

# **Regulating the Postal Sector in a fully Liberalised Market**

## **An Authorisation Regime for a Fully Liberalised Market**

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### **Response to the Consultation Document and Next Steps**

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## Executive Summary

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The Malta Communications Authority's ('MCA') primary objective with regard to the regulation of the postal sector is to safeguard the provision of an efficient, affordable, high quality universal service together with the promotion of fair market conditions, conducive to effective competition between postal operators.

The European Postal Directive as amended by Directive 2008/06/EC, adopted on the 20<sup>th</sup> of February 2008, identified the end of 2012 as the final step in the gradual opening of Malta's postal markets to competition – referred to as full market opening of the postal sector.

In July 2010, the Postal Services Act (Cap. 254) (hereafter 'the Act') and the Postal Services (General) Regulations (SL 254.01) (hereafter 'the Regulations') were amended to reflect the amended European Postal Directive. In line with the Second Schedule of the Act, full market opening of the postal sector in Malta will take place on the 1<sup>st</sup> of January 2013, when the area reserved to MaltaPost Plc ('MaltaPost'), as the incumbent designated universal service provider ('designated USP'), will be completely abolished.

In a fully liberalised market environment, new or existing postal operators may choose to offer new postal services within the scope of the universal services (also referred to as "the universal service area"), or diversify their postal activities. An appropriate authorisation regime is therefore necessary to ensure a level playing field by lowering barriers to entry, leading to further innovation, investment, and competition.

### Consultation Process

A consultation process<sup>1</sup> was initiated on the 10<sup>th</sup> of August 2012 and ran through to the 24<sup>th</sup> of September 2012, during which interested parties were given the opportunity to raise their views on a proposed authorisation regime and licensing structure. MaltaPost, the Express Association of Malta,<sup>2</sup> and Fortytwo Corporate Services on behalf of Mailbox Services Ltd ('Mailbox') responded to the Consultation.<sup>3</sup> The Consultation addressed three main aspects:

- An **authorisation regime** compatible with a fully liberalised postal market. The consultation noted that the existing authorisation regime safeguards the provision of the universal service whilst at the same time allowing for minimal supervision in the provision of postal services without hindering competition. The MCA therefore proposed to maintain the existing authorisation regime whereby an individual licence is required to provide postal services within the universal

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<sup>1</sup> The consultation document may be accessed by following the link <http://www.mca.org.mt/article/regulating-postal-sector-fully-liberalised-market-consultation-authorisation-regime-mcac12>.

<sup>2</sup> Airsped Express Ltd, Airswift Couriers Ltd, Arrow Express Ltd, C&C Express Ltd, DHL International Ltd and Global Parcels Ltd.

<sup>3</sup> The detailed responses are available for viewing at the MCA's office.

service area and a general authorisation is required to provide postal services that fall outside the scope of the universal service.

- A **licensing structure** consistent amongst all postal operators licensed to provide postal services within the scope of the universal services. The existing licensing structure distinguishes between postal operators providing services within the scope of the universal services and a designated USP. To eliminate such a distinction, the MCA proposed that all postal operators providing services within the scope of the universal services, including a designated USP, would be granted an identical individual licence. The legal instrument designating a postal operator as a USP to provide all or part of the universal service will however remain in the form of a legal notice.
- **Administrative charging principles** that would guide the development of a suitable and equitable fee algorithm. The MCA plans to review the administrative charge-out algorithm determining the annual fees payable by postal operators, in line with the proposed charging principles, in 2013.

The MCA is grateful for the responses received in relation to the Consultation. The MCA notes that, in general, respondents agreed with the need for a streamlined licensing regime within the scope of the universal services that ensures a level playing field and safeguards the provision of the universal service. In some instances, however, the approaches proposed did not tally. This document provides the salient points made by the respondents to the issues and proposals raised in the Consultation and the MCA's reflections on the feedback provided, together with conclusions and envisaged next steps.

Having considered the responses to the consultation, the MCA plans to maintain the existing authorisation regime as envisaged, whereby:

- postal operators providing postal services within the scope of the universal services, including a designated USP, require an individual licence, and will be automatically authorised to provide also postal services outside the scope of the universal services; and
- postal operators providing only postal services outside the scope of the universal services require a general authorisation.

### Next Steps

The MCA will submit the proposed changes to legislation as depicted in the Consultation to the Minister responsible for postal matters. The MCA will update the current specimen licence for the provision of services within the scope of the universal services and should amend existing licences by the 1<sup>st</sup> of May 2013. The updates to the specimen licence take into account comments received on certain provisions of the licence, in particular dispute resolution and licence termination.

In line with the Act, the MCA will grant a new licence to MaltaPost Plc when its licence expires on the 30<sup>th</sup> of April 2013.

## Key Definitions

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<i>Act</i>	Postal Services Act (Cap 254).
<i>Regulations</i>	Postal Services (General) Regulations (SL 254.01).
<i>licensed postal operator</i>	A postal operator authorised by way of individual licence to provide postal services within the scope of the universal service.
<i>designated universal service provider</i>	A postal operator designated by the Minister to provide the universal service or parts thereof within Malta.
<i>essential requirements</i>	General non-economic reasons which can induce the Authority to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes laid down by law or administrative provision and, or by collective agreement between national social partners, in accordance with Community and national law, and where justified, data protection, environmental protection and regional planning.
<i>General Authorisation</i>	Means an authorisation regardless of whether it is regulated by a 'class licence' and regardless of whether such regulation requires registration or declaration procedures, which does not require the postal operator concerned to obtain an explicit decision by the Authority before exercising the rights stemming from the authorisation.
<i>individual licence</i>	An authorisation which is granted by the MCA and which gives a postal operator specific rights, or which subjects the operations of that operator to specific obligations supplementing the general authorisation where applicable, where the postal operator is not entitled to exercise the rights until it has received the decision by the MCA further to the operator's application for such authorisation.
<i>specimen licence</i>	Specimen Licence to provide postal services within the scope of the Universal Services <sup>4</sup> , which licence contains provisions applicable to all postal operators providing such services and which forms the basis of individual licences issued to such operators.

