

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

COMPETITIVE PRODUCT PRICES  
GLOBAL DIRECT CONTRACTS 1  
NEGOTIATED SERVICE AGREEMENTS

Docket No.  
MC2010-17

COMPETITIVE PRODUCT PRICES  
GLOBAL DIRECT CONTRACTS 1 (MC2010-17)  
NEGOTIATED SERVICES AGREEMENT

Docket No.  
CP2010-18

**NOTICE OF THE UNITED STATES POSTAL SERVICE OF FILING OF  
FUNCTIONALLY EQUIVALENT GLOBAL DIRECT CONTRACTS NEGOTIATED  
SERVICE AGREEMENT, AND REQUEST TO ADD GLOBAL DIRECT CONTRACTS 1  
TO THE COMPETITIVE PRODUCTS LIST**  
(December 23, 2009)

In accordance with 39 C.F.R. § 3015.5 and Order No. 153,<sup>1</sup> the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional Global Direct contract. Prices and classifications not of general applicability for Global Direct Contracts were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy and Global Plus Contracts issued July 16, 2008 (Governors' Decision No. 08-10).<sup>2</sup> The Postal Regulatory Commission (Commission) has determined that the individual Global Direct contracts filed in Docket Nos. CP2009-10, CP2009-11, CP2009-18, and CP2009-29 are

<sup>1</sup> PRC Order No. 153, Order Concerning Global Direct Contracts Negotiated Service Agreements, Docket Nos. MC2009-9, CP2009-10 and CP2009-11, December 19, 2008.

<sup>2</sup> A redacted copy of this decision was filed as a Attachment 1 to the Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) of Two Functionally Equivalent Agreements, Docket Nos. MC2008-7, CP2008-16 and CP2008-17, August 8, 2008. The notice of filing is available at <http://www.prc.gov/Docs/60/60671/GlobalPlus2Request%20.pdf>. An unredacted copy of the decision, as well as a record of proceedings, was filed under seal that same date.

functionally equivalent and should be included in the Global Direct Contracts product on the Competitive Products List.<sup>3</sup> The Postal Service demonstrates below that the instant agreement is functionally equivalent to the previously submitted Global Direct agreements.

In addition, the instant contract is the immediate successor to the agreement that the Commission found to be functionally equivalent and eligible for inclusion in the Global Direct Contracts product in Docket No. CP2009-11. While there are evolutionary changes over last year's version, these changes do not detract from this contract's functional equivalency to its predecessor. Moreover, the instant contract takes the place of its immediate predecessor and one of the original baseline Global Direct Contracts – the contract in Docket No. CP2009-11 – which expires on January 11, 2010. Future Global Direct Contracts are likely to resemble this contract in form and substance. Accordingly, the Postal Service requests that the instant contract be treated as the baseline for future functional equivalency comparisons and requests that Global Direct Contracts 1 be added to the Competitive Products List.<sup>4</sup> To the extent that a statement of supporting justification is deemed necessary, the Postal Service incorporates by reference the Statement of Frank Cebello, Executive Director, Global Business Management,<sup>5</sup> which the Postal Service has included herewith for reference as Attachment 5. The Postal Service respectfully submits that detailed consideration of

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<sup>3</sup> Order No. 153 at 9; PRC Order No. 166, Order Concerning Additional Global Direct Contracts Negotiated Service Agreement, Docket No. CP2009-18, Jan. 9, 2009, at 5, 6.

<sup>4</sup> See PRC Order No. 290, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Products List, Docket No. CP2009-50, August 28, 2009, at 3 ("Future requests to implement a new baseline agreement should be filed as an MC docket since it will result in adding a new product to the product list and may result in removing a product from the product list.").

<sup>5</sup> Request of the United States Postal Service to Add Global Direct Negotiated Service Agreements to the Competitive Products List, and Notice of Filing (Under Seal) Two Functionally Equivalent Agreements, Docket Nos. MC2009-9, CP2009-10, and CP2009-11, November 17, 2008, at Attachment 1. This document is available at <http://www.prc.gov/Docs/61/61403/GlobalDirectRequest.pdf>.

the factors under 39 U.S.C. § 3642(b) is unnecessary here, because such an exercise would merely replicate the Commission's determination in Docket No. MC2009-9.

The contract and supporting financial documentation establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. A redacted version of the contract is included as Attachment 1, and the certified statement required by 39 C.F.R. § 3015.5(c)(2) is included as Attachment 2. The Postal Service's application for non-public treatment of the unredacted versions of these materials is included with this filing as Attachment 3. In accordance with the Commission's instructions in Order No. 265,<sup>6</sup> the redacted version of the Governors' Decision that authorizes Global Direct Contracts is included as Attachment 4. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

***I. Identification of the Additional Global Direct Contract***

The Postal Service believes that this additional Global Direct contract fits within the Mail Classification Schedule (MCS) language included as Attachment A-2 to Governors' Decision No. 08-10, with the modification proposed by the Commission to reflect the actual payment practice under these types of agreements.<sup>7</sup> This agreement is the immediate successor and counterpart of the Global Direct Contract at issue in Docket No. CP2009-11, which is scheduled to expire soon. The Postal Service will advise the customer of the contract's effective date within thirty days of completing the

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<sup>6</sup> PRC Order No. 265, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, Docket No. CP2009-46, July 31, 2009, at 7.

<sup>7</sup> Order No. 153 at 9. See also Notice of the United States Postal Service of Classification Change, Docket No. MC2009-23, April 20, 2009 (proposing slight modification of MCS language to clarify that Global Direct mail may be sealed or not sealed against inspection, depending on destination country requirements reflected in each contract).

regulatory review process. The agreement is scheduled to remain effective for one year, subject to automatic renewal unless terminated by the parties.

## ***II. Functional Equivalence of Global Direct Contracts***

The instant Global Direct Contract is fundamentally similar to that in Docket No. CP2009-11. Although many of the terms and conditions have changed as a result of experience, negotiation, and changed Canada Post offerings, the substance of the core terms and conditions remains essentially the same: the Postal Service is providing the customer with price-based incentives to commit to large amounts of mail volume or postage revenue for Global Direct, a competitive service for delivery of Letter Post items bearing foreign postage and indicia.

In addition to cosmetic differences, updates to account for changes in generally applicable Postal Service policies and product structures, and additional terms that simply clarify the applicability of Postal Service policies and export requirements, the Postal Service offers the following identification of material changes, including those that impose new obligations or requirements. Canada Post's domestic Incentive Lettermail service has been added as an available offering for Global Direct, due to a July 1, 2010, change in the array of Canada Post services that support Global Direct.<sup>8</sup> Related changes include more specific descriptions of the process for charging penalties and postage due assessed by Canada Post, in light of the fact that Canada Post may assess the difference in postage up to applicable Lettermail prices for items that do not properly qualify for Incentive Lettermail pricing. These changes in the

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<sup>8</sup> Incentive Lettermail is the same as Canada Post's Lettermail in terms of size, shape, and content. A mailer performs certain preparation tasks dictated by Canada Post to qualify for Incentive Lettermail pricing, just as Canadian domestic mailers might.

underlying services do not affect the essential nature of Global Direct service, as described above.

The instant contract includes new language to account for required notices under the Commission's rules for confidentiality, which have become effective since the drafting of the contract in Docket No. CP2009-11. A new article clarifies which provisions will continue to apply after termination. The term has been changed to a full year, instead of possibly ending earlier to correspond to the date of a Canada Post domestic price change. Language concerning the locations where the mailer may tender qualifying items has been made more specific, and provisions have been included to explain the availability of pickup service. Finally, a sentence has been added to clarify that price changes based on Canada Post prices are covered by Article 9, paragraph 3, and not Article 9, paragraph 2. In the Postal Service's view, these updated provisions simply add detail or elaboration to processes that were included in the prior Global Direct Contracts. Because this agreement and the three filed previously incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, for the Global Direct Contracts. The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts.

As demonstrated, the cost and market characteristics of this agreement are substantially similar to those of prior Global Direct contracts. Nothing detracts from the conclusion that these agreements are "functionally equivalent in all pertinent respects."<sup>9</sup> Because the Postal Service expects the text of any future Global Direct Contracts to resemble the instant contract more closely than those in Docket No. CP2009-10 and

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<sup>9</sup> PRC Order No. 85 at 8.

CP2009-11, the Postal Service requests that the contract in this proceeding be treated as the baseline for future functional equivalency comparisons.

**III. Conclusion**

For the reasons discussed above, and on the basis of the financial data filed under seal, the Postal Service has established that this new Global Direct Contract is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to other Global Direct Contracts. Accordingly, this contract should be added to the existing Global Direct Contracts product and treated as the new “baseline” agreement for consideration of future such contracts’ functional equivalency.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
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December 23, 2009

**GLOBAL CUSTOMIZED MAIL AGREEMENT BETWEEN  
THE UNITED STATES POSTAL SERVICE AND**

This Agreement ("Agreement") is between [REDACTED] ("Mailer"), with an address at [REDACTED], and the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the United States Government, with offices at 475 L'Enfant Plaza SW, Washington, DC 20260-9998. The Mailer and the USPS may be referred to individually as a "Party" and together as the "Parties."

**INTRODUCTION**

WHEREAS, the Parties desire to enter into a non-exclusive relationship whereby the USPS will provide certain products and/or services to the Mailer pursuant to the terms and conditions contained herein;

WHEREAS, the Parties acknowledge and understand that the commencement of performance under this Agreement is subject to the approval of various entities with oversight responsibilities, which may include but not be limited to the USPS management's executive committee, the USPS Governors, and/or the Postal Regulatory Commission. Accordingly, the Mailer acknowledges and understands that the ability of the USPS to perform under this Agreement may not occur;

WHEREAS, in light of the aforementioned acknowledgements, the Parties desire to be bound by the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth below, the Parties hereby agree as follows:

**ARTICLE 1. PURPOSE OF THE AGREEMENT**

This Agreement shall govern the use the Mailer may make of customized mail service for Global Direct – Canada Lettermail and Global Direct – Canada Incentive Lettermail. The use of all other USPS products and services shall be governed by the appropriate USPS regulations.

**ARTICLE 2. DEFINITIONS**

As used in this Agreement:

1. "IMM" means the *International Mail Manual* as found on the USPS website [pe.usps.com](http://pe.usps.com) on the date of mailing.
2. "DMM" means the *Domestic Mail Manual* as found on the USPS website [pe.usps.com](http://pe.usps.com) on the date of mailing.
3. "CPC" means Canada Post Corporation.

4. "Global Direct" means mail that conforms to the size, shape, and mail piece specifications as determined by a postal administration other than the USPS and is mailed in the United States for intended delivery in a country other than the United States by the postal administration of that country.
5. "Lettermail" means mailable items as defined by Canadian law for lettermail, including, but not limited to the Letter Mail Regulations, SOR/88-430, and Letter Definition Regulations, SOR/83-481, as applicable. When in USPS custody, Lettermail is sealed against inspection under U. S. law.
6. "Global Direct – Canada Lettermail" means Global Direct service in connection with items to Canada subject to CPC specifications for domestic Canadian lettermail ("Lettermail"). When in USPS custody, Global Direct – Canada Lettermail is sealed against inspection under U. S. law.
7. "Incentive Lettermail" means one or more tenders of large volumes of identical lettermail items meeting mail preparation requirements set by CPC and eligible for CPC's domestic incentive lettermail prices. When in USPS custody, Incentive Lettermail is sealed against inspection under U. S. law.
8. "Global Direct – Canada Incentive Lettermail" means Global Direct service in connection with Incentive Lettermail to Canada. Global Direct – Canada Incentive Lettermail is subject to CPC specifications for domestic Canadian incentive lettermail. When in USPS custody, Global Direct – Canada Incentive Lettermail is sealed against inspection under U. S. law.
9. "Qualifying Mail" means mail that meets the requirements set forth in Article 3 of this Agreement.
10. "Non-qualifying Mail" means mail that does not meet the requirements set forth in Article 3 of this Agreement.
11. "Effective Date" means the first date on which the USPS is willing to accept Qualifying Mail.

### **ARTICLE 3. QUALIFYING MAIL**

Only mail that meets the following requirements shall qualify as Qualifying Mail under this Agreement:

1. Design and General Preparation Requirements. Every item must conform to the size, shape, and mail piece specifications as determined by CPC for Lettermail and must comply with the preparation requirements set forth in Annex 3.
2. Presentation. All items must be presented to the USPS in USPS trays or other USPS approved equipment.

### **ARTICLE 4. NONQUALIFYING MAIL**

The USPS, at its option and without forfeiting any of its rights under this Agreement, either may refuse to accept Non-qualifying Mail or may accept Non-qualifying Mail under terms, conditions, and at handling charges the USPS and CPC specify.

