

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

COMPETITIVE PRODUCT PRICES  
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENTS WITH  
FOREIGN POSTAL OPERATORS  
AUSTRALIAN POSTAL CORPORATION – UNITED STATES POSTAL  
SERVICE BILATERAL AGREEMENT (MC2010-34)  
NEGOTIATED SERVICE AGREEMENT

CP2012-1

**NOTICE OF UNITED STATES POSTAL SERVICE OF FILING  
FUNCTIONALLY EQUIVALENT INBOUND COMPETITIVE MULTI-SERVICE  
AGREEMENT WITH A FOREIGN POSTAL OPERATOR**  
(October 17, 2011)

In accordance with 39 C.F.R. § 3015.5 and Order No. 546,<sup>1</sup> the United States Postal Service (Postal Service) hereby gives notice that the Postal Service has entered into an additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator. This notice concerns the inbound portion of a bilateral agreement with Australian Postal Corporation (Australia Post) that the Postal Service seeks to include within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators (MC2010-34) product.

Prices and classifications for competitive products not of general applicability for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators were previously established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive

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<sup>1</sup> PRC Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

Multi-Service Agreements with Foreign Postal Operators, issued August 9, 2010 (Governors' Decision No. 10-3).<sup>2</sup>

The Postal Regulatory Commission (Commission) previously determined, in Order No. 546, that the agreement with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV that is the subject of Docket No. CP2010-95 (TNT Agreement) should be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34 and CP2010-95) product. In Order No. 546, the Commission acknowledged that the Postal Service proposed "that additional agreements functionally equivalent to the TNT Agreement be added to the competitive product list as price categories under the Competitive Multi-Service Agreements product."<sup>3</sup> Subsequently, the Commission determined that the bilateral agreement with China Post filed in Docket No. CP2011-68 (China Post 2011 Agreement) and the bilateral agreement with Norway Post filed in Docket No. CP2011-69 (Norway Post Agreement) should be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.<sup>4</sup>

The agreement with Australian Postal Corporation (Australia Post Agreement) 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, and a

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<sup>2</sup> A redacted copy of the Governors' Decision No. 10-3 was filed on August 13, 2010, and is filed as Attachment 3 of this Notice. An unredacted copy of this Governors' Decision was filed under seal on the same day with Request of United States Postal Service to Add Inbound Competitive Multi-Service Agreements with Foreign Postal Operators to the Competitive Product List, and Notice of Filing (Under Seal) of Enabling Governors' Decision and Negotiated Service Agreement, Docket Nos. MC2010-34 and CP2010-95, August 13, 2010. That notice may be accessed at the following link: [http://prc.gov/Docs/69/69690/MC2010-34\\_CP2010-95%20Request\\_Notice.pdf](http://prc.gov/Docs/69/69690/MC2010-34_CP2010-95%20Request_Notice.pdf).

<sup>3</sup> PRC Order No. 546, at 4.

<sup>4</sup> PRC Order No. 859, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-68, September 16, 2011, at 9; PRC Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-69, September 7, 2011, at 6.

redacted copy of the agreement is filed as Attachment 1. A certified statement concerning the Australia Post Agreement that is required by 39 C.F.R. § 3015.5(c)(2) is included with this filing as Attachment 2, and an Application for Non-Public Treatment is included as Attachment 4. A redacted version of the supporting financial documentation is included with this filing as a separate Excel file.

For other competitive products, the Commission has determined that additional individual contracts may be included as part of the product if they meet the requirements of 39 U.S.C. § 3633 and if they are functionally equivalent to the previously submitted contracts included within the product.<sup>5</sup> In PRC Order No. 840, the Commission accepted the Postal Service's designation of the TNT Agreement "as the baseline agreement for functional equivalency analyses of the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 product."<sup>6</sup>

The Postal Service demonstrates in this filing that the agreement to deliver inbound Air CP and EMS in the United States that is included in the Australia Post Agreement is functionally equivalent to the agreement to deliver inbound Air CP and EMS in the TNT Agreement. Accordingly, the Postal Service requests that the Commission include the Australia Post Agreement within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC 2010-34) product.

***Identification of the Additional Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator***

The Postal Service believes that the Australia Post Agreement fits within the Mail Classification Schedule (MCS) language included as Attachment A to Governors'

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<sup>5</sup> See, e.g., PRC Order No. 601, Order Approving Five Additional Global Expedited Package Services 3 Negotiated Service Agreements, Docket Nos. CP2011-34, CP2011-35, CP2011-36, CP2011-37 and CP2011-38, December 1, 2010, at 5.

<sup>6</sup> PRC Order No. 840, at 5.

Decision No. 10-3.<sup>7</sup> The competitive services offered to Australia Post include rates for inbound Air CP and EMS. The Postal Service and Australia Post intend for the effective date of the rates concerning Air CP and EMS included in the agreement to be January 1, 2012. The rates for inbound Air CP and EMS included in the agreement shall remain in effect for two years after the effective date of this agreement unless terminated sooner.

In this docket, the Postal Service is presenting only an agreement with Australia Post to deliver inbound Air CP and EMS in the United States. The rates paid by the Postal Service to Australia Post for outbound delivery of the Postal Service's competitive products in Australia Post have not been presented to the Commission. Those rates represent supplier costs to the Postal Service, which are built into the prices that the Postal Service charges its shipping customers for outbound competitive products to be delivered in Australia Post. An agreement concerning outbound competitive services with Australia Post would no more need to be classified as a product or otherwise subjected to prior Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers.

### ***Application for Non-public Treatment***

The Postal Service maintains that the redacted portions of the contract and related financial information should remain confidential. Attachment 4 to this Notice is the Postal Service's application for non-public treatment of materials filed under seal in

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<sup>7</sup> See also 2515.10 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, Additional Supplemental Comments of United States Postal Service on Mail Classification Schedule, PRC Docket No. RM2011-8, July 29, 2011, Suppl MCS Markup 7 28 2011. pdf, at 411.

this docket. A full discussion of the required elements of the application appears in Attachment 4.

***Functional Equivalency of Inbound Competitive Multi-Service Agreements with Foreign Postal Operators***

The inbound portion of the Australia Post Agreement is substantially similar to the inbound portion of the TNT Agreement in terms of the products being offered under the contract and the contract's cost characteristics. Like the TNT Agreement, the Australia Post Agreement also fits within the parameters outlined by Governors' Decision No. 10-3, which establishes the rates for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. There are, however, differences between the inbound portion of the Australia Post Agreement and the inbound portion of the TNT agreement. These differences include the following.<sup>8</sup>

- The Australia Post Agreement and the TNT Agreement are with different foreign postal operators. As a result, the name and address of the foreign postal operator with whom the agreement is made is different in the title, first paragraph, Article 15, signature block, and throughout the agreement.
- The Introduction, Article 2, and Article 3 acknowledge that certain bodies with oversight responsibilities might exist, not only in the United States, but also in Australia.
- An article concerning Guiding Principles of the Agreement, similar to Article 2 of the TNT Agreement, is not included in the Australia Post Agreement. As a result, in the Australia Post Agreement, all article

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<sup>8</sup> The differences listed do not include differences that specifically apply to the sections of the Australia Post Agreement that concern inbound Letter Post items. These differences are listed in the companion filing which requests that the Australia Post Agreement be included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-35) product.

numbers after Article 1 and before Article 7 and references to those article numbers have been revised.

- Article 4, Limitation on Liability and Costs, Article 8, Termination, Article 9, Dispute Resolution, Article 11, Indemnification and Liability, and Article 13 Confidentiality Requirements, differ as a result of negotiations between the parties.
- An additional article, Article 7, concerning Customs Inspection, is included in the Australia Post Agreement.
- In Article 16, Force Majeure, an additional sentence refers to the pertinent Universal Postal Union rules.
- Article 20, Applicability of Other Laws, includes only one paragraph.
- Article 21, Entire Agreement, has been revised to clarify what constitutes the entire agreement. Paragraph 2 acknowledges the provisions of any agreement of the Kahala Post Group.
- Article 22, Term & Renewal, has been slightly revised, and states that three months prior to the expiration of the term of the agreement, the Parties shall meet to discuss the agreement.
- Article 23, concerning Intellectual Property, Co-Branding and Licensing, has been added.
- Article 24, concerning the survival of various provisions, has been included.
- In Annex 1, the explanatory paragraphs that appear before the rate table have been revised. The rate table is different and the notes after the

rates table provide details concerning the development of Accounting Business Rules related to the agreement.