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<sup>4</sup> The existing specimen licence is available from the MCA's web site at the following link:  
[http://www.mca.org.mt/sites/default/files/pageattachments/Specimen\\_Licence\\_-\\_Postal\\_Non-Res\\_US\\_0.pdf](http://www.mca.org.mt/sites/default/files/pageattachments/Specimen_Licence_-_Postal_Non-Res_US_0.pdf)

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## Introduction

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The MCA is presently carrying out final preparations to be in a position to regulate the postal sector effectively<sup>5</sup> when full liberalisation of the postal sector takes place on the 1<sup>st</sup> of January 2013 – in line with the mandate set by the Directive. These preparations include, amongst other things, a review of the postal authorisation regime, which further necessitates:

- a re-assessment of the licensing structure leading to a streamlined individual licence granted to all postal operators providing services within the scope of the universal services, including those postal operators designated as a USP; and
- an appraisal of the principles underlying the authorisation fee algorithm.

The current licensing structure places MaltaPost as the incumbent designated USP, and other licensed postal operators on a different footing, both as regards rights and obligations, as well as with respect to the administrative fee algorithm. The main reason for this state of affairs is primarily legacy, where MaltaPost was always considered as the only postal operator with the necessary capacity to provide all elements of the universal service. This assumption may no longer necessarily hold true in a fully liberalised market.

Presently, licences granted to postal operators providing services within the scope of the universal services vary, both in content and structure, from that issued to MaltaPost as the incumbent designated USP. In order to maintain a level playing field, when the postal market is fully liberalised, equivalent licence terms and conditions should be applicable to all licensed postal operators that provide services within the scope of the universal services, including a designated USP. Additional specific rights and obligations would apply to a licensed postal operator in its capacity as a designated USP as set out in the Act.

A rationalisation exercise aimed at streamlining the structure of existing postal licences into one single licence, containing all pertinent terms and conditions applicable to all postal operators providing services within the scope of the universal services, is therefore necessary. In this manner, rights and obligations applicable to a postal operator providing services within the scope of the universal services in its capacity as a designated USP will be clearly distinguishable from the symmetrical obligations<sup>6</sup> incumbent on it as a provider of postal services within the scope of the universal services.

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<sup>5</sup> On the 1st of August 2012 the MCA published its consultation document on the proposed framework for the regulation of the postal sector in a fully liberalised market.

<http://www.mca.org.mt/consultation/regulating-postal-sector-fully-liberalised-market-consultation-mcac114312>

<sup>6</sup> Symmetrical obligations, in the context of this consultation, are obligations which apply to all postal operators providing postal services within the scope of the universal services; asymmetrical obligations are specific obligations incumbent on a designated USP(s) and which do not apply to other postal operators.

This exercise is complemented by a review of the administrative charging principles for the postal sector. The charging principles aim to ensure that the MCA continues to carry out its regulatory functions effectively in relation to postal services and to ensure a level playing field by safeguarding the principles of proportionality and equitability in the financing of such regulation.

## 1.1 Legal Basis

The following provisions constitute the legal basis for this review:

- Article 8(1) of the Act establishes that an authorisation to operate or provide postal services which are within the scope of the universal services may be granted by individual licence issued by the MCA to the extent necessary in order to:
  - guarantee compliance with essential requirements; and to
  - safeguard the universal services.

An authorisation to operate or provide postal services that are outside the scope of the universal services may be granted in accordance with a **general authorisation** in order to guarantee compliance with essential requirements.

- Article 8(2) and article 8(3) of the Act establish the terms and conditions that may be imposed on operators authorised to provide postal services.
- Article 8(4) of the Act requires the MCA to ensure that procedures stipulated in articles 8(1), 8(2) and 8(3) are, amongst others, transparent, non-discriminatory, proportionate and made public in advance.
- Clause 6.4 of existing licences for the provision of non-reserved postal services within the scope of the universal services<sup>7</sup> states that, *inter alia*, nothing in the licence shall be construed as limiting the power of the Authority to amend the licence or to impose further conditions on the licensed postal operator.
- Article 14 of the Malta Communications Authority Act (Cap 418) requires the MCA to levy all administrative fees, rates and other payments prescribed under any law that the MCA enforces in order to, as far as practicable, meet its expenditure out of its revenue.

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<sup>7</sup> The specimen licence is available on the MCA's web site here:  
[http://www.mca.org.mt/sites/default/files/pageattachments/Specimen\\_Licence\\_-\\_Postal\\_Non-Res\\_US\\_0.pdf](http://www.mca.org.mt/sites/default/files/pageattachments/Specimen_Licence_-_Postal_Non-Res_US_0.pdf)



## 1.2 Document Structure

Sections 2, 3 and 4 offer an overview of the three principal consultation issues:

- the MCA's plans on how the **postal authorisation regime** should be applied in a fully liberalised postal market;
- a rationalised licensing structure for the provision of postal services that fall within the scope of the universal services, which results in an individual licence with identical terms and conditions granted to all postal operators providing such services; and
- authorisation charging principles for the determination of an equitable postal licence fee algorithm.

Each section discusses the views presented by the respondents followed by the MCA's position.

**Appendix A** exhibits the specimen licence to provide postal services within the scope of the universal services identifying the revisions to the version of the licence proposed in the consultation.

