

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

COMPETITIVE PRODUCT PRICES  
GLOBAL DIRECT CONTRACTS (MC2009-9)  
NEGOTIATED SERVICES AGREEMENT

Docket No.  
CP2009-29

**NOTICE OF UNITED STATES POSTAL SERVICE FILING OF FUNCTIONALLY  
EQUIVALENT GLOBAL DIRECT CONTRACTS NEGOTIATED SERVICE  
AGREEMENT**  
(May 1, 2009)

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

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

<sup>2</sup> A redacted copy of this decision was filed as an Attachment to Request of the United States Postal Service to Add Global Plus 2 Negotiated Service Agreements to the Competitive Product List, and Notice of Filing (Under Seal) of Two Functionally Equivalent Agreements, Docket Nos. MC2008-7, CP2008-16 and CP2008-17, August 8, 2008, and an unredacted copy of the decision, as well as a record of proceedings, were filed under seal that same date.

Products List.<sup>3</sup> The Postal Service demonstrates below that the instant agreement is functionally equivalent to the previously submitted Global Direct agreements.

Accordingly, this contract should be included within the Global Direct Contracts product.

The contract and supporting documents establishing compliance with 39 U.S.C. § 3633 and 39 C.F.R. § 3015.5 are being filed separately under seal with the Commission, although redacted versions of the contract and the certified statement required by 39 C.F.R. § 3015.5(c)(2) are included with this filing as Attachments 1 and 2, respectively.

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

The Postal Service believes that this additional Global Direct contract fits within the Mail Classification Schedule (MCS) language included as Attachment A-2 to Governors' Decision No. 08-10, with the modification proposed by the Commission to reflect the actual payment practice under these types of agreements.<sup>4</sup> This agreement is set to expire one year after its effective date, of which the Postal Service will advise the customer within thirty days of completing the regulatory review process.

### ***II. Confidentiality***

While the Commission intends to address broader confidentiality issues in the future,<sup>5</sup> the Postal Service maintains that certain portions of the contract, related financial information, names of Global Direct customers, and certain portions of the certified statement required by 39 C.F.R. § 3015.5(c)(2) should remain confidential.

---

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

<sup>4</sup> Order No. 153 at 9. See also Notice of the United States Postal Service of Classification Change, Docket No. MC2009-23, April 20, 2009 (proposing slight modification of MCS language to clarify that Global Direct mail may be sealed or not sealed against inspection, depending on destination country requirements reflected in each contract).

<sup>5</sup> See PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009.

Related financial data and portions of the certified statement contain cost and pricing information showing how prices are developed. Prices and other financial terms in a contract such as this one are highly confidential in the business world, and the Postal Service protects them in accordance with industry standards. Public disclosure would compromise the ability of the Postal Service and individual shippers to negotiate favorable shipping services contracts in the future. Names of customers should remain confidential due to the substantial likelihood that the Postal Service's competitors would use such information to target their efforts and undercut the Postal Service's prices. This information is clearly of a commercial nature, and the Postal Service is aware of no competitor or private company of comparable size and scope that releases such information to the public.

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

The Global Direct contract under consideration is functionally equivalent to the Global Direct contracts filed previously, in that they share similar cost and market characteristics, and they therefore should be classified as a single product.<sup>6</sup> With their Decision, the Governors established a pricing formula and classification that ensure each contract meets the criteria of 39 U.S.C. § 3633 and the regulations promulgated thereunder. Therefore, the costs of each contract conform to a common description. In addition, the Global Direct Contract language contained in the MCS requires that each Global Direct contract must cover its attributable costs. The contract at issue here

---

<sup>6</sup> In Order No. 85, for example, the Commission concluded, that despite different revenue thresholds, the two Global Plus 1 contracts at issue were "functionally equivalent in all pertinent respects." PRC Order No. 85, Order Concerning Global Plus Negotiated Service Agreements, Docket Nos. CP2008-8, CP2008-9 and CP2008-10, June 27, 2008, at 8.

meets the Governors' criteria and thus exhibits similar cost and market characteristics to the previous Global Direct contracts.