- In Annex 1, minor revisions and/or additional details have been provided about the specifications for Parcels and EMS product categories and formats.
- Annex 4 includes Office of Exchange Routing Details for EMS shipments and other classes of mail.
- Annex 5 concerns detailed item content restrictions.
- Annex 6 includes an agreement on joint business development initiatives.

Because the Australia Post Agreement and the TNT Post Agreement incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, for the Australia Post Agreement and the TNT Agreement. 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 agreements. Nothing detracts from the conclusion that these agreements are “functionally equivalent in all pertinent respects.”<sup>9</sup>

### ***Conclusion***

For the reasons discussed, and as demonstrated by the financial data filed under seal, the Postal Service has established that the Australia Post Agreement is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to the TNT Agreement, the first agreement to be included in the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (MC2010-34) product.

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<sup>9</sup> PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket No. CP2008-8, June 27, 2008, at 8.

Accordingly, the Australia Post Agreement should be added to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (MC2010-34) product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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October 17, 2011

**AUSTRALIAN POSTAL CORPORATION – UNITED STATES POSTAL SERVICE  
BILATERAL AGREEMENT**

This Agreement ("Agreement") is between the United States Postal Service ("USPS"), an independent establishment of the Executive Branch of the Government of the United States with offices at 475 L'Enfant Plaza SW, Washington, DC 20260, and Australian Postal Corporation ("Australia Post" or "AUP"), an Australian statutory corporation established by an act of the parliament of the Commonwealth of Australia, and owned by the Government of Australia, with offices at 111 Bourke St, Melbourne, Victoria 3000. The USPS and Australia Post 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 Parties will provide each other certain products and/or services 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 and/or non-objection by certain bodies with oversight responsibilities for each Party. Accordingly, each Party acknowledges and understands that the ability of the other Party to perform under this Agreement may not occur, and in this respect the provisions of Article 2 and 3 shall apply;

WHEREAS, in light of the aforementioned acknowledgements, the Parties desire to be bound by the terms of this Agreement as well as the terms of Article 3 of this Agreement entitled "Conditions Precedent";

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

**Article 1: Purpose of the Agreement**

The purposes of this Agreement are the following:

1. to foster the maintenance and further development of a mutually beneficial relationship on behalf of the Parties' respective customers;
2. to set out the rates that will apply to the exchange of certain international products and services between the Parties, as set forth in Annex 1.
3. to set out the principles and general terms and conditions that shall apply to the exchange of certain international products and services between the Parties, as further detailed in and set forth in Annexes 2, 3, 4, and 5 ; and
4. to establish a working project team and explore joint business development activities such as ecommerce knowledge sharing, product development, and joint sales/marketing as further detailed in Annex 6.

**Article 2: Oversight and Effective Date**

The terms and pricing set forth under this Agreement require the approval from certain bodies that have oversight responsibilities for the Parties. Upon execution of this Agreement, each Party must obtain the relevant approvals as set out in Article 3 below, by no later than 1 December 2011 ("Conditions Deadline"). Each Party shall immediately notify the other Party upon receipt of each approval it requires.

Subject to receipt of all approvals set out in Article 3, this Agreement shall come into effect on 1 January 2012 ("the Effective Date") unless an alternative date is proposed and agreed to by both Parties, in which case that alternative date shall be the Effective Date.

### **Article 3: Conditions Precedent**

The Parties acknowledge and understand that all obligations of the Parties under this Agreement shall be contingent on the Parties receiving the approvals from, and/or non-objection by (hereinafter "Conditions Precedent") the following bodies with oversight responsibilities:

Party	Approval Required
USPS	- USPS management's executive committee, - USPS Governors, - USPS Board of Governors and - U.S. Postal Regulatory Commission.
Australia Post	- Nil

The Parties acknowledge that the Agreement might not be approved by such bodies. No obligation shall exist for the USPS or Australia Post and no benefit or rights granted through this Agreement shall inure to either Party unless and until the Effective Date occurs and upon such occurrence the Conditions Precedent shall have been deemed to have been fulfilled.

### **Article 4: Limitation on Liability and Costs**

In the event that the Conditions Precedent are not fulfilled by the Conditions Deadline, the USPS and Australia Post shall have no liability, which shall include no obligation to pay costs associated with any action taken by Australia Post or USPS prior to the Conditions Deadline of the Agreement. Further, in the event of the failure of any Condition Precedent, neither Party shall be held liable for any damages including, without limitation, the following: actual damages; special damages; indirect damages; incidental damages; punitive damages; consequential damages; 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 any cost incurred by either Party attributable to such non-approval such as attorney's fees.

### **Article 5: Price Changes; No Effect on Service Terms**

For each of the services with specific terms and conditions set forth in an attachment to this Agreement, any adjustments to the rates for the services shall be subject to the terms and conditions set forth in the Attachments or Annexes.

### **Article 6: Monetary Transactions**

1. Each Party will bear the costs and retain the revenues for any work performed by it and by agents or contractors on its behalf, unless the Parties agree to other arrangements to allocate costs or revenues and those arrangements are incorporated in an Amendment to this Agreement. Any such Amendment shall be governed by Article 18 below.
2. All taxes and duties are the sole responsibility of the Party to whom they are duly assessed and shall not be charged to any other Party in any form unless the Parties otherwise provide in an Amendment to this Agreement. Any such Amendment shall be governed by Article 18 below.

### **Article 7: Customs Inspection**

1. USPS bears no responsibility for the disposition of items in the custody of U.S. Customs & Border Protection. Further, Australia Post understands that all contents of any item, including items that are treated as sealed mail under USPS regulations, are subject to inbound search and inspection by U.S. Customs & Border Protection, regardless of when the USPS elects to conduct verification and acceptance of any inbound items.
2. Australia Post bears no responsibility for the disposition of items in the custody of the Australian Customs and Border Protection Service and/or Australian Quarantine Inspection Service. Further, USPS understands that all contents of any item are subject to inbound search and inspection by Australian Customs and Border Protection Service and/or Australian Quarantine Inspection Service, regardless of when the Australia Post elects to conduct verification and acceptance of any inbound items.

#### **Article 8: Termination**

1. Either Party may terminate this Agreement without cause upon 30 days advance written notice to be served on the other Party, with such termination effective as of the end of the calendar month in which the 30-day notice period expires. The right to terminate the Agreement for good cause remains unaffected.
2. In the event of termination of the Agreement under this Article, the Parties shall be liable to make final settlement of all amounts owing as of the effective date of the termination. Each Party shall bear its own costs in the event of termination. All further rights and remedies shall remain unaffected.
3. In the event of termination, and as of the effective date of termination, the Parties shall revert to the default rates applicable under the Universal Postal Union Convention effective at the time of such termination, and neither Party shall be liable to the other for any damages including, without limitation, actual, special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason incurred as a result to the change of rates after termination.

#### **Article 9: Dispute Resolution**

1. The Parties intend to resolve all disputes under this Agreement informally through correspondence, oral communications, and informal meetings.
2. If the method described in the above paragraph proves insufficient to resolve a dispute, the Parties agree that the signatories to this agreement, or their replacement, shall be given a written description of the dispute by each Party and a suggested outcome. They will review the information provided and shall attempt in good faith to come to an agreement on the issue through correspondence, oral communications, or informal meetings.
3. If the methods described in the above paragraph prove insufficient to resolve a dispute, the Parties agree to refer that dispute to mediation, which shall consist of an informal, nonbinding conference or conferences between the Parties and the mediator, which shall perform mediation responsibilities in the English language. The mediator will be selected as mutually agreed by the Parties.
4. With the exception of disputes concerning cost or revenue liability, mediation will provide the sole means for addressing disputes related to this Agreement. If mediation does not resolve such a dispute, the Parties may exercise their right to terminate.
5. For disputes related to cost or revenue liability, Australia Post and the USPS will first refer the matter to mediation as discussed in the above paragraph. If mediation does not resolve such a dispute, or the Parties are unable to agree upon a mediator, a dispute relating to cost or revenue liability shall be referred to arbitration for final settlement under the Rules of the International Chamber of Commerce ("the **Rules**") by three arbitrators who have substantial experience in business disputes and appointed in accordance with the Rules. Unless the Parties agree otherwise, the place of arbitration shall be determined by the arbitrators. The arbitration proceedings shall be conducted in the English language.
6. Notwithstanding the provisions of this Article 9, and without prejudice to Article 11, paragraph 1, in the event of conflict or inconsistency between the provisions of this Article 9 and Article 11, paragraph 1, the provisions of Article 11, paragraph 1 shall prevail.