## The Postal Authorisation Regime

In line with the Act, a postal operator providing, or intending to provide, postal services:

- **within the scope of the universal services** is required to seek an *individual licence* from the MCA,<sup>8</sup> prior to providing such services, in order to safeguard the universal service and at the same time guarantee compliance with the essential requirements;
- **outside the scope of the universal services** requires a *general authorisation* in order to guarantee compliance with the essential requirements.<sup>9</sup>

**Figure 1** below illustrates the existing authorisation regime:

Provision of Services Within the Scope of the Universal Services		Provision of Services Outside the Scope of the Universal Services
<p><b>MaltaPost Plc Licence (designated USP)</b></p> <p><b>Terms and Conditions</b></p> <ul style="list-style-type: none"> <li>• Set of universal services</li> <li>• Standards of service</li> <li>• Service provision and complaint handling / compensation</li> <li>• Mail integrity</li> <li>• Provision of information</li> <li>• Accounting separation (Universal Service Obligation)</li> <li>• Access points (universal services)</li> <li>• Directives or decisions of the MCA</li> <li>• Obligations and requirements emanating from the Postal Services Act</li> </ul>	<p><b>Individual Licence (other postal operators)</b></p> <p><b>Terms and Conditions</b></p> <ul style="list-style-type: none"> <li>• Service provision and complaint handling</li> <li>• Mail integrity</li> <li>• Provision of information</li> <li>• Accounting separation – revenues from services with the scope of the universal service</li> <li>• Directives or decisions of the MCA</li> <li>• Obligations and requirements emanating from the Postal Services Act</li> </ul>	<p><b>General Authorisation</b></p> <p><b>Terms and Conditions</b></p> <ul style="list-style-type: none"> <li>• Service provision and complaint handling</li> <li>• Mail integrity</li> <li>• Provision of information</li> <li>• Directives or decisions of the MCA</li> <li>• Obligations and requirements emanating from the Postal Services Act</li> </ul>

**Figure 1: Existing authorisation regime**

<sup>8</sup> Refer to MCA’s website on the Application for a Licence and General Authorisation to provide postal services (both within and outside the scope of the universal service).

<sup>9</sup> Refer to article 8 of the Act - Individual licences and general authorisations.

### 1.3 Outline of Consultation Issues

The existing postal authorisation regime was developed for a partially liberalised postal sector. Two key concepts underpinned its development:

- The concept whereby postal operators providing services within the scope of the universal services require an individual licence, whereas those providing postal services outside this scope require a general authorisation. This distinction is required to safeguard the provision of the universal service whilst at the same time allowing for minimal supervision in the provision of postal services that are not within the scope of the universal service. The MCA believes that such a distinction should continue to subsist in a fully liberalised market environment.
- The concept of a 'reserved area', whereby certain postal services are reserved for the exclusive use of MaltaPost, as the incumbent designated USP.<sup>10</sup> This privilege will be abolished as from 1<sup>st</sup> of January 2013 when the postal market will be completely liberalised. This means that MaltaPost will no longer retain exclusivity in the provision of such postal services and that new or existing postal operators may choose to offer any of these postal services.

The MCA proposed to maintain the existing authorisation regime whereby postal operators providing postal services within the scope of the universal services, including a designated USP, require an individual licence and postal operators providing postal services outside scope require a general authorisation.

### 1.4 Summary of Respondents' Views and the MCA's Position

#### 1.4.1 Authorisation Regime

MaltaPost welcomed the creation of a level playing field, which it maintained remains fundamental for its commercial viability. At the same time, MaltaPost claimed that it *"understands that operators registered as providing services that fall outside the scope of the Universal Service are in fact providing services which fall within the Universal Service..."*

The key matter that Mailbox brings forward as a suggestion is for the MCA to go a step further and amalgamate the individual licensing and general authorisation regime. It argues that *"whether the new single regime would be licensing or a general authorisation would not really matter so long as the MCA would be allowed to impose specific obligations over and above those of an individual licence or general authorisation, depending on the nature of the services provided by the specific operator, its size and*

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<sup>10</sup> The services presently reserved for MaltaPost are described in the Second Schedule of the Act, and include the clearance, sorting, transport and delivery of items of inland correspondence, cross-border and direct mail up to 50 grams.

*effect on the market so as to ensure continuity of the provision of the universal services as well as competition in the market space.”*

**The MCA’s position**

The MCA would like to clarify that it is current practice when granting an individual licence to a postal operator to automatically authorise the operator to provide also postal services that are outside scope of the universal services. Administrative fees payable by such licensed postal operators cover postal services that are both within and outside the scope of the universal services<sup>11</sup>. The table below illustrates the current practice:

	Authorises to provide postal services that are:	
	<b>within</b> the scope of the universal services	<b>outside</b> the scope of the universal services
Individual Licence	✓	✓
General Authorisation		✓

For the purposes of clarification, the MCA proposed an amendment to regulation 46 of the Postal Services (General) Regulations, which states that *“the grant of an individual licence automatically authorises the licensee to provide also postal services outside the scope of the universal services”*.

The MCA believes that the existing authorisation regime should be retained. Thus:

- postal operators providing postal services within the scope of the universal services, including a designated USP, require an individual licence, and will be automatically authorised to provide also postal services outside the scope of the universal services; and
- postal operators providing postal services outside the scope of the universal services require a general authorisation.

The MCA will continue to ensure that postal operators providing services outside the scope of the universal service that start to offer additional postal services which fall within the scope of the universal service are appropriately authorised to carry out such activities. This is particularly important in order to safeguard the provision of the universal postal service in Malta.

**1.4.2 Separate Accounting**

Mailbox observed that *“once you have the two regimes in one, then all that would be required would be the imposition of obligations like accounting separation either be imposed on one or more operators as permanent or temporary criteria in their specific*

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<sup>11</sup> See First Schedule of the Postal Services (General) Regulations.

*licence grant or else such requirements could be imposed as an outcome of a market review in one or more specific markets in the postal services sector."*

### **The MCA's position**

The MCA acknowledges that the term 'Accounting Separation' in the licence could be confused with accounting separation as an obligation on a designated USP and/or an operator having Significant Market Power (SMP) to support, amongst others, the obligation of non-discrimination of tariffs<sup>12</sup>. The MCA has taken note of this, and has rephrased the term 'accounting separation' to 'separate accounting' for licensing purposes. Separate accounting refers to the recording of separate revenues raised from products within and outside the scope of the universal services for the purposes of determining the postal licence fee.

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<sup>12</sup> See Regulating the Postal Sector in a fully Liberalised Market – Consultation (MCA/C/1143/12) <http://www.mca.org.mt/consultation/regulating-postal-sector-fully-liberalised-market-consultation-mcac114312>.

## Licence for the provision of Postal Services within the Scope of the Universal Services

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The present licensing structure distinguishes between postal operators providing postal services within the scope of the universal services, and the incumbent designated USP.

