

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

COMPETITIVE PRODUCT PRICES
INTERNATIONAL MERCHANDISE RETURN SERVICE
AGREEMENTS WITH FOREIGN POSTAL OPERATORS
NON-PUBLISHED RATES

Docket No. MC2015-68
Docket No. CP2015-99

**UNITED STATES POSTAL SERVICE RESPONSE TO ORDER NO. 2639
CONCERNING REVISED MODEL AGREEMENT FOR COMPETITIVE
INTERNATIONAL MERCHANDISE RETURN SERVICE AGREEMENTS WITH
FOREIGN POSTAL OPERATORS (IMRS-FPO)**

(October 1, 2015)

On September 4, 2015, the Postal Regulatory Commission (Commission) issued Order No. 2639, conditionally approving the IMRS-FPO product that is the subject of the instant docket.¹ In that Order, the Commission expressed concern over the cost coverage of agreements with indefinite terms, and directed the Postal Service to revise the model agreement so that it either: “1) automatically adjusts the agreement’s prices if it falls below the range most recently approved by the Commission; or 2) automatically terminates the agreement if the agreement’s prices fall below the range most recently approved by the Commission.”² The Postal Service accordingly provides a revised version of the model agreement consistent with Order No. 2369.

Because the model agreement contains commercially sensitive information, it is being filed separately under seal with the Commission. A redacted copy of the model agreement is filed as Attachment 1 to this notice. Edits have been made to Article 9, Article 23, and Annex 1 that will cause the agreement to automatically terminate should

¹ PRC Order No. 2639, Order Conditionally Approving Addition of Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) to the Competitive Product List, September 4, 2015.

² *Id.* at 7

the rates in the Agreement no longer fall within the most recent rate ranges approved by the Commission.

The Postal Service incorporates by reference the application for non-public treatment that was filed in conjunction with the Postal Service's July 10, 2015, notice in this docket.³ The application protects from disclosure information in the model contract that the Postal Service is filing today with the Commission under seal in this docket.

Respectfully submitted,
UNITED STATES POSTAL SERVICE
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October 1, 2015

³ PRC Docket Nos. CP2015-99 and MC2015-68, Request of the United States Postal Service to Add Competitive International Merchandise Return Service Agreements with Foreign Postal Operators (IMRS-FPO) Product to the Competitive Products List and Notice of Filing IMRS-FPO Model Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, July 10, 2015.

**[POST NAME] – UNITED STATES POSTAL SERVICE BILATERAL AGREEMENT
FOR INTERNATIONAL MERCHANDISE RETURN SERVICE**

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 [Post Name], the postal operator in [Country], organized and existing under the laws of the [Country], and having a place of business at [Address]. The USPS and [Post Name] may be referred to individually as a “Party” and together as the “Parties” or “Posts”.

INTRODUCTION

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;

The Parties acknowledge and understand that the commencement of performance under this Agreement is subject to the approval of and/or non-objection by 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 U.S. Postal Regulatory Commission. Accordingly, [Post Name] acknowledges and understands that the ability of the USPS to perform under this Agreement may not occur, and in this respect the provisions of Articles 3 and 4 shall apply;

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 4 of this Agreement entitled “Conditions Precedent”;

NOW, 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 principles and general terms and conditions that shall apply to the exchange of International Merchandise Return Service between the Parties; and
3. to set out the bilateral rates that will apply to the exchange International Merchandise Return Service as specified in Annex 1.

Article 2: Guiding Principles of the Agreement

1. The Parties agree to work together to improve the quality of postal services between [Country] and the United States in order to better serve the market. In particular, the Parties agree to provide access to each other’s operating networks and services in such a way that for International Merchandise Return Service:
 - (i) excellence in quality of service will be attained and maintained;
 - (ii) the flexibility required to meet changing market and logistical conditions will be supported;
 - (iii) the costs to each Party of providing services will be minimized; and
 - (iv) the settlement and payment processes will continue to be streamlined, with the objective being to make such processes efficient, timely, and specific to each particular service or type of service.

2. In addition to the level of cooperation specifically outlined in this Agreement, the Parties intend to collaborate further on product development, enhancements to the current product, and specified value-added services required to meet the ever-evolving needs of their customers.

