LAW DEPARTMENT

UNITED STATES POSTAL SERVICE

Postal Regulatory Commission
Submitted 7/2/2021 2:25:17 PM
Filing ID: 119149
Accepted 7/2/2021

July 2, 2021

Honorable Erica A. Barker
Secretary and Chief Administrative Officer
Postal Regulatory Commission
901 New York Avenue, NW, Suite 200
Washington, DC 20268-0001

Dear Ms. Barker:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is hereby filing copies of two bilateral Data Sharing Agreements (DSAs) into which it has entered with the designated postal operators of Montenegro and Timor-Leste. *See* Attachments 2 & 3, respectively (redacted). The Postal Service has marked the non-public versions of these DSAs as "Confidential" and "Non-Public," and is filing them under seal, because they contain information considered confidential and commercially sensitive by the affected postal operators and the Postal Service.

The Postal Service considers certain portions of the new DSAs to be protected by Exemption 3 of the Freedom of Information Act (FOIA), 5 U.S.C. §552(b)(3), coupled with 39 U.S.C. § 410(c)(2), and thereby not subject to mandatory disclosure under the FOIA. Further, the DSAs contain the confidential commercial information of the affected postal operators, and, as such, certain portions of the instruments are also subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an Application for non-public treatment of these documents under 39 C.F.R. § 3011.201. *See* Attachment 1. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that any of the documents become subject to any FOIA request, so that we can engage in appropriate consultations with the affected postal operator(s).

Pursuant to 39 U.S.C. § 407(d)(2), the Postal Service is also hereby filing (as Attachments 4 & 5) copies of the signature pages for the accessions of two additional foreign designated postal operators to join the following multilateral DSA into which the Postal Service and various other foreign designated postal operators have previously entered: "Agreement for the Electronic Exchange of Customs Data, Version 2 (8 June 2015)."[1]

[1] This refers to the multilateral "DSA 1" among the Postal Service and various foreign designated postal operators that is administered through the International Post Corporation (IPC); the Postal Service filed its signed copy with its letter to Mr. Stacy Ruble dated May 24, 2017. With this submission, the Postal Service is filing copies of the signature pages for the accessions of one of the designated operators of Bosnia and Herzegovina and of the designated operator of Montenegro.

475 L'ENFANT PLAZA SW
WASHINGTON, DC 20260-1101
(202) 268-6687
JEFFREY.A.RACKOW@USPS.GOV

Please feel free to contact me if further information would be helpful.

Sincerely,

/s/

Jeffrey A. Rackow

Attorney

Attachments

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT

In accordance with 39 C.F.R. Part 3011, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the unredacted versions of the Data Sharing Agreements ("DSAs") between the Postal Service and the foreign designated postal operators. The Postal Service is transmitting the DSAs to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). The redacted versions of the DSAs are attached to this Application as Attachments 2 & 3. The Postal Service hereby furnishes below the justification required by 39 C.F.R. § 3011.201 for this Application.

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials;

The material designated as non-public consists of information of a commercial nature that would not be publicly disclosed under good business practices as well as information that may impact law enforcement interests. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).[1] Because the portions of the material that the Postal Service seeks to file under seal fall within the scope of information not

[1] In appropriate circumstances, the Commission may determine the proper level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 4679, Order Adopting Final Rules Relating to Non-Public Information, Docket No. RM2018-3, June 27, 2018, at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11. *Cf. Food Marketing Institute v. Argus Leader Media*, No. 18-481, 2019 WL 2570624 (U.S. June 24, 2019).

required to be publicly disclosed, the Postal Service asks the Commission to support its determination that this material is exempt from public disclosure and to grant its Application for its non-public treatment.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of [§ 3011.201] (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual;

The submitter, the Postal Service, has a proprietary interest in the information contained in the non-public versions of the DSAs. In the case of agreements, such as the ones being transmitted here, the Postal Service believes that the foreign postal operators that are counterparties to the agreements are the only third parties that also have proprietary interests in that information. For both itself and for those third-party operators, the Postal Service identifies as an appropriate contact person Mr. Jimmy Ortiz, Executive Director, International Postal Affairs, United States Postal Service.[2] Mr. Ortiz's phone number is +1 (202) 268-6356, and his email address is jimmy.ortiz@usps.gov. The Postal Service has already informed the participating postal operators, consistent with 39 C.F.R. § 3011.200(b), about the nature and scope of this filing and about the postal operators' ability to address any confidentiality concerns directly with the Commission.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would

[2] 39 C.F.R. § 3011.201(b)(2)(ii) provides that, where a third party's identification is "sensitive or impracticable," another individual may be designated to provide notice to the third party as applicable. Under the present circumstances in which the third parties are foreign postal operators that are based abroad to conduct their businesses, it is impracticable to identify one individual who can receive and accept future notices of U.S. motions, subpoenas, or orders related to these materials on behalf of the foreign operators. Accordingly, the Postal Service identifies the individual above to provide such notices as applicable.

allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials is non-public;

