



Office of Utility Regulation

Postal Licence Conditions

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Office of Utility Regulation

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OFFICE OF THE DIRECTOR GENERAL OF UTILITY REGULATION

Licence issued to

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under Part I of

THE POST OFFICE (BAILIWICK OF GUERNSEY) LAW, 2001

The Director General, in exercise of the powers conferred on her by the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 and the Post Office (Bailiwick of Guernsey) Law, 2001, grants to the Licensee a Licence to convey postal packets within, to and from the Bailiwick and subject to the Conditions, all lawful directions of the Director General and all applicable laws, rules, regulations and Ordinances of the States of Guernsey.

DATED

**SIGNED BY THE DIRECTOR GENERAL OF
UTILITY REGULATION**

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 A word or expression that is used in the Licence and the Conditions and is also used in the Post Office (Bailiwick of Guernsey) Law, 2001 or the Regulation of Utilities (Bailiwick of Guernsey) Law, has, except where the context otherwise requires, the same meaning in the Licence and the Conditions that it has in the relevant Law. In addition, the expressions set out below have the meanings given to them below:

“Conditions”: means Conditions 1 through 24 of this Licence as may be amended revoked or added to by the Director General from time to time;

“Licence”: means this licence to provide the Postal Services and to establish, operate and maintain the Postal Facilities, subject to the Conditions;

“Licence Commencement Date”: means the date on which this licence is signed by the Director General;

“Licence Fee”: means the fee prescribed by the Director General under sections 3(3) and 6 of the Postal Law and payable by the Licensee;

“Licensee”: means [];

“Licensed Services”: means Postal Services the provision of which is prohibited unless authorised under section 1(1) of the Postal Law;

“Non-Licensed Services”: means Postal Services the provision of which are permitted without a licence, under section 1(1) of the Postal Law;

“Other Licensee”: means any person who, for the time being, has the benefit of a Class or Individual Licence granted under Part I of the Postal Law;

“Postal Facilities”: means the physical and human resources and systems deployed by the Licensee and by its contractors and agents for the purpose of meeting the Licensee’s obligations under this Licence to provide a Universal Postal Service;

“Postal Law”: means The Post Office (Bailiwick of Guernsey) Law, 2001;

“Regulation Law”: means the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001;

“Term”: means, subject to Condition 10 and to the Postal Law, a period of fifteen years from the Licence Commencement Date; and

“Universal Service”: means a Universal Postal Service, the scope of which is specified by States Direction.

1.2 In the Licence and these Conditions, unless the context indicates a contrary intention:

- (a) references to Conditions, paragraphs and subparagraphs are to Conditions, paragraphs and subparagraphs of the Conditions, as varied from time to time in accordance with the Conditions;
- (b) a document will be incorporated into and form part of the Conditions if it is referred to in the Conditions and reference to such a document is to that document as varied from time to time;
- (c) headings used for conditions, paragraphs and subparagraphs are for ease of reference only and will not affect the interpretation of the Conditions;
- (d) references to any law, rule, regulation, Ordinance or other legal instrument includes any modification, re-enactment or legislative provisions substituted for the same;
- (e) use of the word "includes" or "including" should be construed as being without limitation; and
- (f) the masculine gender shall include the feminine and neuter, and the singular shall include the plural, and vice versa, and words importing persons shall include firms or companies.

PART I: ESTABLISHMENT AND ENFORCEMENT

2. SCOPE OF THE LICENCE

2.1 The Licensee shall enjoy the exclusive right to convey the reserved services as defined by the Director General by Order in accordance with Section 9 of the Postal Law.

2.2 The Licence is personal to the Licensee and the Licensee shall not:

- (a) sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or
- (b) sell or pledge any of its assets which are necessary to provide any Licensed Services which the Licensee is obliged to provide under this Licence, unless such assets are immediately replaced with equivalent assets,

without the prior written consent of the Director General. The Director General shall not unreasonably withhold consent.

