



# Office of Utility Regulation

## Licensing of Postal Operators

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### Consultation Paper

**Document No: OUR 10/04**

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**Office of Utility Regulation**  
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# 1. Introduction and scope of this consultation

Currently the Guernsey postal market is regulated pursuant to and in accordance with the Post Office (Bailiwick of Guernsey) Law 2001 (“**Postal Law**”). In particular the Postal Law sets out the postal activities in respect of which a licence is required and those which may lawfully be carried out without a licence. At present, under the Postal Law, only postal services which are within the “Reserved Area” (explained in more detail later in this consultation paper) require a licence.

In the context of a proposed change to the scope of the “Reserved Area”, the issue of the regulation of new postal operators, and how competition in the postal market might be managed, was raised by respondents to the Draft Decision document ‘Guernsey Post’s Proposed Tariff Changes’ (OUR 09/20). In the final decision (OUR 09/21) the Director General (“**DG**”) indicated he would consult separately on this matter.

Since 2001 there has been limited competition in the postal market. This has mainly come from courier companies delivering parcels or documents from outside the Bailiwick or service providers collecting PO Box mail for delivery to businesses. However for what might be referred to as normal post (i.e. non-premium priced), Guernsey Post has retained a legal monopoly on a significant proportion of mail services. This legal monopoly derives from the ‘Reserved Area’ as only Guernsey Post may provide postal services which are within the scope of the ‘Reserved Area’ (which shall be referred to as the “Reserved Services” in this consultation paper). In December 2009, the DG decided, after consultation, to amend the Reserved Area to allow for some further competition with respect to certain postal services. The Director General’s decision in relation to the Reserved Area has been appealed by Guernsey Post and that appeal continues. However, the question of licensing in the postal markets is a discrete one from the matters under appeal and the Director General has, as he undertook to do, prepared this consultation paper in order that the question of licensing can be opened for public consultation.

Currently, under the Postal Law the provision of postal services which are non-Reserved Services may be provided without a licence. In effect, only Guernsey Post, as the exclusive provider of postal services in the Reserved Area, is legally obliged to hold a licence. A licence was granted to Guernsey Post in 2001 on the direction of the States of Guernsey. The DG also set a Reserved Area in 2001, in compliance with a separate States’ direction.

The challenge with the current licensing provisions in the Postal Law is that, while they provide for the regulation of operators in the Reserved Area (i.e. Guernsey Post), it is not possible to mandate that operators providing services outside the Reserved Area can be licensed. Given that Guernsey Post is required to hold a licence which regulates both Reserved Area and non-Reserved Area services, to the extent that the market for postal services is opened up to competition (even partially) the current licensing regime could result in asymmetric regulation of postal service providers, which has the potential to be unfair to Guernsey Post as the only licence holder at present.

The DG believes there is merit in considering amending this situation. However, an amendment to the Postal Law will be required if the DG is to have the power to licence providers of non-Reserved Area services. The Commerce & Employment Department will ultimately be responsible for bringing any proposed changes to the Postal Law before the States of Deliberation. In advance of any such proposals being made however, the

DG is seeking the views of interested parties on an amended licensing regime for postal services in Guernsey.

The purpose of this document is to consult on the nature and form of any licensing regime for non-Reserved Area services that may be put in place should the States of Guernsey decide to amend the current Postal Law to extend the licensing regime beyond its current remit. Thereafter, this document addresses the key areas where the DG believes a licensing regime would be of benefit to postal customers in the Guernsey market for postal services. It also considers how exemptions to the need to hold a licence, beyond those already set out in the Postal Law might be considered. The DG would welcome feedback on any of the issues addressed in this consultation.

*This document does not constitute legal, technical or commercial advice; the Director General is not bound by this document and may amend it from time to time. This document is without prejudice to the legal position or the rights and duties of the Director General to regulate the market generally.*

## 2. Structure of this Paper and Process

This consultation document is structured as follows:

- Section 3 describes the legislative and States Directions background;
- Section 4 sets out the rationale for the need for a postal licensing regime;
- Section 5 sets out the type of licence the DG is minded to consider granting to postal operators that may be required to hold a licence;
- Section 6 sets out the next steps in the consultation process.

### 2.1. Procedure and Timetable

Responses to this document should be submitted in writing and should be received by the OUR before 5.00pm on 11<sup>th</sup> June 2010. Written comments should be submitted to:

Office of Utility Regulation,  
Suites B1 & B2,  
Hirzel Court,  
St. Peter Port,  
Guernsey, GY1 2NH

Or by email to [info@regutil.gg](mailto:info@regutil.gg)

All comments should be clearly marked: “Licensing of Alternative Postal Operators.”