Pursuant to 39 U.S.C. § 407(d), the Postal Service is transmitting the DSAs with foreign postal operators that are agencies of foreign governments. The DSAs include information concerning the transmission of electronic data between the Postal Service and the foreign postal operators. Such electronic data are used by law enforcement entities to ensure compliance with various U.S. laws and regulations, including those related to imports, exports, security, and mailability. The Postal Service may also use the electronic data for operational and customer services purposes. Likewise, the foreign operators and their countries' law enforcement agencies may also use the data for law enforcement, operational, and customer service purposes. The redactions applied to the DSAs protects the specifics of the electronic transfer of data between the Postal Service and its counterparties.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of such harm alleged to result from disclosure;

If the portions of the DSAs that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it could suffer commercial harm. The details of electronic data transfers — including the content, timing, and method of such transfers – are commercially sensitive, and would not be disclosed under good business practices. If this information were made public, competitors of the Postal Service and its counterparties, including private entities and other postal operators not parties to the DSAs, could use the information to identify strengths and vulnerabilities in operations and customer service. Postal operators not currently a party to any DSA

also might use the information to their advantage in negotiating future DSAs with the Postal Service. Similarly, the foreign postal operators that are the counterparties to the agreement could also face the same kind of commercial harm from disclosure to their competitors.

Additionally, if the redacted information were to be disclosed publicly, it would assist entities seeking to circumvent law enforcement efforts to ensure compliance with various U.S., foreign, and international laws and regulations, including those governing imports, exports, security, and mailability.

The Postal Service considers the use of the redacted information to gain commercial advantage and to circumvent law enforcement to be highly probable outcomes that would result from public disclosure of the redacted material.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the redacted terms of the DSAs would provide other foreign postal operators negotiating power to obtain similar terms from the Postal Service.

Hypothetical: The negotiated terms are disclosed publicly on the Postal Regulatory Commission's website, which another postal operator sees. That other postal operator then uses that publicly disclosed information to insist that it must receive similar, or better, terms when negotiating its own DSA with the Postal Service.

Harm: Public disclosure of redacted information in the DSA would be used by competitors to the detriment of the Postal Service.

Hypothetical: A competing delivery service obtains an unredacted version of the DSA from the Postal Regulatory Commission's website. The competitor analyzes the DSA to determine strengths and weaknesses of the Postal Service's operational and customer service abilities. The competing delivery service then targets the area of weaknesses to

gain leverage in the marketplace, thereby significantly cutting into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the DSA would be used detrimentally by the foreign postal operators' competitors.

Hypothetical: A competing international delivery service obtains copies of the unredacted version of the DSA from the Commission's website. The competitor analyzes the DSA to determine strengths and weaknesses of the foreign postal operator's operational and customer service abilities. The competitor then targets the areas of weakness to gain leverage in the marketplace, thereby significantly cutting into the revenue streams of the foreign postal operator.

Harm: Public disclosure of information in the DSA would be used to circumvent U.S., foreign, and international laws and regulations.

Hypothetical: Entities or individuals seeking to circumvent U.S. laws and regulations or those of the Postal Service's counterparty obtain unredacted copies of the DSA from the Commission's website. Those entities or individuals then use the information regarding electronic data transfer to circumvent efforts by domestic or foreign law enforcement agencies to enforce laws and regulations governing, *inter alia*, imports, exports, security, and mailability.

(6) The extent of protection from public disclosure alleged to be necessary;

The Postal Service maintains that the redacted portions of the material filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal

Service (including other postal operators) should not be provided access to the non-public material.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. § 3011.401(a). However, because the Postal Service's relationships with postal operators often continue beyond ten years, the Postal Service intends to oppose requests for disclosure of these materials pursuant to 39 C.F.R. § 3011.401(b)-(c).

(8) Any other relevant factors or reasons to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service respectfully requests that the Commission grant its Application for non-public treatment of the identified material.

Pošta Crne Gore AD Podgorica

Broj 00020-10528

Podgorica, 26. 05. 2021 20___ god.

Attachment 2 to the Postal Service DSA Letter dated July 2, 2021

AGREEMENT FOR THE ELECTRONIC EXCHANGE OF CUSTOMS DATA

Version: April 2020

AGREEMENT FOR THE ELECTRONIC EXCHANGE OF CUSTOMS DATA

BETWEEN
THE POSTAL OPERATORS LISTED IN ANNEX H

RECITALS

WHEREAS, the postal operators listed in Annex H provide international postal services;

WHEREAS, the Parties understand the need to devote appropriate resources to facilitate the exchange of electronic customs data;

WHEREAS, the Parties recognize that EDI, as defined below, is one of the most effective ways to exchange data between trading partners and is therefore broadly used for international trade;

WHEREAS, the Parties understand that service and efficiency improvements can be achieved if postal operators of origin transmit data on outbound international postal items to the destination postal operators, for the purposes of customs clearance, [redacted]; and

WHEREAS, the Parties also recognize the importance of data and privacy protection in view of the long-lasting reputation of postal operators as guardians of the integrity of the mail.