This condition 2.3 does not apply to:

- (i) a mortgage or other transaction entered into for the purpose of securing borrowings of the Licensee or an Associated Company, being borrowings for the purpose of the Licenced Postal Service or the provision thereof or anything incidental thereto, or

- (ii) a transfer, assignment or other disposal of an interest in assets under an arrangement whereby the Licensee retains the use and benefit of such assets for the remainder of the useful life of such assets and for the duration of the Licence, or
- (iii) a transfer, assignment or other disposal of assets made in the ordinary course of business.

2.3 The Licensee shall notify the Director General of the occurrence of any of the following:

- (a) any fact or event likely to materially affect the Licensee's ability to comply with any Condition of the Licence;
- (b) an insolvency-related event in respect of the Licensee or an Associated Company of the Licensee, or any preparatory steps being taken that might lead to an insolvency-related event,

immediately upon the Licensee becoming aware of the event.

2.4 Without prejudice to Condition 9, the Licensee shall notify the Director General:

- (a) of any proposed Change of Control of the Licensee forthwith upon the Licensee, or its Chairman, Chief Executive Officer, Chief Operating Officer or any Director becoming aware of the proposed change; and
- (b) in any event, on the occurrence of any Change of Control of the Licensee, within thirty days of that event.

2.5 On receipt of notification the Director General may:

- (a) approve the proposed change or the change in writing;
- (b) disapprove the proposed change or the change in writing, giving reasons; or
- (c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under section 8 of the Postal Law,

and or in addition to any of the above measures, the Director General may issue such directions to the Licensee or invoke any of the sanctions, penalties or remedies in the Law or the Licence as the Director General considers necessary or appropriate.

In taking action under this section, the Director General may have regard to whether or not the Director General would have awarded the Licence to the Licensee had the Change of Control taken effect prior to the award.

2.6 In this Condition 2, "**Control**" shall mean any direct or indirect possession of any power or right that enables a person or group of persons to direct, or cause the general direction of, the management or policies of the Licensee by any means and in any event, a person or group of persons shall be deemed to Control the Licensee if:

- (a) he or they exercises or controls the exercise of fifty-one per cent or more of the votes able to be cast at general meetings of the Licensee on all, or substantially all, matters; or

- (b) he or they are able to appoint or remove directors holding a majority of voting rights at board meetings on all, or substantially all matters or is able to appoint or remove a majority of the governing body of the Licensee; or
- (c) he or they exercises or controls the exercise of fifty-one per cent or more of the partnership or other ownership interests of the Licensee,

and, in each case, reference to the Licensee shall include any person or group of persons who Controls the Licensee in any of such ways, and “**Change of Control**” shall mean any change as a result of which any other person or group of persons acquires Control.

2.7 The Licensee shall supply to the Director General, in relation to itself and any Associated Company which Controls the Licensee:

- (a) a copy of its annual return on the same date on which it is required to be filed in accordance with the Companies (Guernsey) Law 1994;
- (b) a copy of its annual report and accounts on the same date on which it is circulated to the shareholders of the relevant body corporate; and
- (c) where the relevant body corporate is not incorporated in the Bailiwick, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which are, in the opinion of the Director General, analogous or equivalent to the above, at such times and in such forms as the Director General directs from time to time.

2.8 The Licensee shall comply with any other requirement in law or practice to obtain any additional consents, permissions, authorisations or licences as may be necessary for the provision of the Licensed Services and for the exercise of its rights or discharge of its obligations under this Licence.

2.9 The Licensee shall ensure that:

- (a) the administration and management of the business associated with the provision of the Licensed Services shall be conducted from the Bailiwick; and
- (b) its business is conducted in a manner which the Director General is satisfied is on a normal commercial basis and at arm’s length from the business of any of its shareholders or Associated Companies.

3. LICENCE FEE

3.1 The Licensee shall pay the Licence Fee in the manner directed by the Director General.

3.2 Without prejudice to any other remedies of the Director General under this Licence or the Laws, if the Licensee fails to pay any amount due to the Director General under this Condition 3 by the due date, the unpaid amount will accrue interest daily from the due date to the date of payment at three percentage points above the published base rate of the Bank of England.