In accordance with the OUR’s policy on consultation set out in Document OUR 05/28 – “Regulation in Guernsey; Revised Consultation Procedures Information Paper” - non-confidential responses to the consultation will be made available on the OUR’s website ([www.regutil.gg](http://www.regutil.gg)) and for inspection at the OUR’s Office during normal working hours. Any material that is confidential should be put in a separate annex and clearly marked so that it can be kept confidential. The DG regrets that he is not in a position to respond individually to the responses to this consultation.

## 3. Background

### 3.1. Legislation

Guernsey's regulatory legislation sets out the overarching objectives of the regulatory regime in all of the regulated sectors (telecommunications, post and electricity) and provides for the States of Guernsey to issue certain directions to the DG in each of these sectors. This legislation and the States' Directions set the framework within which the DG regulates the postal sector.

First, the Regulation of Utilities (Bailiwick of Guernsey) Law, 2001 sets out the overarching objectives that the DG must promote when exercising his functions and powers in any of the regulated sectors. To the extent that any of those objectives conflict, the DG must balance those conflicting objectives.

Second, the Postal Law sets out the DG's specific duties and functions in the postal sector. The Postal Law defines postal services as:

“the service consisting of conveying postal packets from one place to another, the incidental services of receiving, collecting and delivering such packets and any other service which relates to such services”<sup>1</sup>

It is an offence to provide any postal services without a licence from the DG<sup>2</sup>, unless the services fall into one of the exempted categories described in the Law<sup>3</sup>. Currently, all postal services that are not designated as reserved postal services may be provided without holding a licence<sup>4</sup>. The Postal Law also provides that a range of other postal activities do not require licensing, ranging from personal private delivery to delivery of court documents and banking instruments<sup>3</sup>

The DG may by Order made pursuant to Section 9(1) of the Postal Law designate what services are to be “reserved postal services”<sup>5</sup>. However the DG may only make such an Order:

- If he considers it is necessary to ensure the provision of the universal postal service in the Bailiwick<sup>6</sup>, or
- If it is necessary to comply with States' Directions<sup>7</sup>.

By States' Directions issued in September 2001 pursuant to section 3(1)(b) of the Regulation Law, the DG was directed to issue a licence to Guernsey Post containing an obligation to provide the universal postal service specified by the States and to award to Guernsey Post the exclusive right to provide postal services in the Bailiwick to the extent that such exclusive right was necessary to ensure the maintenance of the universal postal service. In addition the DG was directed to review and revise the award of exclusive rights from time to time with a view to opening up the Bailiwick

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<sup>1</sup> Section 45 of the Post Office (Bailiwick of Guernsey) Law, 2001

<sup>2</sup> Section 1(1) of the Post Office (Bailiwick of Guernsey) Law, 2001

<sup>3</sup> Section 1(2) of the Post Office (Bailiwick of Guernsey) Law, 2001

<sup>4</sup> Section 1(2)(a) of the Post Office (Bailiwick of Guernsey) Law, 2001

<sup>5</sup> Section 9(1) of the Post Office (Bailiwick of Guernsey) Law, 2001

<sup>6</sup> Section 9(2)(a) of the Post Office (Bailiwick of Guernsey) Law, 2001

<sup>7</sup> Section 9(2)(b) of the Post Office (Bailiwick of Guernsey) Law, 2001

postal services market to competition, provided that any such opening up did not prejudice the continued provision of the universal postal service. A summary of the background to the States' Directions is set out in Appendix 2.

These Directions were designed to provide the DG with a framework similar to that in neighbouring jurisdictions, within which he can manage the twin objectives of:

- ensuring the continued provision of a universal postal service throughout the Bailiwick; and
- facilitating the development of a vibrant postal sector in Guernsey to deliver efficient, high quality and good value services to customers and one that contributes to the overall economic wellbeing of the Bailiwick.

The Reserved Area was first set in October 2001. In setting the 'Reserved Area' the DG considered the information which was available at that time relative to the Guernsey postal market as well as international practice. As a result the DG defined reserved postal services in Guernsey as those services provided for a consideration of less than £1.35. The price limit for the reserved area was arrived at by multiplying the then standard tariff for letters to the UK (which was 27p) by five, along the lines of the EU approach. The use of the standard UK tariff reflects the fact that a significant amount of the Bailiwick's mail is to and from the UK. The DG considered this a prudent level at which to set the price limit at the time of the 2001 Decision.

