



Appendix 1

Draft Postal Services Licence Conditions

Class 1 – Postal Operator’s Licence

**Consultation Document
2004/6
December 2004**

JERSEY COMPETITION REGULATORY AUTHORITY

Licence issued to

[]

under

THE POSTAL SERVICES (JERSEY) LAW 2004

Article 15

The JCRA, in exercise of the powers conferred on it by the Postal Services (Jersey) Law, 2004, 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 JCRA and all applicable laws, rules, regulations, ordinances and orders of the States of Jersey.

DATED

SIGNED

DRAFT

CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1 A word or expression that is used in the Licence or the Conditions and is also used in the Postal Services (Jersey) Law 2004 (the “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:

“**Access Point**” means any box, receptacle or other facility provided by a universal service provider for the purpose of receiving postal packets, or any class of postal packets, for onwards transmission in connection with the provision of a universal postal service;

“**Associated Company**”: means a company that is an 'Associated Company' of the Licensee where one of the two has control of the other, or both are under the control of the same person or persons;

“**Change of Control**” has the meaning given in Condition 2.5;

“**Christmas Period**” means the month of December;

“**Conditions**” has the meaning given in Part II of the Licence;

“**Delivery Point**” means a private household address or a business address located in the Bailiwick of Jersey, or any other facility or receptacle which the Licensee confirms to be suitable for the acceptance of Mail;

“**Direction**”: means a written statement issued by the JCRA with which a Licensee must comply;

“**Force Majeure**” means any cause affecting the performance by the Licensee of its obligation hereunder arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) governmental or States' acts or regulations, fire, flood, inclement weather, terrorism or any disaster or an industrial dispute affecting the provision of Postal Service. Any act, event, omission, happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its officers, contractors, sub-contractors, agents, servants or employees;

“**Information**” includes – (a) Information recorded in any form; and
(b) forecasts and estimates;

“**JCRA**” means the Jersey Competition Regulatory Authority;

“**Licensed Services**” means Postal Services authorised by this Licence;

“**Licence Commencement Date**” means the date on which this Licence is signed by the JCRA;

“**Licence Fee**” means the fee prescribed by the JCRA under Article 18 of the Postal Law and calculated in accordance with Schedule 2 and payable by the Licensee;

“Licensed Operators” means any person who, for the time being, has the benefit of a Licence granted under the Postal Services (Jersey) Law 2004;

“Licensee” means Licensed Operator holding the licence;

“Other Licensed Operator”: means any person who, other than the Licensee, for the time being, has the benefit of a Licence granted under the Postal Services (Jersey) Law 2004;

“Parcel” means an item of Mail which is defined as a Parcel within the relevant Postal Scheme;

“Postal Law” means Postal Services (Jersey) Law 2004;

“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 Postal Services;

“Term” means subject to Condition 10, a period of ten (10) years from the Licence Commencement Date;

“User” means a person, organization or other entity that is a consumer of Postal Services;

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, order 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 For the avoidance of doubt, this Licence shall be non-exclusive.

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 but the Licensee may provide Licensed Services through its employees, agents and sub-contractors; or
- (b) sell or pledge any of its assets which are necessary to provide the Licensed Postal Service 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 JCRA, such consent not to be unreasonably withheld.

Condition 2.1 does not apply to:

- (i) a mortgage or other transaction entered into for the purpose of securing borrowings of the Licensee or a Subsidiary, fellow Subsidiary, Associated Company or joint venture of the Licensee, being borrowings for the purpose of the Licensed 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 Subject to Condition 8 the Licensee shall notify the JCRA 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 including any change to the Licensed Services which may detrimentally affect the permanence, availability or quality of the Licensed Services or the fulfilment of the Universal Service Obligation;
- (b) any insolvency-related event in respect of the Licensee or Subsidiary, fellow Subsidiary, Associated Company or joint venture 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 The Licensee shall notify the JCRA:

- (a) of any proposed Change of Control of the Licensee prior to the acceptance by the Licensee or its shareholder of any such proposal; 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 of Change of Control the JCRA may:

- (a) approve, in writing, the change or the proposed change; or
- (b) disapprove, in writing, the change or the proposed change, giving reasons; or
- (c) approve the proposed change or the change subject to the Licensee accepting a modification of the Licence under Article 19 of the Law