In a concrete sense as well, this Global Direct contract shares the same cost and market characteristics as the previous Global Direct contracts. In essence, with Global Direct service, the Postal Service is providing customers with a price for mail acceptance within the United States and transportation to a receiving country of mail that bears the destination country's indicia and meets the preparation requirements for the particular type of mail established by the receiving country. The customers for Global Direct contracts, including this one, are businesses that send mail directly to foreign destinations and desire that their mail bear the indicia of the foreign country for the particular foreign services used. In almost all substantive respects, this Global Direct contract resembles the contract in Docket No. CP2009-11, which covers the same service to the same foreign destination; this service and destination were offered in other Global Direct contracts as well, however.<sup>7</sup> One notable difference from the contract in Docket No. CP2009-11 is that this customer has a volume commitment instead of a postage commitment, but a volume commitment is featured in the functionally equivalent Global Direct contract in Docket No. CP2009-10. Any differences in prices, foreign services offered, foreign destinations, or volume or postage commitments between these or other Global Direct contracts do not alter the contracts' functional equivalence, because the total costs associated with Global Direct contracts are volume-variable and the basic service offered – acceptance within the

---

<sup>7</sup> As the Postal Service indicated previously, however, different services may be provided to other foreign destinations in future Global Direct contracts.

United States and transportation to the destination country of “foreign” mail – is the same.

This contract, like the previous ones, provides for postage adjustments to account for certain currency exchange rate fluctuations and for any changes in the relevant foreign postal administration’s postage or other fees. In addition to the pricing contingencies addressed in previous Global Direct contracts, this contract includes more detailed language about adjusting prices quarterly in response to exchange rate fluctuations. For all its prolixity, this language covers no new ground, but clarifies that such changes are not a matter of Postal Service discretion. The Postal Service expects similar language to be included in future Global Direct contracts.<sup>8</sup> In the Postal Service’s view, this expanded language does not affect the fundamental similarity to prior Global Direct contracts’ cost and market considerations, because it simply adds detail to processes that were included in earlier Global Direct contracts.

The term of this contract is the same as the others – basically a one-year period. All of the contracts have the same postage payment provisions, generally requiring the use of dedicated permits and, for non-identical weight items, special payment systems.

---

<sup>8</sup> In at least one other context, the Commission has indicated that certain contract provisions that “provide the Postal Service with the flexibility to change rates without the need to enter into a new agreement” may remain subject to 39 U.S.C. § 3632(b)(3) and the Commission’s price change rules. PRC Order No. 178, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, Feb. 5, 2009, at 10. Like exchange-rate-based price changes, the contract also provides for certain other price changes that respond automatically in direct proportion to objective, external factors: Canada Post Corporation’s prices, to the degree that they are incorporated within the contract’s prices, and to the degree that they are an external constraint. The formulaic, pre-established nature of such changes essentially removes them from the area of Postal Service discretion. As such, the Postal Service respectfully submits that any periodic price updates under Article 9, Paragraphs 1, 3, and 4 of the contract would not be tantamount to a price change under 39 C.F.R. § 3015.5. Rather, the Postal Service proposes to file such changes with the Commission on a notice-type basis, without the expectation that the filings should lead to further proceedings or review.

This contract's provisions regarding where the mail is to be tendered are consistent with those pertaining to the same service and destination in other Global Direct contracts.<sup>9</sup>

Other changes from previous Global Direct contracts are cosmetic or, at most, minor "clean-up" matters that do not affect the agreement's essential cost or market characteristics. A preservation clause has been included to clarify the parties' rights in the event of termination. The postage payment provision makes explicit that the agreement's specifications should prevail in the event of conflict with general Postal Service regulations. The provisions on penalties assessed by the foreign postal administration have been expanded to specify the process by which any penalties assessed initially to the Postal Service will be relayed to the customer. Provisions relating to export requirements have been updated to include the U.S. Census Bureau and refer more broadly to "Customs and Export Requirements"; the Postal Service expects that future Global Direct contracts will contain similar language. Some contract clauses in these types of contracts may be numbered differently, merely reflecting preparation of the contracts at different times. Because this agreement, as well as the two filed previously, incorporates the same cost attributes and methodology, the relevant characteristics are similar, if not the same, for the Global Direct contracts. The Postal Service does not consider that the specified differences affect either the fundamental service the Postal Service is offering or the fundamental structure of the contracts.