#### **Article 10: Construction**

Except as otherwise provided in this Agreement, this Agreement shall be governed by and construed in accordance with U.S. Federal law.

#### **Article 11: Indemnification and Liability**

1. The Parties acknowledge that aspects of liability or indemnification (including, but not limited to registered mail and air parcels) in favor of third Parties not expressly governed by this Agreement

or its regulations are subject to the appropriate provisions of the Acts of the Universal Postal Union and any reservations the Parties have taken to those instruments.

2. In the event that an entity not Party to this Agreement asserts claims against Australia Post or USPS that are attributable to the actions of the other Party to this Agreement and are not subject to the provisions of the Acts of the Universal Postal Union, the latter Party shall indemnify the defending Party for, and hold the defending Party harmless from, any losses, damages or liabilities suffered by the defending Party as a result. In that instance, the indemnifying Party shall also reimburse the defending Party for all reasonable expenses incurred in connection with investigating, preparing for, or defending any such claim, whether in an administrative, regulatory or judicial proceeding, and whether or not the indemnified Party is named in the proceeding.
3. Neither Party to this Agreement shall be liable to the other Party nor will they indemnify the other Party for any loss or damage including special, indirect, incidental, punitive, consequential or any other damages (including, without limitation, damages for loss of business profits, business interruption or any other loss) for any reason, except for the following:
  - a. liability and indemnification as described in Article 11, paragraph 1,
  - b. final settlement under Article 8, or
  - c. any actual damage or loss suffered by a Party as a result of a breach of this Agreement by the other Party.
4. Nothing in this Agreement shall be construed as an acknowledgment or concession regarding the validity of any claim or the entitlement of any Party to any amount of damages.

#### **Article 12: Language**

The official version of this Agreement, including all supporting documentation and correspondence, shall be in English. The English language shall be the controlling language for the purpose of interpreting this Agreement, and all correspondence between the Parties pertaining to this Agreement shall be in the English language. In the event of inconsistency between any terms of this Agreement, including its supporting documentation and correspondence, and any translation into another language, the English language meaning shall control.

#### **Article 13: Confidentiality Requirements**

1. The Parties may share confidential information about their businesses. Subject to the provisions of subparagraph 13.6 below, confidential information includes the terms of this Agreement and all information concerning either Party's markets, customers, organization, administration, operation, business, finance, methods and systems (including any secret process or trade secret).
2. The Parties will take the same measures (being not less than reasonable measures) to protect the other Party's confidential information in its possession, as it takes to protect the confidentiality of its own information.
3. The Parties agree that all confidential information will be used by the recipient Party only for the purposes intended and will not be disclosed to any third Party unless;
  - (a) the disclosing Party has obtained the prior written consent of the other Party;
  - (b) the information is known to either Party prior to disclosure by the other Party;
  - (c) the information is public knowledge (except because of a breach of this clause or obligations of confidentiality under this Agreement); or
  - (d) is required to be disclosed by law, court order or administrative order to disclose;
  - (e) the confidential information is requested by any governmental body in the proper exercise of its oversight or investigatory jurisdiction;
4. The obligations of this clause will survive termination of this Agreement and will end on the second anniversary of the expiration or termination of this Agreement.

5. At the expiry and or termination of this Agreement both Parties must cease using any confidential information of the other Party and must immediately return to the other Party or destroy and certify they have destroyed all confidential information held on behalf of the other Party.
6. Australia Post acknowledges that United States law may require that this Agreement be filed with the U.S. Postal Regulatory Commission (Commission) and the U.S. Department of State. Australia Post authorizes the USPS to determine the scope of information that must be made publicly available under the Commission's rules. Australia Post further understands that any unredacted portion of this document may be posted on the Commission's public website, [www.prc.gov](http://www.prc.gov). In addition, the USPS may file information in connection with this agreement (including revenue, cost, or volume data) in other Commission dockets, including PRC docket numbers ACR2011, ACR2012, and ACR 2013.

Australia Post has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. USPS will assist Australia Post with the making of any application to the Commission for non-public treatment of materials believed to be protected from disclosure, as outlined at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: [www.prc.gov/Docs/63/63467/Order225.pdf](http://www.prc.gov/Docs/63/63467/Order225.pdf). U.S. Postal Service will immediately notify Australia Post of the docket number of the Commission proceeding, if any, used in connection with this Agreement.

#### **Article 14: Severability**

If any of the provisions of this Agreement shall be held void or unenforceable, the other provisions shall survive and remain in full force and effect, subject only to either Party's unilateral right to terminate the Agreement.

#### **Article 15: Notices**

Any notice or other document to be given under this Agreement will be in writing and addressed as set out below. Notices may be delivered by hand, email, or Express Mail.

To the USPS:

Executive Director, International Postal Affairs  
United States Postal Service  
475 L'Enfant Plaza SW, Room 1p906  
Washington, DC 20260  
[lea.emerson@usps.gov](mailto:lea.emerson@usps.gov)

To Australia Post:

Manager - International Portfolio  
Australia Post  
111 Bourke Street,  
Melbourne Victoria 3000 Australia  
[Michael.Cope@auspost.com.au](mailto:Michael.Cope@auspost.com.au)

#### **Article 16: 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.

All Force Majeure events will be covered according to the pertinent UPU rules unless otherwise stated.

#### **Article 17: Legal Status of this Agreement**

This Agreement constitutes a legally binding agreement on the part of each signatory hereto and does not bind the Parties' respective governments. The Parties acknowledge that this Agreement sets out the terms and conditions of a negotiated contractual arrangement between the Parties and is not an agreement entered into or subject to public international law, except as expressly provided in this Agreement. This Agreement does not involve the creation of a wholly-owned subsidiary of any Party or a

joint venture company or partnership funded in any ratio by the Parties. The Parties do not intend that any agency or partnership relationship be created between any of them by this Agreement.

**Article 18: Amendment**

This Agreement may be amended or extended only by mutual written agreement signed by authorized representatives of Australia Post and USPS. Neither a Party's acquiescence in any performance at variance to this Agreement nor a Party's failure to exercise any right or enforce any obligation shall be deemed an amendment to this instrument. The Amendment may be contingent upon any and all necessary approvals listed in Article 3. If such approvals are required, the Amendment will not become effective until such time as all necessary approvals are obtained.

**Article 19: Assignment**

This Agreement may not be assigned in whole or in part by any Party without the prior written consent of the other Party. Each Party may, however, delegate certain of its responsibilities under this Agreement to a subsidiary or other affiliate entity within its organizational structure without the need for consent by the other Parties so long as such subsidiary or entity would be bound by this Agreement.

**Article 20: Applicability of Other Laws**

The Parties acknowledge that this Agreement does not involve the USPS's acquisition of property or services and is not subject to the Contract Disputes Act (41 U.S.C. §§ 601 et seq.).

**Article 21: Entire Agreement**

1. This Agreement and its Attachments or Annexes shall constitute the entire agreement between the Parties concerning the exchange of international mail described herein. Except as otherwise indicated in this agreement, any prior agreement, understanding, or representation of any kind pertaining to the subject matter of this Agreement and preceding the date of this Agreement shall not be binding upon either Party.
2. The Parties acknowledge that the provisions of the Universal Postal Convention and applicable regulations and any agreement of the Kahala Group will apply except to the extent inconsistent with this Agreement.

**Article 22: Term & Renewal**

This Agreement will remain in effect for two years from the Effective Date, unless terminated sooner pursuant to Article 8 ('the Term') or extended by amendment.

Three (3) months prior to the expiration of the Term, both Parties shall meet to discuss whether to extend the Term by amendment and/or renegotiate the Agreement.

**Article 23: Intellectual Property, Co-Branding, and Licensing**

The Parties acknowledge that in the service of improving existing international products or developing new international products under this Agreement that such products may be enhanced through the use of co-branding or the use of each Party's trademarks, logos or intellectual property. In such instances, the Parties acknowledge and agree that any use shall be subject to separate written agreements. The Parties acknowledge and agree that neither Party shall use the other Party's trademarks, logos or intellectual property until such time that a license for each specific such use has been executed by the Parties and all laws and regulations required for such license's effectiveness have been perfected, which shall include but not be limited to any recordation requirements.