4. PROVISION OF INFORMATION

- 4.1 For the purpose of monitoring the Licensee's compliance with the Conditions and the Laws, the Licensee shall provide to the Director General in the manner and at the times required by the Director General, any documents, accounts, returns, estimates, reports or other information required by the Director General, including but not limited to the documents, accounts, returns, estimates, reports and other information specified in this Licence.
- 4.2 The Director General may require an examination, investigation or audit of any aspect of the Licensee's business relating to the Licensed Services or its compliance with the Conditions and the Laws, and the Licensee shall provide any assistance requested by the Director General in relation to any such examination, investigation or audit. The Director General may issue directions with regard to the manner in which such examination, investigation or audit is carried out.
- 4.3 In particular, the Director General may authorise a person to carry out an examination, investigation or audit or may require the Licensee to arrange for an examination investigation or audit of any aspect of the Licensee's business involved in the establishment, operation or maintenance of the Postal Facilities or the provision of the Licensed Services to ensure compliance with the Conditions. The Licensee shall allow the Director General's authorised representative to attend at, enter and inspect any premises under the Licensee's or any of its Associated Companies' control, and to take copies of any documents and to acquire any information in the control of the Licensee or any of its Associated Companies, as may be required in order to carry out the examination, investigation or audit.
- 4.4 The Licensee shall bear all reasonable costs associated with any examination, investigation or audit conducted under this Condition 4.

5. COMPLIANCE

In addition to the Conditions, the Licensee shall comply with:

- (a) any obligation imposed on it by the Laws or by any law, regulation, rule or Ordinance; and
- (b) any direction duly issued by the Director General under a Law or by any law, any regulation, rule, Ordinance or this Licence.

6. MODIFICATION

The Director General may from time to time modify, revoke or add to any condition in this licence. Any modification, revocation or addition to the Conditions shall be made in accordance with section 8 of the Postal Law and any other requirements under any applicable law.

7. EXCEPTIONS AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS

7.1 If the Licensee is prevented from performing any of its obligations under this Licence because of force majeure:

- (a) the Licensee shall notify the Director General of the obligations it is prevented from performing as soon as reasonably practicable; and
- (b) those obligations may be suspended, and the Licensee will not be liable to perform those obligations, for so long as the force majeure continues, only if and to the extent that the inability to perform could not have been prevented by taking steps specifically required under this Licence or other reasonable precautions and the inability cannot reasonably be circumvented by the Licensee at its expense through the use of alternate sources, work-around plans or other means.

8. ENFORCEMENT AND REVOCATION

The Director General may at any time revoke this licence in accordance with the provisions and procedures set out in Section 32 of the Postal Law. The Director General may also take any action to enforce any condition of this licence in accordance with Section 32 of the Postal Law.

9. MATTERS OF BAILIWICK INTEREST

9.1 The Licensee shall, in connection with its establishment, operation and maintenance of Postal Facilities and provision of the Licensed Service take reasonable steps to prevent any of them from being used in, or in relation to, the commission of offences against the laws of the Bailiwick.

9.2 The Licensee shall establish and maintain the capability to intercept Postal Packets transported using the Postal Facilities and to provide information regarding the use of Licensed Services in order to comply with Section 19 of the Postal Law.

10. TERM AND RENEWAL

10.1 The Licence commences on the Licence Commencement Date and continues, subject to the Licensee's compliance with the Conditions and the Laws and subject to any revocation or suspension by the Director General, for the Term.

10.2 At any time after the eleventh anniversary but prior to the twelfth anniversary of the Licence commencement date, the Licensee may serve notice on the Director General requesting a renewal of this Licence.

10.3 Within one hundred and eighty days of receipt of the notice under Condition 10.2, or such further period as may be agreed with the Licensee, the Director General shall notify the Licensee whether or not she agrees to a renewal of the Licence subject to the same Conditions or on any modified Conditions subject to the licensee providing all necessary information to the Director General to enable her to make the notification within the

required time.