## ARTICLE 5. OBLIGATIONS OF THE USPS

The USPS hereby agrees:

1. Mailing requirements. To provide the Mailer with pre-mailing consultation on postal regulations as they relate to CPC Lettermail.
2. Supplies. To furnish the Mailer with letter trays and other postal equipment and/or supplies required for the use of Qualifying Mail.
3. Documentation. To prepare appropriate export documentation for dispatch of Qualifying Mail to Canada.
4. International transportation. To arrange for commercial surface transportation for Qualifying Mail from the United States to Canada.
5. Delivery. To coordinate with CPC for delivery of Qualifying Mail to addressees.
6. Payment Method. To facilitate postage payments through the use of permit accounts.
7. CPC Penalties. To provide the Mailer with an invoice for penalties in the event Canada Post Corporation should assess any penalty on mail presented by the Mailer not prepared in accordance with CPC regulations.
8. Postage Due to CPC. To provide the Mailer with an invoice for any postage due to Canada Post Corporation in the event that any items not meeting CPC's requirements for incentive lettermail are mailed at the prices for Global Direct – Canada Incentive Lettermail.
9. Pickup Service. To provide pickup service for Qualifying Mail according to the applicable local agreement, if any, as amended from time to time.
10. Confidentiality. To seek non-public treatment of information it determines to be eligible for protection from public disclosure under applicable law and practice when it files the Agreement with the Postal Regulatory Commission, or when it files information (including data) in connection with the Agreement in accordance with other regulatory requirements.

## ARTICLE 6. OBLIGATIONS OF THE MAILER

The Mailer hereby agrees:

1. Mail Preparation. To tender Qualifying Mail to the USPS in accordance with USPS and CPC requirements for Lettermail.
2. Tender. To tender mailings of Global Direct – Canada Lettermail and Global Direct Incentive Lettermail at a Bulk Mail Entry Unit (BMEU) approved by the USPS to receive Qualifying Mail.
3. Notification.
  - a. To notify the Manager, Global Customized Agreements, via e-mail to [icmusps@usps.gov](mailto:icmusps@usps.gov) of any new permit numbers to be used for Qualifying Mail at least one (1) week in advance of using the new permit numbers. The message should include the permit number, the city, state, and ZIP

Code where the permit is held, the name of the permit owner, and the requested effective date.

- b. To provide the USPS acceptance site(s) with notice of intent to mail and to adhere to the acceptance times and scheduling procedures in place at the appropriate acceptance site(s).
4. Postage. To pay postage for Qualifying Mail according to the price charts in Annex 1 and Annex 2. The prices listed in Annex 1 and Annex 2 are contingent upon any and all necessary approvals for corresponding USPS prices by the USPS Governors, the USPS Board of Governors, and/or the United States Postal Regulatory Commission as provided in Article 24.
  5. Penalty. To pay any penalty CPC may assess for mail not prepared in accordance with CPC regulations.
    - a. Canada Post Corporation will inform the USPS of any penalty assessed on Qualifying Mail the Mailer presents that is not prepared in accordance with CPC regulations.
    - b. The USPS will invoice the Mailer for these assessed penalties.
    - c. The Mailer shall pay to the USPS the amount of the assessed penalties within thirty (30) days of the date of the invoice. All invoices that are not paid within thirty (30) days will incur an annual late payment penalty (finance charge) of [REDACTED].  
[REDACTED] Any invoicing discrepancies will be resolved subsequent to payment of the invoice. In addition to late payment penalties (finance charges), the USPS reserves the right to pursue other available remedies.
  6. Postage Due. To pay any postage due CPC may assess for mail presented as Incentive Lettermail that does not meet CPC's requirements for incentive lettermail and that therefore should have been presented as Lettermail.
    - a. Canada Post Corporation will inform the USPS of any postage due.
    - b. The USPS will invoice the Mailer for the assessed postage due.
    - c. The Mailer shall pay to the USPS the amount of the assessed postage due within thirty (30) days of the date of the invoice. All invoices that are not paid within thirty (30) days will incur an annual late payment penalty (finance charge) of ten (10) percent of the total assessed penalty, to be compounded monthly. Any invoicing discrepancies will be resolved subsequent to payment of the invoice. In addition to late payment penalties (finance charges), the USPS reserves the right to pursue other available remedies.
  7. Payment of Postage. To pay postage, either directly or through a mailing agent, for all Qualifying Mail with a dedicated unique permit imprint to be used only for Qualifying Mail, subject to the general conditions stated in DMM 604 with the exception that the indicia must conform to the requirements in Annex 3. For non-

identical weight items, mailings are acceptable as authorized under the specific procedures in one of the special payment programs in DMM 705.

8. Customs and Export Documentation. To provide any necessary documentation, including data provided in electronic format, in connection with each mailing, in the form and at the time specified by the USPS, Customs & Border Protection, Transportation Security Administration, the U.S. Census Bureau, the government of Canada, or other authority. The Mailer further understands that the failure to provide any such required documentation may result in refusal at acceptance, delay in processing, involuntary seizure by customs authorities, and/or return of mail to the sender.
9. Customs and Export Requirements. To comply with any regulation or order promulgated by the USPS, Customs & Border Protection, the Transportation Security Administration, the U.S. Census Bureau, the government of Canada, or other governmental unit with jurisdiction over mail, to facilitate the Customs processing of its mail, according to any requirements specified by those authorities.
10. Confidentiality. To treat as confidential and not disclose to third parties, absent express written consent by the USPS, any information related to this Agreement that is treated as non-public by the Postal Regulatory Commission.

#### **ARTICLE 7. NO SERVICE GUARANTEE**

Nothing in this Agreement shall be construed as a representation or guarantee by the USPS that Qualifying Mail will be delivered to the appropriate addresses within any particular time.

#### **ARTICLE 8. MINIMUM COMMITMENT**

1. The Mailer is required to meet an annualized minimum commitment of [REDACTED] in postage for Qualifying Mail.
2. The Mailer acknowledges that preparing and gaining approval for the terms set forth in this Agreement requires substantial resources on the part of the USPS and that these resources will not be recouped in the event the Mailer does not meet its minimum commitment as set forth above in Paragraph 1 of this Article. Accordingly, Mailer agrees to pay to the USPS the maximum sum of [REDACTED] as liquidated damages if such minimum commitment is not met. Such liquidated damages shall be payable within thirty (30) days of receipt of a written demand by the USPS.

#### **ARTICLE 9. POSTAGE UPDATES**

1. The prices in Annex 1 and Annex 2 are based in part on the exchange rate between the United States Dollar and the Canadian Dollar reported on December 1, 2009, on the following URL on the International Monetary fund website: [http://www.imf.org/external/np/fin/data/rms\\_mth.aspx?reportType=REP](http://www.imf.org/external/np/fin/data/rms_mth.aspx?reportType=REP). The USPS will continue to use this website or any successor website the International Monetary Fund may establish.

- a. The USPS Postal Fiscal Year quarters begin on October 1, January 1, April 1, and July 1.
  - b. The USPS will review the foreign exchange rate of the Canadian Dollar as measured in United States Dollars ("Exchange Rate") reported on the International Monetary Fund website [REDACTED]  
[REDACTED]
  - c. Should the Exchange Rate change [REDACTED]  
[REDACTED]  
[REDACTED], the USPS will adjust the prices in the then-current Annex 1 or Annex 2, as applicable, [REDACTED]  
[REDACTED]
  - d. [REDACTED]  
[REDACTED]
2. In the event that the costs the USPS incurs to provide the service in this Agreement increase [REDACTED] during the term of this Agreement, the USPS reserves the right to adjust the prices in Annex 1 and Annex 2 during the term of this Agreement. This paragraph does not apply to costs of service that are based on CPC prices which are governed by paragraph 3.
  3. The prices for Global Direct – Canada Lettermail listed in Annex 1 and for Global Direct – Canada Incentive Lettermail listed in Annex 2 are based on Canada Post Corporation prices. The USPS will adjust the prices in Annex 1 and/or Annex 2 if Canada Post Corporation changes its prices for domestic Canadian lettermail and/or domestic Canadian incentive lettermail during the term of this Agreement.
  4. Notwithstanding the provisions of Paragraph 1 above, if the Exchange Rate [REDACTED] results in the then-current prices, denominated in United States Dollars, in Annex 1 or Annex 2 of this Agreement falling below the Canada Post Corporation prices for domestic Canadian lettermail or domestic Canadian incentive lettermail, as appropriate, as expressed in United States Dollars, the USPS will adjust the prices as necessary to avoid such a result.

5. Any revision of the prices in Annex 1 or Annex 2 shall go into effect [REDACTED], except for the following:
  - a. Any price revision pursuant to Paragraphs 1 and 4 above [REDACTED]. In such cases, the price revision will take effect simultaneous with the price revision pursuant to Paragraph 3 above, except that for purposes of Paragraph 1, if Canada Post Corporation does not change its rates in January, any price revision will take place [REDACTED].
  - b. Any price revision pursuant to Paragraph 2. In such cases, the price revision will take effect as specified by the USPS.
6. The USPS shall use its best efforts to provide the Mailer with notification of any revision to the prices in Annex 1 and/or Annex 2 at least fifteen (15) days prior to the date on which the revised prices will take effect.
7. The Mailer acknowledges that revisions in prices may be subject to regulatory oversight and such oversight might affect the effective date of any price revision.
8. No revision to the prices in Annex 1 or Annex 2 shall be retroactive.
9. In the event that this Agreement is extended for any period of time under the terms of Article 15, the price adjustment provisions of this Article shall continue to apply during the extension term.

#### **ARTICLE 10. SUSPENSIONS OF MAIL SERVICE**

In the event that a suspension of mail service from the United States to Canada would prevent delivery of Qualifying Mail to addressees in Canada, the Mailer shall not tender Qualifying Mail to the USPS until service is restored. Under these circumstances, the Mailer shall have the option to make alternative arrangements for the delivery of Qualifying Mail without penalty. The annualized minimum postage commitment for Qualifying Mail set forth in Article 8 shall be recalculated *pro rata* to reflect the reduction in available service time.

#### **ARTICLE 11. GOVERNING LAW**

This Agreement shall be governed by, construed, and enforced in accordance with United States Federal law.

#### **ARTICLE 12. TERM OF THE AGREEMENT**

1. The USPS will notify the Mailer of the Effective Date of the Agreement within thirty (30) days after receiving the approval of the entities that have oversight responsibilities for the USPS. The Agreement will remain in effect for one year from the Effective Date. The Agreement may be terminated sooner pursuant to Article 13.
2. The USPS shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process.

### **ARTICLE 13. TERMINATION OF THE AGREEMENT**

Either Party to this Agreement, in its sole discretion, may terminate the Agreement for any reason, without cost, fault, or penalty, regardless of whether either Party is in default, upon a thirty (30) day written notification, unless a time frame longer than thirty (30) days that falls within the term of the Agreement is indicated by the terminating Party.

### **ARTICLE 14. ENTIRE AGREEMENT**

This Agreement, and all Annexes thereto, shall constitute the entire agreement between the Parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either Party except to the extent incorporated in this Agreement.

### **ARTICLE 15. MODIFICATION OF THE AGREEMENT**

1. Any modification of this Agreement or additional obligation assumed by either Party in connection with this Agreement, with the exception of changes to prices under the terms of Article 9, shall be binding only if placed in writing and signed by each Party.
2. Modifications may be contingent upon any and all necessary approvals by USPS management's executive committee, the Board of Governors of the USPS, the Governors of the USPS, the Postal Regulatory Commission, the Antitrust Division of the Department of Justice, the Federal Trade Commission and/or any other governmental body with oversight responsibility for the USPS.
3. If such approvals are required, the modifications will not become effective until such time as all necessary approvals are obtained.
4. The USPS will notify the Mailer of the date the modification becomes effective within thirty (30) days after receiving the approval of the entities that have oversight responsibility for the USPS.
5. The USPS shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process.
6. Any changes to or modification of the local agreement referred to in Article 6, Paragraph 9, are not subject to the provisions of this Article.

### **ARTICLE 16. CONFIDENTIALITY**

The Mailer acknowledges that as part of securing approval of this Agreement, and in other subsequent regulatory filings, the Agreement and supporting documentation will be filed with the Postal Regulatory Commission ("Commission") in a docketed proceeding. The Mailer authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding. The Mailer further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission's public website, [www.prc.gov](http://www.prc.gov). In addition, the USPS may file information in connection with this instrument (including revenue, cost, or volume data) in other Commission dockets. The Mailer has the right, in accordance with the Commission's rules, to address its confidentiality concerns

directly with the Commission. At the request of the Mailer, the USPS will notify the Mailer of the docket number of the Commission proceeding to establish the prices in this instrument once assigned.

#### **ARTICLE 17. CUSTOMS DUTIES AND TAXES**

Customs duties and taxes for items mailed under this Agreement are the responsibility of the addressee.