**Article 24: Survival**

The provisions of Articles 8, 9, 10, 11, 13, 15 and 17 shall survive the conclusion or termination of this Agreement, as well as any other terms insofar as they apply to the Parties' continuing obligations to one another under the articles listed above.

IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Agreement.

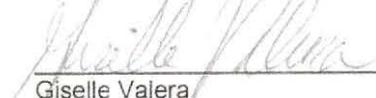
Australian Postal Corporation



Ahmed Fahour  
Managing Director and  
Chief Executive Officer

30/9/2011  
Date

United States Postal Service



Giselle Valera  
Managing Director, Global Business,  
and Vice President

9/29/2011  
Date

**Annex 1 - Rates**

The rates below shall be in effect for the term of this Agreement, as set forth in Article 22. Changes in rates during the term of this Agreement will be negotiated and agreed to in accordance with Article 18.

Settlement rates listed in the tables included below are stated in Special Drawing Rights (SDRs) unless noted otherwise. Any changes to current specifications (i.e. sortation and preparation) must be agreed to in writing by both Parties as provided in Article 18 of this Agreement. The mail streams listed below are intended to be the only streams used by the Parties for the respective service descriptions. In the event that a Party dispatches items of a listed service description outside of the applicable stream, the receiving Party may charge any rate listed on the table with respect to those items, up to the highest possible rate listed on the table, even if that rate would not ordinarily apply to the service description.

United States to Australia					
Service Description	Mail Class/Subclass	Year 1		Year 2	
		SDR/Piece	SDR/kg	SDR/Piece	SDR/kg
Priority Letter Tray non-IPA	A, UL, PU- non-IPA				
Priority Flat Tray- non-IPA	A, UL, GU- non-IPA				
Priority Bag non-IPA	A, UN, BG- non-IPA				
IPA - Letters, Flats, Packets	A,UZ,PU/GU/BG				
Priority M-Bag	A,UN/ UM,BG				
Priority Registered Mail Bag	A,UR,BG				
ISAL	B,UA,UL,UN, BG				
SAL M-Bag	B,UN/UM,BG				
Air Parcels	A,CN,CN/BG/PC				
Express Mail Service	A,ED/EM/EN,BG/CN/PC				
Small Packet with Delivery Scanning	A, UX, BG				

Australia to United States					
Service Description	Mail Class/Subclass	Year 1		Year 2	
		SDR/Piece	SDR/kg	SDR/Piece	SDR/kg
Priority Letter Tray	A,UL,PU				
Priority Flat Tray	A,UL,GU				
Priority Bag	A,UN,BG				
Priority Bulk Container	A,UN,PC/CN				
Priority Registered Mail Bag	A,UR,BG				
Priority M-Bag	A, UN/UM, BG				
SAL Letter Tray	B,UL,PU				
SAL Flat Tray	B,UL,GU				
SAL Bag	B,UN,BG				
SAL Bulk Container	B,UN,PC/CN				
SAL M-Bag	B,UN/UM,BG				
Surface Bag	C, UN, BG				
Surface M-Bag	C, UN/UM, BG				
Surface Bulk Container	C,UN,PC				
Surface Letter Tray	C,UL,PU				
Air Parcels	A,CN,CN/BG/PC/PX				
EMS	A,ED/EM/EN,BG/CN/PC				
Small Packet with Delivery Scanning	A, UX,BG				

\*Rates incorporate provisional quality link performance. These rates may potentially be adjusted depending on performance results in accordance with current UPU rules.

USPS and Australia Post will negotiate in good faith to develop a document that establishes Accounting Business Rules. Such document will address the financial settlement process and guiding principles of settling the above mail streams. The joint development of the settlement processes will ensure each Party's accounting and operational processes are taken into consideration. The settlement process will be developed using electronic data as the primary source.

### **Specifications of Mail Product Categories and Formats**

The rates for the stream categories above shall be based upon the following format and product definitions:

#### **Letters**

Any piece which has:

- a length more than 139.70 mm (5.5 inches) but less than or equal to 292 mm (11 1/2 inches) and
- a height more than 88.90mm (3.5 inches) but less or equal to 155 mm (6 1/8 inches) and
- a thickness more than 0.18mm (0.007 inch) but equal to or less than 6 mm (1/4 inch)
- and which has a weight of less than or equal to 99.22 grams (3.5 ounces)

#### **Flats/Large Letters**

Any piece exceeding any maximum limit for a Letter and which has:

- a length less than or equal to 381 mm (15 inches) and
- a width less than or equal to 292 mm (11 1/2 inches) and
- a thickness less than or equal to 20 mm (3/4 inch)
- and which has a weight of less than or equal to 2 kilograms

#### **Packets**

Any piece exceeding any of the maximum size limits for a Flat, but within the maximum size limits as set forth in the Universal Postal Union Letter Post Regulations Article RL 122 and which has a weight of less than or equal to 2 kilograms.

#### **M-Bags**

Printed matter in a direct sack to a single foreign address, subject to the Reservations of the United States of America in Universal Postal Union Protocol Article RL II and V, which has a weight less than or equal to 30 kilograms.

#### **Registered Mail**

Any piece that meets the size and weight dimensions of Letters, Flats, or Packets and bears a registered label on the front of the mail piece.

#### **Parcels (Air, Sea and SAL)**

The admitted maximum weight limit for parcels is 30kg (66 lbs)

The admitted maximum size for parcels is 1.05m (42 inches) for any one dimension or 2m (79 inches) for the sum of the length and the greatest circumference measured in a direction other than that of length.

#### **Express Mail Service (EMS)**

"EMS items" means mail items as defined by Article 14 of the Universal Postal Union Convention (Geneva 2008). An EMS item may contain documents or merchandise or both.

The Parties to this Agreement also confirm their adherence to all terms and conditions (other than rates which are dealt with under Annex 1 of this Agreement) relating to the exchange of EMS items set forth in their previous agreements as well as to the service guarantees, targets and levels of achievement adopted by the members of the Kahala Post Group, which are expressly incorporated into this Agreement by reference.

#### **Small Packets with Delivery Scanning**

Refer to Annex 2 and Annex 3 respectively of this Agreement

## **Annex 2 – Australia to United States Small Packet with Delivery Scanning**

***For the purposes of this Annex 2 the product referred as Small Packet with Delivery Scanning is defined as commercial or non-commercial Flats (referred to as large letter by Australia Post) and packets.***

### ***Package Specific Preparation Requirements***

1. **Package Dimensions and Weight.** Each Small Packet with Delivery Scanning shipped under this Agreement must conform to the size and weight limitations specified in the UPU Letter Post Manual. Specifically, each packet shall not exceed 2 kilograms in weight or limits of size specified in UPU Article RL 122.
2. **Package Labeling.** A bilaterally agreed upon label will be displayed on the outside of each package. Customers in Australia will use Australia Post certified software to print labels which will include a valid UPU Letter-Post barcode utilizing the LA through LZ prefix of the UPU S10 barcode construct. In addition, each item will display a completed customs declaration (CN22). The sample label is presented below.

### ***Receptacle Preparation Requirements***

1. **Separation from other products.** The Small Packet with Delivery Scanning product that is described in this Agreement will be sorted in receptacles separate from other mail pieces. Other international products, including, but not limited to, other letter-post products, Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be commingled in receptacles containing Small Packet with Delivery Scanning items.
2. **Receptacle Identification.** Each receptacle will contain a 29-character UPU barcode containing the mutually agreed-upon mail subclass code of "UX"
3. **Receptacle Routing.** To expedite the processing and delivery of these Small Packets with Delivery Scanning, the sending party may present receptacles to corresponding Offices of Exchange (OEs) per the routings outlined in Annex 4 and as agreed upon by the receiving Party.

### ***Dispatch Preparation Requirements***

1. **Separation from other products.** The Small Packet with Delivery Scanning product that is described in this Agreement will be dispatched separately from other mail pieces. Other international products, including but, not limited to, other letter-post products, Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be mixed in dispatches containing the Small Packets with Delivery Scanning items.
2. **Dispatch Identification.** Each dispatch will contain the mutually agreed-upon mail subclass code and unique dispatch numbers, which shall not repeat within a calendar year period.
3. **Sampling.** The Small Packets with Delivery Scanning described in this Agreement are not subject to IPK sampling processes.
4. **Dispatch Manifesting.** Each dispatch will be manifested using the existing PREDES 2.0 or PREDES 2.1 messages, whereby the number of receptacles and the total weight and number of pieces contained in each receptacle will be transmitted as accurately and timely as possible.