The undersigned Parties hereby agree as follows:

OPERATIVE TERMS

1. Definitions

Agreement: means this Agreement for the Electronic Exchange of Customs Data.

Authority or Authorities: means all officially authorized agencies associated with the inspection or control of postal items at a country's borders, in accordance with the national laws of each country.

Customs Data: [redacted]

Customs Form: means the customs declaration form to be affixed on postal items exchanged between the Parties to be submitted for customs control in accordance with the laws of the countries of origin and destination.

Electronic Data Interchange (EDI): means computer-to-computer exchange of data, by means of networks and formatted messages.

Exchange of Customs Data Guide: means the guide (Version 1 dated 30 June 2016) which the Parties shall reference to assist them in the electronic exchange of Customs Data and which contains all functional and operational information relating to each Party needed for the electronic exchange of Customs Data and as may be amended by the Parties from time to time.

Party: means the postal operators listed in Annex H, and any additional postal operator that has acceded to the Agreement as set forth in Article 25.

Parties: means two or more of the Parties collectively as best suits the context in which the term is used.

Personal Data: [redacted]

Receiving Party: means a Party that has received Customs Data through EDI messages from any other Party.

Sending Party: means a Party that transmits Customs Data through EDI messages to any other Party.

System: means the telematic system used to create, send, receive, or handle data messages.

UPU: means the Universal Postal Union, a specialized agency of the United Nations, whose aim is to secure the organization and improvement of postal services and to promote the development of international collaboration in this sphere and which develops standards commonly used by postal operators.

2. Subject and purpose

This Agreement shall set the conditions pursuant to which Customs Data relating to postal items exchanged by the Parties are processed and exchanged electronically between the Parties.

3. Data capture

3.1 Customs Data relating to the items defined in Article 4 shall be captured in the System by each Party [redacted]

3.2 The Customs Data to be captured in the System are as set out in Annex B.

4. Items for which Customs Data are captured and exchanged

4.1 The Parties shall capture and exchange Customs Data for the products as set out in Annex C.

4.2 The Parties shall capture and exchange Customs Data via the channels and at the locations as set out in Annex D.

5. Data transmission relating to postal items and format of EDI messages

5.1 The provisions of Annex A stating the manner in which the Customs Data are exchanged by a Party may be varied by that Party from time to time by notification in writing to all other Parties.

5.2 Customs Data, described in Annex B and captured in accordance with Article 3 above, shall be transmitted by the postal operator of origin to the postal operator of destination by means of EDI messages via the System [redacted]

5.3 The policy regarding timing of transmission of the Customs Data to the EDI network shall be as set out in Annex F. Notwithstanding the foregoing and Annex F, the Parties shall also comply with any applicable laws with requirements for the timing of transmission of the Customs Data to the EDI network.

5.4 The postal operator of origin shall transmit the Customs Data based on the events set out in Annex E.

5.5 Each Party shall transmit Customs Data, including Personal Data, to the other Party using technical measures that ensure the confidentiality and security of the data transmitted.

5.6 No Party shall be obligated to transmit or receive Customs Data (including Personal Data) to any other Party until such time as each Party's legal requirements are satisfied and any applicable arrangements for protection and storage of Customs Data are made by the Parties and any intermediary entity that may be engaged in the transmission and/or storage of Customs Data.

6. Exchange of information

[redacted]

[redacted]

7. Discrepancy between the paper and electronic versions of the Customs Form

In case of a discrepancy between the data on the Customs Form and the electronic data sent by one Party to another pursuant to this Agreement, [redacted]

8. Use of the data exchanged

8.1 [redacted]

8.2 A Receiving Party shall ensure that the Authority to which it has transmitted a Sending Party's Customs Data (including any Personal Data contained therein) makes use of and/or discloses that Sending Party's Customs Data [redacted]

8.3 The provisions of this Article 8 shall not restrict a Receiving Party's lawful disclosure of Customs Data received from other Parties in the event of legal requirements based on each Receiving Party's national laws or by order of any court, tribunal, or oversight agency of competent jurisdiction.

9. Data security and storage

[redacted]

[redacted]

10. Confidentiality

10.1 The Parties consider certain information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. Except as required by law, the Parties shall treat as confidential and not disclose to third parties, absent express written consent by the other Party, any information related to this Agreement that is proprietary to another Party, including any information treated as non-public by the U.S. Postal Regulatory Commission ("Commission").

10.2 The Parties acknowledge that this Agreement and supporting documentation may be filed with or submitted to the Commission, the U.S. Department of State, U.S. Customs and Border Protection, and/or other U.S. Government entities. As for disclosures to the Commission, the Parties authorize the United States Postal Service (USPS) to determine the scope of information that must be made publicly available under the Commission's rules. The Parties further understand that any unredacted portion of this Agreement or supporting documentation may be posted on the Commission's public website, www.prc.gov. The Parties have the right, in accordance with the Commission's rules, to address their confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, U.S. Code of Federal Regulations, Part 3011, including Sections 3011.201 and 3011.204, and may also be found through the Commission's website. At a Party's request, USPS shall notify that other Party of any filing with the Commission, the U.S. Department of State, U.S. Customs and Border Protection, and/or any other U.S. Government entity.

