2. increase the total number of employees listed in the Swiss Post Solutions Provisional Staff List save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
- 13.3.3. make, propose or permit any changes to the terms and conditions of employment of any employees listed in the Swiss Post Solutions Provisional Staff List;
- 13.3.4. increase the proportion of working time spent on the Services (or the relevant part) by any of the Swiss Post Solutions Personnel save for fulfilling assignments and projects previously scheduled and agreed with the Customer;
- 13.3.5. introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed in the Swiss Post Solutions Provisional Staff List; or
- 13.3.6. replace any of the Swiss Post Solutions Personnel listed in the Swiss Post Solutions Provisional Staff List or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons in the Swiss Post Solutions Provisional Staff List.
- **13.4.** Swiss Post Solutions will promptly notify the Customer or, at the direction of the Customer, the Replacement Supplier of any notice to terminate employment received from any persons listed in the Swiss Post Solutions Provisional Staff List regardless of when such notice takes effect.
- **13.5.** At least 14 days before the expected Service Transfer Date, Swiss Post Solutions shall provide to the Customer or any Replacement Supplier, in respect of each person (subject to compliance with Applicable Data Protection Legislation) in the Swiss Post Solutions Final Staff List who is a Transferring Employee, their:
- 13.5.1. pay slip data for the most recent month;
- 13.5.2. cumulative pay for tax and pension purposes;
- 13.5.3. cumulative tax paid;

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- 13.5.4. tax code;
- 13.5.5. voluntary deductions from pay; and
- 13.5.6. bank or building society account details for payroll purposes.
- **13.6.** In connection with a relevant transfer to which the Employment Regulations apply, the parties agree that:
- 13.6.1. Swiss Post Solutions shall perform and discharge all its obligations in respect of all the Transferring Employees and their representatives for its own account up to and including the Service Transfer Date. Swiss Post Solutions shall indemnify the Customer and any Replacement Supplier in full for and against all claims costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by the Customer or any Replacement Supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:
  - a) Swiss Post Solutions failure to perform and discharge any such obligation;
  - b) any act or omission by Swiss Post Solutions on or before the Service Transfer Date;
  - c) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period of employment with Swiss Post Solutions on or before the Service Transfer Date;
  - d) any claim made by or in respect of any person employed or formerly employed by Swiss Post Solutions other than a Transferring Employee for which it is alleged the Customer or any Replacement Supplier may be liable by virtue of this agreement and/or the Employment Regulations;
- **13.7.** The Customer shall indemnify Swiss Post Solutions against all claims arising from the Customer's or the Replacement Supplier's failure to perform and discharge any obligation and against any Claims in respect of:
- 13.7.1. any Transferring Employees and arising from or as a result of any act or omission by the Customer or the Replacement Supplier relating to a Transferring Employee occurring before, on or after the Service Transfer Date; and
- 13.7.2. all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date; and
- 13.7.3. any failure by the Customer or the Replacement Supplier to comply with its or their obligations under Regulation 13 of the Employment Regulations; and
- 13.7.4. all and any claims by any individual to the effect that the Service Transfer involves or would involve a substantial change in working conditions as provided for under Regulation 4(9) of the Employment Regulations or otherwise gives rise to a repudiatory breach of contract.
- **13.8.** The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
- **13.9.** The Customer shall assume (or shall procure that the Replacement Supplier shall assume) the outstanding obligations of Swiss Post Solutions in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration prior to the Service Transfer Date.



**13.10.** It is expressly agreed that the parties may by agreement rescind or vary clauses 12 and 13 without the consent of any other person who has the right to enforce the term in question notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