### ***Return Service, Customer Inquiries and Compensation***

1. **Return Service.** Return service for undeliverable, refused, or missent Small Packets with Delivery Scanning will be provided consistent with the current procedures for letter-post under the UPU regulations.
2. **Customer Inquiries.** USPS and Australia Post will use the PRIME customer service platform to handle customer inquiries.
3. **Compensation.** Other than specified in this agreement USPS and Australia Post do not offer indemnity or insurance for Small Packets with Delivery Scanning. Accordingly, unless the Parties

agree otherwise in a separate written agreement, neither the USPS nor Australia Post shall have any liability, other than specified in this Agreement

**Service Standards**

Small Packets with Delivery Scanning under this Agreement carry no day- or time-specific guarantee. Applicable domestic service standards apply once the Small Packets with Delivery Scanning are cleared through U.S. Customs and Border Protection and entered into the U.S. domestic mailstream. However, both Parties shall target delivery scanning rates of [REDACTED] which will be monitored monthly via the PRIME platform of the International Postal Corporation (IPC)

**Sample Label**

Below is a sample label for the Small Packet with Delivery Scanning. The Parties acknowledge that this is only a sample and the required label may vary from time to time as agreed between the Parties.

<b>Pack and Track International</b>		<b>CN22</b>		<b>Forwarder air bill – Non negotiable</b>	
<small><b>IMPORTANT:</b> Use a ballpoint pen and press firmly. This form must be completed in English. Customer to complete all details except Official Use Only. See Privacy Notice on the back of label. The value of the items cannot exceed AUS\$500. This service is for items weighing up to 2kg. Lodge this item over the counter at any Australia Post retail outlet. DO NOT lodge in street post boxes.</small>					
<b>From</b> Name			<b>To</b> Name		
Company name			Company name		
Address			Address		
City			City		
State		Postcode	State		Postcode
Telephone / Fax number ( )		Australia Post Account Number	Country		Telephone / Fax number ( )
<b>Customs declaration</b>					
Full Description of Goods <i>Designation détaillée de contenu</i>			<input type="checkbox"/> Gifts <input type="checkbox"/> Documents <input type="checkbox"/> Merchandise <input type="checkbox"/> Commercial sample <input type="checkbox"/> Returned goods <input type="checkbox"/> Other <small>(Articles commerciales)</small>		
HS Tariff No. (for Commercial Items)			Country of origin		Value (AUS Dollars) \$
<b>Sender's declaration</b>			<b>Official use only</b>		
 <p>The sender acknowledges that this article may be carried by air and will be subject to aviation security and clearing procedures, and the sender declares that: • the article does not contain any dangerous or prohibited goods, explosive or incendiary devices; • the information provided is true and correct; • he/she accepts liability for any costs, including customs or excise duty, which may be imposed by Customs; and • he/she agrees to the Australia Post Terms and Conditions available at <a href="http://www.auspost.com.au">www.auspost.com.au</a> or in-store.</p>			Weight      Kilos      Grams      Tons      enjpm Office of Origin / Office WCC Date      /      / Acceptance officer's signature		
Sender's signature _____ Date _____ Articles without this declaration completed will not be forwarded.			<input type="checkbox"/> "A" Scan Completed		
					

### **Annex 3 – United States to Australia Small Packet with Delivery Scanning**

***For the purposes of this Annex 3: the product referred to as Small Packet with Delivery Scanning is defined as commercial or non commercial Flats (referred to as large letter by Australia Post) and packets.***

#### ***Package Specific Preparation Requirements***

1. **Package Dimensions and Weight.** Each Small Packet with Delivery Scanning shipped under this Agreement must conform to the size and weight limitations specified in the UPU Letter Post Manual. Specifically, each packet shall not exceed 2 kilograms in weight or limits of size specified in UPU Article RL 122.
2. **Package Labeling.** A bilaterally agreed upon, label will be displayed on the outside of each package. Customers in United States will use USPS-certified software to print labels which will include a valid UPU letter-post barcode utilizing the prefix LX of the UPU S10 barcode construct. In addition, each item will display a completed customs declaration (CN22). The sample label is presented in below.

#### ***Receptacle Preparation Requirements***

1. **Separation from other products.** The Small Packet with Delivery Scanning product that is described in this Agreement will be dispatched separately from other mail pieces. Other international products, including but, not limited to, other letter-post products, Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be mixed in dispatches containing the Small Packets with Delivery Scanning items.
2. **Receptacle Identification.** Each receptacle will contain a 29-character UPU barcode containing the bilaterally agreed-upon mail subclass code "UX"
3. **Receptacle Routing.** To expedite the processing and delivery of these Small Packets with Delivery Scanning, the sending Party may present receptacles to corresponding Offices of Exchange (OEs) per the routings outlined in Annex 4 and as agreed upon by the receiving Party.

#### ***Dispatch Preparation Requirements***

1. **Separation from other products.** The Small Packets with Delivery Scanning product that is described in this Agreement will be dispatched separately from other mail pieces. Other international products, including but, not limited to, other letter-post products, Express Mail Service (EMS), Air Parcels (Air CP), and direct entry packages, may not be mixed in dispatches containing Small Packets with Delivery Scanning items.
2. **Dispatch Identification.** Each dispatch will contain the bilaterally agreed-upon mail subclass code and unique dispatch numbers, which shall not repeat within a calendar year period.
3. **IPK sampling.** The Small Packets with Delivery Scanning described in this Agreement are not subject to IPK sampling processes.
4. **Dispatch Manifesting.** Each dispatch will be manifested using the existing PREDES 2.0 or PREDES 2.1 messages, whereby the number of receptacles and the total weight and number of pieces contained in each receptacle will be transmitted as accurately and timely as possible.

#### ***Return Service, Customer Inquiries and Compensation***

1. **Return Service.** Return service for undeliverable, refused, or missent Small Packets with Delivery Scanning will be provided consistent with the current procedures for letter-post under the UPU regulations.
2. **Customer Inquiries.** USPS and Australia Post will use the PRIME customer service platform to handle customer inquiries.
3. **Compensation.** Other than specified in this agreement USPS and Australia Post do not offer indemnity or insurance for Small Packets with Delivery Scanning. Accordingly, unless the Parties

agree otherwise in a separate written agreement, neither the USPS nor Australia Post shall have any liability other than specified in this agreement

**Service Standards**

Small Packet with Delivery Scanning items under this Agreement carry no day- or time-specific guarantee. Applicable domestic service standards apply once the Small Packets with Delivery Scanning are cleared through Australian Customs and Border Protection and/or the Australian Quarantine Inspection Service and entered into the Australian domestic mailstream. However, both Parties shall target delivery scanning rates of [REDACTED] which will be monitored monthly via the PRIME monitoring platform of the IPC.

**Sample Label**

Below is a sample label for the Small Packet with Delivery Scanning. The Parties acknowledge that this is only a sample and that the required label may vary from time to time as agreed between the Parties.

			<table border="1"><tr><td>INTERNATIONAL PRIORITY AIRMAIL™ POSTAGE PAID U.S. POSTAL SERVICE PERMIT #</td></tr></table>	INTERNATIONAL PRIORITY AIRMAIL™ POSTAGE PAID U.S. POSTAL SERVICE PERMIT #
INTERNATIONAL PRIORITY AIRMAIL™ POSTAGE PAID U.S. POSTAL SERVICE PERMIT #				
From:		USPS ePacket™		
US SENDER NAME STREET ADDRESS SUITE/ APT NUMBER CITY STATE ZIP+4 USA		LETTER-POST		
TO:	FOREIGN RECIPIENT ADDRESS SUITE/ APT NUMBER CITY STATE/OTHER POSTCODE COUNTRY			
<b>USPS DELIVERY CONFIRMATION®</b>				
				
LX123456789US				

**Annex 4 – Office of Exchange Routing Details**

**USPS**

In dispatching EMS shipments, the routing details determined through the KPG agreement shall still apply.

For all other classes of mail, the following table illustrates the appropriate United States (U.S.) points of entry based on the first digit of the destination address postal code. A more detailed table based on the first three digits can be provided upon request.

Registered mail can be entered only in LAX and JFK Offices of Exchange.