---

<sup>9</sup> Any differences in future Global Direct contracts would not necessarily affect the contracts' functional equivalence. In general, in instances where the Postal Service determines that it might incur higher transportation costs, it includes a specific tender location in the contract. In instances where transportation costs are less of an issue for the Postal Service, the contract includes more general language and the Postal Service works with the customer to determine an appropriate location or locations.

As demonstrated, the cost and market characteristics of this agreement are substantially similar to those of prior Global Direct contracts. Nothing detracts from the conclusion that these agreements are “functionally equivalent in all pertinent respects.”<sup>10</sup>

#### **IV. Conclusion**

For the reasons discussed above, and on the basis of the financial data filed under seal, the Postal Service has established that this new Global Direct contract is in compliance with the requirements of 39 U.S.C. § 3633 and is functionally equivalent to other Global Direct contracts. Accordingly, this contract should be added to the existing Global Direct Contracts product.

Respectfully submitted,

UNITED STATES POSTAL SERVICE  
By its attorneys:

Anthony F. Alverno  
Chief Counsel, Global Business

Jacob Howley

475 L'Enfant Plaza, S.W.  
Washington, D.C. 20260-1137  
(202) 268-8917; Fax -6187  
jacob.d.howley@usps.gov  
May 1, 2009

---

<sup>10</sup> PRC Order No. 85 at 8.

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

[REDACTED]

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

**INTRODUCTION**

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

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

WHEREAS, in light of the aforementioned acknowledgements, the Parties desire to be bound by the terms of this Agreement as well as the terms of Exhibit A of this Agreement entitled: ADDITIONAL AND SUPERSEDING TERMS AND CONDITIONS TO THIS AGREEMENT INCORPORATED BY REFERENCE;

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

**ARTICLE 1. PURPOSE OF THE AGREEMENT**

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

## ARTICLE 2. DEFINITIONS

As used in this Agreement:

1. "IMM" means the *International Mail Manual* as found on the USPS website [USPS.com](http://USPS.com) on the date of mailing.
2. "DMM" means the *Domestic Mail Manual* as found on the USPS website [USPS.com](http://USPS.com) on the date of mailing.
3. "CPC" means Canada Post Corporation.
4. "Lettermail" means mailable items as defined by Canadian law for lettermail, including, but not limited to the Letter Mail Regulations, SOR/88-430, and Letter Definition Regulations, SOR/83-481, as applicable. When in USPS custody, Lettermail is sealed against inspection under U. S. law.
5. "Qualifying Mail" means mail that meets the requirements set forth in Article 3 of this Agreement.
6. "Non-qualifying Mail" means mail that does not meet the requirements set forth in Article 3 of this Agreement.
7. "Effective Date" means the first date on which the USPS is willing to accept Qualifying Mail.

## ARTICLE 3. QUALIFYING MAIL

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

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

## ARTICLE 4. NONQUALIFYING MAIL

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

## ARTICLE 5. OBLIGATIONS OF THE USPS

The USPS hereby agrees:

1. Mailing requirements. To provide the Mailer with pre-mailing consultation on postal regulations as they relate to CPC Lettermail.
2. Supplies. To furnish the Mailer with letter trays and other postal equipment and/or supplies required for the use of Qualifying Mail.

3. Documentation. To prepare appropriate export documentation for dispatch of Qualifying Mail to Canada.
4. International transportation. To arrange for commercial surface transportation for Qualifying Mail from the United States to Canada.
5. Delivery. To coordinate with CPC for delivery of Qualifying Mail to addressees.
6. Payment Method. To facilitate postage payments through the use of permit accounts.
7. CPC Penalties. To provide the Mailer with an invoice for penalties in the event Canada Post Corporation should assess any penalty on mail presented by the Mailer not prepared in accordance with CPC regulations.