# 14. DATA PROTECTION

- **14.1.** Each of the parties shall in the course of performing its obligations under this Agreement comply with the provisions of the Applicable Data Protection Legislation.
- **14.2.** For the purposes of this Clause 14, the parties agree and acknowledge that:
- 14.2.1. whilst the factual arrangement between the parties dictates the classification of each party as a 'Controller' or 'Processor' under the Applicable Data Protection Legislation, the parties anticipate that the Customer shall be the Controller and Swiss Post Solutions shall be the Processor where Swiss Post Solutions is processing Personal Data in connection with its provision of the Services;
- 14.2.2. the description provided in Schedule [11] (Data Protection Particulars) is an accurate description of the Data Protection Particulars;
- 14.2.3. Swiss Post Solutions may have access to Personal Data (including 'sensitive' or 'special categories' of Personal Data) in its provision of the Services.
- **14.3.** Where Swiss Post Solutions processes Personal Data as a Processor on behalf of the Customer, Swiss Post Solutions shall:
- 14.3.1. process the Personal Data only in accordance with the terms of this Agreement and the documented instructions of the Customer;
- 14.3.2. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm and risk which might result from any unauthorised or unlawful processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
- 14.3.3. ensure that all individuals who it permits to process Personal Data are bound by enforceable obligations of confidentiality;
- 14.3.4. save where such countries have been deemed by the European Commission to be providing an adequate level of protection pursuant to the relevant provisions of the Applicable Data Protection Legislation, not transfer Personal Data outside the European Economic Area without the written instructions of the Customer. Notwithstanding the foregoing, Swiss Post Solutions is expressly permitted and instructed by the Customer that it may transfer Personal Data to any other Swiss Post Solutions Group Member and any other third parties, subject to first ensuring that adequate protections are in place to protect the Personal Data consistent with the requirements of the Applicable Data Protection Legislation;
- 14.3.5. notify the Customer without undue delay if it becomes aware of a Personal Data Breach in relation to Personal Data processed pursuant to this Agreement;
- 14.3.6. taking into account the nature of the processing and the information available to Swiss Post Solutions and the price paid by the Customer, assist the Customer in ensuring the Customer's



compliance with the Customer's obligations under the Applicable Data Protection Legislation in relation to Personal Data processed pursuant to this Agreement:

- **a)** to notify an applicable Supervisory Authority of a Personal Data Breach (pursuant to Article 33 of the GDPR);
- **b)** to communicate a Personal Data Breach to affected individuals (pursuant to Article 34 of the GDPR);
- c) to carry out Data Protection Impact Assessments (pursuant to Article 35 of the GDPR); and
- **d)** to engage in prior consultation with an applicable Supervisory Authority (pursuant to Article 36 of the GDPR)

If the costs reasonably incurred by Swiss Post Solutions in complying with this clause 14.3.6 exceed £1,000 for any one incident and £5,000 in the aggregate for any one or more incidents in any 12 month period, Swiss Post Solutions may (acting reasonably) request a financial contribution from Customer and Customer shall pay the applicable amount in full in accordance with the terms of this Agreement;

- 14.3.7. allow the Customer (or an auditor mandated by the Customer) to conduct audits (subject to reasonable confidentiality undertakings), in accordance with the provisions of Clause 17.1, to determine Swiss Post Solutions' compliance with its obligations under this Clause 14 and the Applicable Data Protection Legislation, and to make available to the Customer all information that is necessary, in the reasonable opinion of Swiss Post Solutions, to demonstrate compliance with the same;
- 14.3.8. notwithstanding Clause 5.5 (Term and Termination), at the election of the Customer, permanently delete or return to the Customer all Personal Data (processed on behalf of the Customer) following termination or expiry of this Agreement, or procure compliance with the same, save that Swiss Post Solutions may retain a copy of such Personal Data to the extent required by applicable EU or EU member state law;
- **14.4.** Swiss Post Solutions is expressly permitted and instructed by the Customer that it may engage sub-Processors (as a sub-contractor), subject to:
- 14.4.1. the relevant sub-contractor being engaged by way of a written contract which imposes obligations on the sub-contractor which are at least equivalent to the obligations imposed on Swiss Post Solutions pursuant to this Clause 14; and
- 14.4.2. the provisions of Clause 16.2 applying,
  - and all sub-Processors engaged by Swiss Post Solutions as at the Effective Date (a list of which shall be made available to the Customer on the Customer's written request) shall be deemed authorised.
- **14.5.** In addition to the sub-Processors engaged pursuant to clause 14.4 (above), Swiss Post Solutions shall be entitled to engage additional or replacement sub-Processors subject to:
- 14.5.1. the relevant sub-contractor being engaged by way of a written contract which imposes obligations on the sub-contractor which are at least equivalent to the obligations imposed on Swiss Post Solutions pursuant to this Clause 14;
- 14.5.2. the provisions of Clause 16.2 applying; and
- 14.5.3. Swiss Post Solutions notifying the Customer, at the Customer's request, of the identity of the additional or replacement sub-Processor,



and where the Customer objects to the additional or replacement sub-Processor, Swiss Post Solutions will use its reasonable endeavours to address any such objection but failure to address the objection will not constitute a breach of the terms of this Agreement.