Presently, licensed postal operators, other than MaltaPost, require a '*Licence to provide non-reserved postal services within the scope of the universal services*'. MaltaPost, on the other hand, is granted a tailor-made licence for the provision of all postal services within the scope of the universal services, by virtue of its long-standing role as the incumbent designated USP. This licence was issued to MaltaPost by Government in 1998. It was subsequently amended to comply with European Union law and published in the form of a legal notice (MaltaPost Plc Licence (Modification) Regulations as per LN500/2004<sup>13</sup>). MaltaPost's licence runs for a term of fifteen years, with expiry at the end of April 2013.

### 1.5 Outline of Consultation Issues

The current licensing structure places MaltaPost, as the incumbent designated USP, and other licensed postal operators on different playing fields, both as regards rights as well as obligations. The MCA therefore proposed that all licensed postal operators, including a designated USP, would be granted an individual licence with identical terms and conditions. Additional rights and obligations would apply to a postal operator in its capacity as a designated USP as set out in the Act<sup>14</sup>, and will be clearly distinct from the postal licence. This distinction is particularly important to separate symmetrical obligations applicable to all licensed postal operators from those applicable as a result of a USO designation.

#### 1.5.1 Proposed Licensing Structure

In order to create a level playing field, the MCA proposed that all licensed postal operators, including a designated USP, would be granted an individual licence to provide postal services within the scope of the universal services with identical terms and conditions. The legal instrument designating a postal operator as a USP will remain in the form of a legal notice. The MCA however proposed that the legal notice designating a USP will be amended to specify the universal service or universal services a designated USP is required to provide<sup>15</sup>.

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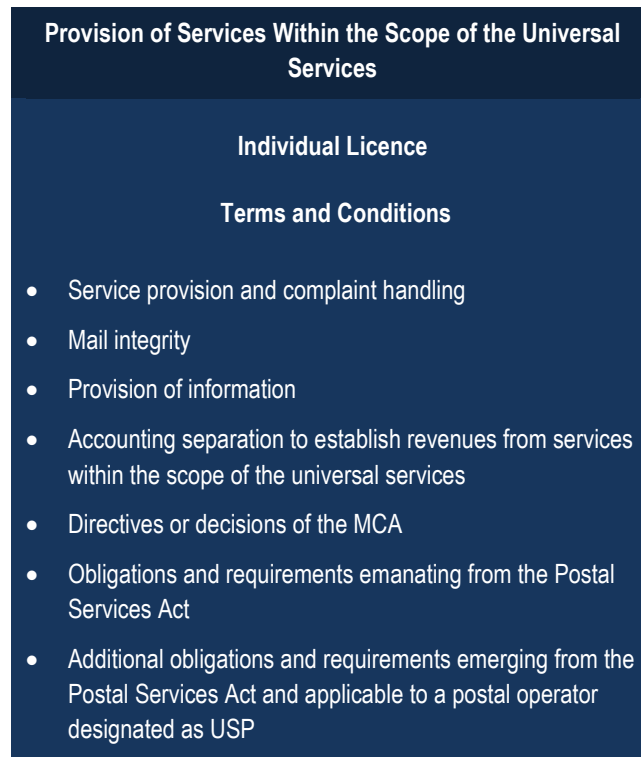
<sup>13</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=9667&l=1>

The licence issuance function has since devolved to the MCA. In line with Article 80 of the Postal Services Act any individual licence granted after 1 January 2010 shall be made in accordance with the provisions of articles 8 and 9.

<sup>14</sup> These rights and obligations on a designated USP only apply in respect of the services it is obliged to provide as the designated universal service provider. Currently, MaltaPost is the only designated USP in Malta.

<sup>15</sup> The specific range of universal services that MaltaPost is required to provide as part of its universal service obligation currently forms part of its licence to provide all services within the scope of the universal services.

**Figure 2** below illustrates this concept:



**Figure 2: Proposed licensing structure**

For the proposed licensing structure to have effect, amendments to regulations 45 and 46 of the Regulations are required. The amendments remove references to the reserved area and harmonise the licensing of operators providing postal services within the scope of the universal services (including a postal operator designated as a USP).

### **1.5.2 Proposed Amendments to the Specimen Licence**

The MCA proposed a series of amendments to the current postal licence structure. Such amendments to the licence structure will be reflected accordingly in the content of individual licences granted to postal operators authorised to provide postal services within the scope of the universal services. The proposed changes fall into three main categories:

- new clauses to be included in the licence;
- amendments having a material effect on existing clauses; and
- amendments having no material effect on existing clauses.

In the large part, amendments to the licence have insignificant effect on the terms and conditions. The purpose of such amendments is to streamline individual licences issued to all operators providing postal services within the scope of the universal services, including a USP, to include identical terms and conditions.

A major amendment to the licence term and licence termination was put forward for consultation. The MCA proposed to extend the term of the licence from the existing ten-year period (currently fifteen years in the case of MaltaPost) to an indefinite term. The MCA noted that the need to have a definite licence term for the provision of postal services is not required, as the MCA cannot restrict the number of licences issued for the provision of services within the scope of the universal services. Furthermore, the provision of postal services, unlike for example the rights of use of radio spectrum, does not require the grant of any exclusive use of scarce resources. The MCA further proposed that a licence may be suspended or withdrawn by the MCA, or handed back by the licensed postal operator, under certain conditions.

A postal operator licensed to provide postal services within the scope of the universal services may be designated as a USP in line with the Act.<sup>16</sup> A designated USP will be subject to additional specific rights and obligations emerging from the Act. In contrast to current practice, the MCA proposed that such rights and obligations will no longer form part of the USP's licence; these will emerge from the USP's designation with specific requirements stemming from the relevant provisions in the Act and supported by MCA's decisions.

### **1.5.3 Updating existing Postal Licences**

This specimen licence will be amended as per MCA's position and decision discussed below, and published on the MCA's website replacing the current published specimen postal licence.

The MCA will subsequently update all existing postal licences granted to the postal operators not designated as a USP, to reflect the amended specimen licence. The MCA will also provide licensed postal operators with a consolidated version of the individual licence for ease of reference.