**Table A: Suggested U.S. points of entry**

First Digit of Postal Code	Suggested U.S. Point of Entry
0	JFK - New York
1	JFK - New York
2	JFK - New York
3	JFK - New York
4	ORD - Chicago
5	ORD - Chicago
6	ORD - Chicago
7	SFO – San Francisco
8	SFO – San Francisco OR LAX – Los Angeles
9	SFO – San Francisco OR LAX – Los Angeles

**Australia Post**

In dispatching EMS shipments, the routing details determined through the KPG agreement shall still apply.

For all other classes of mail, the following table illustrates the appropriate Australian point of entry based on the first digit of the destination address postal code. A more detailed table based on the first three digits can be provided upon request.

**Table B: Suggested Australian points of entry**

First Digit of Postal Code	Suggested Australian Point of Entry	
NSW, ACT – Postcodes beginning with 1, 2 and 02	Sydney	AUSYDA (LC/AO + Parcels) AUSYDD (SAL) AUSYDE (Surface)
VIC, SA, NT, TAS – Postcodes beginning with 3, 8, 5, 08 and 7	Melbourne	AUMELA (LC/AO + Parcels) AUMELD (SAL)
WA – Postcodes beginning with 6	Perth	AUPERA (LC/AO + Parcels) AUPERD (SAL)
QLD – Postcodes beginning with 4 and 9	Brisbane	AUBNEA (LC/AO + Parcels) AUBNED (SAL)

**Acknowledgment**

The Parties agree and acknowledge that nothing in this Annex 4 imposes an obligation on:

- (a) Australia Post to route all mail product categories except EMS covered by this Agreement destined for the United States from Australia through the entry points listed in Table A and that Australia Post is free to continue using the entry points in the United States that it was using as at the date of this Agreement; and
- (b) USPS to route all mail product categories except EMS covered by this Agreement destined for Australia from the United States through the entry points listed in Table B and that USPS is free to continue using the entry points in Australia that it was using as at the date of this Agreement.

### **Annex 5 – Detailed Item Content Restrictions**

All items mailed under this Agreement must conform to the following;

a) the mailability requirements of the United States Postal Service, as detailed in the International Mail Manual sections 135 and 710; the United States country listing in the Universal Postal Union's List of Prohibited Items; and Domestic Mail Manual section 601. As of the execution date of this Agreement, these materials are available at the following websites, respectively:

[http://pe.usps.gov/text/imm/immc1\\_013.htm](http://pe.usps.gov/text/imm/immc1_013.htm)

[http://pe.usps.com/text/imm/immc7\\_001.htm](http://pe.usps.com/text/imm/immc7_001.htm)

[http://www.upu.int/customs/en/country\\_list\\_en.pdf](http://www.upu.int/customs/en/country_list_en.pdf)

<http://pe.usps.gov/text/dmm300/601.htm>

and

b) the mailability requirements of Australia Post, as detailed in the documents (including but not limited to the Australia Post Terms & Conditions, Australia Post International Post Guide and the Australia Post Dangerous & Prohibited Goods and Packaging Guide) found on the following websites (and as may be amended from time to time):

<http://auspost.com.au/statutorydocuments/generalpostalservices/frame.htm>

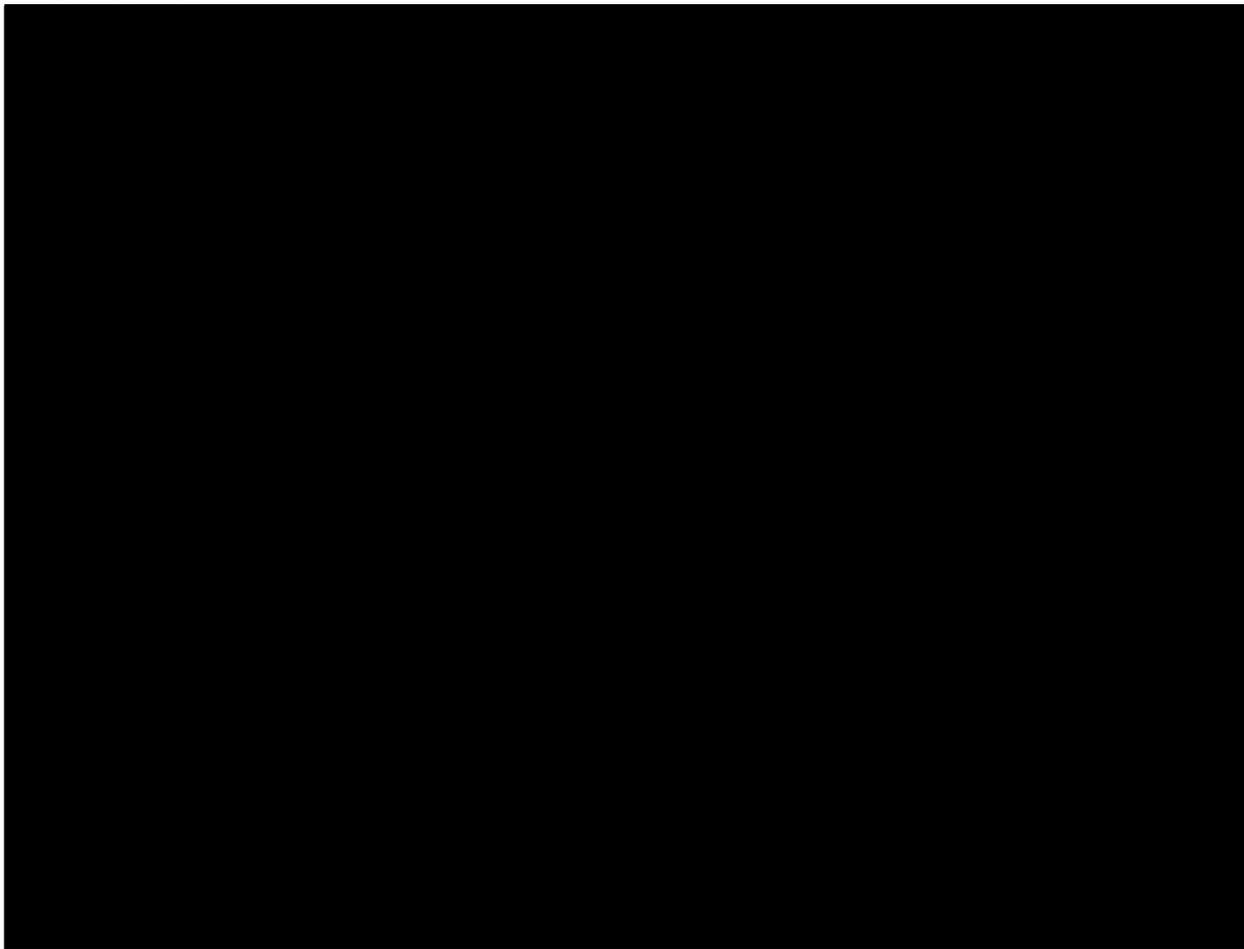
<http://auspost.com.au/media/documents/international-post-guide.pdf>

<http://auspost.com.au/media/documents/dangerous-prohibited-goods-packaging-post-guide.pdf>

<http://www.customs.gov.au/site/page4369.asp>

<http://www.daff.gov.au/aqis/mail/cant-mail>

Annex 6 – Project Team



**Certification of Prices for the Inbound Competitive Multi-Service Agreement with  
Australian Postal Corporation**

I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the prices for the Inbound Competitive Multi-Service Agreement with the Australian Postal Corporation. The prices contained in this agreement were established by the Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreement, issued August 6, 2010 (Governors' Decision No. 10-3)

I hereby certify that the cost coverage for the agreement with Australian Postal Corporation has been appropriately determined and represents the best available information. The prices are in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The prices demonstrate that the agreement should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2010, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from this agreement should be much smaller. The agreement with Australian Postal Corporation should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

  
Joseph Moeller

**"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"**

**DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON THE  
ESTABLISHMENT OF PRICES AND CLASSIFICATIONS FOR INBOUND COMPETITIVE  
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS  
(GOVERNORS' DECISION NO. 10-3)**

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August 6, 2010

**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 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. The agreements to which these prices will apply are described in Attachment A.<sup>1</sup> The pricing formulas and management's analysis of the appropriateness of these formulas are specified in Attachment B. We have reviewed that analysis and have concluded that the prices and classification changes are in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. Agreements that fall within the terms specified in Attachment A, and whose prices fall within the price ranges established by the price floor and price ceiling formulas specified in Attachment B, 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 are satisfied that the prices established according to the formulas listed in Attachment B will enhance the Postal Service's ability to meet the applicable statutory and regulatory requirements. We accept and rely upon the certification in Attachment C that the correct cost inputs for the formulas have been identified. In addition, the price floor formulas should produce prices that allow each product to cover attributable costs and

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<sup>1</sup> Because the Postal Service is creating a new grouping for Inbound Competitive Multi-Service Agreements with Foreign Postal Administrations, entirely new Mail Classification Schedule language is proposed.