# 15. NOTICES AND OTHER COMMUNICATIONS

- **15.1.** Where this Agreement provides for the giving of notice or the making of any other communication, such notice or communication shall not (unless otherwise expressly provided) be effective unless given or made in writing in accordance with the following provisions of this clause 15.
- **15.2.** Any notice or communication to be given or made under or in connection with this Agreement may be:
- 15.2.1. delivered or sent by post to:

Customer	[address]
SWISS POST SOLUTIONS LIMITED	Parkshot House
	5 Kew Road
	Richmond upon Thames
	Surrey TW9 2PR

Or

15.2.2. sent by fax, email or other electronic communication, to:

Customer	Fax: [ ] Email address: [ ]
SWISS POST SOLUTIONS LIMITED	Fax: 020 8614 [ ]

and shall be marked in the case of the Customer for the attention of [the Managing Director] and in the case of Swiss Post Solutions for the attention of the COO.

- **15.3.** Any notice or other communication so delivered or sent shall be deemed to have been served at the time when it is received at the address to which it is delivered or sent except that if that time is between 5.30 p.m. on a Business Day and 9.00 a.m. on the next Business Day it shall be deemed to have been served at 9.00 a.m. on the second of such Business Day.
- **15.4.** Where either party has given notice to the other of any different address or number to be used for the purposes of this clause then such different address or number shall be substituted for that shown above

For the purposes of this clause:

- 15.4.1. "Postal Address" means the address shown in clause 15.2 or any different address substituted under clause 15.4;
- 15.4.2. any reference to a time is to the time at the Postal Address of the receiving party;
- 15.4.3. reference to an electronic communication (including a fax) being received shall, in the case of a party which is a corporate body or partnership, mean receipt at the first device hosting electronic communication services for that corporate body or partnership at which it is received; and



**15.4.4.** "**electronic communication**" has the same meaning as in the Electronic Communications Act 2000.

## 16. ASSIGNMENT

- **16.1.** Save as stated herein, neither party shall be entitled to assign, sub-contract or otherwise transfer its rights or obligations under this Agreement whether in whole or in part without the other party's prior written consent (not to be unreasonably withheld), save that Swiss Post Solutions shall be entitled to assign its rights hereunder (in whole or in part) to any Swiss Post Solutions Group Member.
- **16.2.** Swiss Post Solutions shall have the right to sub-contract its obligations under this Agreement provided that Swiss Post Solutions shall remain primarily responsible to the Customer for all the acts and omissions of the sub-contractors as fully as if they were the acts and omissions of Swiss Post Solutions.

# 17. AUDIT RIGHTS

- 17.1. Upon not less than 30 days prior written notice, except in the case of reasonable cause to suspect fraud or breach of confidentiality or breach of intellectual property rights (in which case no notice shall be required), and no more frequently than once per year, the Customer, at its sole cost and expense, may conduct an independent audit of Swiss Post Solutions internal processes and procedures relating solely to security, availability and service continuity, including but not limited to Swiss Post Solutions compliance with Applicable Data Protection Legislation, the backup systems, disaster recovery programmes and security policies. In such event, any such audit shall be conducted during normal business hours and in a manner so as to reduce any interruption or interference with Swiss Post Solutions business operations.
- **17.2.** Swiss Post Solutions will provide to the Customer a copy of all their security policies in place, on written request.