11. CESSATION

- 11.1 If the Licensee proposes to cease to provide all or a material part of the Licensed Services it shall give not less than three years notice in writing to the Director General of the proposal and its plans in relation to the cessation of such services. Such cessation shall be effected only with the consent of the Director General and with any conditions imposed by the Director General.
- 11.2 At any time within three years before the expiry of the License or if the Director General receives a notice under Condition 11.1. or if the Director General suspends or revokes the license, the Director General may after consultation with the Licensee direct it in writing to take such steps as are specified in the direction, being steps that he or she considers necessary or expedient to ensure the continuation of the provision of Services or any constituent parts thereof, and the Licensee shall comply with any such directions.

PART II: PUBLIC SERVICE CONDITIONS

12. UNIVERSAL POSTAL SERVICE

- 12.1 Where so directed the licensee shall provide in the Bailiwick of Guernsey the Universal Service set out in the States Direction issued in accordance with Section 3.1(b) of the Regulation Law, as amended, modified or replaced from time to time. The Licensee shall comply with any direction given from time to time by the Director General in respect of the Universal Service Obligation.
- 12.2 For the purposes of Condition 12.1 the conclusion with Users of individual agreements as to prices, shall not be taken to preclude the provision of a Universal Postal Service.
- 12.3 Until otherwise instructed, the Licensee shall defray the full cost of the Universal Service obligation set out in this Condition 12.

13. SERVICES FOR THE BLIND OR PARTIALLY SIGHTED

- 13.1 The Licensee shall comply with directions issued by the Director General as to the terms upon which Postal Services are to be provided to blind or partially sighted persons.

14. DEVELOPMENT OF THE POSTAL FACILITIES AND SERVICES

- 14.1 The Licensee shall develop and operate the Postal Facilities so as to progressively achieve standards in line with international best practice during the Term, and in particular, the Licensee shall achieve and comply with such international standards and benchmarks as the Director General may direct from time to time.
- 14.2 Within three months of the Licence Commencement Date, the Licensee shall submit to the Director General a plan setting out the target levels it will achieve in accordance with

Condition 14.1 for Postal Services together with specific quality of service information requested by the Director General (to be known as the “**Postal Development Plan**”) and a service monitoring plan (to be known as the “**Postal Monitoring Plan**”) which provides for accurate measurement of each of the target levels set out in the Postal Development Plan, together the ‘Plans’.

14.3 The Plans will describe:

- (i) how actual performance of scheduled services and standards will be monitored;
- (ii) the process for the collection and analysis of suitable data; and
- (iii) the procedures for internal review and performance improvement planning by the Licensee.

14.4 The Director General may direct the Licensee to update and resubmit the Plans from time to time.

14.5 The Director General may direct the Licensee as to the minimum areas to be covered by the Postal Development Plan and may amend or replace such direction from time to time.

14.6 The Director General may include as a condition in this Licence the targets specified by the Licensee in the Development Plan and the Licensee shall be deemed to be in breach of its Licence if the target levels are not achieved.

14.7 Within thirty days of the end of each six month period during the Term, the Licensee shall provide the Director General with a written report in a form required by the Director General on its achievements under the Plans during the preceding six month period as set out in Condition 14.2.

14.8 The Licensee shall comply with any directions issued by the Director General from time to time, regarding any quality of service indicators and measurement methods for Postal Services and shall, as and when required, supply to the Director General in a form specified by her, the results of its measurements of actual performance against any quality of service indicators and measurements so specified and the Director General may publish or require publication of such information as she considers appropriate.

15. CONSUMER PROTECTION

15.1 The Licensee shall, in the manner and at the times specified by the Director General, publish the standard terms and conditions, including tariffs, under which it provides each category of Licensed Services to Users. In the absence of any other direction from the Director General, the Licensee shall ensure that a statement of all applicable terms and conditions is:

- (a) filed with the Director General; and
- (b) promptly made available for inspection at the request of any member of the public or promptly sent to them by post.

