

ROYAL MAIL WHOLESALE

ROYAL MAIL CUSTOMER CONTAINER AGREEMENT – Auto Level Packet Sleeves (ALPS)

DATED

201[]

BETWEEN

1. **Royal Mail Group Ltd**, company number 4138203, whose registered office is situated at 100 Victoria Embankment London EC4Y 0HQ (“**Royal Mail**”); and
2. [**Customer registered name**], company number [**company registration number**], whose registered office is situated at [**company registered address**] (“**the Customer**”).

RECITALS

- A. The use/loan of ALPS is agreed subject to the Customer signing a Royal Mail Container Agreement for the use of Yorks (as defined below)
- B. The Customer owns the Customer ALPS and uses the Customer ALPS for the purposes of handing over Packets to Royal Mail premises in accordance with the Access Agreement (as defined below) and the Customer Container Agreement for the use of Yorks.
- C. To facilitate operational procedures for the hand over of Packets described in Recital A, the Customer has asked Royal Mail to provide Royal Mail ALPS to it on the basis of a one-for-one swap for the Customer ALPS and Royal Mail has agreed to such loan of Royal Mail ALPS, all as provided in this Agreement.
- D. Packets may be handed over in a York container fitted with an ALPS subject to the requirements of each Access Service as detailed:
Access 1400 - in place of a bag where the minimum number of Packets required per selection (5 packets) cannot be accommodated in a single bag due to the weight restrictions or the physical dimensions of the Packets; and
Access 120 - in place of a bag per selection. ..

IT IS AGREED

1. Definitions and interpretation

1.1 In this Agreement:

Access Agreement means the agreement between Royal Mail and the Customer dated [**dd/mm/yyyy**] under which Royal Mail granted access to its postal facilities;

ALPS or ALPS containers means Auto Level Packet Sleeves;

Associate means in relation to either party, (i) any subsidiary or holding company of that party and any subsidiary of that holding company, or (ii) an agent (including a franchisee or owner-driver) of that party engaged by that party for the purposes of fulfilling its obligations under the Access Agreement;

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Commencement Date	means the date of this Agreement;
Container Agreement for the use of Yorks	means the agreement between Royal Mail and the Customer dated [dd/mm/yyyy] under which the Customer purchased York containers to enable handover of Mailing Items to Royal Mail premises in accordance with the Access Agreement;
Customer ALPS	means such ALPS containers purchased by the Customer from time to time in accordance with clause 3.1 or in the Customer's possession following the transfer from Royal Mail in accordance with clause 3.4;
Excess ALPS	has the meaning given in clause 4.5;
Intellectual Property Rights	means the copyright, the registered design and the design rights and all other intellectual property rights recorded or embodied in any design documents relating to the Royal Mail ALPS or any part of the technical information in each case in any part of the world and whether or not registered or registrable, for the full period and all extensions and renewals;
Mailing Item	has the meaning given to the term in the Access Agreement;
Packet	has the meaning given to the term in the Access Agreement;
Purchase Date	means the date or dates when the Customer purchases ALPS from time to time, as advised to Royal Mail in accordance with clause 3.3;
Royal Mail ALPS	means Royal Mail ALPS containers provided by Royal Mail in accordance with the terms of this Agreement;
Royal Mail premises	means Royal Mail's inward mail centres;
third party	means any person other than the Customer or its Associate; and
York containers	means a Royal Mail caged trolley used for the purposes of moving or transporting Mailing Items.

1.2 In this Agreement (except where the context otherwise requires):

1.2.1 any reference to a clause is to the relevant clause of this Agreement;

1.2.2 the masculine shall include the feminine and the singular shall include the plural and vice versa; and

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1.2.3 clause headings are for convenience only and shall not affect its interpretation.

2. Loan of ALPS

In consideration of the Customer agreeing to perform its obligations as set out in this Agreement and providing that the Customer performs those obligations, Royal Mail shall (subject to clause 7 of the Access Agreement (insofar as it applies to this Agreement) and clause 3.5) from time to time supply Royal Mail ALPS to the Customer by way of loan.

3. Customer's Obligations

3.1 The Customer has purchased [insert number] ALPS containers directly through Royal Mail's preferred supplier (currently Jacon Limited). The Customer may purchase additional ALPSs in the same way as its operational needs require.