#### 18. ENTIRE AGREEMENT

- **18.1.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and supersedes and invalidates all written or oral earlier understandings and agreements between any of the parties and all earlier representations by any party relating to such subject matter.
- **18.2.** The parties have not entered into this Agreement in reliance upon any representation, warranty or promise and no such representation or warranty or any other term is to be implied whether by virtue of any usage or course of dealing or otherwise except as expressly set out in this Agreement.
- **18.3.** This clause 18 shall not limit or exclude the liability of a party for fraud or fraudulent misrepresentation or concealment.

#### 19. GENERAL

19.1. The Contracts (Rights of Third Parties) Act 1999



A person who is not a party has no right to enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

#### 19.2. No Partnership

This Agreement is not intended to and does not operate to create a partnership between the parties, or to authorise any party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other party.

#### 19.3. Variation

This Agreement may only be varied by the parties if in writing and signed on behalf of each of the parties.

# 19.4. Waiver and Remedies

- 19.4.1. A waiver of any term, provision or condition of, and any consent or approval granted under, this Agreement will be valid only if it is in writing, signed by the party giving the waiver or granting the consent or approval.
- 19.4.2. Any failure (in whole or in part) to exercise or delay in exercising any right, power or remedy ("Right") available under this Agreement or in law will not constitute a waiver of that or any other Right nor will any single or partial exercise of any Right preclude any other or further exercise of that or any other Right. The rights and remedies provided by this Agreement are cumulative and (unless otherwise expressly stated in this Agreement) and may be exercised without excluding any other rights or remedies available in law.

#### 19.5. Confirmation of Certain Provisions

The expiration or determination of this Agreement howsoever arising shall not operate to affect such of the provisions hereof as either in accordance with their terms is expressed to operate or have effect thereafter or impliedly survive such expiration or determination.

#### 19.6. Severability

This Agreement is severable in that if any provision hereof is determined to be illegal or unenforceable by any court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement.

# 20. GOVERNING LAW AND JURISDICTION

- **20.1.** This Agreement (and any dispute or claim relating to it, its enforceability or its termination) shall be governed by and construed in accordance with English law.
- **20.2.** The courts of England and Wales shall have exclusive jurisdiction regarding any claim or dispute arising out of or in connection with this Agreement. The parties to this Agreement irrevocably submit to such jurisdiction and waive any objection to it, on the ground of inconvenient forum or otherwise.



Signed for and on behalf of SWISS POST SOLUTIONS LIMITED	Signed for and on behalf of
Signature	Signature
Name	Name
(BLOCK CAPITALS)	(BLOCK CAPITALS)
Position	Position
Date	Date
Signature	Signature
Name	Name
(BLOCK CAPITALS)	(BLOCK CAPITALS)
Position	Position
Date	Date



# **SCHEDULE 1 — SERVICES**

Commencement Date	[ ]	
Initial Term:	[	]

# **Description of Services:**

- Mailroom Outsourcing On-site or Off-site
- Security Screening
- Document Processing at off-site DPC
- Third Party Contract Management

[SET OUT DETAILS OF IN-SCOPE SERVICES— NORMALLY AN EXTRACT FROM THE TENDER/PROPOSAL — TAKE CARE NOT TO PROMISE OR IMPLY 100% SERVICE]

# **Change Requests**

Any development / system configuration / project management resource requirement will be identified for each individual requirement, and managed within an agreed Change Request (CR) procedure. No work will be undertaken without acceptance of the CR and a Purchase Order provided to Swiss Post Solutions to proceed with the work.

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# **SCHEDULE 2 — SERVICE LEVEL AGREEMENT**



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Between XXXXX and Swiss Post Solutions for the provision of XXXXXXXX and associated services



# **SCHEDULE 3 — PRICES / CHARGES**



Between XXXXX and Swiss Post Solutions for the provision of XXXXXXXX and associated services



# **SCHEDULE 4 — SPECIFICATION**

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# **SCHEDULE 5 — CONTACT LIST**

Name	
Position	Area Manager
	Responsible for: Commercial and Contractual Matters
Email:	
Mobile:	

# **For Escalation**

Name	
Position	Area Director
Email:	
Mobile:	

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## SCHEDULE 6 — EXIT PLAN

# **Example Exit Plan**

# 1. Objectives

The primary objective of the Exit Plan is to ensure that there is a comprehensive plan in place to ensure service delivery through the exit period upon expiry or termination of the Agreement and to provide a smooth transfer from Swiss Post Solutions to the new supplier of the services.