#### **ARTICLE 18. LIMITATION OF LIABILITY**

The liability of the USPS under this Agreement shall be limited to the refund of postage for Qualifying Mail that is lost or destroyed in bulk after being tendered to the USPS and prior to being received by CPC. The USPS shall not be liable for any actual or consequential damages suffered by the Mailer as the result of late delivery or non-delivery of Qualifying Mail.

#### **ARTICLE 19. NO WAIVER**

The failure of either Party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of the terms and conditions of this Agreement, shall not be construed as thereafter waiving any such terms and conditions, but these shall continue and remain in full force and effect as if such forbearance or waiver had not occurred.

#### **ARTICLE 20. ASSIGNMENT**

The rights of each Party under this Agreement are personal to that Party and may not be assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other Party.

#### **ARTICLE 21. INDEMNITY**

The Mailer shall indemnify and save harmless the USPS and its officers, agents, and employees from any and all claims, losses, costs, damages, or expenses growing out of or connected in any other way with the discharge by the Mailer of any undertaking contained in this Agreement, except for Claims arising out of the negligence or willful misconduct of the USPS or of its officers, agents, or employees. Notwithstanding its obligation to indemnify the USPS, the Mailer shall not be liable for any consequential damages suffered by the USPS.

#### **ARTICLE 22. FORCE MAJEURE**

Neither Party shall be liable for its failure to perform under the terms of this Agreement due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid, court orders whether valid or invalid, inability to obtain material, equipment or transportation, and any other similar or different contingency.

### **ARTICLE 23. EFFECT OF PARTIAL INVALIDITY**

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the Parties agree that the remaining provisions shall be deemed to be in full force and effect.

### **ARTICLE 24. CONDITIONS PRECEDENT**

1. The Parties acknowledge and understand that all obligations of the USPS under this Agreement, including the prices listed in Annex 1 and Annex 2, shall be contingent on the USPS receiving approvals hereinafter ("Conditions Precedent") from one or more internal and external bodies that have oversight responsibilities. Conditions Precedent may include, but are not limited to: approvals or, if applicable, non-objection, from responsible USPS management officials, the USPS Board of Governors, the USPS Governors, the Postal Regulatory Commission, the Antitrust Division of the Department of Justice, the Federal Trade Commission and/or any other governmental body with oversight responsibility for the USPS. The Parties acknowledge that the Agreement may not be approved by such individuals or bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to allow the USPS to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS, and no benefit shall inure to either Party.
2. In the event that the Conditions Precedent are not fulfilled, the USPS shall have no liability, which shall include no obligation to pay costs associated with any action taken by the Mailer prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or the failure of any Condition Precedent, the USPS shall not be held liable for any damages including, without limitation, actual; special; indirect; incidental; punitive; consequential; or any other damages, which shall include but not be limited to damages for loss of business profits; business interruption; any other loss; and/or for costs incurred by either Party attributable to such non-approval, such as attorney's fees.

### **ARTICLE 25. PARAGRAPH HEADINGS**

The titles to the paragraphs of this Agreement are solely for the convenience of the Parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

### **ARTICLE 26. MAILABILITY AND IMPORTABILITY**

All items mailed under this Agreement must conform to the mailability requirements of the USPS as detailed in IMM 130 and conform to the importation restrictions of the destination countries, as well as the export requirements of the United States. The Mailer is solely responsible for the importation status of its products.

**ARTICLE 27. PRESERVATION AFTER TERMINATION**

Termination of this Agreement shall be without prejudice to any rights, obligations, and liabilities of the Mailer accrued up to and including the effective date of such termination. In the event of termination of the Agreement, the Mailer shall be liable to make final settlement of all amounts owing as of the effective date of termination within thirty (30) days of written notice by the Postal Service of any deficiency or liability under this Agreement. The obligations of the Parties with respect to confidentiality, as provided in Article 5, Paragraph 10; Article 6, Paragraph 10; and Article 16, will expire three years from the date of the termination of this Agreement.

**ARTICLE 28. NOTICES**

All notices or demands required by this Agreement shall be sufficient if delivered:

1. Personally or mailed, by Express Mail, to the following:

**To the United States Postal Service:**

Managing Director and Vice President, Global Business  
United States Postal Service  
475 L'Enfant Plaza, SW Room 4016  
Washington, DC 20260-4016

To [REDACTED]

[REDACTED]

or

2. Via e-mail:

**To the United States Postal Service at:** [icmusps@usps.gov](mailto:icmusps@usps.gov)

**To the Mailer at:** [REDACTED]

**ARTICLE 29. COUNTERPARTS**

The Parties may execute this Agreement in one or more counterparts (including by facsimile or by electronic means such as .pdf format), not all Parties need be signatories to the same documents, and all counterpart-signed documents shall be deemed an original and one instrument.

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In witness whereof, each Party to this Agreement has caused it to be executed as indicated below.

**ON BEHALF OF THE UNITED STATES POSTAL SERVICE:**

Signature: Frank A. Cebello

Name: Frank A. Cebello

Title: Executive Director, Global Business Management

Date: 12/17/09

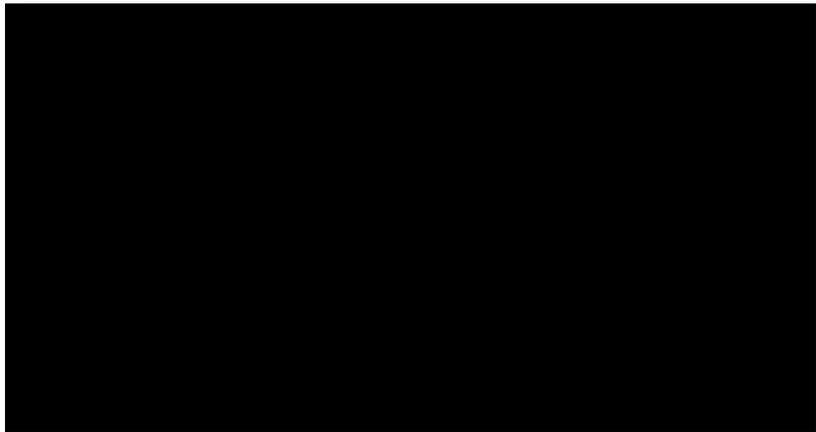
**ON BEHALF OF [REDACTED]:**

Signature:

Name:

Title:

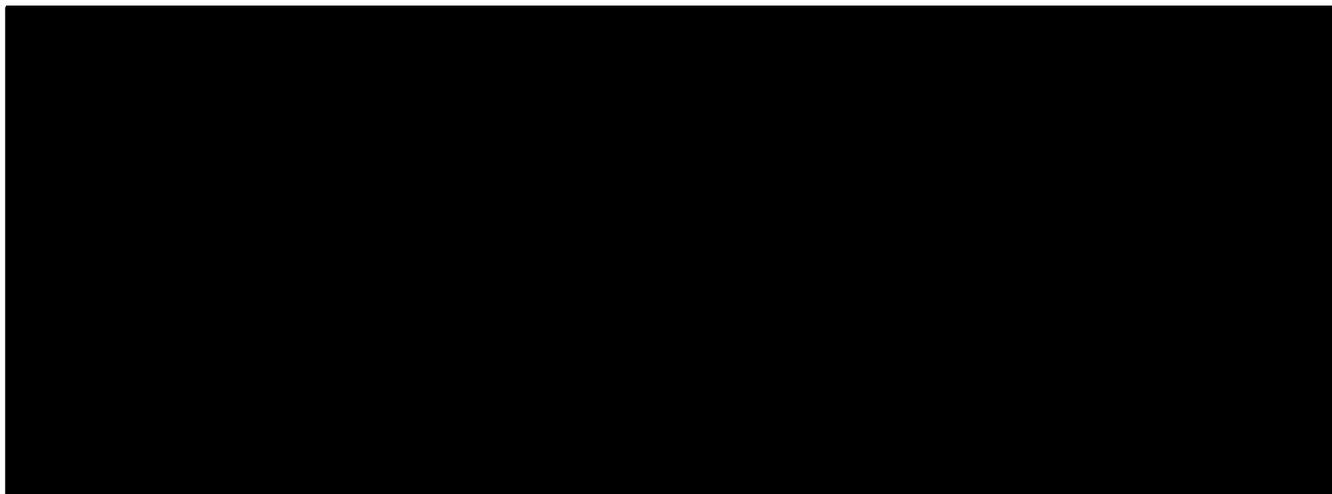
Date



- ANNEX 1 PRICES FOR GLOBAL DIRECT – CANADA LETTERMAIL JANUARY 11, 2010, THROUGH JUNE 30, 2010
- ANNEX 2 PRICES FOR GLOGAL DIRECT – CANADA INCENTIVE LETTERMAIL BEGINNING JULY 1, 2010
- ANNEX 3 GLOBAL DIRECT – CANADA LETTERMAIL MAIL PREPARATION REQUIREMENTS

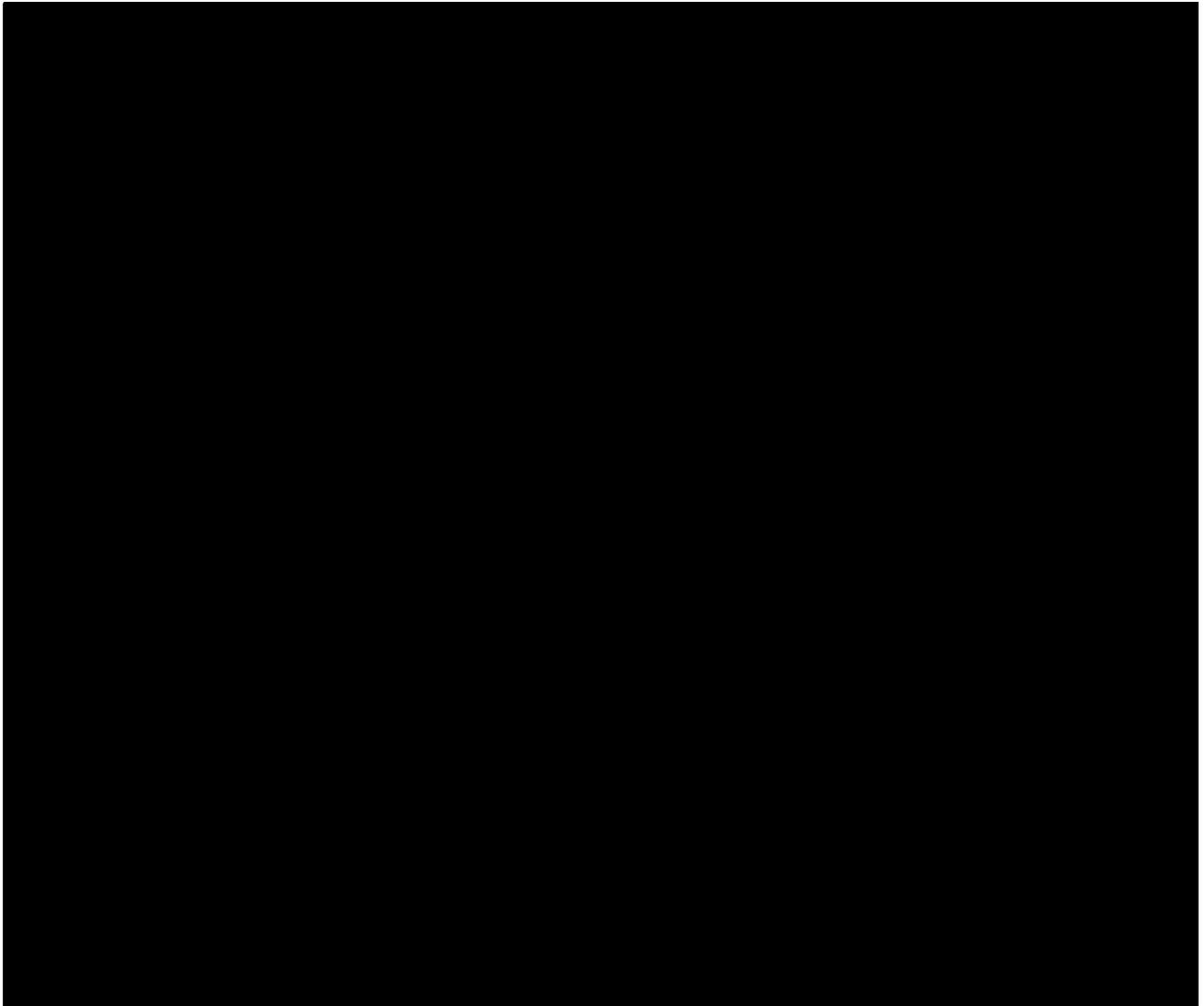
**ANNEX 1**  
**PRICES FOR**  
**GLOBAL DIRECT – CANADA LETTERMAIL**  
**JANUARY 11, 2010, THROUGH JUNE 30, 2010**

**Global Direct – Canada Lettermail**



**ANNEX 2**  
**PRICES FOR**  
**GLOBAL DIRECT – CANADA INCENTIVE LETTERMAIL**  
**EFFECTIVE JULY 1, 2010**

**Global Direct – Canada Incentive Lettermail**



### ANNEX 3

## GLOBAL DIRECT - CANADA MAIL PREPARATION REQUIREMENTS

**NOTE:** Annex 3 is a summary of requirements for information only and is subject to any changes CPC may make. Such changes become binding upon the Mailer on the effective date determined by CPC whether or not they are reflected in this Annex.