As a consequence any postal service provided at a cost of £1.35 or above could be provided without a licence.

The DG did not set a weight limit at the time of his decision in 2001, stating then that further consideration would need to be given to the profile of Bailiwick postal services, particularly those services that are provided on the basis of volume rather than weight (e.g. flower boxes).

In the course of 2009 the DG reviewed the Reserved Area and consulted on proposed changes thereto. In December 2009, the DG published his decision to amend the current Reserved Area, pursuant to which all postal packets (as defined under PiP) and any postal service provided for a consideration of £1.00 or above would be outside the Reserved Area.

This decision has been appealed by Guernsey Post and is currently before the Royal Court. However, as indicated above, this consultation exercise relates to the separate and distinct issue of the need for and scope of an alternative approach to the regulation of postal services, in particular the licensing of other postal providers.

## 4. Issues for consultation

### 4.1. *The rationale for licensing new entrants*

The current Postal Law only requires an operator providing Reserved Services to be licensed. Section 1(2)(a) of the Post Office (Bailiwick of Guernsey) Law, 2001, exempts providers of all postal services other than Reserved Area services from requiring a licence. Accordingly the only licensee at present in the Guernsey postal market is Guernsey Post (as the only person entitled to provide Reserved Area services). However, notwithstanding that it is only required to be licensed by virtue of its Reserved Area services, Guernsey Post's activities with respect to non-Reserved Area services are subject to regulation through its licence conditions.

The existing regime can be considered appropriate in a near monopoly market (as is currently the case), however in a more liberalised market there is merit in having a system of regulation which allows for all operators that compete in the postal market to be regulated i.e. for all like entities to be treated alike. By this we mean that where postal operators are providing broadly similar services, it seems appropriate to the DG that all such operators should be regulated in the same way. This approach has worked successfully in the Bailiwick's telecoms market and the DG considers that a broadly similar scheme may create similar benefits in the postal market.

Among the key benefits of a broader licensing regime are:

- If Guernsey Post is subject to conditions relative to its non-Reserved Area services by virtue of its Reserved Area services licence, and no such conditions apply to its competitors in respect of non-Reserved Area services (and insofar as such conditions are not linked to a position of dominance) then Guernsey Post would be subject to asymmetric and potentially discriminatory regulation.
- Given the nature of the services operating outside the Reserved Area provided for in OUR 09/21, the DG considers it appropriate that certain minimum standards are observed by providers of those services.
- This approach would allow the DG to ensure fair competition which will offer a degree of protection to all postal operators, including Guernsey Post, and their customers. Similarly, given the absence of any fair trading legislation in Guernsey, the DG believes there is merit in including conditions to address this matter in a general licence.
- A licensing regime would also enable the DG to require any postal operator providing licensed postal services to contribute to support the provision of the Universal Service Obligation ("USO") in the event that in the future the provision of the USO became an unfair burden on Guernsey Post. This provides Guernsey Post, its customers and its Shareholder, the States of Guernsey, with a level of protection in terms of ensuring the USO is funded.

A licence system is the normal regulatory tool through which sharing the cost of any USO can be mandated. Clearly such a contribution would only be required where it is established that there is in fact a 'net cost' to Guernsey Post of maintaining the USO.



It would also require the DG to be satisfied that Guernsey Post was providing services in an efficient manner (i.e. that any net cost is not solely due to the service being provided inefficiently).

However, in considering the introduction of a broader licensing regime, the DG is mindful of the need to balance the benefits of legislative and regulatory obligations broadly applied against the need to allow businesses to operate in a commercial manner.

The DG is minded to adopt an approach - similar to that already in place in the telecoms market - whereby dominant operators are required to comply with specific licence conditions given their position in the market with the other postal operators being licensed but with those licences offering greater commercial freedom. This is a standard approach adopted by regulators in many markets where competition is not effective or just being developed. This approach has proven to be effective in Guernsey in developing the telecoms market. Clearly as the market evolves, a need for an ongoing assessment of dominance will be required. Findings of dominance are not static affairs and operators may gain or lose such status.

**Q1: Do interested parties consider that the licensing of alternative postal providers set out above should be pursued? If not please state your reasons for your view.**

#### **4.2. *Who should be licensed?***

The DG must as part of any licensing regime determine who falls within the requirement to hold a licence. Clearly if the Postal Law is amended to delete Section 1(2)(a) all postal services (within the meaning of that term in the Postal Law) would fall to be licensed. Such an approach is, in the DG's view, excessive and disproportionate.