10.3 To the extent the Parties intend to share or disclose non-public information other than Customs Data or Personal Data, they shall enter into a separate agreement if a legal obligation concerning the treatment of that information is not already in effect.

11. Notice

Any information required or authorized to be given by a Party to the other Parties in accordance with the provisions of this Agreement, unless otherwise specifically stipulated, shall be in writing and delivered personally or sent via facsimile or e-mail to the recipient's address for notices specified in Annex G and shall be deemed to have been received the same day it was delivered by hand or sent by facsimile or e-mail. If necessary, a notice may also be sent by mail. In such a case, it shall be deemed to have been received on the seventh (7th) business day following the date of mailing. Any Party may change its address and contact name by giving notice to the other Party in the manner set forth in this Article.

12. Liabilities and indemnities

12.1 In the event that a third party asserts a claim against a Party that is attributable to a breach of this Agreement by another Party, the latter Party shall indemnify the defending Party for, and hold the defending

Party harmless [redacted]

[redacted]

13. Force majeure

13.1 The Parties are released from the obligations to [redacted] in the event of force majeure. All other rights and obligations under this Agreement shall continue to apply to the Parties in the event of force majeure.

13.2 "Force majeure" shall be deemed to be any event in which a Party fails, in part or full, to fulfill its obligations under this Agreement owing to reasons external to the Party that are unforeseeable, unavoidable, and independent of that Party's control, and which are not attributable to any act or failure to take reasonable preventive action by that Party.

13.3 [redacted]

13.4 A Party seeking to rely on force majeure must give prompt written notice thereof to the other Parties and make all reasonable efforts to resume performance of its obligations [redacted] as soon as possible.

14. Entry into force and duration of this Agreement

14.1 This Agreement shall enter into force upon signature of two or more Parties and shall continue indefinitely unless terminated by all of the Parties.

14.2 Withdrawal by one or some of the Parties does not constitute termination with respect to the Agreement. The Agreement will continue to be binding on the remaining Parties to the Agreement.

15. Opening of exchanges

Subject to Article 5.6 of this Agreement, the opening of exchanges of Customs Data between the Parties may begin on the date of entry into force of the Agreement. In the case of a postal operator acceding to the Agreement by invitation of a Party to the Agreement, such Parties may open exchanges when accession as set forth in Article 25 is completed.

16 Termination and withdrawal

16.1 Subject to the conditions laid out in Article 16.4 below, a Party shall be entitled by notice in writing to the other Parties to withdraw from this Agreement immediately if:

(a) less than six months have elapsed since the date that this Agreement enters into force (which is the pilot test period);

(b) another Party assigns or transfers, or purports to assign or transfer, any of its rights or obligations under this Agreement or any interest therein without the withdrawing Party's prior written consent;

(c) another Party commits a material or persistent breach of any of its obligations hereunder and where the breach is capable of remedy fails to rectify such breach within thirty (30) days of receiving a notice to do so;

(d) a new Party accedes to the Agreement pursuant to Article 25, but such withdrawal must occur within thirty (30) days of notice that a postal operator wishes to accede to the Agreement, as set forth in Article 25; or

(e) the Parties cannot resolve a good faith dispute over how to modify the Agreement under either Article 20.1 or Article 20.2, as may be applicable, in order to address a change in applicable legal requirements.

16.2 A Party may withdraw from this Agreement without cause and at any time with the provision of three months' written notice to the other Parties.

16.3 Withdrawal from this Agreement by a Party shall be without prejudice to any other rights of the Parties accrued up until the date of withdrawal.

16.4 The provisions of Articles 8, 9, and 10 shall survive the withdrawal from, or termination of, this Agreement, as well as any other terms insofar as they apply to the Parties' continuing obligations to one another under this Agreement.

16.5 This Agreement may be terminated only by written mutual agreement of all of the Parties to it at the time of its termination, excluding any Parties that have unilaterally withdrawn under the terms of this Article 16.

17. Dispute resolution

17.1 If any dispute arises under or in connection with this Agreement, the concerned Parties shall attempt to resolve such disputes amicably by referring the issue to the respective heads of the international business units of those Parties for discussions and with the aim of resolving the dispute. If this referral fails to achieve a resolution to the dispute, then the matter shall be referred to the respective chief executive officers of the concerned Parties for review and discussion with the aim of finding a resolution.

17.2 Any dispute which cannot be resolved in accordance with Article 17.1 shall be referred to arbitration for final settlement under the Rules of the International Chamber of Commerce (the Rules) by three arbitrators who have substantial experience in business disputes and are appointed in accordance with the Rules. Unless the Parties agree otherwise, the place of arbitration shall be determined by the arbitrators, and the arbitration proceedings shall be conducted in the English language.

17.3 Notwithstanding the foregoing provisions of this Article 17, nothing in this Agreement shall prevent a Party from applying to a court of competent jurisdiction for injunctive relief pending the resolution of a dispute in accordance with the provisions of this Agreement.