### **1.5.4 Grant of new Licence to MaltaPost**

MaltaPost's current licence is due to expire on the 30<sup>th</sup> April 2013.<sup>17</sup> The MCA will grant MaltaPost a new individual licence upon expiry of its current licence in line with the Act. The new licence will be based on the amended specimen licence. This process will effectively streamline all postal licences granted by the MCA.

MaltaPost will continue to be required to provide the universal services specified in the Regulation relating to its designation as a USP.

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<sup>16</sup> The Minister may, after consultation with the MCA, determine the different USPs designated in line with Article 17 of the Act, to provide different parts of the universal service and, or cover different parts of the national territory. In line with Article 17 of the Act, the Minister may, after consultation with the MCA, amend or suspend any designation of a USP, and, where applicable and after consultation with the MCA, designate another postal operator in respect of the service affected by any such withdrawal, amendment or suspension.

<sup>17</sup> Clause 3 of MaltaPost's licence states that the licence shall be valid for a term of fifteen years from the 1<sup>st</sup> of May, 1998, unless otherwise lawfully terminated in accordance with the Act or the provisions of this licence.



### **1.5.5 Ensuring Continuity in the Provision of the Universal Service**

Article 17 of the Act maintains that users at all points in Malta shall enjoy the right to a universal service involving the permanent provision of a range of universal services at an affordable price. Clause 8 of MaltaPost's current licence grants Government powers to ensure continuity of the universal services in a situation where MaltaPost ceases to provide a universal service for any reason other than, industrial action or other force majeure, or if the universal service provider goes into liquidation or is declared bankrupt.

In the consultation, the MCA noted that that such continuity is necessary for users to enjoy an uninterrupted universal service, and observed that such a requirement should be incumbent on any designated USP. This will allow the continuity of the universal service until a designation, as necessary, of another USP or USPs is carried out in line with the Act.

The MCA therefore proposed that, in line with the separation of universal service obligation related conditions from other symmetrical obligations, this existing clause is migrated to legislation, albeit with the appropriate amendments. The proposed amendments effectively set stricter boundaries to this measure and are 'operator-neutral' in that they apply to a designated USP and not to any particular operator. The relative regulation would grant Government the necessary powers to ensure an uninterrupted universal service in the eventuality of a situation mentioned above. This regulation will apply only to a designated USP with regard to the provision of universal services, and only for a limited period of time, until an alternative postal operator is designated to provide the universal service(s) in line with the Act.

## **1.6 Summary of Respondents' Views and the MCA's Position**

### **1.6.1 General Licence Conditions**

The purpose of an individual licence, with identical terms and conditions, granted to all operators providing postal services within the scope of the universal services, including a USP, is to create a level playing field.

MaltaPost held that the "*streamlining of operator licences would be beneficial but only once any requirements laid down for servicing the universal service obligation are included directly in the operator's licence. These obligations are intrinsically tied to the core of the operations of the Universal Service Provider, as well as reflecting the importance of its role within the community*". MaltaPost further maintained that "*all operators be required to fulfil the same obligations, including, but not limited to, industrial relations and employment legislation. Once an operator chooses to provide a given service then the same set of regulatory obligations should bind all operators offering that service*".

### **The MCA's position**

As explained in the consultation and in Section 1.5 above, additional rights and obligations applicable to a postal operator in its capacity as a designated USP will be clearly distinct from those applicable to it in its capacity as a postal operator providing

postal services within the scope of the universal services. Only the latter will be reflected in its postal licence. This structure allows the necessary flexibility to impose universal service obligations on postal operators without the need of amending individual licences.

The new licensing structure will ensure that the same set of rights and obligations applies to all operators providing services within the scope of the universal services. The MCA observes that the existing requirement for a licensed postal operator to abide by the Postal Services Act (Cap. 254 of the Laws of Malta) and to any regulations made thereunder, decisions and directives of the MCA, and all other legislation, will be maintained.

### **1.6.2 Quality of Service**

MaltaPost observed that quality of service standards would aid consumers to compare the service standards of postal operators. It suggested that "*National Quality Standards should be implemented industry-wide and the MCA, as regulator, is best placed to monitor the quality performance of all operators - irrespective of size and legal status*".

#### **The MCA's position**

Licensed postal operators are already bound by their existing individual licence to agree terms and conditions (incl. Quality of Service) with individual customers, and to measure and record their own performance in achieving their contract standards. The MCA may require an operator to amend its procedures where it deems that such procedures are unsatisfactory.

The quality of service standards and targets for the universal service are set out and monitored by the MCA to ensure a high quality universal service. The MCA does not consider it necessary for such an obligation to be extended to postal operators other than a designated USP, for the purposes of safeguarding the universal service.

### **1.6.3 Proposed Amendments to Specimen Licence**

#### **1. Issues relevant to the clause 'Termination'**

Clause 3 'Suspension and Termination' of the licence identifies the conditions when the MCA may suspend or terminate a licence, and when a licensee may hand back its licence.

Mailbox has requested the MCA to clarify the requirement for six months advance notice where a service provider intends to return back the licence<sup>18</sup>. It also proposed a provision which states that an operator may hand back the license upon the introduction of new obligations by the MCA. Mailbox further considers "*section 3.6<sup>19</sup> to be*

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<sup>18</sup> See clause 3.2 of the Specimen Licence proposed in the consultation.

<sup>19</sup> Clause 3.6 states that "*Where the Licence is being terminated by the Licensee, the Authority reserves the right not to withdraw the Licence until any payments due to the Authority are effected, or in cases where there is the need to comply with any obligations under the Act until such obligations are complied with.*"

*unnecessary since the mechanism which is sought to be achieved here is fully covered by section 3.5<sup>20</sup> in any cases”.*

### **The MCA’s position**

In the consultation, the MCA proposed that a licensed postal operator shall give the MCA advance notice of six months that it intends to hand back its licence. The MCA argued that this would allow it sufficient time to ensure that all obligations incumbent on the postal operator are complied with. Nevertheless, the MCA acknowledges that the elimination of this clause would allow for a licence to be duly terminated in less than six months. Since other provisions in the licence provide the necessary tools for the MCA to ensure that all obligations are complied with prior to a licence being terminated, the MCA has concluded that the requirement for six months advance notice will be removed.