Article 3: Oversight and Effective Date

The terms and pricing set forth under this Agreement require the approval from various entities that have oversight responsibilities for the USPS as set out in Article 4 below. Upon execution of this Agreement, the USPS shall seek such approval. The Parties agree that this Agreement shall come into effect (1) after all such approvals have been obtained by USPS and (2) (3) after notification to [Post Name] by USPS that all required approvals have been obtained, and the date of notification shall be "the Effective Date," unless an alternative date is proposed in the USPS's notification and agreed to by [Post Name] in a return communication, in which case that alternative date shall be the Effective Date.

Article 4: Conditions Precedent

The Parties acknowledge and understand that all obligations of the USPS under this Agreement shall be contingent on the USPS receiving approvals from, and/or non-objection by (hereinafter "Conditions Precedent") 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 USPS management, the USPS executive committee, the Governors of the USPS, and the U.S. Postal Regulatory Commission. The Parties acknowledge that the Agreement might not be approved by such bodies. Until such time that all Conditions Precedent are fulfilled that are necessary to provide the products or services contemplated under the Agreement, no obligation shall exist for the USPS or [Post Name] 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 fulfilled.

Article 5: Limitation on Liability and Costs

In the event that the Conditions Precedent are not fulfilled, the USPS and [Post Name] shall have no liability, which shall include no obligation to pay costs associated with any action taken by either Party prior to the Effective Date of the Agreement. Further, in the event of termination of the Agreement or 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 6: 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 7: Monetary Transactions

1. Each Party will bear the costs and retain the revenues for any work performed by it or 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 19 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 19 below.

Article 8: Customs Inspection

USPS bears no responsibility for the disposition of items in the custody of U.S. Customs & Border Protection. Further, [Post Name] 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.

Article 9: Termination and Expiration

1. Either Party may terminate this Agreement without cause upon 60 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 60-day notice period expires. The right to terminate the Agreement for good cause remains unaffected.
2. In the event that the rates for this Agreement listed in Schedule A to Annex 1 no longer fall within the most recent rate range approved for this product by the Postal Regulatory Commission, this Agreement shall expire sixty (60) days after the effective date of the new rate range unless (i) no later than 30 days prior to the conclusion of such sixty (60) day period, the Parties agree to new rates that are within the approved range, and (ii) the U.S. Postal Regulatory Commission does not otherwise find the rates to be inconsistent with applicable legal requirements.
3. In the event of termination or expiration 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.
4. In the event of termination or expiration, 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 10: Dispute Resolution

1. The Parties intend to resolve all controversies 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 controversy, the Parties agree that the signatories to this agreement, or their replacement, shall provide a written description of the controversy to the other Party and a suggested outcome. The Parties 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 controversy, the Parties agree that each Party may exercise its right to terminate this Agreement, or an action relating to cost or revenue liability may be instituted and maintained only in the United States District Court for the District of Columbia.
4. Notwithstanding the provisions of this Article 10, and without prejudice to Article 12, paragraph 1, in the event of conflict or inconsistency between the provisions of this Article 10 and Article 12, paragraph 1, the provisions of Article 12, paragraph 1 shall prevail.

Article 11: Construction

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

Article 12: Indemnification and Liability

1. The Parties acknowledge that aspects of liability or indemnification (including, but not limited to air parcels) 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 [Post Name] or USPS that are attributable to the actions of the other Party to this Agreement, 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. Except for liability and indemnification as described in Article 12, paragraph 1, and final settlement under Article 9, no Party to this Agreement shall be liable to the others 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, including, but not limited to, breach of any term of this Agreement or negligence, unless required by applicable mandatory law.
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 13: 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 14: Confidentiality Requirements