### GLOBAL DIRECT – CANADA LETTERMAIL AND GLOBAL DIRECT – CANADA INCENTIVE LETTERMAIL

The Mailer is responsible for ensuring that the items meet CPC makeup and preparation requirements for Canadian domestic Addressed Lettermail service found on the CPC website ([www.canadapost.com](http://www.canadapost.com)).

#### **ADDRESSING**

##### **Mailing Address:**

The address of the addressee must be complete and include:

- The addressee's name;
- Where, applicable, the street number, street name, and apartment or room number;
- The name and province of the postal facility of delivery; and
- A valid postal code for the address.

##### **Return Address:**

When an Addressed Lettermail item bears a return address, the return address must be Canadian and it must be located on the same side as the delivery address in the upper left corner.

#### **POSTAL INDICIA AND OTHER MARKINGS**

Items must bear the appropriate CPC indicia. The number [REDACTED] must appear in the indicia. Camera-ready indicia artwork can be downloaded from the *Canada Postal Guide* at [www.canadapost.ca/postalguide](http://www.canadapost.ca/postalguide).

The Canada Post indicia shall be located:

- On the front of the item in the upper right corner,
- Not more than 1.57 in. (40 mm.) from the top edge,
- Not more than 2.9 in. (74 mm.) from the right edge.

A return address, service indication, or delivery instruction may be marked/printed on an Addressed Lettermail item if it is located:

- On the front of the item in the upper left corner,
- 1.77 in. (45 mm.) or more from the bottom edge.

Graphics or other printings may be printed on the front of an Addressed Lettermail item if they are located 1.77 in. (45mm.) or more from the bottom of the item. NOTE: Graphics or other printings shall not be located in the area reserved for the postage indicia.

## SEALING

All envelopes must have seams that are permanently and securely sealed. Flaps must be constructed so that they can be completely and securely sealed by the mailer. Unsealed/open envelopes are not permitted for mailings of Canada Addressed Lettermail. Self-mailers must be closed on all four edges.

## MAIL PREPARATION

All items must be placed in USPS letter trays or other appropriate USPS mail transport equipment. Use the following general guidelines when preparing letter trays:

- Face all items in the same direction;
- Sleeve, band, and label each letter tray;
- Each letter tray must bear a label formatted as follows:

Line 1:	Canadian Destination, U.S. Exchange Office Code
Line 2:	Contents
Line 3:	Mailer, Mailer Location

## PRE-NOTIFICATION OF MAILINGS

Effective July 1, 2010, the USPS shall require pre-notification for each mailing of Global Direct – Canada Incentive Lettermail mailed under the terms of this Agreement. At least twenty-four (24) hours before each shipment of Global Direct – Canada Incentive Lettermail the Mailer, or a representative acting on behalf of the Mailer, must submit to the USPS both the electronic Statement of Mailing generated by CPC specialized sortation software and a CPC Address Accuracy Statement. The message must include the date of the mailing. The message must be sent via e-mail to: [InternationalCustomerSupportHQ@usps.gov](mailto:InternationalCustomerSupportHQ@usps.gov).

## PRESENTATION OF MAILING

Each mailing of Global Direct – Canada Incentive Lettermail mailed under the terms of this Agreement must be prepared in accordance with CPC eligibility and mail preparation requirements for domestic Canadian Incentive Lettermail. Mailers are required to use CPC specialized sortation software. The Mailer must meet or exceed the minimum address accuracy requirements set by CPC.

Each mailing of Global Direct – Canada Lettermail and Global Direct – Canada Incentive Lettermail must be accompanied by a completed PS Form 3700, *Postage Statement – International Mail*, Part I Global Direct – Permit Imprint, Line I1 Canada Letter Mail.

**Certification of Prices for the Global Direct Contract with**  
[REDACTED]

I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Global Direct Contract with [REDACTED]. The prices contained in this Contract were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy and Global Plus Contracts, issued July 16, 2008 (Governors' Decision No. 08-10), which established prices by means of price floor and ceiling formulas.

I hereby certify that the numerical cost values underlying the prices in the [REDACTED] contract are the appropriate costs to use in the formulas and represent the best available information. The prices, resulting in a cost coverage of in excess of the minimum required by the Governor's Decision are in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The prices demonstrate that the contract should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2008, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from Global Direct Contracts should be even smaller. The contract with [REDACTED] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

  
Joseph Moeller

### ATTACHMENT 3

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

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,<sup>1</sup> the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to a Global Direct contract that the Postal Service believes is functionally equivalent to previous Global Direct contracts and should serve as the new baseline for functional equivalency comparisons. The contract and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission. Redacted copies of the contract and the certified statement required by 39 C.F.R. 3015.5(c)(2) are filed publicly as Attachments 1 and 2 to the Postal Service's Notice, respectively, and a redacted version of other financial documentation is filed publicly as a separate Microsoft Excel document.

The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

**(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(4). The Commission may determine the appropriate level of confidentiality to be afforded to

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<sup>1</sup> PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

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).<sup>2</sup> Because the portions of materials filed non-publicly in this docket fall within the scope of information not required to be publicly disclosed, the Postal Service asks the Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

**(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;**

In the case of contract prices, the Postal Service believes that the only third party with a proprietary interest in the materials is the customer with whom the contract is made. The Postal Service maintains that customer identifying information should be withheld from public disclosure. Therefore, rather than identifying the customer, the Postal Service gives notice that it has already informed the customer, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service employee responsible for providing notice to the third party with proprietary interest in the materials filed in this docket is Jacob Howley, Attorney, 475 L'Enfant Plaza SW, Washington, D.C. 20260-1137, whose email address is jacob.d.howley@usps.gov, and whose telephone number is 202-268-8917.

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<sup>2</sup> 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. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

The financial documentation also contains information that could be considered proprietary to Canada Post Corporation (Canada Post). The Postal Service has already informed Canada Post, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies Dave Eagles, Director, International Relations, Canada Post Corporation, as the appropriate contact on behalf of Canada Post. Mr. Eagles' telephone number is (613) 734-6043, and his email address is dave.eagles@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Dennis Jarvis, General Manager, International Product Management, Canada Post Corporation. Mr. Jarvis's telephone number is (613) 734-8149, and his email address is dennis.jarvis@canadapost.ca.<sup>3</sup>

**(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;**

In connection with its Notice filed in this docket, the Postal Service included a contract, financial work papers, and the certified statement required by 39 C.F.R. § 3015.5(c)(2). These materials were filed under seal, with redacted copies filed publicly, after notice to the customer. The Postal Service maintains that the redacted portions of

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<sup>3</sup> In the event of a request for early termination of non-public treatment under 39 C.F.R. § 3007.31, a preliminary determination of non-public status under 39 C.F.R. § 3007.32, or a request for access to non-public materials under 39 C.F.R. § 3007.40, the Postal Service notes, on Canada Post's behalf, that differences in the official observation of national holidays might adversely and unduly affect Canada Post's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, Canada Post has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect Canada Post's interests. A listing of Canada's official holidays can be found at <http://www.pch.gc.ca/pgm/ceem-cced/jfa-ha/index-eng.cfm>.

the contract, related financial information, and identifying information related to Global Direct customers should remain confidential.

With regard to the contract filed in this docket, the redactions on page 1 and to the footers of each page, Article 28, and the signature block constitute the name or address of a postal patron whose identifying information may be withheld from mandatory public disclosure by virtue of 39 U.S.C. § 504(g)(1) and 39 U.S.C. § 410(c)(2).

The redactions made in Annex 1 of the contract, other than those involving the customer's name, withhold the actual prices that are being offered to this customer in exchange for its commitment and performance of its obligations under the terms of the agreement. The redactions to Article 6, paragraph 5, Article 8, and Article 9 protect information with specific financial impact on the customer, such as the level of a finance charge for late payment, the customer's commitment to the Postal Service, and the timing and manner in which the Postal Service might change prices under the contract.

The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, pricing formulas, information relevant to the mailing profile of the customer, and cost coverage projections. To the extent practicable, the Postal Service has limited its redactions in the work papers to the actual information it has determined to be exempt from disclosure under 5 U.S.C. § 552(b). However, in a limited number of cases, narrative passages, such as words or numbers in text, were replaced with general terms describing the redacted material. For example, where the mailer's name appears in the spreadsheet within a cell, it has been replaced by the word "Mailer."

**(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;**

If the portions of the contract that the Postal Service has 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 would suffer commercial harm. First, revealing customer-identifying information would enable competitors to focus marketing efforts on current postal customers, undermining the effort and resources that the Postal Service has invested in cultivating business relationships with those customers. The Postal Service considers that it is highly probable that if this information were made public, its competitors would take immediate advantage of it. The contract includes a provision allowing the mailer to terminate the contract without cause by providing at least 30 days' notice. Therefore, there is a substantial likelihood of losing the customer to a competitor that targets them with lower pricing.

Other redacted information in the contract includes negotiated contract terms, such as the amount of liquidated damages, the minimum volume and/or revenue commitment agreed to by the customer, and the percentage of cost increase which may trigger a consequential price increase. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to assess the offers made by the Postal Service to its customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal

Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

Finally, the financial work papers include specific information such as costs, assumptions used in pricing formulas, the formulas themselves, mailer profile information, projections of variables, contingency rates included to account for market fluctuations and the exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required by the mail classification schedule to demonstrate that each negotiated agreement within this group covers its attributable costs. Furthermore, the Postal Service's Governors have required that each contract be submitted to the Commission with a notice that complies with 39 C.F.R. § 3015.5. Thus, competitors would be able to take advantage of the information to offer lower pricing to the relevant customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the expedited package services market. Given that these spreadsheets are filed in their native format, the Postal Service's assessment is that the likelihood that the information would be used in this way is great.

Potential customers could also deduce from the rates provided in the contract or from the information in the work papers whether additional margin for net profit exists between the contract being filed and the contribution that Global Direct contracts must make. From this information, each customer could attempt to negotiate ever-increasing incentives, such that the Postal Service's ability to negotiate competitive yet financially

sound rates would be compromised. Even the customer involved in this Global Direct filing could use the information in the work papers in an attempt to renegotiate its own rates by threatening to terminate its current agreement, although the Postal Service considers this risk to be lower in comparison to those previously identified.

Price information in the contract and financial spreadsheets also consists of sensitive commercial information of the customer. Disclosure of such information could be used by competitors of the customer to assess its underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

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

Identified harm: Revealing customer identifying information would enable competitors to target the customers for sales and marketing purposes.

Hypothetical: The identity of the customer in this contract is revealed to the public. Another expedited delivery service has an employee monitoring the filing of Global Direct contracts and passing along the information to its sales function. The competitor's sales representatives can then quickly contact the Postal Service's customer and offer the customer lower rates or other incentives to terminate its contract with the USPS in favor of using the competitor's services.

Identified harm: Public disclosure of negotiated terms of the agreement could be used by competitors and potential customers to the Postal Service's detriment.

Hypothetical: Customer A signs a Global Direct contract that is filed with the Postal Regulatory Commission. At the same time, Customer B is considering signing a Global Direct contract and has no real concern about the liquidated damages provision, which calls for Customer B to pay up to \$10,000 in liquidated damages if it fails to meet its minimum volume commitment before termination of the agreement. The information about Customer A's liquidated damages is made public. Customer A's agreement calls for a \$5,000 maximum payment as liquidated damages. Customer B sees the information. Customer B now insists that it will not agree to be obligated to pay any more than Customer A was obligated to pay, diminishing the Postal Service's bargaining leverage.

Identified harm: Public disclosure of information in the financial work papers would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing expedited package delivery service obtains a copy of the unredacted version of the financial work papers from the Postal Regulatory Commission's website. It analyzes the work papers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its Global Direct customers under that threshold and markets its ability to guarantee to beat the Postal Service on price for international expedited delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's

competitors acting in a likewise fashion, would freeze the Postal Service out of the business-to-business and business-to-customer expedited delivery services markets for which the GEPS product is designed.

Identified harm: Public disclosure of the rate charts in the contract would provide potential customers extraordinary negotiating power to extract lower rates.

Hypothetical: Customer A's negotiated rates are disclosed publicly on the Postal Regulatory Commission's website. Customer B sees the rates and determines that there may be some additional profit margin between the rates provided to Customer A and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. Customer B, which was offered rates identical to those published in Customer A's agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its international delivery needs.