The MCA is however of the view that both proposed articles 3.5 and 3.6 should remain, since the former refers to a licence being suspended or terminated by the MCA, whereas the latter concerns a licence being terminated by the Licensee.

## **2. Issues relevant to the clause ‘Dispute Resolution’**

A clause on dispute resolution, with the aim of strengthening the need for dispute resolution mechanisms as a necessary feature in the delivery of reliable postal services within the scope of the universal services.

The Express Association of Malta is of the view that *“the current provisions sufficiently safeguard the interests of both operators and the regulator. Any further regulations on express/courier operators will only create duplication, confusion and delays in the case of a dispute.”*

On the same matter, another respondent, Mailbox, stated that it is *“interested to understand the logic behind any reasonable need to review the current regulations.”*

In its response to the consultation, Mailbox agreed with the MCA’s proposed amendment, but *“finds missing in this section ... any reference to a possible appeal to an appeals tribunal”.*

### **The MCA’s position**

The MCA clarifies that there are no plans to review existing regulations on dispute resolution. Such regulations already exist and apply to all postal operators, including postal operators providing services that are within the scope of the universal services, as well as those operators providing services that are outside the scope of the universal services. The MCA has however taken note of the respondents’ comments, and will not be including the proposed clause in the Specimen Licence.

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<sup>20</sup> Clause 3.5 states that *“The suspension or termination of this Licence shall be without prejudice to the obligation of the Licensee to effect any payments due to the Authority or to comply with any obligations under the Act.”*

### 3. Issues relevant to the clause 'Transfer of Licence'

In its response, Mailbox proposed "the introduction of a sentence at the end of both clauses 9.1 and 9.2 on the lines of 'Such decision shall not be unreasonably withheld or delayed'" to "ensure a timeliness of decisions being forthcoming from the MCA on this subject".

#### The MCA's position

The MCA agrees with Mailbox's suggestion, and will introduce a provision at the end of both clauses 9.1 and 9.2 (See Specimen Licence in Appendix A).

#### 1.7 Amendments to the Specimen Licence

A consolidated version of the specimen licence indicating changes from the version proposed in the consultation may be found in **Appendix A**.

Proposed text that will not be included in the amended specimen licence and individual licences is marked with a ~~strikethrough in red~~. New text is underlined in green.

It should be noted that the numbering of clauses 9 to 17 have been re-numbered 8 to 16 since the proposed clause on dispute resolution has been removed.

## Administrative Charging Principles

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The Malta Communications Authority Act (Cap. 418) provides that the MCA “shall so conduct its affairs that the expenditure required for the proper performance of its functions shall, as far as practicable, be met out of its revenue.” This objective is achieved through an arrangement of administrative charges and/or fees levied on players operating within the respective communications sectors falling under the MCA’s jurisdiction.

### 1.8 Outline of Consultation Issues

The current fee algorithm, which is not consistent across operators in the universal service area, is based in part on legacy, and can at present be justified on the grounds that the market is not yet fully competitive. It would not however fully live up to the proportionality principle in a fully competitive market.

The MCA therefore proposed an authorisation fee regime conforming to its administrative charging principles. Such administrative charging principles require that the fees payable by all postal operators be:

- objectively justifiable;
- transparent;
- proportionate to the level of regulatory activity; and
- as far as practicable, sufficient to meet the MCA’s expenditure in carrying out its functions related to the postal sector.

An equitable authorisation fee regime for the postal sector would need to factor in the above-mentioned charging principles. In addition, when developing a suitable authorisation charge-out algorithm, two key elements need to be taken into account:

- sustainability of an effective regulatory function; and
- proportionality in application across all licensed postal operators.

The MCA intends to review the current authorisation fee regime in 2013. The MCA plans to propose an authorisation fee algorithm that will be uniformly applicable to all postal operators providing services within the scope of the universal services, including designated USPs. The principal aim of this review is to ensure a level playing field in a completely liberalised environment.

### 1.9 Summary of Respondents’ Views

The Express Association of Malta maintained that it “cannot understand why additional fees will be levied if there are no new regulatory obligations to be overviewed by the MCA on express/courier operators ... there is no justification to increase the fees of 18 express/courier operators in the competitive area”.

MaltaPost contended that *"licence fees should apply equally to all operators in the market irrespective of size and should be based on the same criteria."* It remarked that *"for many years [it] has been consistently shouldering its Universal Service Obligations at times at a financial loss"*, and claimed that *"concurrently [it is] made to pay an unduly onerous licence fee"*.

Mailbox noted that it *"finds it wrong in principle that an operator should pay a fee based on its turnover. Such calculations should be based on profits; ideally on net profits but at least on gross profits to be more indicative of the actual cost structures and profitability of the operators in question."*

### **1.10 The MCA's Position**

In the consultation, the MCA asserted that the existing fee algorithm is not consistent across postal operators in the universal service area, and that it does not fully live up to the proportionality principle in a fully competitive market. The MCA therefore proposed an appropriate authorisation fee regime that would conform to the MCA's administrative charging principles, which principles require that the fees payable by all postal operators are to be:

- objectively justifiable;
- transparent;
- proportionate to the level of regulatory activity; and
- as far as practicable, sufficient to meet the MCA's expenditure in carrying out its functions related to the postal sector.

The MCA clarifies that, in its consultation, it did not propose an increase in fees, but sought feedback on the above principles that would guide the development of a suitable and equitable algorithm envisaged to be carried out in 2013. Therefore, the existing fee structure specified in the First Schedule of the Regulations will continue to apply.

Mailbox observed that a fee algorithm based on net or gross profits would be more indicative of the actual cost structures and profitability of the operators. The MCA believes that such an approach would increase the regulatory burden of compiling and monitoring net or gross profit data, as well as increasing difficulties in ensuring that all postal operators have calculated and declared net or gross profit consistently and fairly. In addition, the MCA notes that the effect of this approach would be that the revenue base from which to collect regulatory fees will go down, and therefore the percentage tariff on net or gross profits would need to rise to compensate.