3.2 The Customer shall replace the Customer ALPSs by purchasing new ALPSs in accordance with clause 3.1 within four years of the date on which it purchased such ALPSs.

3.3 The Customer shall notify Royal Mail in writing of the total Customer ALPSs purchased from time to time and in any event within two months of the:

3.3.1 the purchase of additional ALPSs in accordance with clause 3.1; and

3.3.2 the replacement of Customer ALPSs in accordance with clause 3.2.

3.4 Each time the Customer hands over mail in Customer ALPSs at the Royal Mail premises in accordance with the Access Agreement, Royal Mail will (subject to clause 7 of the Access Agreement insofar as it applies to this Agreement) provide the Customer with one empty Royal Mail ALPS for each Customer ALPS that the Customer has presented on that handover day.

3.5 When transporting, loading and unloading the Royal Mail ALPSs, the Customer shall use only vehicles that meet Royal Mail's reasonable requirements with regard to health and safety of personnel and care of the Royal Mail ALPSs, as notified to the Customer by Royal Mail from time to time.

3.6 Following collection of Royal Mail ALPSs from Royal Mail, the Customer shall distribute them to its premises. The Customer:

3.6.1 shall use the Royal Mail ALPSs in its mail business for the purposes of transporting mail between (a) the Customer's premises or those of an Associate and (b) between any premises referred to in (a) and Royal Mail premises;

3.6.2 may move empty Royal Mail ALPSs between its premises and those of an Associate to meet its reasonable operational requirements.

for the purpose of fulfilling its obligations under the Access Agreement. The Customer shall ensure that ALPS are not used to transport mail between any other premises, whether of the Customer or of any Associate, or at any other premises of the Customer or any Associate, or for any other purpose, including in respect of other Royal Mail mail services.

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- 3.7 The Customer shall not create or allow to be created any lien or charge over the Royal Mail ALPSs nor shall it sell, hire, lend, charge or otherwise dispose of or allow, subject to clause 3.6, any third party to use or take possession of the Royal Mail ALPSs without the prior written consent of Royal Mail.
- 3.8 The Customer shall not allow any Royal Mail ALPSs to be used in connection with mail that is to be collected, conveyed or delivered by any third party, save as contemplated by clause 3.6.
- 3.9 Royal Mail reserves its right to recover any Royal Mail ALPSs in the possession of a third party in breach of this Agreement.
- 3.10 The Customer shall keep the Royal Mail ALPS in good condition, fair wear and tear excepted, and shall report any damage to the Royal Mail ALPS to Royal Mail immediately.
- 3.11 The Customer shall not remove from the Royal Mail ALPS any labels or markings placed thereon by Royal Mail or the manufacturers of the Royal Mail ALPS and shall not allow to be placed thereon any other labels or markings of any kind without the prior written consent of Royal Mail.
- 3.12 Without prejudice to clause 5, the Customer shall keep the Royal Mail ALPS in a secure place at all times when the Royal Mail ALPS are not in use for the purposes described in clause 3.6.
- 3.13 In the event that the Customer does not have sufficient quantities of Royal Mail ALPS, it may bring mail to Royal Mail premises in its own containers (including Customer ALPS) providing that where it carries mail in containers which are not Customer ALPS it transfers the mail into the Royal Mail containers at the loading dock at Royal Mail premises before handing over the mail to Royal Mail. The Customer may not otherwise use any containers other than Royal Mail ALPS and Customer ALPS (or Yorks where the Customer has entered into a York Exchange Agreement with Royal Mail) to deliver mail to Royal Mail premises.
- 3.14 In the event that Royal Mail introduces new designs of Royal Mail ALPS, the Customer shall accept any such Royal Mail ALPS supplied to it by Royal Mail.
- 3.15 The Customer shall ensure that the Royal Mail ALPS are not misused or its actions in using the Royal Mail ALPS does not in any way damage Royal Mail's reputation.
- 3.16 ALPS must only be used when fitted within York containers.

4. Records

- 4.1. On each collection by the Customer of Royal Mail ALPS from Royal Mail, the Customer shall sign Royal Mail's waybill to acknowledge receipt of the Royal Mail ALPS in the quantities stated in the Manifest of that handover day (as defined in the Access Agreement) provided in accordance with the Access Agreement. A copy of the waybill will be supplied to the Customer. Any error in the details shown on the waybill must be agreed with Royal Mail and corrected at the time of collection.
- 4.2 The Customer shall be deemed to have received the quantity of Royal Mail ALPS stated on the waybill or as otherwise agreed in accordance with clause 4.1.