# 2. Governance and Reporting

The client and Swiss Post Solutions shall designate a representative from their respective organisations to act as the primary point of contact for all disengagement and exit related matters. The following individuals will have exit related responsibility:

- Swiss Post Solutions Exit Manager
- Client Contract Manager

The Service Exit Manager will have two main responsibilities; ensuring that the exit plan is on target in terms of time, quality and cost, and together with the Client Service Manager ensuring that performance levels are maintained throughout the exit period.

The plan will be monitored on a fortnightly basis and a project report produced for the client detailing the following:

- Work completed
- Milestones achieved
- Milestones to be achieved next period
- Issues

This report will be fed into agreed conference call updates, where both the Service Exit Manager and the Client Service Manager shall review with the client the performance reports and statistics.

# 3. Project Initiation

To initiate the exit project the client must formally notify Swiss Post Solutions of termination or the intent to initiate the exit project due to impending contract expiry under conditions contained in the contract with commencement date 26<sup>th</sup> November 2007.

# 4. Project Management

Swiss Post Solutions has two primary roles within the exit period project management structure:

- Business Manager with leadership and ultimate accountability for the programme.
- Service Exit Manager with responsibility for day-to-day management of the programme, its risks, issues, conflicts, priorities, communications, and ensuring delivery of the new capabilities.

The Service Exit Manager will review the existing exit plan and agree relevant changes with the client. The Project Initiation Document (PID) will provide details of the main tasks and deliverables, the dependencies between them, and the scope of the projects responsible for their delivery to the required standards of cost, time and quality.



The plan will reflect the exit period critical success factors and key deliverables, as well as the high level actions needed to deliver them.

# 5. Approach to Risk Management

Swiss Post Solutions is committed to minimising risks in the exit period. Our programme is built on recognised principles of change management and we bring a proven, participative approach that clearly demonstrates early and on-going results.

The objective of a risk management process is to minimise the impact of unplanned incidents on the project by identifying and addressing potential risks before significant negative consequences occur. A risk register is a specific deliverable of our Project Management methodology. The risk register will highlight areas of uncertainty and vulnerability, and thereby anticipate and manage problems, which could otherwise cause a failure to deliver the defined project objectives. It will also provide an overall assessment of project risk for discussion with the project steering group.

#### **Risk Management Process**

The risk management process will ensure that there is a regular review of the risks of the overall project and at the very least a one-time review of risk associated with individual teams within the project. From this review, necessary preventive and / or contingency actions will be identified and passed to detailed work planning for implementation. The effectiveness of risk management actions will be reviewed on an ongoing basis.

Identified risks will then be considered in respect of probability and potential consequences if the risk materialises into reality. Where the risk to the project is high, consideration will be given to possible preventive or contingency actions to mitigate that risk.

Specific actions, which are identified from the review, will be progressed as a project task and progress tracked through the detailed work planning. The effectiveness of any preventive actions which have been initiated and contingency plans called for, will however be considered in subsequent risk management reviews.

#### 6. Deliverables

With respect to the exit plan the main deliverables are as follows:

- Project Initiation Document
- Project Plan

As each independent deliverable is provided to the client the Service Exit Manager will warrant the data as correct and will require formal sign off of acceptance by the client.

#### 7. Service Levels

The Service Levels detailed in the SLA shall be maintained during the Exit Period.