There is therefore a need to establish what postal services should be licensed and what services exempted from licensing.

A number of approaches may be considered. These may include:

- Only operators providing services to Bulk Mail/Direct Mail companies should be required to hold a licence. It is likely that this is the area where most competitive interest is likely to lie and where volumes are of a magnitude to make the requirement to hold a licence a proportionate regulatory response;
- An alternative approach might be to define a licensable activity by reference to postal volumes handled by the postal operator. There would be a need to establish either a monthly or yearly forecast of anticipated volumes or a view would be required to be taken on what level of volume should be a cut-off. While such an approach has attractions, it may be said that defining the market in such a way is rather arbitrary. For example, if a postal operator wins one additional bulk mail customer, that extra customer might trigger the need for a licence. However, equally such customers may change provider (in whole or in part) so that the operator is only caught by the licensing requirements on a temporary basis.

- Some existing service providers (such as Fedex/DHL) already compete with Guernsey Post in the express mail market. However such activity is not considered 'standard' postal services and it is questionable whether it is necessary or appropriate to licence such providers (although the DG understands both mentioned companies are licensed in the UK).

The DG would welcome the views of interested parties on this aspect of the proposed licensing regime. It is intended that once he has considered this issue in more detail he will make firmer proposals in a draft decision to be published later this year.

### **4.3. Legislation**

If the Postal Law is amended to remove condition 1(2)(a), the current automatic exemption from the law for any non-reserved services (not already exempt under the Postal Law) would be removed. The OUR therefore needs to consider whether certain specific services and/or operators should be exempt from the need to hold a licence and if so how should this be achieved.

As mentioned above, currently in the telecoms market, the DG may exempt certain services the provision of which would, under the normal definitions of a licensable activity, require the service provider to hold a licence. In 2001 the DG consulted on a range of activities that he would exempt on this 'class' basis. If licensing was to be introduced, the Director General is minded to adopt a similar approach in the postal market.

If the Postal Law was amended to remove the exemption to hold a licence for the provision of services outside the Reserved Area, then all providers of services that fall within the meaning of postal services as defined in section 45 of the Postal Law (not already exempted by section 1(2)(b)-(h)) would need a licence. Postal operators not exempt from requiring a license would therefore be breaking the law if operating without a licence. The DG believes such a scope for licensing is too broad. For example, he does not believe there is a need to licence companies providing PO Box collection services.

Given that the DG believes it is not necessary to regulate the providers of certain postal services who should therefore be exempt from the requirement to hold a licence, the DG is minded, as part of his recommendations to the Commerce & Employment Department, to propose that a further amendment be made to the Postal Law to provide for the DG to make a direction exempting either certain classes of postal activity or certain service providers. Such a provision would be broadly similar to that contained in Section 1(3) of the Telecoms Law 2001.

However before finalising his position on this matter, the DG would welcome the views of interested parties on what services should be specifically exempt from requiring a licence.

**Q2: Do interested parties agree that provision should be made for the exemption of certain classes of postal services by direction? If not please state your reasons for your view.**

**Q3: Interested parties are invited to submit their views on the type of criteria that might be used in determining what postal providers should be licensed and whether a 'class' licence approach should be taken to postal licensing of providers other than Guernsey Post.**

## **5. Proposed Licence Conditions for New Entrants**

Appendix 1 to this paper sets out in full a draft postal licence for new entrants to the postal market in Guernsey. Such a licence will only be issued should the States of Guernsey agree to amendments being made to the Postal Law to provide for a licensing regime outside the Reserved Area. Following completion of this consultation exercise, the DG proposes to make a recommendation to the Commerce & Employment Department to enable it to bring forward proposals to the States for appropriate amendments to the Law. The Department has already indicated its willingness to bring such proposals to the States should that be required.

It is proposed that the postal licence conditions of the new entrants to the Guernsey postal market broadly follow the conditions contained in the Guernsey Post licence. Any difference will primarily be in those conditions relating only to a dominant operator, which at present would only be applicable to Guernsey Post.