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- 4.3 At the time of each collection of Royal Mail ALPS by the Customer, the Customer shall check the Royal Mail ALPS and notify Royal Mail of any defects in it. Any defects not notified within 12 hours of collection will be deemed to have occurred after receipt of the Royal Mail ALPS by the Customer.
- 4.4 The Customer shall allow Royal Mail and any person authorised by Royal Mail access to its premises and to the premises of any Associate of the Customer at any time during normal working hours to inspect the Royal Mail ALPS and the Customer's records with regard to the Royal Mail ALPS. If the Customer is unable to produce the Royal Mail ALPS in the correct quantities to Royal Mail on such an inspection, it will be presumed to have been lost whilst in the possession of the Customer (unless Royal Mail's records indicate otherwise).
- 4.5 Within seven days of a request by Royal Mail, the Customer shall, at its own expense, supply Royal Mail with an audit of all Royal Mail ALPS in its possession. If it is Royal Mail's reasonable opinion that the Customer has an excessive quantity of Royal Mail ALPS ("Excess ALPS") in relation to the quantity of ALPS the Customer has purchased and notified to Royal Mail in accordance with clause 3.3 Royal Mail may require the return of the Excess ALPS within two working days.
- 4.6 If the Customer in good faith disputes Royal Mail's reasonable opinion in respect of clause 4.5, on written request by the Customer the parties will attempt to resolve the dispute by negotiation and failing such resolution 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.
- 4.7 Without prejudice to any other rights it may have, if the Customer fails to permit inspections or fails to produce all Royal Mail ALPS supplied to it under this Agreement for inspection in accordance with clause 4.4 or fails to produce an audit in accordance with clause 4.5, Royal Mail may require the return of all Excess ALPS within two working days.
- 4.8 The Customer shall comply with Royal Mail's requirements to return Royal Mail ALPS under clauses 4.5 and 4.6 within two working days and shall return the Excess ALPS to the Royal Mail site specified by Royal Mail. Subject to the provisions of this clause 4.8, if the Customer fails to do so, Royal Mail may terminate this Agreement for material breach in accordance with clause 8.2. Royal Mail may not terminate this Agreement for material breach pursuant to clause 8.2, if the quantity of the Excess ALPS is the subject of dispute resolution pursuant to clause 4.6.
- 4.9 In the event that Royal Mail wishes to modify or change its tracking systems across its business for Royal Mail ALPS, the Customer will comply with such modifications or changes, and will install or obtain the necessary systems and/or equipment and make any necessary adjustments to its premises at its own expense to enable it do so within the notice periods reasonably specified by Royal Mail.

5. Loss, Damage, etc.

- 5.1. Without prejudice to clause 11, Royal Mail reserves the right to recover the reasonable costs incurred by it in relation to all Royal Mail ALPS lost, stolen, damaged or destroyed whilst in the Customer's custody, control or possession or that of its customers, servants, or agents, howsoever such loss, damage or destruction was caused, except where it was caused as a result of the negligence or wilful act of Royal Mail, its servants or agents. The Customer's total liability under this clause shall not exceed the purchase value of the Customer ALPS purchased in total.

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- 5.2 The Customer shall maintain insurance in respect of its potential liability hereunder in an appropriate amount with a reputable insurer at its own expense and shall produce evidence of such insurance to Royal Mail on request.