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

In taking action under this section, the JCRA may have regard to whether or not the JCRA 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 exercise(s) or control(s) the exercise of fifty (50) 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 is 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 he is or they are able to appoint or remove a majority of the governing body of the Licensee; or
- (c) he or they exercise(s) or control(s) the exercise of fifty (50) 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 JCRA, in relation to itself and any Subsidiary, fellow Subsidiary, Associated Company or joint venture of the Licensee:

- (a) a copy of its annual return, as required by Article 71 Companies (Jersey) Law 1991, on the same date on which it is required to be filed in accordance the Bailiwick of Jersey Law; and
- (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 of Jersey, any returns, reports, accounts or other information under the laws of any applicable jurisdiction which are, in the opinion of the JCRA, analogous or

equivalent to the above, at such times and in such forms as the JCRA directs from time to time.

- 2.8 The Licensee shall comply with any other requirement in law 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 the 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 running (including establishment, maintenance and operation) of the Licensed Services shall be conducted from the Bailiwick of Jersey; and
 - (b) its dealings with its shareholders, Subsidiaries, fellow Subsidiaries, Associated Companies or joint ventures are conducted in a manner which the JCRA is satisfied is on a normal commercial basis and at arm's length, and this may be audited by the JCRA, having given due notice.
- 2.10 The Licensee is hereby designated as a Public Postal Operator.

3. LICENCE FEE

- 3.1 The Licensee shall pay the Licence Fee in the manner and on the date specified in Schedule 2.
- 3.2 Without prejudice to any other remedies of the JCRA under this Licence or the Law, if the Licensee fails to pay any amount due to the JCRA 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 four percentage points above the published base rate of the Bank of England and is recoverable as a debt under the Law.

4. PROVISION OF INFORMATION

- 4.1 For the purpose of monitoring the Licensee's compliance with the Conditions and the Law, the Licensee shall provide to the JCRA in the manner and at the times required by the JCRA, any documents, accounts, returns, estimates, reports or other Information (whether financial, operational, technical or otherwise) including but not limited to the documents, accounts, returns, estimates, reports and other Information specified in this Licence.
- 4.2 The JCRA 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 Law, and the Licensee shall provide any assistance requested by the JCRA in relation to any such examination, investigation or audit. The JCRA may issue Directions with regard to the manner in which such an examination, investigation or audit is carried out, including the creation of financial and/or technical specifications or documentation.

- 4.3 In particular, the JCRA 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 Licensed Services to ensure compliance with the Conditions. The Licensee shall allow the JCRA's authorised representative to attend at, enter and inspect any premises under the Licensee's control, and to take copies of any documents and to acquire any Information in the control of the Licensee, 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

- 5.1 In addition to the Conditions, the Licensee shall comply with:
- (a) any obligation imposed on it by the Law or by any law, regulation, rule, ordinance or order of the States of Jersey; and
 - (b) any Direction duly issued by the JCRA under the Law, under any other law, regulation, rule, ordinance or order of the States of Jersey or under this Licence.

6. MODIFICATION

- 6.1 The JCRA may from time to time modify, delete or add to any Condition in this Licence. Any modification, deletion or addition to the Conditions shall be made in accordance with Article 19 of the Law and any other requirements under any applicable Law.

7. ENFORCEMENT AND REVOCATION

The JCRA may take any action to enforce any Condition of this Licence in accordance with Article 20 of the Law.

The JCRA may also at any time revoke this Licence in accordance with the provisions and procedures set out in Article 21 of the Law.

8. EXCEPTIONS AND LIMITATIONS ON THE LICENSEE'S OBLIGATIONS

If the Licensee is prevented from performing any of its obligations under this Licence because of Force Majeure:

- (a) the Licensee shall notify the JCRA of those obligations it is prevented from performing and the reason why as soon as reasonably practicable; and
- (b) the JCRA may suspend those obligations 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.

9. MATTERS OF INTEREST TO JERSEY

- 9.1 The Licensee shall, in connection with its establishment, operation and maintenance of the Postal Facilities and provision of the Licensed Services take reasonable steps to prevent any from being used in, or in relation to, the commission of offences against the laws of the Bailiwick of Jersey.
- 9.2 The Licensee shall establish and maintain the capability to intercept Mail transmitted using the Postal Facilities and to provide Information regarding the use of Licensed Services, in order to be able to meet the requirements of the Laws of the Bailiwick of Jersey.

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 JCRA, for the Term.

11. 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 JCRA, would unduly prefer the interests of any business carried on by the Licensee or a Subsidiary, fellow Subsidiary, Associated Company or joint venture of the Licensee or place Other Licensed Postal Operators at an unfair disadvantage.