Alternatively, Customer B attempts to extract lower rates only for those destinations for which it believes the Postal Service is the low-cost provider among all service providers. The Postal Service may agree to this demand in order to keep the customer's business overall, which it believes will still satisfy total cost coverage for the agreement. Then, the Customer uses other providers for destinations other than those for which it extracted lower rates. This impacts the Postal Service's overall projected cost coverage for the agreement, such that it no longer meets its cost coverage

requirement. Although the Postal Service could terminate the contract when it first recognized that the mailer's practice and projected profile were at variance, the costs associated with establishing the contract, including filing it with the Postal Regulatory Commission, would be sunk costs that would have a negative impact on the Global Direct Contracts 1 product overall.

Identified harm: Public disclosure of information in the financial work papers would be used by the customer's competitors to its detriment.

Hypothetical: A firm competing with the customer obtains a copy of the unredacted version of the contract and financial work papers from the Postal Regulatory Commission's website. The competitor analyzes the prices and the work papers to assess the customer's underlying costs for the corresponding delivery products. The competitor uses that information as a baseline to develop lower-cost alternatives.

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

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international expedited and parcels products (including both private sector integrators and foreign postal administrations), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products should not be provided access to the non-public materials. This includes all competitors of the relevant customer, whether or not they are currently actual Postal Service customers.

**(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure 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 the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. The Postal Service believes that the ten-year period of non-public treatment is sufficient to protect its interests with regard to the information it determined should be withheld due to commercial sensitivity.

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

None.

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR GLOBAL DIRECT, GLOBAL BULK ECONOMY, AND GLOBAL PLUS CONTRACTS (GOVERNORS' DECISION NO. 08-10)**

July 16, 2008

**STATEMENT OF EXPLANATION AND JUSTIFICATION**

Pursuant to our authority under section 3632 of title 39, as amended by the Postal Accountability and Enhancement Act of 2006 ("PAEA"), we establish new prices not of general applicability for certain of the Postal Service's competitive service offerings, and such changes in classification as are necessary to implement the new prices. This decision establishes prices by setting price floor and price ceiling formulas for Global Direct and Global Bulk Economy Contracts, as well as for Global Plus Contracts that combine Global Direct and Global Bulk Economy services.<sup>1</sup> The types of contracts to which these prices will apply are described in Attachments A-1, A-2, and A-3,<sup>2</sup> the price floor and price ceiling formulas are specified in Attachments B-1, B-2, and B-3, and management's analyses of the appropriateness of these formulas is explained in Attachments C-1, C-2, and C-3. We have reviewed those analyses and have concluded

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<sup>1</sup> In our Decision on the Establishment of Prices and Classifications for Global Plus Contracts (Governors' Decision No. 08-8), May 28, 2008, we established prices for Global Plus contracts that consist of any combination of International Priority Airmail, International Surface Airlift, Express Mail International and Priority Mail International. In that Decision, we noted that prices for Global Direct and Global Bulk Economy would be established at a later date. The instant Decision establishes a classification for Global Plus contracts similar to that previously established, in that it combines various component services and offers price incentives; the instant classification differs in the precise combination of services offered. Eligible customers may avail themselves of individual contracts for Global Direct and Global Bulk Economy, or they may combine these services under a Global Plus contract.

<sup>2</sup> The classifications for Global Direct and Global Bulk Economy contracts are contained in the Mail Classification Schedule language originally proposed by the Postal Service, as modified in Attachments A-1 and A-2. See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007. It should be noted that certain of the modifications involve changes to the size and weight charts pertaining to Global Bulk Economy Contracts to mirror the shape-based First-Class Mail International sizes and weights effective May 12, 2008. The classification for Global Plus contracts that combine Global Direct and Global Bulk Economy services is contained in Attachment A-3. Attachment A-3 contains many of the same provisions that were proposed in the Postal Service's original Mail Classification Schedule language for Global Plus Contracts, but the language has been specifically tailored to address only those Global Plus Contracts combining Global Direct and Global Bulk Economy services.

that the prices emerging from application of the formulas and the classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Contracts that fall within the terms specified in Attachments A-1, A-2, and A-3, and whose prices fall within the price ranges established by the price floor and price ceiling formulas specified in Attachments B-1, B-2, and B-3, respectively, are hereby authorized.

The PAEA provides that prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share to the Postal Service's institutional costs. We have determined that prices established according to the formulas listed in Attachments B-1, B-2, and B-3 would be appropriate for the services covered by the types of Global Direct, Global Bulk Economy and Global Plus Contracts classified in Attachments A-1, A-2, and A-3, respectively. Management's analysis of the formulas, included as Attachments C-1, C-2, and C-3, supports our decision to establish prices through such formulas for the specified types of contracts.

We are satisfied that the prices established by the formulas in Attachments B-1, B-2, and B-3 meet the applicable statutory and regulatory requirements. The price floor formulas provide greater than 100 percent coverage of the costs attributable to each of these types of agreements. We accept and rely upon the certification in Attachment D that the correct cost inputs for the formulas have been identified. In addition, the price floor formulas

[REDACTED]  
[REDACTED] should cover the agreements' attributable costs and provide a contribution toward the Postal Service's institutional costs. The formulas should thus prevent cross-subsidies from market dominant products. As noted in the certification in Attachment D, entry into agreements pursuant to this Decision should not impair the ability of competitive products as a whole to cover an appropriate share of institutional costs.

No agreement authorized pursuant to this Decision may go into effect unless it is submitted to the Postal Regulatory Commission with a notice that complies with 39 C.F.R. § 3015.5 and any other rules that the Commission deems applicable. The notice must include a

financial analysis that demonstrates that the agreement covers its attributable costs, based on [REDACTED] Attachments B-1, B-2, and B-3. The notice must also include a certification from a Postal Service official that the numerical values chosen for each agreement are appropriate, in that they represent the best available information and that the agreement should not result in a cross-subsidy from market dominant products and should not impair the ability of competitive products, as a whole, to cover an appropriate share of institutional costs.

#### ORDER

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable Global Direct, Global Bulk Economy, and Global Plus Contracts, and the changes in classification necessary to implement those prices, are hereby approved and ordered into effect. An agreement is authorized under this Decision only if the prices fall within the formulas set by this Decision and the certification process specified herein is followed. After an authorized agreement is entered into, the Postal Service shall comply with all applicable statutory and regulatory requirements.

Prices and classification changes established pursuant to this Decision will take effect after filing with and completion of review by the Postal Regulatory Commission.

By The Governors:



Alan C. Kessler  
Chairman

Attachment A-1

Description of Applicable Global Bulk Economy Contracts

2610.4 Global Bulk Economy (GBE) Contracts

These are contracts for letter-post items that are dispatched in bulk via surface transportation to destination countries. The mailer must physically separate the sacks and/or pallets by rate group. Within each rate group direct country sacks weighing less than 11 pounds must be physically separated from other direct country sacks and identified with the letter "S" on the bag tag. To qualify, a mailer must tender all of its qualifying mail to the Postal Service and must be capable, on an annualized basis, of either tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international postage to the Postal Service, paying at least \$2 million in First-Class Mail International postage to the Postal Service. For a mailer to qualify, the contract must cover its attributable costs.

**Size and Weight for Letters/Small Packages/Packages:<sup>1</sup>**

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	24 inches	Length plus height plus thickness: 36 inches		4 pounds

<sup>1</sup>Packages of letter-size pieces of mail should be no thicker than approximately a handful of mail (4" to 6"); packages of flat-size mail may be thicker than 6", but weigh no more than 11 pounds. A package or packet is defined as 10 or more pieces of mail to the same country separation or 1 pound or more regardless of the number of pieces.

**Size and Weight for Postcards:**

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	6 inches	4.25 inches	0.016 inch	Not applicable

**Size and Weight for Letters:**

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	11.5 inches	6.125 inches	0.25 inch	3.5 ounces

**Size and Weight for Large Envelopes (Flats):**

	Length	Height	Thickness	Weight
Minimum <sup>†</sup>	11.5 inches	6.125 inches	0.25 inch	none
Maximum	15 inches	12 inches	0.75 inch	4 pounds

<sup>†</sup>Every minimum dimension does not have to be met; only one does.

**Size and Weight for Packages (Small Packets):**

	<u>Length</u>	<u>Height</u>	<u>Thickness</u>	<u>Weight</u>
<u>Minimum</u>	<u>Large enough to accommodate postage, address and other required elements on the address side.</u>			<u>None</u>
<u>Maximum</u>	<u>24 inches</u>	<u>Length plus height plus thickness: 36 inches</u>		<u>4 pounds</u>

**Size and Weight for Rolls:**

	<u>Length</u>	<u>Length plus twice the diameter</u>	<u>Weight</u>
<u>Minimum</u>	<u>4 inches</u>	<u>6.75 inches</u>	<u>none</u>
<u>Maximum</u>	<u>36 inches</u>	<u>42 inches</u>	<u>4 pounds<sup>70</sup></u>

**Minimum Volume or Revenue Commitment:**

Mailers must commit to tender varying minimum volumes or postage on an annualized basis. The minimum volume requirement is 100 pounds per mailing.

**Price Categories:**

The discount percentage off a base rate is dependent upon a volume or postage commitment on the part of the customer.

**Optional Features:**

None

## Attachment A-2

### Description of Applicable Global Direct Contracts

#### 2610.3 Global Direct Contracts

These are contracts giving a rate for mail acceptance within the United States and transportation to a receiving country with the addition by the customer of appropriate foreign postage charged by the receiving country. The preparation requirements are the preparation requirements for the given product set by the receiving country. All items must bear the postal imprint of the receiving country and a return address in the receiving country. To qualify, a mailer must ~~tender all of its qualifying mail to the Postal Service and be capable, on an annualized basis, of either tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international postage to the Postal Service.~~ paying at least \$2 million in First-Class Mail International postage to the Postal Service, or tendering at least 600 pieces of non-First-Class International mail to the Postal Service, or paying at least \$12,000 in non-First-Class Mail International postage to the Postal Service. For a mailer to qualify, the contract must cover its attributable costs.

#### **Size and Weight:**

Size and weight requirements are the requirements for the given product set by the receiving country.

#### **Minimum Volume or Revenue Commitment:**

Mailers must commit to tender varying minimum volumes or postage on an annualized basis. The mailer may be required to meet minimum volume or weight requirements as specified by the Postal Service.

#### **Price Category:**

Prices are dependent upon a volume or postage commitment on the part of the customer and basically cover mail acceptance within the United States, transportation from the United States to the receiving country and the appropriate postage in the receiving country.

#### **Optional Features:**

All optional features applicable to the product as set by the receiving country.

Attachment A-3

Description of Applicable Global Plus Contracts

2610.6 Global Plus Contracts 2: Global Bulk Economy and Global Direct

These are contracts giving rates for a combination of Global Bulk Economy (GBE) and Global Direct (GD). These contracts are for high-volume mailers or Postal Qualified Wholesalers. For a mailer to qualify, the contract must cover its attributable costs.

The contracts include all destinations served by GBE and/or GD, as specified by the Postal Service. The preparation requirements are the same as for all GBE shipments. For GD shipments, the preparation requirements are the preparation requirements for the given product set by the receiving country. The mailer may be required to prepare specific shipments according to country specific requirements.

To qualify for a contract, a mailer must be capable, on an annualized basis, of either tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international postage to the Postal Service.

Size and Weight for Postcards:

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	6 inches	4.25 inches	0.016 inch	Not applicable

Size and Weight for Letters:

	Length	Height	Thickness	Weight
Minimum	5.5 inches	3.5 inches	0.007 inch	None
Maximum	11.5 inches	6.125 inches	0.25 inch	3.5 ounces

Size and Weight for Large Envelopes (Flats):

	Length	Height	Thickness	Weight
Minimum <sup>2</sup>	11.5 inches	6.125 inches	0.25 inch	None
Maximum	15 inches	12 inches	0.75 inch	4 pounds

<sup>1</sup> Every minimum dimension does not have to be met; only one does.

Size and Weight for Packages (Small Packets):

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address and other required elements on the address side.			None
	Length	Length plus height plus thickness		Weight
Maximum	24 inches	36 inches		4 pounds

**Size and Weight for Rolls:**

	Length	Length plus twice the diameter	Weight <sup>1</sup>
Minimum	4 inches	6.75 inches	none
Maximum	36 inches	42 inches	4 pounds

**Minimum Volume or Revenue Commitment:**

Mailers must commit to tender varying minimum volumes or postage on an annualized basis. The minimum volume requirement for GBE is 100 pounds per mailing. The mailer may be required to meet a volume minimum or weight requirement for Global Direct. If paying through permit imprint, the mailer is required to meet the minimum volume or weight requirements in effect for manifest mailings.