- 15.2 The Director General may direct the licensee to change its standard terms and conditions from time to time.
- 15.3 The Licensee shall within three months of the Licence Commencement Date publish an appropriate code of practice (“consumer code”) for the resolution of User disputes. The Director General may from time to time issue directions to the Licensee specifying any modifications or additions that she considers should be made to the consumer code.
- 15.4 The consumer code shall;
- (a) be a transparent, simple, inexpensive procedure for handling complaints; and
 - (b) cover complaints involving loss, theft, damage and non-compliance with scheduled services and standards as provided for in Condition 12.
- 15.5 The consumer code shall address at least the following:
- (a) appointment of a person to be the first point of contact for members of the public;
 - (b) a means of recording complaints;
 - (c) procedure and time frame for responding to complaints;
 - (d) retention of records of complaint; and
 - (e) any compensation that the Licensee may offer where complaints have been upheld or not satisfactorily resolved.

If a complaint remains unresolved for at least 3 months, either party may refer it to the Director General for determination.

- 15.6 The consumer code may be amended by the Licensee from time to time, provided that the Licensee shall notify the Director General and publish the proposed changes 28 days in advance of their coming into effect. The Director General may issue directions to the Licensee as to the changes, including but not limited to directions not to make the changes, directions to amend the changes further or directions as to the timing of the changes.
- 15.7 The Licensee shall comply with directions issued by the Director General in respect of the consumer code.
- 15.8 The Licensee shall participate in good faith in any dispute resolution procedure established by the Director General for the resolution of disputes.
- 15.9 The Licensee shall at the end of every six months or such other intervals as the Director General directs, submit a written report to the Director General on the application of the consumer code showing:
- (a) the extent to which the Licensee has succeeded in meeting the targets set out in the complaint procedure;

- (b) the compensation that has been paid to Users of Postal Services in relation to complaints that were found to be valid, and why complaints were dismissed; and
 - (c) such other matters that the Director General directs should be included in the report.
- 15.10 The Licensee shall safeguard the privacy and confidentiality of all Postal Packets carried using the Postal Facilities and shall comply with all applicable laws from time to time regarding the protection of personal data and shall comply with any directions issued by the Director General for the purposes of protecting the interests of its Users, having regard to relevant laws in force from time to time.
- 15.11 The Licensee shall ensure the accuracy and reliability of any systems, equipment, data or procedures which the Licensee uses to measure or to track the provision of Licensed Services or for the calculation of related charges.
- 15.12 The Director General may require the Licensee to set up at its expense a User Council or Councils for the specific purpose of obtaining and representing the views of customers.

16. PROTECTING THE INTEGRITY OF THE MAIL

- 16.1 Within three months of the Licence Commencement Date, the Licensee shall submit to the Director General in writing mail protection procedures which shall include:
 - (a) measures for minimising the exposure of Postal Packets conveyed by the Licensee to the risk of theft, loss, damage or interference; and
 - (b) ways of improving the performance of the Licensee in relation to the matters referred to at paragraph (a) above.
- 16.2 The Licensee shall comply with directions issued by the Director General in respect of the mail protection procedures in Condition 16.1.

17. INTERNATIONAL OBLIGATIONS

- 17.1 The Licensee shall comply with international obligations of the Bailiwick as the Director General shall direct in accordance with States' Directions, including the rules and regulations of the Universal Postal Union.

PART III : CONDITIONS APPLYING TO DOMINANT OPERATORS

18. REGULATED PRICES FOR SERVICES

- 18.1 Where the Director General has decided, in accordance with Section 5 of the Postal Law, that a licensee has a dominant position in a relevant market, she may determine that the provisions of this Part III apply.

- 18.2 Where the Licensee intends to introduce:
- (a) new prices for any Licensed Services, or prices for new Licensed Services to be introduced;
 - (b) any discounts to published prices for Licensed Services or for any Users to whom additional services or goods are provided by the Licensee or any of its Associated Companies; or
 - (c) special offers to all or any of its Users for particular categories of Licensed Services,

it shall submit to the Director General and publish the same in a manner that will ensure reasonable publicity for them.