6. Maintenance

- 6.1 Royal Mail will maintain the Customer's ALPS at a cost to the Customer of £1.91 per ALPS (as at April 2011) during each year of this Agreement.
- 6.2 Royal Mail will invoice the Customer on each anniversary of the Purchase Date in respect of the maintenance charges calculated in accordance with clause 6.1 and the Customer shall pay such maintenance charges within 30 days of the date of invoice.
- 6.3 If Royal Mail purchases the Customer ALPS part way through a year in accordance with clause 7.3, it will invoice the Customer for the maintenance of the Customer ALPS on a pro rata basis.
- 6.4 In the absence of any increase in the maintenance charge in accordance with clause 6.5, Royal Mail will review the maintenance charge annually in each year of this Agreement (**Maintenance Charge Review**) and any increase in the maintenance charge, as calculated in accordance with this clause 6.4, shall take effect on the anniversary of this Agreement immediately following the previous Maintenance Charge Review. The charges for maintaining the Customer ALPS, as determined during the Maintenance Charge Review, will increase by the change in percentage points between the average levels of the Retail Price Index published or determined with respect to each of the six months up to and including August in the contract year preceding that anniversary and the average of those levels with respect to each of the six months up to and including August in the preceding year.
- 6.5 If the costs to Royal Mail in maintaining the Customer ALPS have increased materially during the term of this Agreement, Royal Mail may increase the charges for maintenance on giving the Customer at least 90 days' written notice of a change to the maintenance charges, such notice to include reasonable evidence of such material increase in costs, and such change to take effect on the next anniversary of the Commencement Date.
- 6.6 The maintenance charges are expressed as exclusive of VAT. The Customer shall pay any VAT payable on such charges.
- 6.7 If the Customer fails to pay Royal Mail in accordance with clause 6.2, without prejudice to any other right or remedy available to Royal Mail, Royal Mail shall be entitled to:
- 6.7.1 provided it has first served seven days' notice of its intention to do so on the Customer, suspend immediately after expiry of such notice the performance or further performance of its obligations under this Agreement without liability to the Customer; and
- 6.7.2 charge daily interest on all amounts not paid until payment is received in full at an annual rate equal to 4% above the Bank of England base lending rate as current from time to time.

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7. Option to purchase

7.1 If the Customer:

7.1.1 wishes to reduce the number of Customer ALPS required for its operations; or

7.1.2 ceases posting under the Access Agreement,

it will first notify Royal Mail of its desire to sell the Customer ALPS.

7.2 Royal Mail shall notify the Customer in writing within 30 days of the notice provided to it in accordance with clause 7.1 whether it wishes to purchase the Customer ALPS.

7.3 If Royal Mail decides to purchase the Customer ALPS it will pay the Customer the then current book value of the Customer ALPS, which will represent the initial purchase price depreciated by 25% on each anniversary of the date on which those Customer ALPS were purchased. If Royal Mail purchases the Customer ALPS part way through a year the Customer ALPS will be depreciated on a pro rata basis.

7.4 If Royal Mail declines in writing to purchase the Customer ALPS, the Customer may deal with the Customer ALPS in its absolute discretion.

8. Duration and Termination

8.1. This Agreement shall commence on the Commencement Date and shall be terminable upon 30 days' written notice which may be given at any time by either party to the other, subject to earlier termination in accordance with the following provisions.

8.2. This Agreement may be terminated by either party forthwith upon giving the other written notice in the event that the other has committed a material or persistent breach of any of its obligations hereunder and, where the breach is remediable, has failed to remedy that breach within seven days of being required to do so.

8.3. Royal Mail may terminate this Agreement forthwith upon giving the Customer written notice in the event that the Customer fails to pay its debts owed to Royal Mail under any contract or credit arrangement as they fall due, becomes insolvent, passes a resolution for winding up (save in respect of a bona fide scheme of solvent amalgamation or reconstruction) or has a petition presented against it for winding up, or has a receiver, manager, administrative receiver or administrator appointed in respect of its business or affairs or if circumstances arise which would entitle the court or a creditor to wind the company up or to appoint such a person.

8.4. This Agreement shall terminate automatically without notice on the termination of the Access Agreement to which the provision by Royal Mail of Royal Mail ALPS under this Agreement relates.

8.5. On termination of this Agreement and without prejudice to any other rights Royal Mail may have, the Customer shall immediately return all Excess ALPS to Royal Mail sites specified by Royal Mail or, at Royal Mail's request, make the Excess ALPS available for collection by Royal Mail on a date and at a time convenient to Royal Mail and shall allow Royal Mail access to the Customer's premises for that purpose. The provisions of clause 5 shall continue to apply despite termination of this Agreement in respect of loss or damage which is not discovered until after termination.