It should be noted that market dominance is not a static affair. It may be that as competition develops and becomes more effective relative positions in the market may change. Guernsey Post may lose its dominance in some or all markets open to competition. In such a circumstance, the requirement to comply with certain current obligations such as price controls and notifications may fall away. Moreover one or more new entrants may become dominant and thus be required to comply with certain additional obligations. Equally as competition becomes effective, even where one operator may still hold a dominant position, the DG may be minded to remove the obligation on all operators in that particular market

The draft licence that accompanies this consultation paper is based on the existing Guernsey Post licence. The DG however proposes to make amendments to the licence to reflect the nature of the services the provision of which it is intended to licence. The first is that the DG proposes to include a new licence condition requiring postal operators to contribute to a USO compensation fund, if the DG determines at a point in the future that the USO is a burden to Guernsey Post. Again the telecoms market already provides for such a mechanism and all operators in the telecoms market have as a condition of their licence that, in the event that a USO Fund is established, operators will be required to contribute towards funding the provision of the USO.

Thus the text of a telecoms licence states the following:

*“The Licensee shall comply with any directions issued by the Director General requiring it to contribute to any fund which may be established to cover the net cost of the provision of the Universal Service.”*

In Jersey, the JCRA has already licensed a number of postal operators and as part of their licence conditions the requirement to contribute to a USO Fund, if one is established, exists. The JCRA postal licence states:

*“19. UNIVERSAL POSTAL SERVICE  
The JCRA may direct the Licensee to contribute to a fund, to cover the net cost of the provision of the net universal postal service and the Licensee shall comply with such directions.”*

The DG is minded to include a licence condition along the lines set out above in any licences granted to postal operators in the event the States agrees to amend the Postal Law. The relevant licence condition is included as Condition 12 in the attached draft licence.

The second proposed change the DG is minded to make to the licence for new entrants compared to that of Guernsey Post is to remove the need for new entrants to establish a consumer group. Guernsey Post, it might be argued, as the licensee with a legal monopoly in the provision of certain services may not face the same pressures to respond to consumers in the same way that an operator facing competition might. It could therefore be argued that such a requirement on new entrants in a competitive part of the postal market is disproportionate and unnecessary.

The DG would welcome comments on any of the proposed licence conditions including the proposed differences to the Guernsey Post licence proposed above.

## **6. Next Steps**

The DG would welcome comments on any aspect of the proposed licensing regime and the proposal to seek amendments to the Postal Law. He would welcome feedback in particular on an appropriate approach to defining what should and should not require a licence under any new regime.

Once he has considered any responses he intends to issue a draft decision in July 2010. Once a final decision has been made he proposes to request the Commerce & Employment Department to bring forward proposals to the States to amend the Postal Law.

**ENDS**

**DRAFT LICENCE – FOR CONSULTATION**

**Licence issued to**

**[NAME]**

**under Part I of  
THE POST OFFICE (BAILIWICK OF GUERNSEY) LAW, 2001**

The Director General, in exercise of the powers conferred on him 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

### DEFINITIONS AND INTERPRETATION

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 [Name];

**“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.

*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

### SCOPE OF THE LICENCE

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

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

sub-license, assign or grant any right, interest or entitlement in the Licence nor transfer the Licence to any other person; or

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 0 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.

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

any fact or event likely to materially affect the Licensee's ability to comply with any Condition of the Licence;

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.

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

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

in any event, on the occurrence of any Change of Control of the Licensee, within thirty days of that event.

*On receipt of notification the Director General may:*

approve the proposed change or the change in writing;

disapprove the proposed change or the change in writing, giving reasons; or

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.

*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:*

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

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

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.

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

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;

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

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.

*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.*

*The Licensee shall ensure that:*

the administration and management of the business associated with the provision of the Licensed Services shall be conducted from the Bailiwick; and

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.

#### LICENCE FEE

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

*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.*

#### PROVISION OF INFORMATION

*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.*

*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.*

*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.*

*The Licensee shall bear all reasonable costs associated with any examination, investigation or audit conducted under this Condition 4.*

## COMPLIANCE

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

any obligation imposed on it by the Laws or by any law, regulation, rule or Ordinance; and

any direction duly issued by the Director General under a Law or by any law, any regulation, rule, Ordinance or this Licence.

## 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.

## 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:*

the Licensee shall notify the Director General of the obligations it is prevented from performing as soon as reasonably practicable; and

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.