"RESTRICTED AND SENSITIVE BUSINESS INFORMATION - DO NOT DISCLOSE"

Governors' Decision No. 10-3

Page 2

provide a contribution toward the Postal Service's institutional costs. The prices should thus prevent cross-subsidies from market dominant products. As noted in the certification in Attachment C, 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 U.S.C. § 3632(b)(3).

**ORDER**

In accordance with the foregoing Decision of the Governors, the formulas set forth herein, which establish prices for the applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, 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 this Decision and the certification process specified herein is followed. 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:



Louis J. Giuliano  
Chairman

## Attachment A

### Description of Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

#### 2614 Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

##### 2614.1 Description

- a. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators provide prices for acceptance, transportation within the United States, and delivery of any combination of Inbound Air Parcel Post, Inbound Surface Parcel Post, Inbound Direct Entry, and/or Inbound International Expedited Services (Express Mail Service) tendered by foreign postal operators. These constituent services may include other services that the relevant foreign postal operator offers to its customers under differing terms, but that nevertheless are processed and delivered in a similar manner within the United States Postal Service's network. Such agreements may also establish negotiated rates for services ancillary to such items and for customized competitive services developed for application solely in the context of the agreement.
- b. Inbound Competitive Multi-Service Agreements with Foreign Postal Operators may set forth general operating terms and conditions, on-time delivery and scanning service performance targets and standards, specifications for mail product categories and formats, processes for indemnity, and shared transportation arrangements that modify the requirements generally applicable to the services covered by each agreement.
- c. Items tendered under Inbound Competitive Multi-Service Agreements with Foreign Postal Operators items are either sealed or not sealed against inspection, according to the general nature of each underlying service.

##### 2614.2 Size and Weight Limitations

Size and weight requirements are the requirements for Inbound Air Parcel Post at UPU Rates, Inbound Surface Parcel Post (at UPU Rates), Inbound Direct Entry, and Inbound International Expedited Services (Express Mail Service), respectively, subject to any applicable country-specific modifications.

##### 2614.3 Optional Features

The Postal Service may offer such optional features as may be mutually agreed with the relevant foreign postal operator.

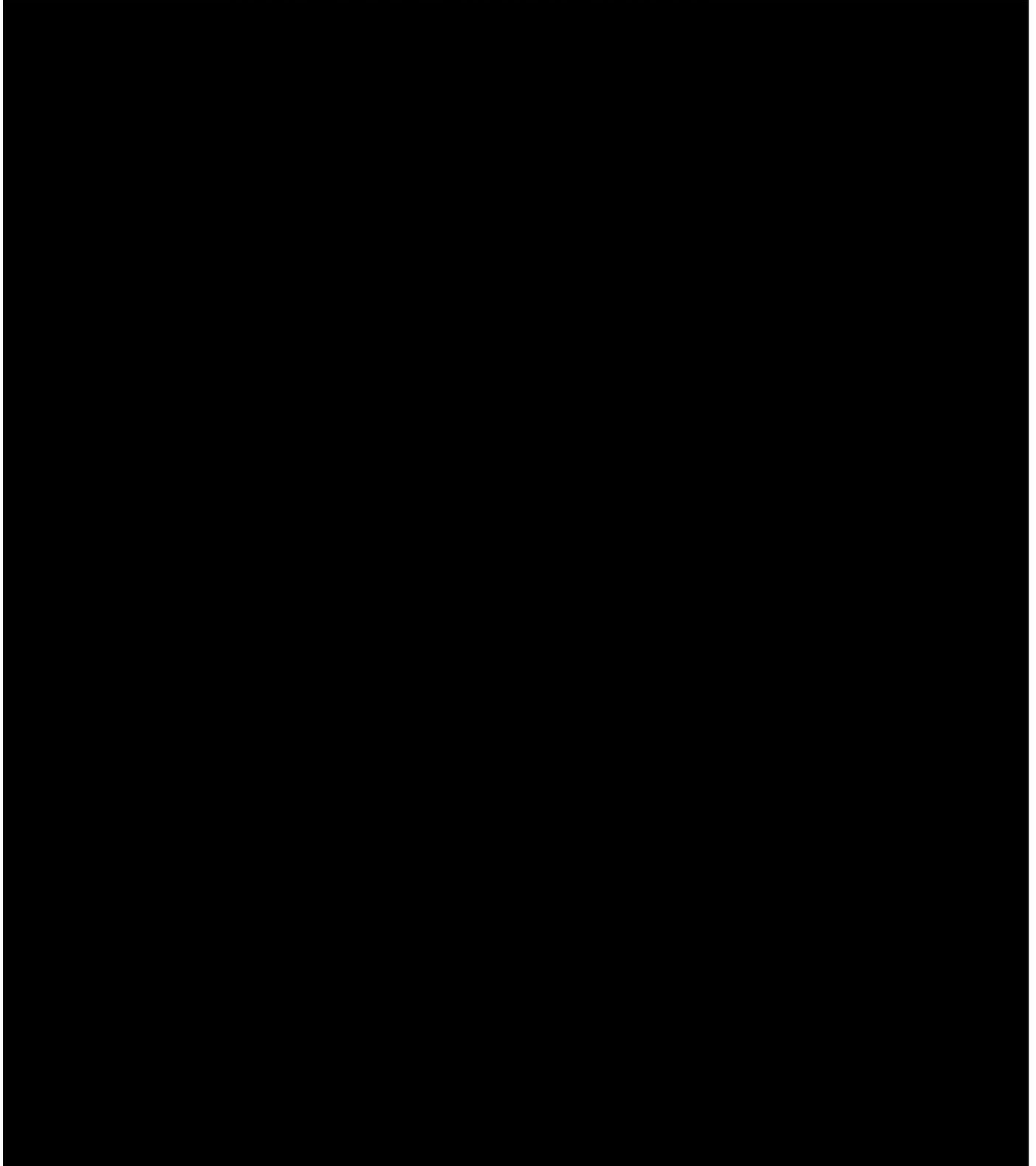
2614.4 Products Included in Group (Agreements)

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-X, CP2010-X)

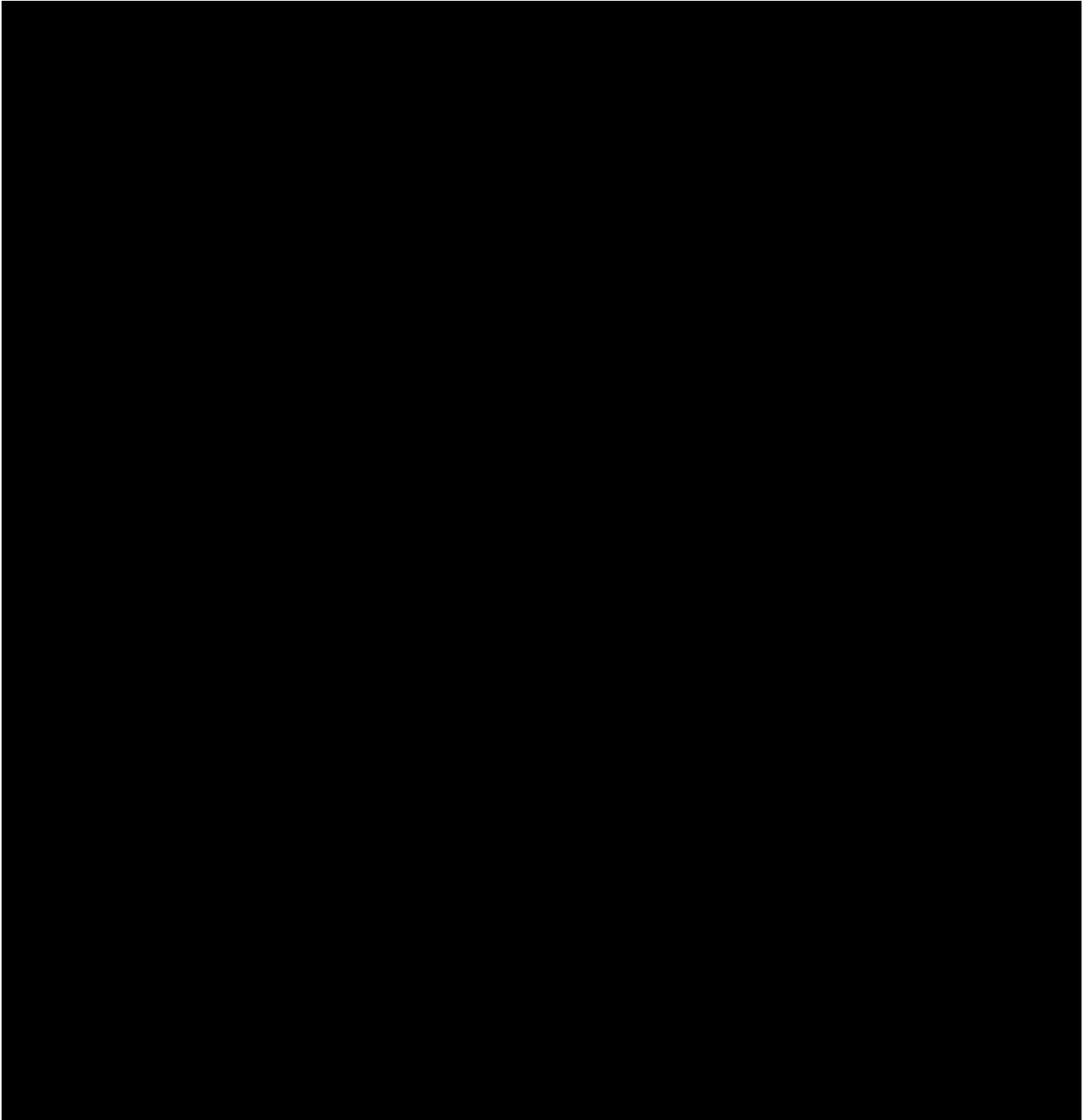
"Restricted and Sensitive Business Information - Do Not Disclose."