## **ARTICLE 6. OBLIGATIONS OF THE MAILER**

The Mailer hereby agrees:

1. Mail Preparation. To tender Qualifying Mail to the USPS in accordance with USPS and CPC requirements for Lettermail.
2. Tender. To tender mailings of Global Direct – Canada Lettermail at a location the USPS designates.
3. Notification.
  - a. To notify the Manager, Global Customized Agreements, via e-mail to [icmusps@usps.gov](mailto:icmusps@usps.gov) of any new permit numbers to be used for Qualifying Mail at least one (1) week in advance of using the new permit numbers. The message should include the permit number, the city, state, and ZIP Code where the permit is held, the name of the permit owner, and the requested effective date.
  - b. To provide the USPS acceptance site(s) with notice of intent to mail and to adhere to the acceptance times and scheduling procedures in place at the appropriate acceptance site(s).
4. Postage. To pay postage for Qualifying Mail through according to the price chart in Annex 1. The prices listed in Annex 1 are contingent upon any and all necessary approvals for corresponding USPS prices by the USPS Governors, the USPS Board of Governors, and/or the United States Postal Regulatory Commission.
5. Penalty. To pay any penalty CPC may assess for mail not prepared in accordance with CPC regulations.
  - a. Canada Post Corporation will inform the USPS of any penalty assessed on Qualifying Mail the Mailer presents that is not prepared in accordance with CPC regulations.
  - b. The USPS will invoice the Mailer for these assessed penalties.
  - c. The Mailer shall pay to the USPS the amount of the assessed penalties within thirty (30) days of the date of the invoice. All invoices that are not paid within thirty (30) days will incur an annual late payment penalty

(finance charge) of [REDACTED]. Any invoicing discrepancies will be resolved subsequent to payment of the invoice. In addition to late payment penalties (finance charges), the USPS reserves the right to pursue other available remedies.

6. Payment of Postage. To pay postage, either directly or through a mailing agent, for all Qualifying Mail with a dedicated unique permit imprint to be used only for Qualifying Mail, subject to the general conditions stated in DMM 604 with the exception that the indicia must conform to the requirements in Annex 2. For non-identical weight items, mailings are acceptable as authorized under the specific procedures in one of the special payment programs in DMM 705.
7. Customs and Export Documentation. To provide any necessary documentation, including data provided in electronic format, in connection with each mailing, in the form and at the time specified by the USPS, Customs & Border Protection, Transportation Security Administration, the U.S. Census Bureau, the government of Canada, or other authority. The Mailer further understands that the failure to provide any such required documentation may result in refusal at acceptance, delay in processing, involuntary seizure by customs authorities, and/or return of mail to the sender.
8. Customs and Export Requirements. To comply with any regulation or order promulgated by the USPS, Customs & Border Protection, the Transportation Security Administration, the U.S. Census Bureau, the government of Canada, or other governmental unit with jurisdiction over mail, to facilitate the Customs processing of its mail, according to any requirements specified by those authorities.

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

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

## **ARTICLE 8. MINIMUM COMMITMENT**

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

## ARTICLE 9. POSTAGE UPDATES

1. The prices in Annex 1 are based in part on the exchange rate between the United States Dollar and the Canadian Dollar reported on March 10, 2009, on the following URL on the International Monetary fund website:  
[http://www.imf.org/external/np/fin/data/rms\\_mth.aspx?reportType=REP](http://www.imf.org/external/np/fin/data/rms_mth.aspx?reportType=REP).  
The USPS will continue to use this website or any successor website the International Monetary Fund may establish.
  - a. The USPS Postal Fiscal Year quarters begin on October 1, January 1, April 1, and July 1.
  - b. The USPS will review the foreign exchange rate of the Canadian Dollar as measured in United States Dollars (“Exchange Rate”) reported on the International Monetary Fund website [REDACTED]
  - c. Should the Exchange Rate change [REDACTED], the USPS will adjust the prices in the then-current Annex 1 [REDACTED]
  - d. [REDACTED]
2. In the event that the costs the USPS incurs to provide the service in this Agreement increase [REDACTED] during the term of this Agreement, the USPS reserves the right to adjust the prices in Annex 1 during the term of this Agreement.
3. The prices for Global Direct – Canada Lettermail listed in Annex 1 are based on Canada Post Corporation prices. The USPS will adjust the prices in Annex 1 if Canada Post Corporation changes its prices for domestic Canadian Lettermail during the term of this Agreement.
4. Notwithstanding the provisions of Paragraph 1 above, if the Exchange Rate [REDACTED] results in the then-current prices, denominated in United States Dollars, in Annex 1 of this Agreement falling below the Canada Post Corporation prices for domestic Canadian Lettermail as expressed in United States Dollars, the USPS will adjust the prices as necessary to avoid such a result.