1. The Parties consider the rate information included in this Agreement to be commercially sensitive information and agree that it should not be disclosed to third parties except as required by law. [Post Name] will 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 U.S. Postal Regulatory Commission.
2. [Post Name] 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 U.S. Postal Regulatory Commission ("Commission") in a docketed proceeding. [Post Name] authorizes the USPS to determine the scope of information that must be made publicly available under the Commission's rules. [Post Name] further understands that any unredacted portion of this document may be posted on the Commission's public website, www.prc.gov. In addition, the USPS may be required to file information in connection with this instrument (including revenue, cost, or volume data) in other Commission dockets, including Commission docket numbers with successive dockets beginning with the acronym "ACR" followed by the fiscal year reported. [Post Name] has the right, in accordance with the Commission's rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the Commission for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22, on the Commission's website: www.prc.gov/Docs/63/63467/Order225.pdf. At [Post Name]'s request, the U.S. Postal Service will notify [Post Name] of the docket number of the Commission proceeding to establish the rates in this instrument under U.S. law, once that docket number has been assigned.

Article 15: 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 16: 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:

Director, Global Business Solutions
United States Postal Service
475 L'Enfant Plaza SW Rm 5146
Washington, DC 20260
United States of America

Arneece.L.Williams2@usps.gov

To [Post Name]:

Title
Post Name
Address
Email Address

Article 17: 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 18: 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 international law. 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 19: Amendment

This Agreement may be amended or extended only by mutual written agreement signed by authorized representatives of [Post Name] 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 by USPS management, the USPS Governors, the USPS Board of Governors, and/or the U.S. Postal Regulatory Commission. If such approvals are required, the Amendment will not become effective until such time as all necessary approvals are obtained.

Article 20: Assignment

This Agreement may not be assigned in whole or in part by any Party without the prior written consent of the other parties. 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 21: Applicability of Other Laws

1. 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.).
2. The Parties recognize that performance under this Agreement may be subject to laws enacted or enforced by governmental entities and is contingent on each Party obtaining all consents, authorizations, orders, or approvals required under applicable law or policy to effectuate the Agreement.
3. The Parties understand that USPS may be required to provide copies of this Agreement to the U.S. Department of State and the U.S. Postal Regulatory Commission. [Post Name] acknowledges that the entire Agreement, or portions thereof as the USPS determines to be appropriate, will be filed with the U.S. Postal Regulatory Commission with a notice to add it to the competitive and/or market dominant products list.

Article 22: Entire Agreement

1. Except as otherwise provided in this Agreement, this Agreement, including all Annexes to this Agreement, shall constitute the entire agreement between the Parties concerning the exchange of International Merchandise Return Service 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, namely, International Merchandise Return Service, and preceding the date of this Agreement, shall not be binding upon either Party. Nothing in this paragraph should be construed to affect any other bilateral agreement between the Parties, provided that the other bilateral agreements do not pertain to International Merchandise Return Service.
2. The Parties acknowledge that the provisions of the Universal Postal Convention and applicable regulations apply except to the extent inconsistent with this Agreement.

Article 23: Term

1. The Parties intend that the Effective Date of the settlement rates set forth in Annex 1 of this Agreement shall be [Date].
2. The USPS will notify [Post Name] 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. USPS shall have no obligation to notify [Post Name] of the status of the approval process or of potential fulfillment of the approval process. The Agreement will remain in effect indefinitely unless it expires or terminates in accordance with Article 9 hereto.

Article 24: 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 25: Survival

The provisions of Articles 5, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, and 24 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.

[Post Name]

United States Postal Service

[Name]
[Title]

Giselle Valera
Managing Director, Global Business, and Vice
President

Date

Date

Annex 1 – International Merchandise Return Service (IMRS)

This Annex covers the operational foundation, rates, and other terms to facilitate the bi-directional exchange of returns between the Posts.

Article 1: Definitions

1. eSeller: a merchant selling items via the internet.
2. eBuyer: a consumer buying items from the eSeller on the internet.
3. eSeller Post: the Post who has the contractual relationship with the eSeller.
4. eBuyer Post: the Post where the eBuyer is located.
5. IMRS: the International Merchandise Return Service product.
6. EMSEVT: the UPU standard used to exchange the tracking events among countries sending and receiving shipments. Specifically:
 - a. EMA: acceptance by the eBuyer Post
 - b. EMC: departure from the eBuyer Post's Office of Exchange (O.E.)
 - c. EMD: acceptance at the eSeller Post's O.E.
 - d. EME: entry into Customs in the eSeller's O.E.
 - e. EMF: exit from Customs in the eSeller's O.E.
 - f. EMH: attempted delivery to the eSeller
 - g. EMI: delivery to the eSeller
7. Inward Land Rate (ILR): the settlement rate for parcels per the UPU regulations.
8. Basic Air Conveyance Rate (BACR): the settlement rate for air conveyance dues per UPU regulations.