## Next Steps

The MCA will now submit the proposed amendments to the Regulations as depicted in the Consultation to the Minister responsible for postal matters.

The table below indicates the key activities planned to be carried out in 2013. These activities effectively complete the review of the postal authorization regime for a fully liberalised market.

<b>Summary of Key Activities and Timelines</b>	<b>Planned</b>
<b>Amendments to current licences</b>	
Amendments to the current licences for the provision of postal services within the scope of the universal services	<b>End April 2013</b>
<b>Renewal of MaltaPost Licence</b>	
Renewal of MaltaPost Licence for the provision of postal services within the scope of the universal services	<b>End April 2013</b>
<b>Revision of Fee Algorithm</b>	
Consultation on the proposed authorisation fee charge-out algorithm	<b>2013</b>

**Note:**

The above-mentioned timelines may be influenced by dependencies which are not within the MCA's control. Nonetheless, the MCA will do its utmost to follow the assignment to conclusion within the envisaged timelines.

## Appendix A: Specimen Licence for the Provision of Services within the Scope of the Universal Services

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### LICENCE TO *{name of licensee}* FOR THE PROVISION OF POSTAL SERVICES WITHIN THE SCOPE OF THE UNIVERSAL SERVICES

This Licence is being granted by the Malta Communications Authority in exercise of the powers conferred on it by the Postal Services Act (Cap 254 of the Laws of Malta).

Date of Issue:	
Name of Licensee:	
Registered Address:	
Company Registration Number:	



## SECTION A: DEFINED TERMS

### 1. Defined Terms

- 1.1 Any reference to the "Act" in this Licence is a reference to the Postal Services Act (Cap. 254 of the Laws of Malta) and to any regulations made thereunder.
- 1.2 The provisions of article 2 of the Act shall apply to this Licence.
- 1.3 In this Licence, unless the context otherwise requires:
- "the Authority" means the Malta Communications Authority established under the Malta Communications Authority Act (Cap. 418 of the Laws of Malta); and
- "the Licensee" means (*Name of Licensee*) (company registration number ..... ).
- 1.4 In this Licence the word "decision" shall have the meaning that is has under article 2 of the Malta Communications Authority Act (Cap. 418 of the Laws of Malta).

## SECTION B: GRANT AND GENERAL CONDITIONS OF LICENCE

### 2. Grant

- 2.1 By virtue of this Licence, the Licensee is hereby authorised to provide postal services within the scope of the universal services as specified in the Act, for an indefinite term and subject to the terms and conditions stated in this Licence.

### 3. Suspension and Termination

- 3.1 The Authority may suspend or withdraw this Licence at any time for serious and repeated breaches of any laws, and, or decisions.
- 3.2 The Licensee may hand back this Licence at any time by communicating its intention to do so in writing to the Authority giving the reasons for handing back the Licence:
- ~~(a) — where the Licensee is not designated as a universal service provider, at least six (6) months prior to the date when the Licensee intends to hand this Licence back to the Authority;~~
- ~~(b) —~~ Provided that where the Licensee is designated as a universal service provider, at least twelve (12) months prior to the date when the Licensee intends to hand this Licence back to the Authority:

Provided further that the Licensee may not hand back this License within eighteen (18) months from the date of grant of this Licence.

- 3.3 The termination of this Licence shall occur upon the earlier of:

- (a) a decision of the Authority to withdraw the Licence in accordance with the applicable legislation or with this Licence; or
- (b) the handing back of the Licence by the Licensee to the Authority provided the Authority in writing agrees to such handing back; or
- (c) the insolvency, liquidation or bankruptcy of the Licensee; or
- (d) the winding up or dissolution of the Licensee.

3.4 This Licence shall cease to have effect upon suspension or termination:

Provided that where the Licensee wishes to provide, or continue to provide, postal services which are outside the scope of the universal services, the Licensee shall notify its intention to the Authority to provide such services in accordance with the Act:

Provided further that where the Licence has been suspended by the Authority, the Licence shall recommence to have effect from the date when the Authority revokes the suspension.

- 3.5 The suspension or termination of this Licence shall be without prejudice to the obligation of the Licensee to effect any payments due to the Authority or to comply with any obligations under the Act.
- 3.6 Where the Licence is being terminated by the Licensee, the Authority reserves the right not to withdraw the Licence until any payments due to the Authority are effected, or in cases where there is the need to comply with any obligations under the Act until such obligations are complied with.
- 3.7 Upon the suspension or termination of this Licence, the Licensee shall cease to provide postal services.
- 3.8 The suspension or termination of this Licence shall not operate as a waiver or release of any obligation of the Licensee, as applicable, arising prior to such termination or suspension.

#### **4. Rights of the Authority**

- 4.1 The Authority may add to, or amend any of the terms and conditions of this Licence when such additions or amendments are necessary as a result of any international obligations entered into by the Authority or by the Government of Malta, or by the need to ensure compliance with the Act:

Provided that the Authority shall not be held responsible in any manner whatsoever for any damages suffered or expenses incurred by the Licensee as a result of any amendment of the terms or conditions of this Licence:

Provided further that the Authority shall inform the Licensee in advance and take into account the Licensee's views if relevant impact is foreseeable on the

Licensee's circumstances, granting a reasonable timeframe for the implementation of the relevant additions and, or amendments to the terms or conditions.

## **5. Cessation of Business as a Postal Operator**

- 5.1 The Licensee shall establish, and at all times during the term of this Licence maintain all necessary arrangements ensuring that if it ceases to carry on business as a postal operator, postal articles in its care at the time of such cessation shall be delivered to the addressees.
- 5.2 The Licensee shall notify the Authority in writing for whatever cause it ceases to provide postal services, including without prejudice to the generality of the foregoing:
- (a) prior to the filing of an answer admitting the allegations of a demand by any creditor for declaration of bankruptcy;
  - (b) prior to the institution of dissolution or liquidation proceedings with respect to its business;
  - (c) prior to the approval of a demand for the dissolution or the liquidation of the Licensee or effecting a plan or other arrangement with the creditors of the Licensee which may affect the operation of postal services under this Licence;
  - (d) on being subject to an executive warrant of seizure or garnishee order or other similar process that may materially affect the provision of postal services; or
  - (e) upon the occurrence of any event which is reasonably likely to lead to foreclosure or to the judicial sale of a substantial part of the assets of the Licensee.