# SCHEDULE 7 — GOODS / SOFTWARE / THIRD PARTY SOFTWARE

# **Equipment**

[LIST ANY EQUIPMENT TO BE PURCHASED]
[SPECIFY OWNERSHIP OF SUCH EQUIPMENT]

# **Software**



**Third Party Software** 

[THIRD PARTY SOFTWARE]

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Between XXXXX and Swiss Post Solutions for the provision of XXXXXXXX and associated services



# **SCHEDULE 8 — SUPPORT SERVICES**

[List as applicable]

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# **SCHEDULE 9 — EMPLOYEES**

[List as applicable]



## SCHEDULE 10 — SOFTWARE LICENCE TERMS

# 1. **DEFINITIONS**

#### **1.1.** In this Schedule:

#### "Equipment"

means the computer equipment used, owned or operated by the Customer, any Group Member of the Customer, their servants, agents or sub-contractors;

#### "Operating Manuals"

means the operating manuals relating to the Software and shall include any variations, amendments, modifications, enhancements or additions supplied under this Agreement;

#### "Permitted Purposes"

means the internal business purposes of the Customer and the members of the Customer's Group;

#### "Premises"

means the premises at which the Software is to be installed;

#### "Software"

means the computer programs as set out in Schedule 8 and shall include any replacements, modifications, variations, enhancements or additions supplied under this Agreement.

# 2. LICENCE

- **2.1.** With effect from the Commencement Date and for the term of this Agreement, Swiss Post Solutions grants to the Customer a non exclusive, revocable, non-transferable licence for the Customer and each member of the Customer's Group to use the Software for the Permitted Purposes subject to the terms and conditions of this Agreement.
- **2.2.** The Software may not be used on any equipment or premises other than the Equipment or the Premises without the consent of Swiss Post Solutions.
- 2.3. If the Customer permanently discontinues the use of any Equipment, it may install the Software on any replacement equipment, which shall be deemed to be Equipment for the purposes of this Agreement provided that Swiss Post Solutions has first provided its written consent.
- **2.4.** The Customer shall ensure that none of it employees or any Group Member uses the Software other than as licensed hereby.
- 2.5. Swiss Post Solutions shall provide the Software in object code form only and the Customer shall have no right under any circumstances to have access to the source code of the Software except to the extent that such source code is required to be placed into escrow pursuant to the terms of the Services Agreement in which case access to such source code shall be governed by the terms of such escrow agreement.

# 3. RESTRICTED ACTS

**3.1.** Except to the extent expressly permitted by law the licence granted by this Agreement does not permit:



- **3.1.1.** the Customer to make copies of the Software or the Operating Manuals save to the extent that such copies are reasonably necessary for:
  - a) use of the Software in accordance with the terms of this Agreement and where applicable the Services Agreement;
  - **b)** security and back-up purposes;
  - c) and the licence granted by this Agreement shall apply to all such copies of the Software and the Operating Manuals;
- 3.1.2. the Customer to de-compile or reverse engineer the Software; or
- 3.1.3. the alteration, modification, adaptation or translation of the Software.
- **3.2.** The Customer shall:
- **3.2.1.** use its best endeavours to protect the Software from access or use by unauthorised persons; and
- 3.2.2. retain the Software in its possession or control at all times.

# 4. WARRANTIES AND COVENANTS

- **4.1.** [The Software is provided strictly "as is" and Swiss Post Solutions makes no additional such warranties in respect of the Software except as expressly provided under this Agreement.]
- 4.2. Any and all warranties, conditions or other terms which may be implied or otherwise incorporated into this Agreement by statute, common law or otherwise are, to the fullest extent permitted by law, hereby excluded. For the avoidance of doubt, Swiss Post Solutions makes no warranties, either express or implied, regarding the Software's merchantability or fitness for any particular purpose, any hidden defects, durability, suitability, course of performance, course of dealing, usage of trade, non-infringement or otherwise.
- **4.3.** Swiss Post Solutions does not warrant that the operation of the Software will be uninterrupted or error-free or that all errors will be corrected.
- **4.4.** The Customer shall not make or pass on any express or implied warranty or representation on behalf of Swiss Post Solutions or its licensors to any end user or other third party.
- **4.5.** [With respect to third party software that may be provided as part of the Services, Swiss Post Solutions shall pass on the relevant third party warranties for such software, to the extent it is able to do so.]

# 5. INTELLECTUAL PROPERTY RIGHTS

- **5.1.** The Customer acknowledges that all Intellectual Property Rights in the Software belong and shall belong to Swiss Post Solutions or its licensors, and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of this Agreement.
- 5.2. If any claim is made against the Customer, any member of the Customer's Group or their servants, agents or sub-contractors that the use or possession of the Software or the Operating Manuals infringes the Intellectual Property Rights of any third party (a "Claim") then the Customer shall immediately notify Swiss Post Solutions of the Claim and shall provide Swiss Post Solutions with all assistance requested by Swiss Post Solutions, at Swiss Post Solutions's expense, in connection with such Claim.