Article 2: Generation of IMRS Labels and Customs Declarations

1. Each Post shall establish relationships with its eSellers to facilitate the return of merchandise via IMRS subject to this Annex and each Post shall be responsible for ensuring that any arrangement with its eSellers is consistent with the requirements of this Annex.
2. eSeller shall send goods to the eBuyer using the postal network or any other outbound carrier.
3. eBuyer wishing to return an item shall contact the eSeller and follow the eSeller's instructions for requesting return service and label. The instructions may vary by eSeller but must require the eBuyer to submit detailed item information to the eSeller including name, address, contact information, merchandise description, type of service, and package weight.
4. eSeller shall authorize the return and acquire return label by accessing [REDACTED]
 - a. eSeller Post sends label data [REDACTED]
 - b. eSeller shall provide by electronic means (e-mail, .pdf download etc.) the label and customs declaration to the eBuyer via the eBuyer Post.
 - c. IMRS labels will bear the "CU" prefix and the eBuyer Post's suffix.

Article 3: Dispatch Procedures

IMRS items follow the UPU regulations relating to Air Parcel dispatching, including the listing of individual IMRS items on the CP87 and in the PREDES message. [REDACTED]

1. Each IMRS item must be clearly labeled with a pre-agreed item label.
2. Each IMRS item label shall contain one unique S10 barcode with the CU prefix and suffix of the eBuyer country.
3. The Posts agree to timely and accurate exchange of EMSEVT messages for: [REDACTED]

Article 4: [REDACTED]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED] g:
 - a. [REDACTED]
 - b. [REDACTED]

Article 5: International Merchandise Return Service Rates

1. Schedule A outlines the rates applicable to IMRS items for the 2015 calendar year, ending 31 December 2015. [REDACTED]
2. Rates in Schedule A shall be based upon [REDACTED].
3. The IMRS rate charged by the eBuyer Post is a [REDACTED] that consists of two main components:
 - a. [REDACTED]
 - b. [REDACTED]

c. [REDACTED] 015-99

4. In the event that the rates for this Agreement listed in Schedule A to Annex 1 no longer fall within the most recent rate range approved for this product by the Postal Regulatory Commission, this Agreement shall expire sixty (60) days after the effective date of the new rate range unless (i) no later than 30 days prior to the conclusion of such sixty (60) day period, the Parties agree to new rates that are within the approved range, and (ii) the U.S. Postal Regulatory Commission does not otherwise find the rates to be inconsistent with applicable legal requirements.

Article 6: Invoicing

1. [REDACTED]
 - a. [REDACTED]
 - b. [REDACTED]
2. [REDACTED] The Parties will agree to all rate adjustments in writing, and all rate adjustments are subject to the terms of Article 19 of the Agreement.

Article 7: USPS/[Post] Customer Service Support for Inquiries, Claims and Liability

1. [REDACTED]
2. [Post] and USPS [REDACTED]
3. After launching IMRS, [Post] and USPS shall make the determination [REDACTED]

Article 8: Limits of weights and size

For IMRS, the Posts shall adhere to limits of weight and size for Air Parcel items, as depicted in the UPU Regulations.

Schedule A to Annex 1 – IMRS Settlement Rates

The following rates [REDACTED] exchanged between [Post] and USPS; are [REDACTED] per Article 5 of this Annex; and are applicable on a [REDACTED] basis:

IMRS from [Post] to USPS	
IMRS Settlement Rates	[REDACTED]
IMRS – Air Parcel Service	[REDACTED]

IMRS from USPS to [Post]	
IMRS Settlement Rates	[REDACTED]
IMRS – Air Parcel Service	[REDACTED]