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

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

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

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

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

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

1. The USPS will notify the Mailer of the Effective Date of the Agreement within thirty (30) days after receiving the approval of the entities that have oversight responsibilities for the USPS. The Agreement will remain in effect for one year from the Effective Date. The Agreement may be terminated sooner pursuant to Article 13.

2. The USPS shall have no obligation to notify the Mailer of the status of the approval process or of potential fulfillment of the approval process.

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

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

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

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

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

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

### **ARTICLE 16. CUSTOMS DUTIES AND TAXES**

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

## **ARTICLE 17. LIMITATION OF LIABILITY**

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

## **ARTICLE 18. NO WAIVER**

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

## **ARTICLE 19. ASSIGNMENT**

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

## **ARTICLE 20. INDEMNITY**

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

## **ARTICLE 21. 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 22. EFFECT OF PARTIAL INVALIDITY**

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

### **ARTICLE 23. NUMBER AND GENDER**

The use of any particular gender or the plural or singular number in this Agreement is intended to include the other gender or number as the text may require.

### **ARTICLE 24. PARAGRAPH HEADINGS**

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

### **ARTICLE 25. MAILABILITY AND IMPORTABILITY**

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

### **ARTICLE 26. PRESERVATION AFTER TERMINATION**

Termination of this Agreement shall be without prejudice to any rights, obligations, and liabilities of the Mailer accrued up to and including the effective date of such termination. In the event of termination of the Agreement, the Mailer shall be liable to make final settlement of all amounts owing as of the effective date of termination within thirty (30) days of written notice by the Postal Service of any deficiency or liability under this Agreement.

### **ARTICLE 27. COUNTERPARTS**

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

**ARTICLE 28. NOTICES**

All notices or demands required by this Agreement shall be sufficient if delivered personally or mailed, by Express Mail, to the following:

**To the United States Postal Service:**

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

To

[REDACTED]

[REDACTED]



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

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

Signature: Frank A. Cebello  
Name: Frank A. Cebello  
Title: Executive Director, Global Business Management  
Date: 4/27/09

**ON BEHALF OF** [REDACTED]

Signature: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]  
Date: 4-22-09

EXHIBIT A      ADDITIONAL AND SUPERSEDING TERMS AND CONDITIONS

ANNEX 1      PRICES FOR GLOBAL DIRECT – CANADA LETTERMAIL

ANNEX 2      PREPARATION REQUIREMENTS GLOBAL DIRECT – CANADA  
LETTERMAIL

**EXHIBIT A**  
**ADDITIONAL AND SUPERSEDING TERMS AND CONDITIONS**

The Parties acknowledge that the following terms and conditions shall apply to this Agreement. Any terms contained in this Exhibit A shall be controlling and supersede any terms found within the Agreement.