**Price Categories:**

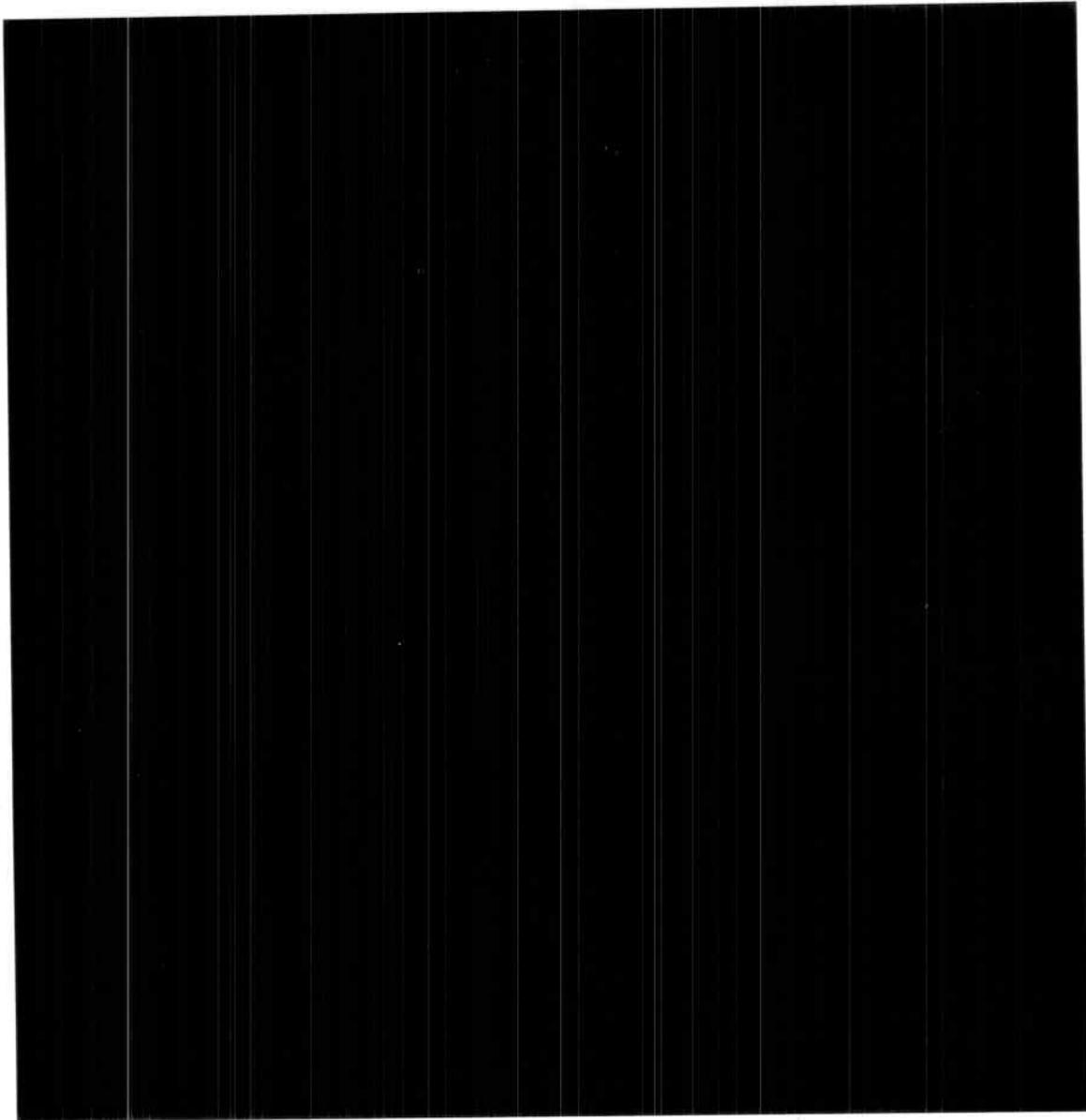
The discount percentage or price, as applicable to the service, is dependent upon a volume or postage commitment on the part of the customer. Additional tiered discounts are available if the mailer exceeds the minimum volume or postage commitment.

**Optional Features:**

For GD, all optional features applicable to the product as set by the receiving country.