12. PROTECTING THE INTEGRITY OF THE MAIL

- 12.1 Within three (3) months of the Licence Commencement Date, the Licensee shall submit to the JCRA in writing Mail protection procedures which shall include:
- (a) measures for minimising the exposure of Mail 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.
- 12.2 The Licensee shall comply with Directions issued by the JCRA in respect of Mail protection and procedures in Condition 12.1.

PART II: PUBLIC SERVICE CONDITIONS

13. CONSUMER PROTECTION

- 13.1 The Licensee shall, in the manner and at the times specified by the JCRA, publish the Postal Schemes, including tariffs under which it provides each category of Postal Services to the Users. In the absence of any other Direction from the JCRA, the Licensee shall ensure that all current Postal Schemes are:
- (a) filed with the JCRA; and
 - (b) promptly made available for inspection at the request of any member of the public or promptly sent to them by post and/or electronic means on request.
- 13.2 The JCRA may direct the Licensee to change the Licensee's standard conditions from time to time where any condition thereof is contrary to the Licence, the Law or any other law, regulation, rule, ordinance or order of the States of Jersey.
- 13.3 The Licensee shall safeguard the privacy and confidentiality of all Mail 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 JCRA for the purposes of protecting the interests of its Users, having regard to relevant laws in force from time to time.
- 13.8 The Licensee shall participate in good faith in any dispute resolution procedure established by the JCRA, following consultation with the Licensee, for the resolution of disputes.

**PART III: GENERAL CONDITIONS RELATING TO THE PROVISION OF
POSTAL SERVICES**

14. INTERNATIONAL OBLIGATIONS

The Licensee shall comply with international obligations of the Bailiwick of Jersey as the JCRA shall direct in accordance with States' directions, including the rules and regulations of the Universal Postal Union.

15. CESSATION OF THE PROVISION OF THE LICENSED SERVICES

15.1 If the Licensee proposes to cease to provide all or a material part of the Licensed Services or to fulfil the Universal Service Obligation it shall give not less than four months notice in writing to the JCRA of the proposal and its plans in relation to the cessation, unless the Licensee has previously given notice to the JCRA under Condition 2.2, in which case the Licensee shall give as much notice as reasonably possible. Such cessation shall be effected only with the consent of the JCRA and in accordance with any Directions given by the JCRA in relation thereto.

15.2 At any time within four months before the expiry of the Licence or if the JCRA receives a notice under Condition 20.1 or if the JCRA has made a decision pursuant to Article 21 of the Law to suspend or revoke the Licence, the JCRA may, after consultation with the Licensee, direct it in writing to take such steps as the JCRA considers necessary or expedient to ensure the safety of the Licensed Services or the continuity and continuation of the fulfilment of the Universal Service Obligation or any constituent parts thereof, and the Licensee shall comply with any such Directions.

16. UNDUE PREFERENCE AND UNFAIR DISCRIMINATION

16.1 The Licensee shall not show undue preference to, or exercise unfair discrimination against, any User or Other Licensed Postal Operator regarding the provision of Postal Services. The Licensee will be deemed to be in breach of this Condition if it favours any business carried on by the Licensee or a Subsidiary, fellow Subsidiary, Associated Company or joint venture or Other Licensed Operator so as to place Other Licensed Postal Operators competing with that business at an unfair disadvantage in relation to any licensed activity.

PART IV: ADDITIONAL CONDITIONS

17. FAIR COMPETITION

- 17.1 The Licensee shall not, where it is in a dominant position, do or omit to do any thing which would be an abuse of that dominant position under Article 16 of the Competition (Jersey) Law 200-.
- 17.2 The Licensee shall:
- (a) not abuse any position of significant market power and/or established position in any Postal Services market;
 - (b) 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 establishment in the provision of Postal Services; and
 - (c) comply with any Direction issued by the JCRA for the purpose of preventing any market abuse or 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.

18 CROSS SUBSIDISATION

- 18.1 The Licensee shall not unfairly cross subsidise or unfairly subsidise the establishment, operation or maintenance of any Postal Facilities or Postal Services.
- 18.2 To enable the JCRA 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, costs, rights or liabilities between a part and any other part of its business, and between it and any Subsidiary, fellow Subsidiary, Associated Company or joint venture, and shall comply with any Directions issued by the JCRA for this purpose.

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