## 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.*

## MATTERS OF BAILIWICK INTEREST

*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.*

*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.*

## TERM AND RENEWAL

*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.*

*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.*

*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 him to make the notification within the required time.*

## CESSATION

*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.*

*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

### UNIVERSAL POSTAL SERVICE

*Where The Licensee shall comply with any direction issued by the Director General requiring it to contribute to any fund which may be established to cover the net cost of the provision of the Universal Service.*

### SEVICES FOR THE BLIND OR PARTIALLY SIGHTED

*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.*

### DEVELOPMENT OF THE POSTAL FACILITIES AND SERVICES

*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.*

*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’.*

*The Plans will describe:*

*how actual performance of scheduled services and standards will be monitored;*

*the process for the collection and analysis of suitable data; and*

*the procedures for internal review and performance improvement planning by the Licensee.*

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

*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.*

*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.*

*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.*

*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 him, 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.*

## CONSUMER PROTECTION

*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:*

*filed with the Director General; and*

*promptly made available for inspection at the request of any member of the public or promptly sent to them by post.*

*The Director General may direct the licensee to change its standard terms and conditions from time to time.*

*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.*

*The consumer code shall;*

*be a transparent, simple, inexpensive procedure for handling complaints; and*

*cover complaints involving loss, theft, damage and non-compliance with scheduled services and standards as provided for in Condition 12.*

*The consumer code shall address at least the following:*

*appointment of a person to be the first point of contact for members of the public;*

*a means of recording complaints;*

*procedure and time frame for responding to complaints;*

*retention of records of complaint; and*

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.

*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.*

*The Licensee shall comply with directions issued by the Director General in respect of the consumer code.*

*The Licensee shall participate in good faith in any dispute resolution procedure established by the Director General for the resolution of disputes.*

*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:*

the extent to which the Licensee has succeeded in meeting the targets set out in the complaint procedure;

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

such other matters that the Director General directs should be included in the report.

*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.*

*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.*

## PROTECTING THE INTEGRITY OF THE MAIL

*Within three months of the Licence Commencement Date, the Licensee shall submit to the Director General in writing mail protection procedures which shall include:*

measures for minimising the exposure of Postal Packets conveyed by the Licensee to the risk of theft, loss, damage or interference; and

ways of improving the performance of the Licensee in relation to the matters referred to at paragraph (a) above.

*The Licensee shall comply with directions issued by the Director General in respect of the mail protection procedures in Condition 16.1.*

#### INTERNATIONAL OBLIGATIONS

*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

### REGULATED PRICES FOR SERVICES

*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.*

*Where the Licensee intends to introduce:*

new prices for any Licensed Services, or prices for new Licensed Services to be introduced;

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

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.

*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;*

provide for the overall limit to apply to such Licensed Services or categories of Licensed Services or any combination of Licensed Services;

restrict increases in any such charges or to require reductions in them whether by reference to any formula or otherwise; or

provide for different limits to apply in relation to different periods of time falling within the periods to which any determination applies.

*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.*

*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.*

## 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.*

## CROSS SUBSIDISATION

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

*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.*

## 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.*

## ACCESS TO THE LICENSEE'S POSTAL FACILITIES

*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.*

*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:*

*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*

*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*

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

### FAIR COMPETITION

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

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

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.

### 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.

## **Appendix 2 - States Directions**

The Regulation Law provides that the States of Guernsey may issue States Directions to the Director General in relation to:

- the scope of the universal service that should be provided in the postal sector in the Bailiwick;
- the extent of any exclusive privileges or rights in the postal sector;
- the identity of the first licensee in the postal sector; and
- any obligations arising from international agreements.

The States of Guernsey has set out in directions issued to the DG in September 2001, some key policies that the DG is obliged to implement. Briefly, the States of Guernsey directed the DG to licence Guernsey Post and to require it to provide a “universal postal service” (known as the USO) which was set out in States Directions as follows:

*“... throughout the Bailiwick of Guernsey at uniform and affordable prices, except in circumstances or geographical conditions that the Director General of Utility Regulation agrees are exceptional:*

- *One collection from access points on six days each week;*
- *One delivery of letter mail to the home or premises of every natural or legal person in the Bailiwick (or other appropriate installations if agreed by the Director General of Utility Regulation) on six days each week including all working days;*
- *Collections shall be for all postal items up to a weight of 20Kg;*
- *Deliveries on a minimum of five working days shall be for all postal items up to a weight of 20Kg;*
- *Services for registered and insured mail.”*

Finally, the States directed that GPL should be provided with the exclusive right to provide some postal services (known as “reserved services”) insofar as this is needed to enable and ensure the universal postal service is delivered. The relevant States Direction states:

*“The Regulator shall reserve services to be exclusively provided by the Universal Service Provider to the extent necessary only to ensure the maintenance of universal service, and shall review and revise the reserved services from time to time with a view to opening up the Guernsey postal market to competition consistent with the need to maintain the Universal Service”.*