- 18.3 The Director General may determine the maximum level of charges the Licensee may apply for Licensed Services within a Relevant Market in which the Licensee has been found to be dominant. A determination may;
- (a) provide for the overall limit to apply to such Licensed Services or categories of Licensed Services or any combination of Licensed Services;
 - (b) restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or
 - (c) provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.

18.4 All published prices, discount schemes and special offers of, or introduced by, the Licensee for Licensed Services shall be transparent and non-discriminatory; all discount schemes shall be cost-justified and all special offers shall be objectively justifiable.

18.5 If the Director General, after consulting the Licensee and such other persons as she may determine, is satisfied that any published price, discount scheme or special offer is in breach of any part of this Condition 18, the Director General may, by issuing a direction, require the Licensee to bring the relevant prices, discount schemes or special offers into conformity with this Licence.

19. SEPARATION OF ACCOUNTS

Within six months of the Licence Commencement Date, the Licensee shall prepare and maintain accounting records in a form that enables the activities specified in any direction given by the Director General to be separately identifiable, and which the Director General considers to be sufficient to show and explain the transactions of each of those activities. The Director General may provide direction as to the basis and timing of such reports as the Director General may require.

20. CROSS SUBSIDISATION

20.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Postal Facilities or Services.

- 20.2 To enable the Director General to evaluate where any unfair cross-subsidisation or unfair subsidisation is taking place, the Licensee shall record at full cost in its accounting records any material transfer of assets, funds, rights or liabilities between a part and any other part of its business, and between it and any Associated Company, and shall comply with any directions issued by the Director General for this purpose.

21. UNDUE PREFERENCE AND UNFAIR DISCRIMINATION

The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User or Other Licensee regarding the provision of any Licensed Services. The Licensee will be deemed in breach of this Condition 21 if it favours any business carried on by the Licensee or an Associated Company or Other Licensee so as to place Other Licensees competing with that business at an unfair disadvantage.

22. ACCESS TO THE LICENSEE'S POSTAL FACILITIES

- 22.1 If any person who is a Postal Operator seeks access to the Licensee's Postal Facilities the Licensee shall negotiate with that person in good faith with a view to agreeing with him terms for such access.

- 22.2 If negotiations conducted pursuant to Condition 22.1 fail to lead to agreement between the Licensee and any person seeking access to the Licensee's Postal Facilities pursuant to that paragraph and if the Director General on the application of such a person:

- (a) has given the Licensee not less than 28 days' notice in writing that it proposes to make a determination to allow that person to have access to the Licensee's Postal Facilities on such terms as may be specified in the notice, and
- (b) has given to the Licensee the opportunity in that period of not less than 28 days to make representations to it in relation to its proposal to make such a determination, and
- (c) after considering such representations requires the Licensee by a direction to allow that person to have access to the Licensee's Postal Facilities on reasonable terms,

then the Licensee shall allow such access on such terms.

PART IV : FAIR COMPETITION

23. FAIR COMPETITION

23.1 Subject only to the Licensee's exclusive rights during the Term as described in Condition 2.1, the Licensee shall:

- (a) not engage in any practice or enter into any arrangement that has the object or the likely effect of preventing, restricting or distorting competition in the provision of Postal Services in the licensed area; and
- (b) comply with any direction issued by the Director General for the purpose of preventing any practice or arrangement that has the object or effect of preventing, restricting or distorting competition in the provision of Postal Services in the licensed area.

24. MISUSE OF DATA

The Licensee shall not make use of data of any nature which become available to it directly or indirectly as a result of providing the Licensed Services, in any way which, in the reasonable opinion of the Director General, would unduly prefer the interests of any business carried on by the Licensee or an Associated Company of the Licensee, or place Other Licensed Operators at an unfair disadvantage.