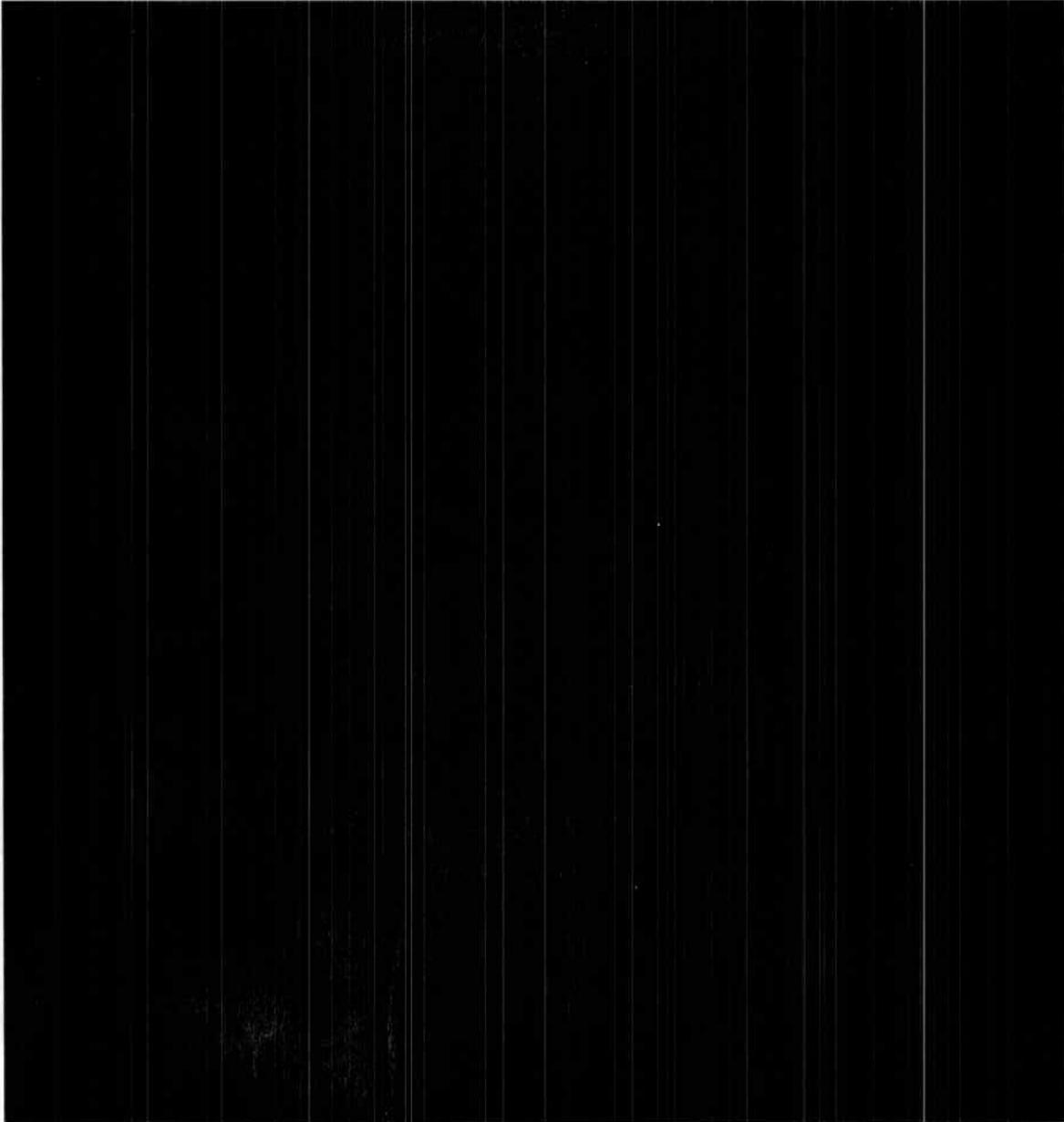
Attachment B-1

Formulas for Prices Under Applicable Global Bulk Economy Contracts



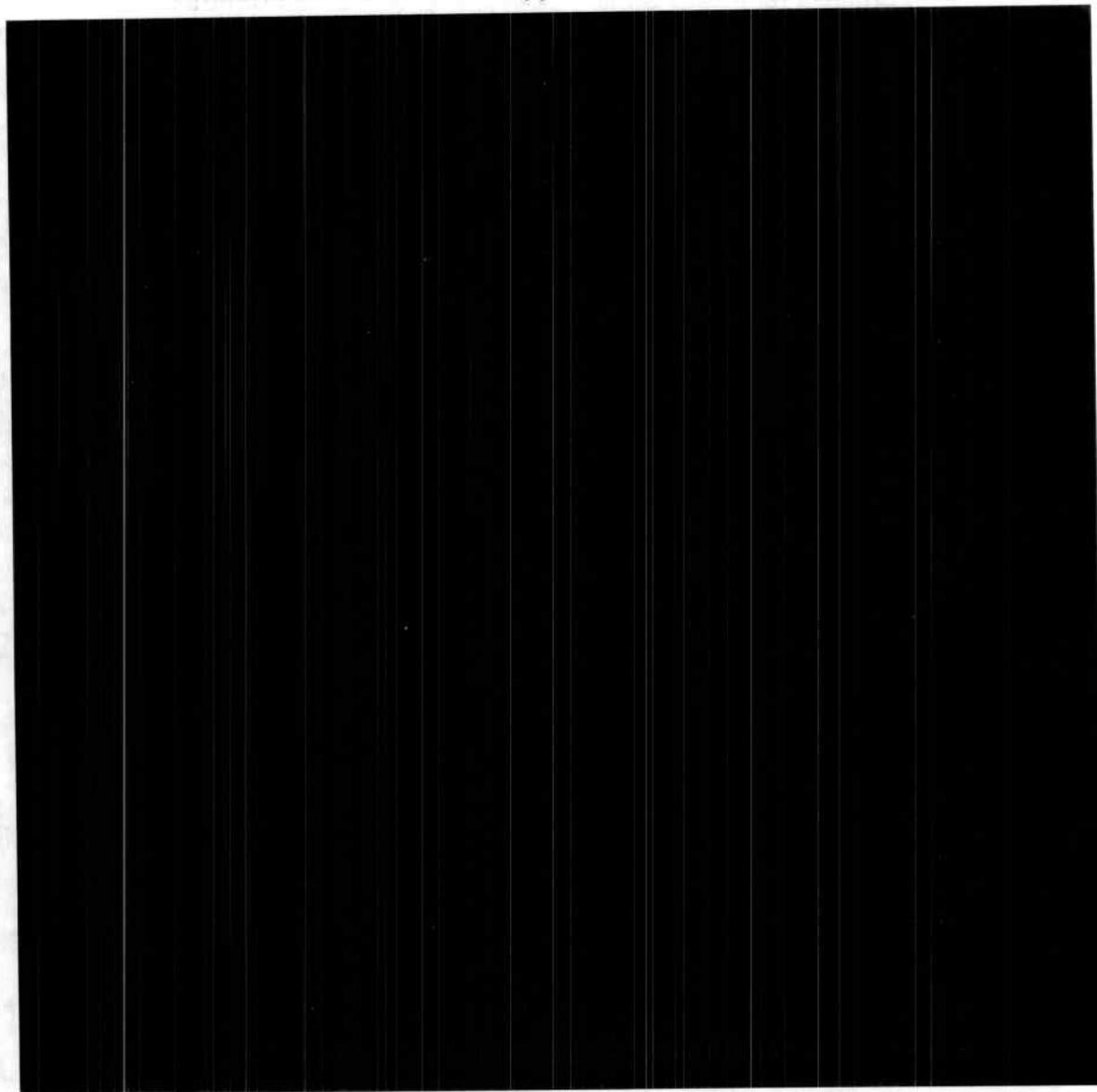
Attachment B-2

Formulas for Prices Under Applicable Global Direct Contracts



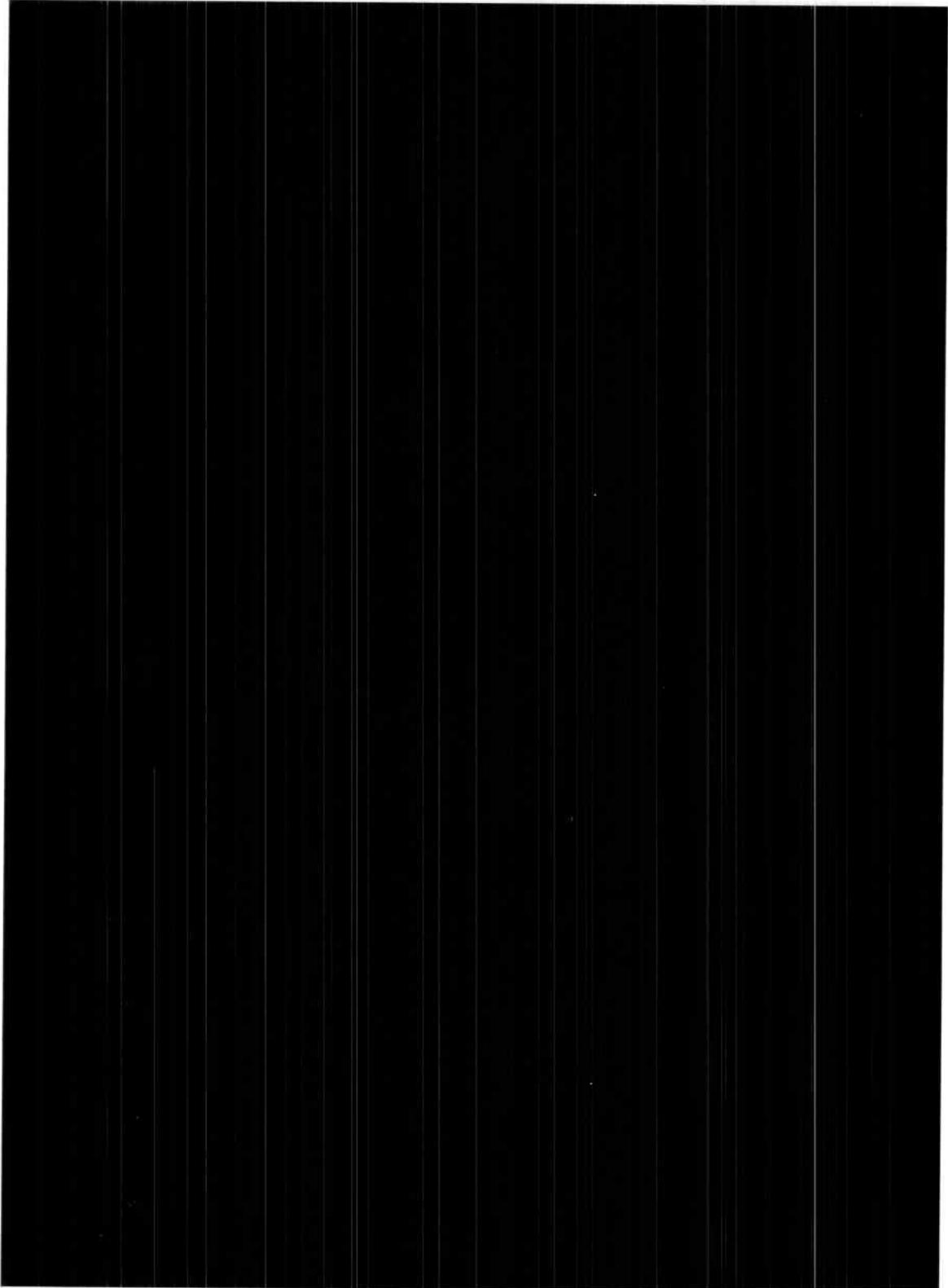
Attachment B-3

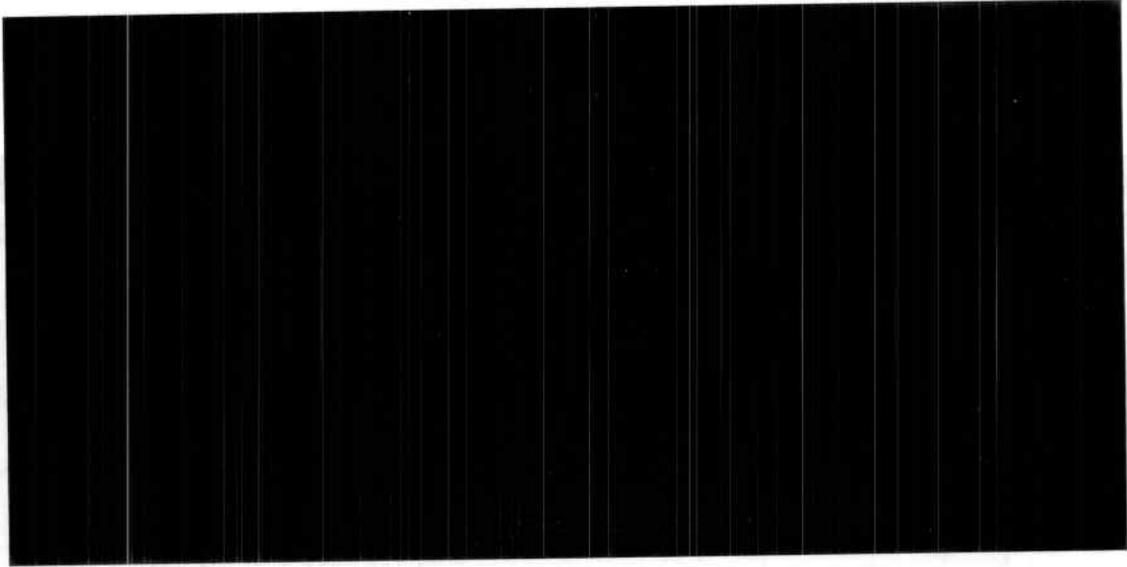
Formulas for Prices Under Applicable Global Plus Contracts



Attachment C-1

Analysis of the Formulas for Prices Under Applicable Global Bulk Economy  
Contracts

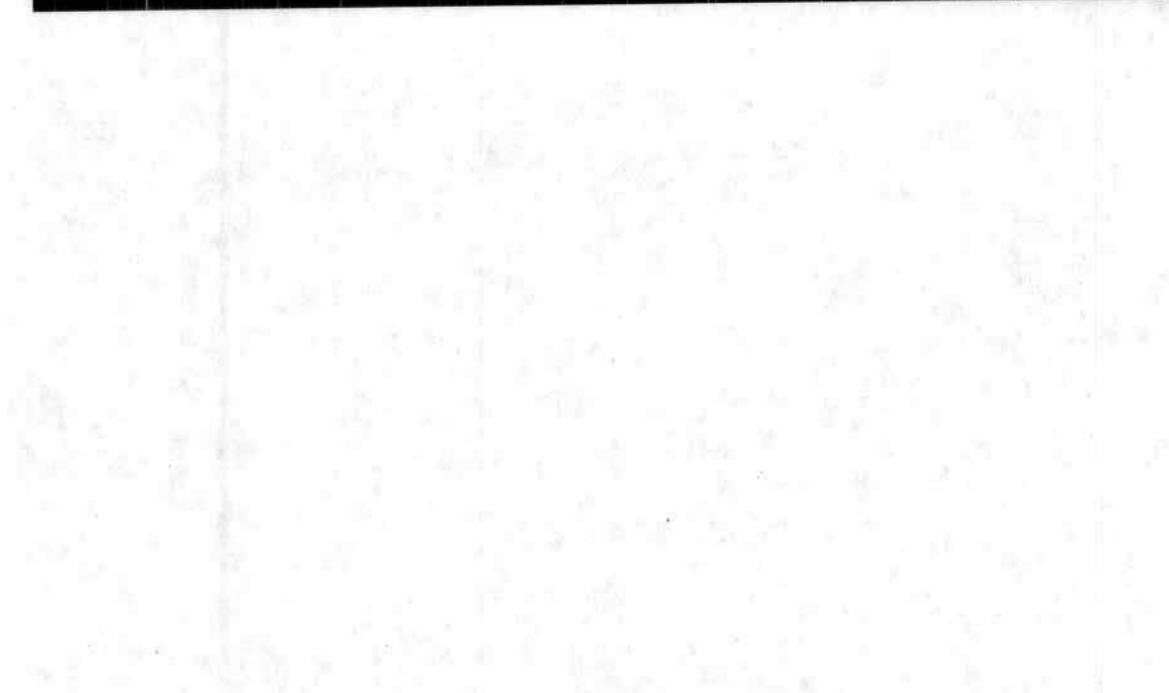
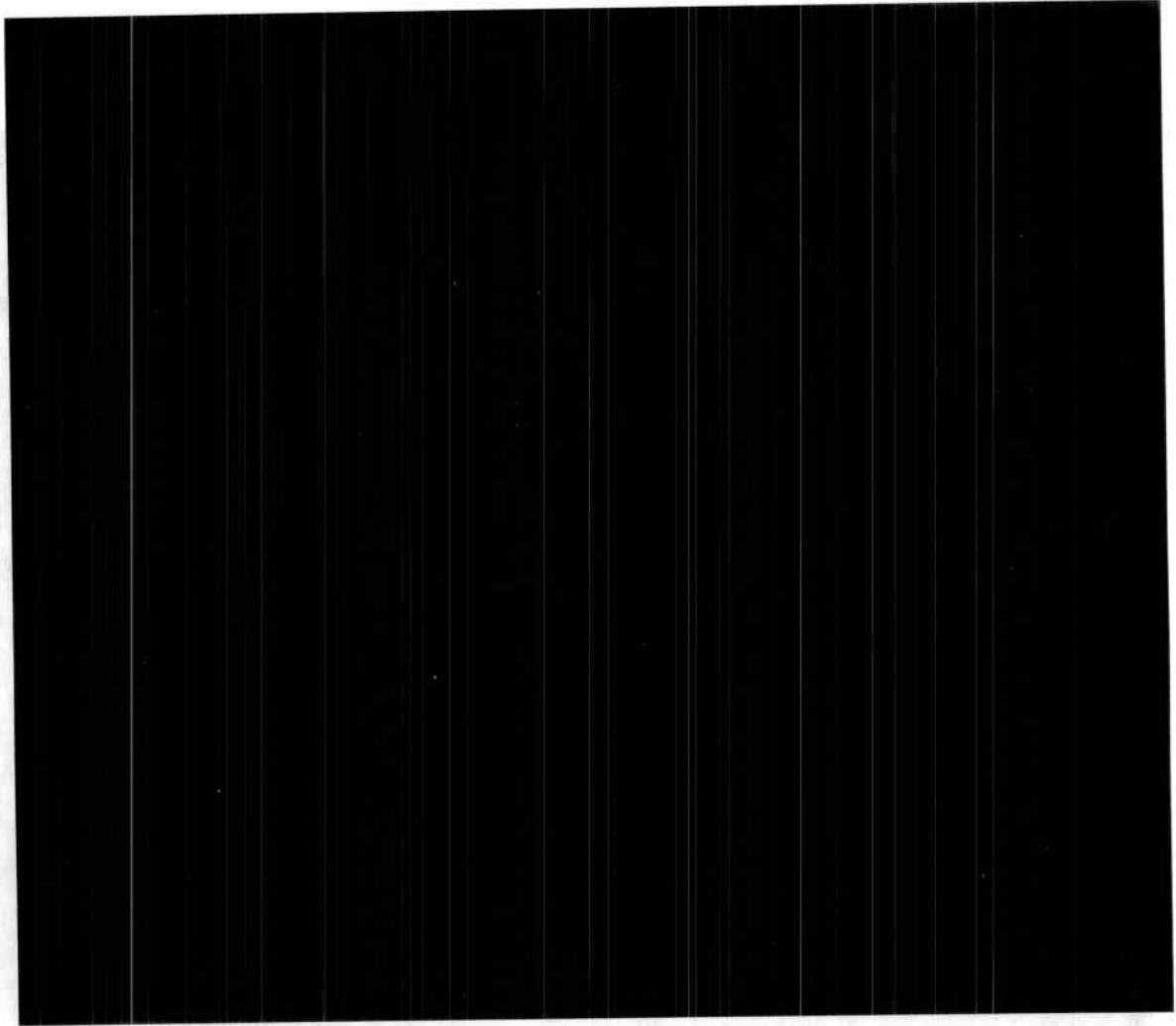