18. Commercial nature of the Agreement

This is a commercial contract and not an agreement subject to international law. It binds only the entities that are Parties to it and not their respective governments. By their signatures, the authorized representatives of the Parties warrant that their employing organizations have independent authority to enter into and be obligated by such commercial contractual agreements.

19. Language

[redacted]

20. Amendments

20.1 Any amendment to this Agreement shall be made in writing and signed by, or on behalf of, each of the Parties.

20.2 Changes to the information presented in Annexes A, C, D, E, F, and G are anticipated and are not considered to be amendments to this Agreement. Such changes must be notified to the Parties in writing at least thirty (30) business days in advance of the change if they require operational changes or changes to the Systems of the other Parties, and as soon as possible if not.

21. Waiver

21.1 No delay or omission by a Party to exercise any right or power accruing upon any non-compliance or default by another Party with respect to any of the terms of this Agreement shall be construed as a waiver of such non-compliance or default.

21.2 A waiver by a Party of any breach of the terms of this Agreement shall not be construed to be a waiver of any preceding or succeeding breach.

21.3 To constitute a valid waiver, the terms of the waiver must be exchanged between the relevant Parties in writing.

22. Severability

If any provision of this Agreement is held to be invalid, unenforceable, or in conflict with any applicable law, treaty, or regulation related to this Agreement or its performance, that provision shall be deemed to no longer form part of this Agreement, and the remaining provisions shall remain in force.

23. Order of precedence

If there is any conflict or inconsistency between the text of the body of this Agreement, its Annexes, and/or any amendments to this Agreement under Article 20, such conflict or inconsistency shall be resolved by interpreting the components of this Agreement in accordance with the following order of precedence:

(a) subsequent amendments to this Agreement under Article 20.1;

(b) the text of the body of this Agreement;

(c) subsequent changes to the Annexes under Article 20.2; and

(d) the Annexes.

24. Counterparts

This Agreement may be executed in counterparts. Each counterpart constitutes the agreement of each Party which has executed and delivered that counterpart to the other Parties. Each executed counterpart is an original, but the executed counterparts together constitute one and the same Agreement.

25. Accession

25.1 Any postal operator possessing full autonomy of the matters provided for in this Agreement may be invited by a Party to the Agreement to accede to the Agreement.

25.2 Accession to the Agreement shall be by invitation of a Party to the Agreement. Upon such invitation and signature of the Agreement by the postal operator wishing to accede, the inviting Party shall provide notice to all existing Parties pursuant to Article 11. Existing Parties shall have ten (10) days from the date of notice to object to the accession of the postal operator. If any Party objects, the postal operator shall not become a Party to the Agreement. If no Party objects, the postal operator who wishes to accede to the Agreement shall become a Party to the Agreement.

25.3 As set forth in Article 16.1(d), a Party may withdraw from the Agreement immediately rather than object to the accession of a new Party.

26. Entire Agreement

This is the entire agreement between the Parties with respect to its subject matter. It supersedes and replaces any written or oral arrangements, correspondence, conversations, and documents made or exchanged between the Parties prior to its execution. Any modifications made to this Agreement, as well as to the periodically updated Annexes, shall have no effect unless explicit and confirmed in a written document signed by the Parties hereto.

Annex A – Technical specifications and message standards to be used

[redacted]

Annex B – Customs Data to be captured and exchanged

[redacted]

[redacted]

Annex C – The product(s) for which data shall be sent and/or received

[redacted]

Annex D – The channel(s) and physical locations at which data shall be captured for outbound items

[redacted]

Annex E – Policy regarding the timing of creation of the electronic message to the EDI network

[redacted]

Annex F – Maximum time between the event causing creation of the electronic message and transmission of the message to the EDI network

[redacted]

Annex G – Contact Details

[redacted]

Annex H – Signatories of the Agreement

Signature of Authorized Representative	
Name of Authorized Representative	Dragan Tufegdžić
Title of Authorized Representative	Executive Director (CEO) of Montenegro Post
Date of Signing	

UNITED STATES POSTAL SERVICE	
Signature of Authorized Representative	Robert H. Raines Jr.
Name of Authorized Representative	Robert H. Raines Jr.
Title of Authorized Representative	Managing Director, Global Business
Date of Signing	June 21, 2021

AGREEMENT FOR THE ELECTRONIC EXCHANGE OF CUSTOMS DATA

Version: April 2020

AGREEMENT FOR THE ELECTRONIC EXCHANGE OF CUSTOMS DATA

BETWEEN
THE POSTAL OPERATORS LISTED IN ANNEX H

RECITALS

WHEREAS, the postal operators listed in Annex H provide international postal services;

WHEREAS, the Parties understand the need to devote appropriate resources to facilitate the exchange of electronic customs data;

WHEREAS, the Parties recognize that EDI, as defined below, is one of the most effective ways to exchange data between trading partners and is therefore broadly used for international trade;

WHEREAS, the Parties understand that service and efficiency improvements can be achieved if postal operators of origin transmit data on outbound international postal items to the destination postal operators, for the purposes of customs clearance, [redacted]; and

WHEREAS, the Parties also recognize the importance of data and privacy protection in view of the long-lasting reputation of postal operators as guardians of the integrity of the mail.