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- 8.6. If the Customer fails to return the Excess ALPS or make the Excess ALPS available for collection, as specified in clause 8.5, for any reason, Royal Mail reserves the right to recover the reasonable costs incurred by Royal Mail as a result of such failure.
- 8.7. Without prejudice to its other obligations hereunder, in the event of a receiver, manager, liquidator, administrator or administrative receiver being appointed in respect of the Customer, the Customer shall immediately inform such person that the Excess ALPS are the property of Royal Mail and do not form part of the Customer's assets or undertaking.
- 8.8. Termination of this Agreement by either party shall be without prejudice to the accrued rights of either party at the date of termination.

9. Ownership

The Excess ALPS (if any) shall remain the property of Royal Mail at all times.

10. Health and Safety

- 10.1 It is the Customer's responsibility to ensure that its custody, use, management and transportation of the Royal Mail ALPS complies with all applicable health and safety legislation and in particular shall ensure that when attending at any premises of Royal Mail it complies with Royal Mail's health and safety procedures (as may be notified to the Customer from time to time) regarding the Royal Mail ALPS.
- 10.2 The Customer shall ensure that it does not load any of the Customer ALPS in excess of 250 kg or such other maximum weight limit specified by Royal Mail from time to time.
- 10.3 Royal Mail reserves the right to refuse hand over or handle any Royal Mail ALPS weighing more than the maximum loaded weights.

11. Liability

- 11.1 Subject to clauses 5.1, and 11.2, the Customer shall indemnify and keep indemnified Royal Mail against any cost, liability, proceeding or expense suffered or incurred by Royal Mail as a result of the Customer's custody, use or management of the Royal Mail ALPS (save where this arises as a result of any negligent act or omission on the part of Royal Mail) including without limitation as a result of any negligent or wrongful act or omission or any breach of statutory duty on the part of the Customer, its servants or agents in the custody, use or management of the Royal Mail ALPS or any of it or any breach by the Customer of its obligations under this Agreement.
- 11.2 Nothing in this Agreement shall exclude or restrict either party's liability for death or personal injury or for the fraud or fraudulent misrepresentation of such party.

12. Application of Access Agreement

The Customer confirms that by entering into this Agreement it will be bound by the provisions of clauses 6, 7, 12, 17, and 18 of the Access Agreement which shall be deemed to apply to this Agreement as if specifically and full set out in it. Each clause of the Access Agreement listed in this clause 12, shall be interpreted accordingly.

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13. Waiver

No delay, neglect or forbearance on the part of either party in enforcing its obligations hereunder and no partial enforcement thereof, shall prejudice the subsequent exercise of those rights or act as a waiver thereof.

14. Warranties

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

15. Intellectual Property Rights

15.1 The Customer acknowledges Royal Mail's ownership and proprietary rights in the Intellectual Property Rights in the Royal Mail ALPS and agrees and acknowledges that:

15.1.1 it will not obtain any rights in the Intellectual Property Rights of the Royal Mail ALPS, except as expressly granted to it under this Agreement; and

15.1.2 it will not register or attempt to register any of the Intellectual Property Rights in the Royal Mail ALPS in any jurisdiction.

16. Notices

16.1 Any notices required to be served hereunder shall be addressed to the Customer for the attention of [*insert details*] at the address given at the beginning of this Agreement and addressed to Royal Mail at:

Royal Mail Wholesale
148 Old Street
London EC1V 9HQ
Attention: Managing Director
Fax: 020 7250 2382

or such other address as either party may notify to the other in writing from time to time.

16.2 All notices shall be sent by first class post or by fax and shall, in the case of first class post, be deemed to be served on the second working day after the day of posting and in the case of fax on the same working day.

17. Miscellaneous

17.1 No variation of this Agreement shall be effective unless the change is in writing, expressly stated to amend this Agreement and signed by an authorised representative of each party.

17.2 Neither party may assign the benefit of this Agreement.

17.3 This Agreement and the documents referred to in this Agreement embody the entire understanding between the parties and there are no additional terms or obligations other than those contained or referred to herein.

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- 17.4 This Agreement shall be deemed to have been made in England and shall be subject to English law. The Parties agree to submit to the exclusive jurisdiction of the English Courts.
- 17.5 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 Contracts (Rights of Third Parties) Act 1999.

As witness the hand of the parties the day and year before written.

Signed on behalf of **Royal Mail Group Ltd** by

.....
a duly authorised signatory

Signed on behalf of [**Customer registered name**] by

.....
a duly authorised signatory