Attachment C-2

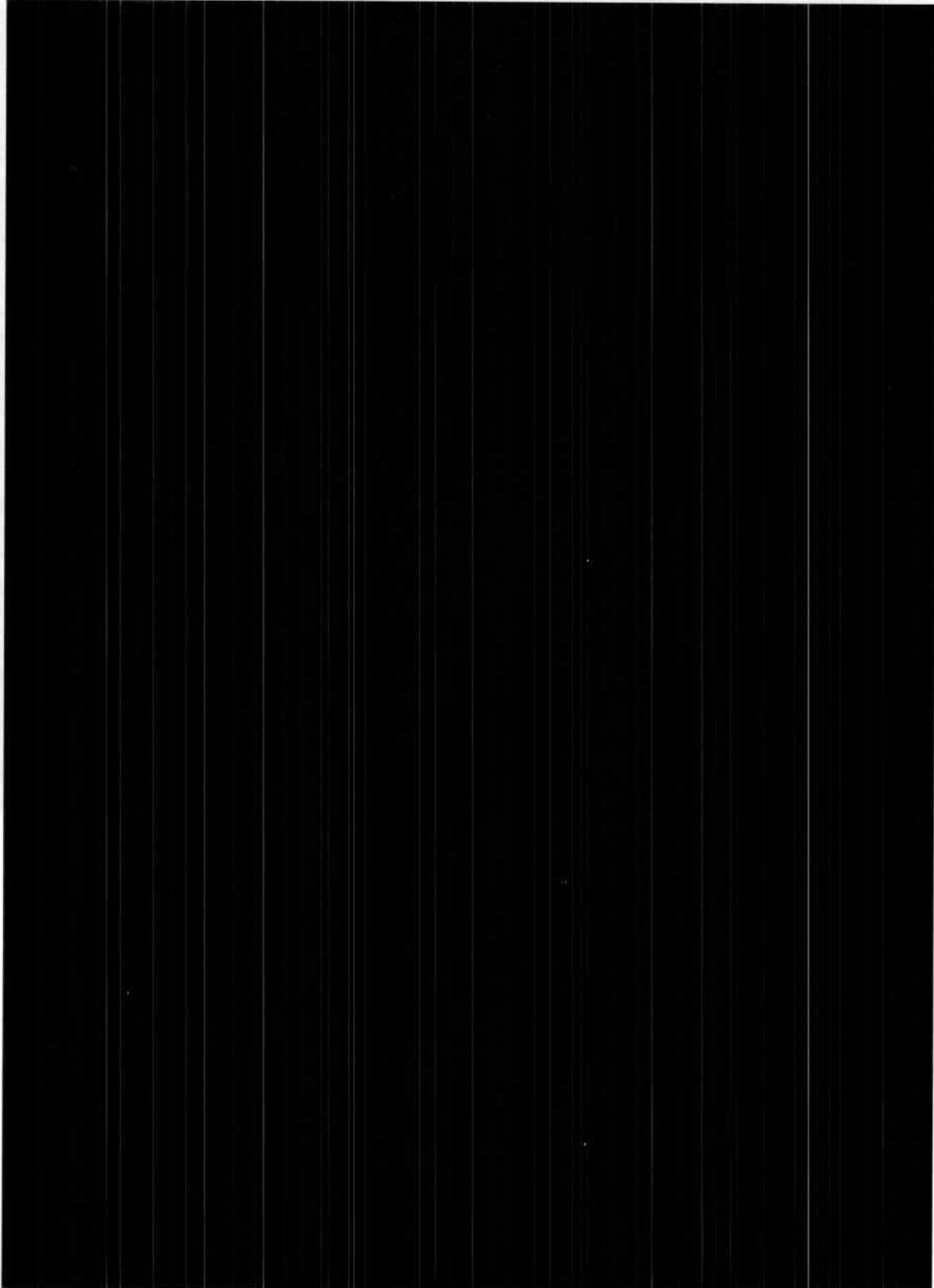
Analysis of the Formulas for Prices Under Applicable Global Direct Contracts

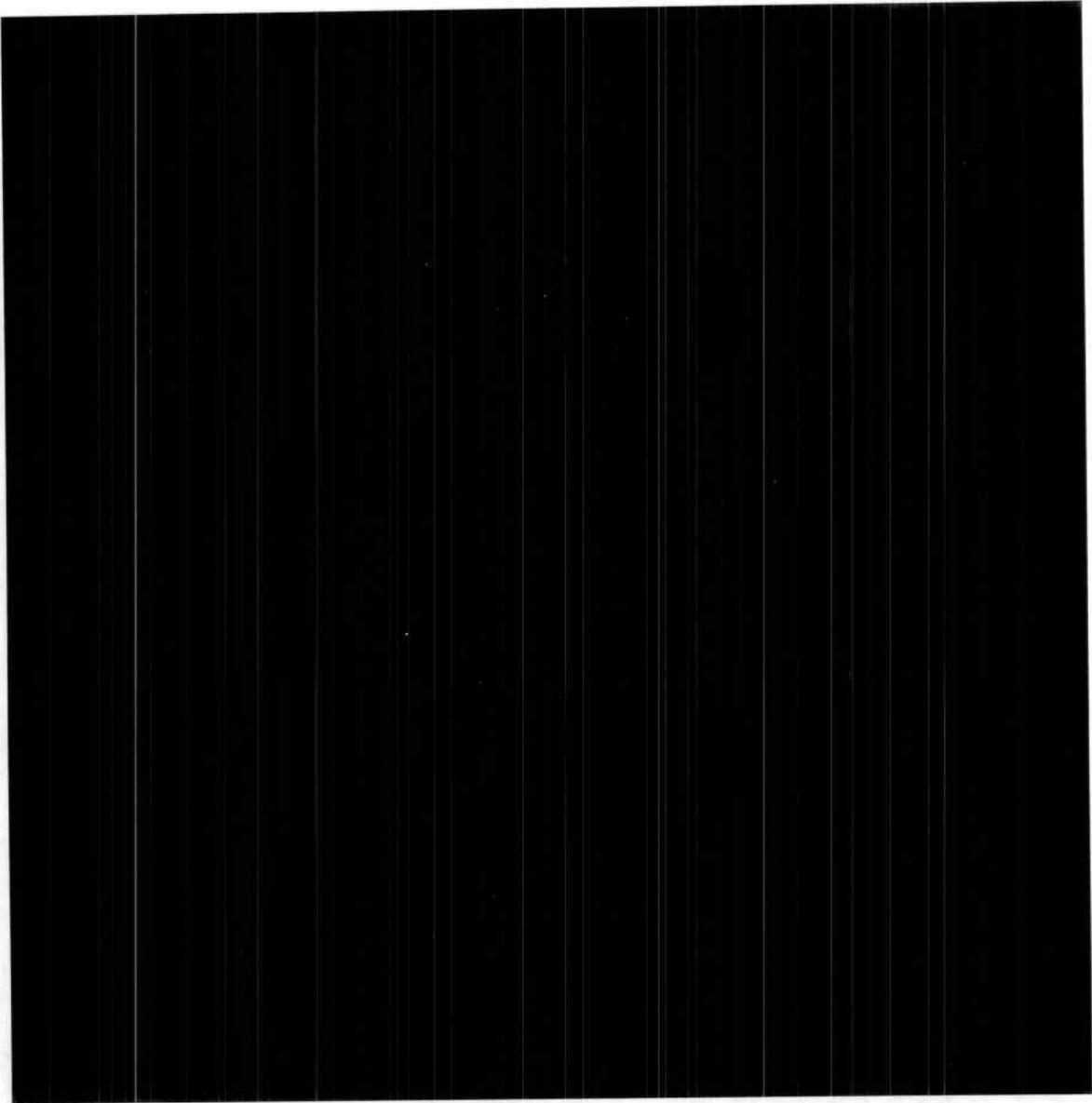




Attachment C-3

Analysis of the Formulas for Prices Under Applicable Global Plus Contracts





Attachment D

**Certification as to the Formulas for Prices Offered Under Applicable Global Bulk Economy, Global Direct, and Global Plus Contracts**

I, W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, United States Postal Service, am familiar with the price floor formula and price ceiling formula for Global Bulk Economy Contracts, which are set forth in Attachment B-1; the formulas for Global Direct Contracts, which set forth in Attachment B-2; and the formulas for Global Plus Contracts, which are set forth in Attachment B-3.

I hereby certify that these formulas adequately represent all necessary [REDACTED] [REDACTED] if the Postal Service were to enter into agreements that set prices above the price floor, the Postal Service would be in compliance with 39 U.S.C § 3633 (a)(1), (2), and (3). The price floor formula is designed to ensure that each agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2007, all outbound international competitive mail accounted for approximately 11 percent of the total contribution by all competitive products. Contribution from Global Bulk Economy, Global Direct, and Global Plus Contracts should be much smaller. Even if all the agreements for Global Bulk Economy, Global Direct, and Global Plus Contracts are signed at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

  
W. Ashley Lyons

### **Statement of Supporting Justification**

I, Frank Cebello, Executive Director, Global Business Management, am sponsoring the Request that the Commission add, as one product, the two Global Direct contracts filed in Docket Nos. MC2009-9, CP2009-10, and CP2009-11, to the competitive products list for prices not of general applicability. The proposed Mail Classification Schedule (MCS) language for Global Direct Contracts describes the requirements for this type of contract. My statement supports the Postal Service's Request by providing the information required by each applicable subsection of 39 C.F.R. § 3020.32. I attest to the accuracy of the information contained herein.

- (a) *Demonstrate why the change is in accordance with the policies and applicable criteria of the Act.*

As demonstrated below, the change complies with the applicable statutory provisions.

- (b) *Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. § 3622(d), and that it advances the objectives of 39 U.S.C. § 3622(b), taking into account the factors of 39 U.S.C. § 3622(c).*

Not applicable. The Postal Service is proposing that the two Global Direct contracts be added, as one product, to the competitive products list. Other functionally equivalent contracts would be added to the list as price categories under the Global Direct Contracts listing.

- (c) *Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. § 3633.*

Adding the Global Direct contracts to the competitive product list will improve the Postal Service's competitive posture, while enabling the Commission to verify that each contract covers its attributable costs and makes a positive contribution to coverage of institutional costs. These contracts, along with each contract that is functionally equivalent to these contracts, will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs paid for by competitive products. Accordingly, no issue of subsidization of competitive products by market dominant products arises.

- (d) *Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products: (1) set the price of such product substantially above costs, (2) raise prices significantly; (3) decrease quality; or (4) decrease output.*

The Global Direct contracts are for businesses that desire to ship articles bearing the indicia of the receiving country for a variety of marketing or operational reasons. These businesses, for example, may desire to send items that have the characteristics of the receiving country's domestic mail without setting up separate operations in the receiving country. With Global Direct services, the Postal Service basically provides customers with a price for mail acceptance within the United States and transportation to a receiving country of items bearing the postal imprint of the receiving country and a return address in the receiving country, and that meet any preparation requirements of both the Postal Service and the receiving country. Under the Postal Service's previous

statutory authority, customers have accessed Global Direct services through customized agreements.

When negotiating Global Direct contracts, the Postal Service's bargaining position is constrained by the existence of other providers of similar services. As such, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service. Global Direct items should be deemed competitive by virtue of their exclusion from the letter monopoly, as well as the significant levels of competition they face in their respective markets. The Postal Service may not decrease quality or output without risking the loss of business to large competitors that offer similar international delivery services. The relevant market also does not allow the Postal Service to raise prices or offer prices substantially above costs; rather, the contracts are premised on prices that provide sufficient incentive for customers to ship with the Postal Service rather than a competitor. If the Postal Service were to raise these prices, it risks losing these customers to a private competitor in the international shipping industry.

- (e) *Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. § 1696, subject to the exceptions set forth in 39 U.S.C. § 601.*

While certain Global Direct items fall within the meaning of "letters" under the Private Express Statutes, these items fall outside the prohibition on private carriage of letters over post routes by virtue of suspensions to the Private Express Statutes for outbound letters to a foreign country for deposit in that country's domestic mailstream for delivery to an ultimate destination outside of the United States. See part (d) above.

- (f) *Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product.*

See part (d) above. Private consolidators, freight forwarders and integrators also offer international shipping arrangements whereby they provide analogous delivery services under similar conditions. Also, mailers with large enough volumes may find it advantageous to enter mail directly with foreign posts, without the Postal Service's assistance.

- (g) *Provide any available information on the views of those who use the product on the appropriateness of the proposed modification.*

As discussed above, the customers for these Global Direct contracts are businesses that desire to ship articles bearing the indicia and meeting the preparation requirements of the receiving country. These customers have previously entered into Global Direct Contracts with the Postal Service pursuant to the latter's former authority, and they find the arrangement sufficiently attractive to merit continuation. This indicates that the relevant segment of postal customers, in general, find this type of product to be preferable to similar products offered by the Postal Service's competitors. Customers are aware that competitive services are provided by other entities. However, no specific data are available to the Postal Service on Global Direct customer views regarding the regulatory classification of these contracts.

- (h) *Provide a description of the likely impact of the proposed modification on small business concerns.*

The market for international delivery services comparable to Global Direct is highly competitive. Therefore, addition of Global Direct Contracts will likely

have little, if any, impact upon small business concerns. Large shipping companies, consolidators, and freight forwarders serve this market, particularly with respect to the type of customers represented by these Global Direct contracts; the Postal Service is unaware of any small business concerns that could offer comparable service for these volumes.

In addition, Global Direct contracts may be used by small businesses to ship their items. By offering Global Direct contracts, the Postal Service is giving small businesses an additional option for shipping articles internationally, beyond the services offered by competitors. Thus, the net impact on small businesses is positive, because of the absence of negative impact on small business competitors and the positive impact on the small businesses that will have these services available.

- (i) *Include such other information, data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.*

The customer eligibility criteria contained in the proposed MCS language for Global Direct contracts are consistent with those proposed for the previously filed customized agreement product classifications. That is, the customers must be capable on an annualized basis of tendering at least 5,000 pieces of international mail to the Postal Service or paying at least \$100,000 in international postage to the Postal Service and that a customer need not tender all of its qualifying mail to the Postal Service. Also, as with other customized agreements, the contract must cover its attributable costs.