The undersigned Parties hereby agree as follows:

OPERATIVE TERMS

1. Definitions

Agreement: means this Agreement for the Electronic Exchange of Customs Data.

Authority or Authorities: means all officially authorized agencies associated with the inspection or control of postal items at a country's borders, in accordance with the national laws of each country.

Customs Data: [redacted]

Customs Form: means the customs declaration form to be affixed on postal items exchanged between the Parties to be submitted for customs control in accordance with the laws of the countries of origin and destination.

Electronic Data Interchange (EDI): means computer-to-computer exchange of data, by means of networks and formatted messages.

Exchange of Customs Data Guide: means the guide (Version 1 dated 30 June 2016) which the Parties shall reference to assist them in the electronic exchange of Customs Data and which contains all functional and operational information relating to each Party needed for the electronic exchange of Customs Data and as may be amended by the Parties from time to time.

Party: means the postal operators listed in Annex H, and any additional postal operator that has acceded to the Agreement as set forth in Article 25.

Parties: means two or more of the Parties collectively as best suits the context in which the term is used.

Personal Data: [redacted]

Receiving Party: means a Party that has received Customs Data through EDI messages from any other Party.

Sending Party: means a Party that transmits Customs Data through EDI messages to any other Party.

System: means the telematic system used to create, send, receive, or handle data messages.

UPU: means the Universal Postal Union, a specialized agency of the United Nations, whose aim is to secure the organization and improvement of postal services and to promote the development of international collaboration in this sphere and which develops standards commonly used by postal operators.

2. Subject and purpose

This Agreement shall set the conditions pursuant to which Customs Data relating to postal items exchanged by the Parties are processed and exchanged electronically between the Parties.

3. Data capture

3.1 Customs Data relating to the items defined in Article 4 shall be captured in the System by each Party [redacted]

3.2 The Customs Data to be captured in the System are as set out in Annex B.

4. Items for which Customs Data are captured and exchanged

4.1 The Parties shall capture and exchange Customs Data for the products as set out in Annex C.

4.2 The Parties shall capture and exchange Customs Data via the channels and at the locations as set out in Annex D.

5. Data transmission relating to postal items and format of EDI messages

5.1 The provisions of Annex A stating the manner in which the Customs Data are exchanged by a Party may be varied by that Party from time to time by notification in writing to all other Parties.

5.2 Customs Data, described in Annex B and captured in accordance with Article 3 above, shall be transmitted by the postal operator of origin to the postal operator of destination by means of EDI messages via the System [redacted]

5.3 The policy regarding timing of transmission of the Customs Data to the EDI network shall be as set out in Annex F. Notwithstanding the foregoing and Annex F, the Parties shall also comply with any applicable laws with requirements for the timing of transmission of the Customs Data to the EDI network.

5.4 The postal operator of origin shall transmit the Customs Data based on the events set out in Annex E.

5.5 Each Party shall transmit Customs Data, including Personal Data, to the other Party using technical measures that ensure the confidentiality and security of the data transmitted.

5.6 No Party shall be obligated to transmit or receive Customs Data (including Personal Data) to any other Party until such time as each Party's legal requirements are satisfied and any applicable arrangements for protection and storage of Customs Data are made by the Parties and any intermediary entity that may be engaged in the transmission and/or storage of Customs Data.

6. Exchange of information

[redacted]

[redacted]

7. Discrepancy between the paper and electronic versions of the Customs Form

In case of a discrepancy between the data on the Customs Form and the electronic data sent by one Party to another pursuant to this Agreement, [redacted]

8. Use of the data exchanged

8.1 [redacted]

8.2 A Receiving Party shall ensure that the Authority to which it has transmitted a Sending Party's Customs Data (including any Personal Data contained therein) makes use of and/or discloses that Sending Party's Customs Data [redacted]

8.3 The provisions of this Article 8 shall not restrict a Receiving Party's lawful disclosure of Customs Data received from other Parties in the event of legal requirements based on each Receiving Party's national laws or by order of any court, tribunal, or oversight agency of competent jurisdiction.

9. Data security and storage

[redacted]

[redacted]

10. Confidentiality

10.1 The Parties consider certain information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. Except as required by law, the Parties shall treat as confidential and not disclose to third parties, absent express written consent by the other Party, any information related to this Agreement that is proprietary to another Party, including any information treated as non-public by the U.S. Postal Regulatory Commission ("Commission").

10.2 The Parties acknowledge that this Agreement and supporting documentation may be filed with or submitted to the Commission, the U.S. Department of State, U.S. Customs and Border Protection, and/or other U.S. Government entities. As for disclosures to the Commission, the Parties authorize the United States Postal Service (USPS) to determine the scope of information that must be made publicly available under the Commission's rules. The Parties further understand that any unredacted portion of this Agreement or supporting documentation may be posted on the Commission's public website, www.prc.gov. The Parties have the right, in accordance with the Commission's rules, to address their confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, U.S. Code of Federal Regulations, Part 3011, including Sections 3011.201 and 3011.204, and may also be found through the Commission's website. At a Party's request, USPS shall notify that other Party of any filing with the Commission, the U.S. Department of State, U.S. Customs and Border Protection, and/or any other U.S. Government entity.