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

---

Initials United States Postal Service



Initials

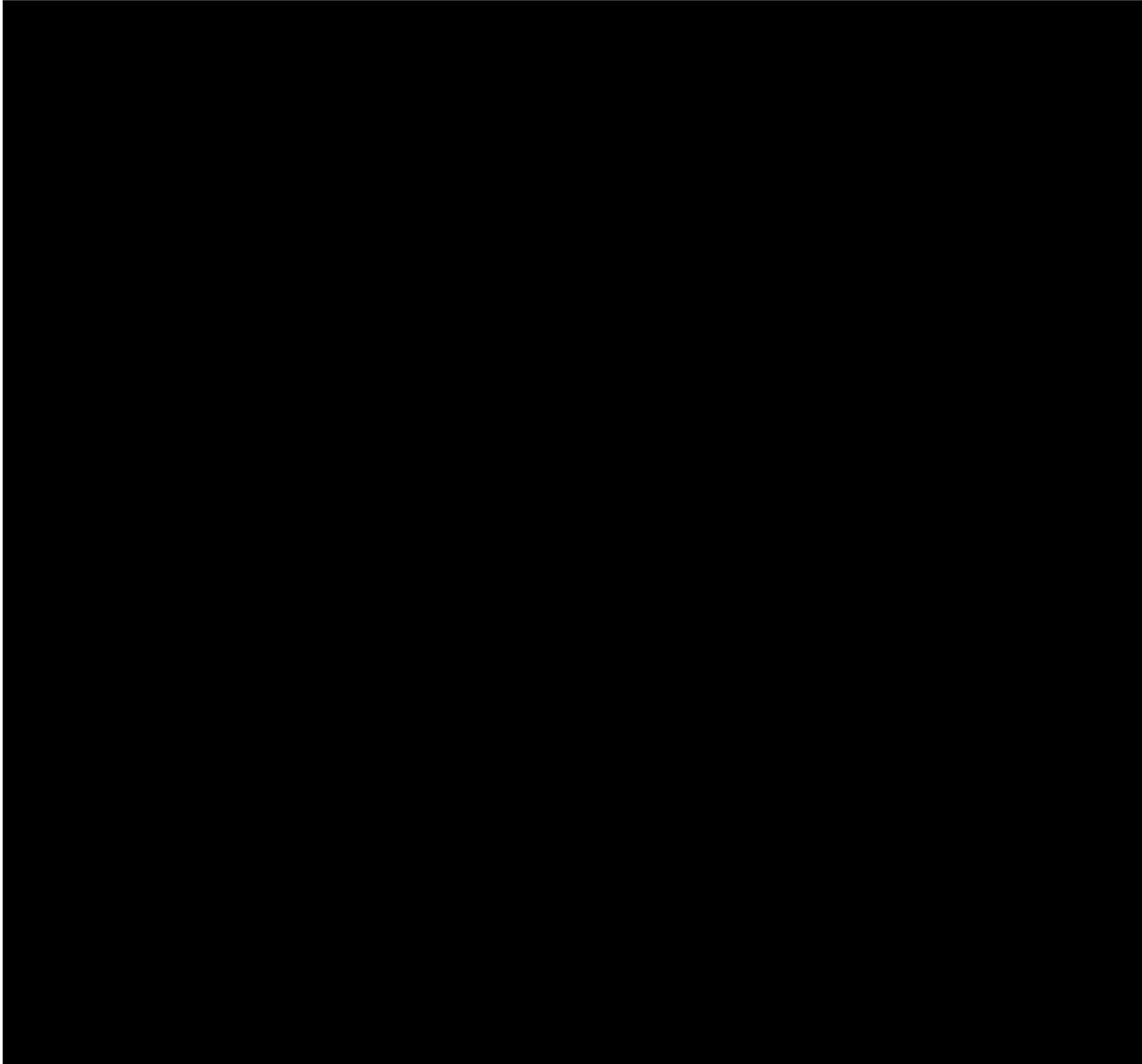
[REDACTED]

[REDACTED]

4-23-09

**ANNEX 1**  
**PRICES FOR**  
**GLOBAL DIRECT – CANADA LETTERMAIL**

**Global Direct – Canada Lettermail**



## ANNEX 2

### PREPARATION REQUIREMENTS GLOBAL DIRECT – CANADA LETTERMAIL

#### GLOBAL DIRECT – CANADA LETTERMAIL

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

#### ADDRESSING

##### Mailing Address:

The address of the addressee must be complete and include:

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

##### Return Address:

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

#### POSTAL INDICIA AND OTHER MARKINGS

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

The Canada Post indicia shall be located:

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

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

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

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

## SEALING

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

## MAIL PREPARATION

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

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

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

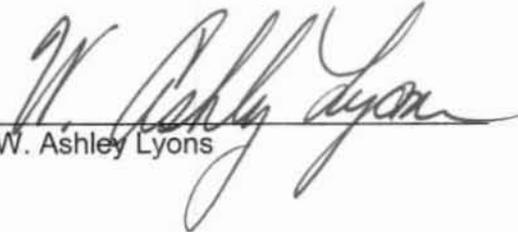
## PRESENTATION OF MAILING

Each mailing must be accompanied by a completed PS Form 3700, *Postage Statement – international Mail*, Part I Global Direct, Line I1 Canada Letter Mail.

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

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

I hereby certify that the numerical [REDACTED] values underlying the prices in the [REDACTED] Contract are the appropriate [REDACTED] to use in the formulas and represent the best available information. The prices, resulting in a cost coverage of [REDACTED] percent for the applicable 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 2008, all international competitive mail accounted for approximately [REDACTED] percent of the total contribution by all competitive products. Contribution from Global Direct Contracts should be much smaller. The Agreement with [REDACTED] [REDACTED] should not impair the ability of competitive products on the whole to cover an appropriate share of institutional costs.

  
W. Ashley Lyons