Between XXXXX and Swiss Post Solutions for the provision of XXXXXXX and associated services



- **5.3.** If any Claim is made, or in the Swiss Post Solutions' reasonable opinion is likely to be made, against the Customer, Swiss Post Solutions may at its sole option and expense:
- **5.3.1.** procure for the Customer the right to continue using the Software (or any part thereof) in accordance with the terms of this licence; or
- **5.3.2.** modify the Software so that it ceases to be infringing; or
- **5.3.3**. replace the Software with non-infringing software; or
- **5.3.4**. terminate this Agreement immediately by notice in writing to the Customer.



# APPENDIX 1 — FREEDOM OF INFORMATION ACT REQUIREMENTS [PUBLIC SECTOR ORGANISATIONS]

#### 1) Definitions:

- "FOIA" means the Freedom of Information Act 2000 together with any amendments, regulations and codes of practice made pursuant to the Freedom of Information Act 2000
- "Information" means any information obtained, collected or held by the Council or Swiss Post Solutions in relation to or created pursuant to this Agreement (including this Agreement.)
- "Request for Information" means a request for information as described in Section 8 of FOIA.
- 2) Swiss Post Solutions understands and acknowledges that the Council is subject to the requirements of the FOIA and agrees to assist and co-operate with the Council to enable it to comply with its Information disclosure obligations under FOIA.
- 3) Swiss Post Solutions shall provide the Council with a copy of all Information which is required to comply with any Request for Information. Such Information shall be provided within 10 working days of a request from the Council (or such other period as the Council shall specify) and in such form as the Council may specify.
- 4) When submitting a tender or agreeing the terms of this Agreement, Swiss Post Solutions may identify in writing information which it considers to be commercially prejudicial, or a trade secret. Swiss Post Solutions should also indicate if it believes that information should be accepted in confidence. Such an expectation should only be claimed where Swiss Post Solutions believes it would have grounds to sue for breach of confidence were the information to be disclosed. Where Swiss Post Solutions identifies sensitive information, the Council will have due regard to Swiss Post Solutions comments or objections.
- Notwithstanding Clause 4 above, the Council shall be responsible for determining whether information is exempt from disclosure under FOIA and for determining, in its absolute discretion, the information to be disclosed in response to a Request for Information.
- **6)** Swiss Post Solutions understands and acknowledges that the Council may be obliged under FOIA to disclose Information without consulting Swiss Post Solutions.
- 7) If the Council at Swiss Post Solutions request seeks to rely upon a FOIA exemption, Swiss Post Solutions shall indemnify the Council for any costs, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner.
- 8) The Council shall not be liable for any loss, damage, harm or other detriment, however caused, arising from any disclosure made pursuant to a Request for Information, or a decision notice from the Information Commissioner.
- **9)** The Council may, pursuant to a Request for Information, disclose all information and documentation, in whatever form, as necessary to respond to that Request for Information.
- 10) Swiss Post Solutions shall notify any sub-contractor of the provisions of this clause and any sub contract shall contain like terms as to this Clause entitling the Council to provision of information held by the sub contractor relating to the sub contract with a full indemnity and without any liability as if the information related to Swiss Post Solutions or Contract. Swiss Post Solutions shall fully indemnify the Council for any failure to comply with this requirement.
- **11)** The Council and Swiss Post Solutions shall bear their own respective costs in relation to any disclosure under FOIA.
- **12)** The provisions of this Clause shall take precedence over any clause or condition requiring the Council to hold information in confidence.



# **SCHEDULE 11 — DATA PROTECTION PARTICULARS**

The subject matter and duration of the Processing	[Provide a brief description]
The nature and purpose of the Processing	[Provide a brief description]
The type of Personal Data being Processed	[Provide a brief description]
The categories of Data Subjects	[Provide a brief description]

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# **Swiss Post Solutions**

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