10.3 To the extent the Parties intend to share or disclose non-public information other than Customs Data or Personal Data, they shall enter into a separate agreement if a legal obligation concerning the treatment of that information is not already in effect.

11. Notice

Any information required or authorized to be given by a Party to the other Parties in accordance with the provisions of this Agreement, unless otherwise specifically stipulated, shall be in writing and delivered personally or sent via facsimile or e-mail to the recipient's address for notices specified in Annex G and shall be deemed to have been received the same day it was delivered by hand or sent by facsimile or e-mail. If necessary, a notice may also be sent by mail. In such a case, it shall be deemed to have been received on the seventh (7th) business day following the date of mailing. Any Party may change its address and contact name by giving notice to the other Party in the manner set forth in this Article.

12. Liabilities and indemnities

12.1 In the event that a third party asserts a claim against a Party that is attributable to a breach of this Agreement by another Party, the latter Party shall indemnify the defending Party for, and hold the defending

Party harmless from, [redacted]

[redacted]

13. Force majeure

13.1 The Parties are released from the obligations to [redacted] in the event of force majeure. All other rights and obligations under this Agreement shall continue to apply to the Parties in the event of force majeure.

13.2 "Force majeure" shall be deemed to be any event in which a Party fails, in part or full, to fulfill its obligations under this Agreement owing to reasons external to the Party that are unforeseeable, unavoidable, and independent of that Party's control, and which are not attributable to any act or failure to take reasonable preventive action by that Party.

13.3 [redacted]

[redacted]

13.4 A Party seeking to rely on force majeure must give prompt written notice thereof to the other Parties and make all reasonable efforts to resume performance of its obligations [redacted] as soon as possible.

14. Entry into force and duration of this Agreement

14.1 This Agreement shall enter into force upon signature of two or more Parties and shall continue indefinitely unless terminated by all of the Parties.

14.2 Withdrawal by one or some of the Parties does not constitute termination with respect to the Agreement. The Agreement will continue to be binding on the remaining Parties to the Agreement.

15. Opening of exchanges

Subject to Article 5.6 of this Agreement, the opening of exchanges of Customs Data between the Parties may begin on the date of entry into force of the Agreement. In the case of a postal operator acceding to the Agreement by invitation of a Party to the Agreement, such Parties may open exchanges when accession as set forth in Article 25 is completed.

16 Termination and withdrawal

16.1 Subject to the conditions laid out in Article 16.4 below, a Party shall be entitled by notice in writing to the other Parties to withdraw from this Agreement immediately if:

(a) less than six months have elapsed since the date that this Agreement enters into force (which is the pilot test period);

(b) another Party assigns or transfers, or purports to assign or transfer, any of its rights or obligations under this Agreement or any interest therein without the withdrawing Party's prior written consent;

(c) another Party commits a material or persistent breach of any of its obligations hereunder and where the breach is capable of remedy fails to rectify such breach within thirty (30) days of receiving a notice to do so;

(d) a new Party accedes to the Agreement pursuant to Article 25, but such withdrawal must occur within thirty (30) days of notice that a postal operator wishes to accede to the Agreement, as set forth in Article 25; or

(e) the Parties cannot resolve a good faith dispute over how to modify the Agreement under either Article 20.1 or Article 20.2, as may be applicable, in order to address a change in applicable legal requirements.

16.2 A Party may withdraw from this Agreement without cause and at any time with the provision of three months' written notice to the other Parties.

16.3 Withdrawal from this Agreement by a Party shall be without prejudice to any other rights of the Parties accrued up until the date of withdrawal.

16.4 The provisions of Articles 8, 9, and 10 shall survive the withdrawal from, or termination of, this Agreement, as well as any other terms insofar as they apply to the Parties' continuing obligations to one another under this Agreement.

16.5 This Agreement may be terminated only by written mutual agreement of all of the Parties to it at the time of its termination, excluding any Parties that have unilaterally withdrawn under the terms of this Article 16.

17. Dispute resolution

17.1 If any dispute arises under or in connection with this Agreement, the concerned Parties shall attempt to resolve such disputes amicably by referring the issue to the respective heads of the international business units of those Parties for discussions and with the aim of resolving the dispute. If this referral fails to achieve a resolution to the dispute, then the matter shall be referred to the respective chief executive officers of the concerned Parties for review and discussion with the aim of finding a resolution.

17.2 Any dispute which cannot be resolved in accordance with Article 17.1 shall be referred to arbitration for final settlement under the Rules of the International Chamber of Commerce (the Rules) by three arbitrators who have substantial experience in business disputes and are appointed in accordance with the Rules. Unless the Parties agree otherwise, the place of arbitration shall be determined by the arbitrators, and the arbitration proceedings shall be conducted in the English language.