## **Attachment B**

### **Formulas for Prices Under Applicable Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**



"Restricted and Sensitive Business Information - Do Not Disclose."



## Attachment C

### **Certification of Prices for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**

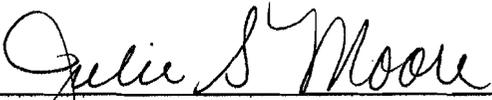
I, Joseph Moeller, Manager, Regulatory Reporting and Cost Analysis, Finance Department, United States Postal Service, am familiar with the price formulas for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators, which are set forth in Attachment B. I hereby certify that these formulas adequately represent all necessary cost elements. If the Postal Service were to enter into agreements and offer services that set prices above the price floors, the Postal Service would be in compliance with 39 U.S.C. § 3633(a)(1), (2), and (3). The price floor formulas are designed to ensure that each agreement and service should cover its attributable costs and preclude the subsidization of competitive products by market dominant products. In Fiscal Year 2009, all international competitive mail accounted for a relatively small percentage of the total contribution by all competitive products. Contribution from Inbound Competitive Multi-Service Agreements with Foreign Postal Operators should be much smaller. Even if all such agreements are signed with prices at the price floor, they should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.



Joseph Moeller

**CERTIFICATION OF GOVERNORS' VOTE  
IN THE  
GOVERNORS' DECISION NO. 10-3**

I hereby certify that the Governors voted on adopting Governors' Decision No. 10-3, and that, consistent with 39 USC 3632(a), a majority of the Governors then holding office concurred in the Decision.

  
\_\_\_\_\_  
Julie S. Moore  
Secretary of the Board of Governors

Date: 8-9-2010

## ATTACHMENT 4

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

In accordance with 39 C.F.R. § 3007.21, 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 the bilateral agreement between the Australian Postal Corporation and the United States Postal Service filed in this proceeding. The agreement and supporting documents establishing compliance are being filed separately under seal with the Commission. A redacted copy of the agreement is filed with the Notice as Attachment 2. In addition, a redacted version of the supporting financial documentation is included with this public filing as a separate Excel file.

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);**

The materials designated as non-public consist of information of a commercial nature that would not be publicly disclosed under good business practice. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).<sup>1</sup> Because the portions of the materials that the Postal Service is

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<sup>1</sup> In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed

applying to file only under seal 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 e-mail 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 the instant Agreement, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the contract is made. Through text in the agreement, the Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and the operator's ability to address its confidentiality concerns directly with the Commission. Due to the sensitive nature of the Postal Service's rate relationship with the affected foreign postal operator, the Postal Service proposes that a designated Postal Service employee serve as the point of contact for any notices. The Postal Service identifies as an appropriate contact person Ms. Lea Emerson, Executive Director, International Postal Affairs. Ms. Emerson's phone number is (202) 268-2574, and her email address is lea.emerson@usps.gov.<sup>2</sup>

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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.

<sup>2</sup> The Postal Service acknowledges that 39 C.F.R. § 3007.21(c)(2) appears to contemplate only situations where a third party's identification is "sensitive" as permitting the designation of a Postal Service employee who shall act as an intermediary for notice purposes. To the extent that the Postal Service's filing might be construed as beyond the scope of the Commission's rules, the Postal Service respectfully requests a waiver to designate a Postal Service employee as the contact person under these circumstances, for the reasons provided in the text above.

**(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 Request filed in this docket, the Postal Service included an agreement and financial work papers associated with that agreement. These materials were filed under seal, with redacted copies filed publicly, after notice to the affected postal operator. The Postal Service maintains that the redacted portions of the agreement and related financial information should remain confidential.

With regard to the agreement filed in this docket, the redactions withhold the actual prices being offered between the parties under the agreement, as well as the targeted delivery scanning rate for one product and information about product development plans. The redactions applied to the financial work papers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, 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).

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

If the portions of the agreement that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed

under good business practices. Foreign postal operators could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service, and to gain intelligence about product development efforts. Competitors could also use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. This latter concern applies to the extent that the prices in the filed agreement cover certain competitive services, which are included in the agreement filed under seal; market dominant services for which competition exists (*e.g.*, with respect to Letter Post, heavier Letter Post small packets, and outbound international items, which are included in the agreement filed under seal); and monopoly letters, to the extent that competing providers are not fully cognizant of or compliant with the Private Express Statutes. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

The financial work papers include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingency rates included to account for market fluctuations and 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, in light of statutory, regulatory, or policy constraints. Thus, competitors would be able to take advantage of the

information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant inbound delivery services markets. 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 agreement or from the information in the workpapers whether additional margin for net contribution exists under agreement's prices. The settlement charges between the Postal Service and the foreign postal operator constitute costs underlying the postal services offered to each postal operator's customers, and disclosure of this cost basis would upset the balance of Postal Service negotiations with contract customers by allowing them to negotiate, rightly or wrongly, on the basis of the Postal Service's perceived supplier costs. From this information, each foreign postal operator or customer could also attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator involved in the agreement at issue in this docket could use the information in the work papers in an attempt to renegotiate the rates in its instrument by threatening to terminate its current agreement.

Price information in the agreement and financial spreadsheets also consists of sensitive commercial information of the foreign postal operator. Disclosure of such information could be used by competitors of the foreign postal operator to assess the foreign postal operator's underlying costs, and thereby

develop a benchmark for the development of a competitive alternative. The foreign postal operator would also be exposed to the same risks as the Postal Service in customer negotiations based on the revelation of their supplier costs.

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

Harm: Public disclosure of the prices in the Agreement, as well as any negotiated terms, would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: The negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the price and determines that there may be some additional profit margin below the rates provided to either operator. The other postal operator, which was offered rates comparable to those published in the agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered.

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 delivery service obtains unredacted versions of the financial workpapers from the Postal Regulatory Commission's website. It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to comply with business or legal considerations regarding cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service

on price for international 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 one or more relevant international delivery markets. Even if the competing providers do not manage wholly to freeze out the Postal Service, they will significantly cut into the revenue streams upon which the Postal Service relies to finance provision of universal service.

Harm: Public disclosure of information in the financial workpapers would be used detrimentally by the foreign postal operator's competitors.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess the foreign postal operator's underlying costs for the corresponding products. The competitor uses that information as a baseline to negotiate with U.S. companies 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 delivery products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should not be provided access to the non-

public materials. This includes the counter-party to the agreement with respect to all materials filed under seal except for the text of the postal operator's agreement, to which that counter-party already has access.

**(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.

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

None.

***Conclusion***

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.