17.3 Notwithstanding the foregoing provisions of this Article 17, nothing in this Agreement shall prevent a Party from applying to a court of competent jurisdiction for injunctive relief pending the resolution of a dispute in accordance with the provisions of this Agreement.

18. Commercial nature of the Agreement

This is a commercial contract and not an agreement subject to international law. It binds only the entities that are Parties to it and not their respective governments. By their signatures, the authorized representatives of the Parties warrant that their employing organizations have independent authority to enter into and be obligated by such commercial contractual agreements.

19. Language

[redacted]

20. Amendments

20.1 Any amendment to this Agreement shall be made in writing and signed by, or on behalf of, each of the Parties.

20.2 Changes to the information presented in Annexes A, C, D, E, F, and G are anticipated and are not considered to be amendments to this Agreement. Such changes must be notified to the Parties in writing at least thirty (30) business days in advance of the change if they require operational changes or changes to the Systems of the other Parties, and as soon as possible if not.

21. Waiver

21.1 No delay or omission by a Party to exercise any right or power accruing upon any non-compliance or default by another Party with respect to any of the terms of this Agreement shall be construed as a waiver of such non-compliance or default.

21.2 A waiver by a Party of any breach of the terms of this Agreement shall not be construed to be a waiver of any preceding or succeeding breach.

21.3 To constitute a valid waiver, the terms of the waiver must be exchanged between the relevant Parties in writing.

22. Severability

If any provision of this Agreement is held to be invalid, unenforceable, or in conflict with any applicable law, treaty, or regulation related to this Agreement or its performance, that provision shall be deemed to no longer form part of this Agreement, and the remaining provisions shall remain in force.

23. Order of precedence

If there is any conflict or inconsistency between the text of the body of this Agreement, its Annexes, and/or any amendments to this Agreement under Article 20, such conflict or inconsistency shall be resolved by interpreting the components of this Agreement in accordance with the following order of precedence:

(a) subsequent amendments to this Agreement under Article 20.1;

(b) the text of the body of this Agreement;

(c) subsequent changes to the Annexes under Article 20.2; and

(d) the Annexes.

24. Counterparts

This Agreement may be executed in counterparts. Each counterpart constitutes the agreement of each Party which has executed and delivered that counterpart to the other Parties. Each executed counterpart is an original, but the executed counterparts together constitute one and the same Agreement.

25. Accession

25.1 Any postal operator possessing full autonomy of the matters provided for in this Agreement may be invited by a Party to the Agreement to accede to the Agreement.

25.2 Accession to the Agreement shall be by invitation of a Party to the Agreement. Upon such invitation and signature of the Agreement by the postal operator wishing to accede, the inviting Party shall provide notice to all existing Parties pursuant to Article 11. Existing Parties shall have ten (10) days from the date of notice to object to the accession of the postal operator. If any Party objects, the postal operator shall not become a Party to the Agreement. If no Party objects, the postal operator who wishes to accede to the Agreement shall become a Party to the Agreement.

25.3 As set forth in Article 16.1(d), a Party may withdraw from the Agreement immediately rather than object to the accession of a new Party.

26. Entire Agreement

This is the entire agreement between the Parties with respect to its subject matter. It supersedes and replaces any written or oral arrangements, correspondence, conversations, and documents made or exchanged between the Parties prior to its execution. Any modifications made to this Agreement, as well as to the periodically updated Annexes, shall have no effect unless explicit and confirmed in a written document signed by the Parties hereto.

Annex A – Technical specifications and message standards to be used

[redacted]

[redacted]

Annex B – Customs Data to be captured and exchanged

[redacted]

[redacted]

Annex C – The product(s) for which data shall be sent and/or received

[redacted]

Annex D – The channel(s) and physical locations at which data shall be captured for outbound items

[redacted]

Annex E – Policy regarding the timing of creation of the electronic message to the EDI network

[redacted]

Annex F – Maximum time between the event causing creation of the electronic message and transmission of the message to the EDI network

[redacted]

Annex G – Contact Details

[redacted]

Annex H – Signatories of the Agreement

TIMOR-LESTE POST	
Signature of Authorized Representative	
Name of Authorized Representative	Juliana do Rego Ximenes
Title of Authorized Representative	Director
Date of Signing	May, 12 2021

UNITED STATES POSTAL SERVICE	
Signature of Authorized Representative	Robert H. Raines Jr.
Name of Authorized Representative	Robert H. Raines Jr.
Title of Authorized Representative	Managing Director, Global Business
Date of Signing	June 21, 2021

Annex H – Signatories of the Agreement

Postal operator: Hrvatska pošta Mostar (Bosnia and Herzegovina)	
Signature of Authorized Representative	
Name of Authorized Representative	M.Sc. Mate Rupčić
Date of Signing	15.04.2021.

Annex H – Signatories of the Agreement

Postal operator: Montenegro Post	
Signature of Authorized Representative	
Name of Authorized Representative	Executive Director of Montenegro Post Dragan Tufegdžić
Date of Signing	