## **6. Applicability of Laws, Decisions of the Authority, etc**

- 6.1 The Act, all national laws, all decisions of the Authority, and applicable European Union Law, shall apply to the Licensee for all purposes and shall form an integral part of this Licence except in those cases where the Licensee is specifically exempted by the Authority.
- 6.2 The Licensee shall comply with the terms and conditions of this Licence, as well as any applicable obligations or requirements, however described, emanating from the laws and decisions mentioned in 6.1 above:

Provided that nothing in this Licence shall exempt the Licensee from the obligation to diligently obtain at its own expense any permit, licence or other approval or authorisation, however so described, that may be necessary to construct, operate and maintain the postal services or any part thereof, or from the

obligation of complying with any condition of any such permit, licence or other approval or authorisation however so described:

Provided further that the Licensee shall be solely responsible for all expenses and other commitments, however so described, whether financial or otherwise, in respect of the Licence and the implementation thereof, and the Authority shall not be responsible for any such expenses or commitments whatever they may be.

- 6.3 Nothing in this Licence shall be construed as absolving or releasing the Licensee from any obligations, or limiting the power of the Authority to amend this Licence or to impose further conditions on the Licensee.

## 7. Severability

- 7.1 If any term or condition of this Licence is determined to be illegal or invalid by any court or tribunal, however so described, such determination shall have no effect on the validity of any other parts of this Licence, which parts shall remain in full force and effect for the term of the Licence or any amendment thereof.

## 8. ~~Dispute Resolution~~

- ~~8.1 The Licensee shall resolve disputes in a fair, transparent and timely manner and, without prejudice to the right to appeal under any law, shall comply with all requirements or decisions of the Authority in relation to disputes.~~

## 8. Transfer of Licence

- 8.1 This Licence may not be transferred or assigned by the Licensee to another person without the prior consent in writing of the Authority and in accordance with the provisions of the Act. The decision of the Authority in this regard shall be communicated in writing and the Authority shall give reasons for its decision. Such decision shall not be unreasonably withheld or delayed.
- 8.2 A change in the control of the ownership or management of the Licensee shall be equivalent to the transfer of the Licence, and shall be subject to the prior consent in writing of the Authority as aforesaid, which shall not be unreasonably withheld or delayed.

## 9. Licence Fees

- 9.1 The Licensee shall pay any licence fees however so described in accordance with the provisions of the Act.

## 10. Non-Compliance

10.1 If the Authority has reason to believe that the Licensee is not complying with the terms or conditions of this Licence, the Authority may take any required action as authorised at law.

### SECTION C: SERVICES PROVIDED AND RELATED CONDITIONS

## 11. Service Provision and Complaint Handling

11.1 The Licensee shall collect, convey, and deliver postal articles according to the prices and terms and conditions, including quality of service standards, as defined by the Licensee or as agreed upon with individual customers.

11.2 Within two (2) months of the grant of this Licence, the Licensee shall establish and operate adequate systems for:

- (a) measuring and recording its performance in achieving the quality of service standards as defined by the Licensee or as agreed upon with its individual customers; and
- (b) recording, analysing and responding to complaints in respect of the postal services provided by the Licensee generally.

11.3 On the grant of this Licence, the Licensee shall submit to the Authority its procedures for handling complaints about all postal services it provides. The Authority shall verify that the procedures reflect and conform to all legal requirements as provided for in the laws and decisions it enforces. The procedures shall:

- (a) be transparent, simple, inexpensive and prompt;
- (b) cover in particular complaints involving loss, theft, damage or non-compliance with quality of service standards;
- (c) identify where responsibility lies if more than one postal operator is involved;
- (d) include appropriate reimbursement and compensation systems; and
- (e) publicise updated information on complaint handling procedures and contact details for lodging complaints with the Licensee in a manner as may be determined by the Authority.

11.4 The Authority may require the Licensee to amend its procedures to ensure that the conditions mentioned in paragraph 11.2 and 11.3 are satisfied.

11.5 Where a user is not satisfied with the way the Licensee has handled his/her complaint, the Licensee shall ensure that the user is informed that s/he may refer the complaint to the Authority for investigation.

11.6 If in the opinion of the Authority, the number or nature of complaints referred to the Authority indicate, or if the Authority otherwise becomes aware, that the complaint handling procedures of the Licensee are not adequate, the Authority may require the procedures to be reviewed and improved.

11.7 The Licensee shall publish its complaints and redress contact details in a manner as may be determined by the Authority.

## **12. Provision of Information**

12.1 The Licensee shall in a timely manner provide any information as the Authority may require in the exercise of its functions:

Provided that the Authority may also specify the form in which it requires such information.

## **13. Protection of Integrity of Mail**

13.1 The Licensee shall establish and apply adequate mail integrity procedures:

Provided that within two (2) months of the grant of this licence the Licensee shall submit to the Authority the proposed mail integrity procedures, which procedures are to be drawn up in accordance with any directives issued by the Authority:

Provided further that the Authority shall verify that the procedures reflect and conform with all requirements as provided for in the laws and decisions it enforces.

13.2 The Licensee shall establish and apply adequate mail integrity procedures for the purpose of:

- (a) minimising the exposure of postal articles conveyed by the Licensee to the risk of loss, theft, damage or interference;
- (b) minimising the risk of non-compliance with the Act and, or any decisions in relation to postal articles conveyed by the Licensee; and
- (c) improving the performance of the Licensee in relation to the matters referred to in paragraphs (a) and (b).

13.3 The mail integrity procedures of the Licensee shall include the following:

- (a) the selection, vetting, training, provision of incentives to and disciplining of its staff, agents, sub-contractors, directors and officials however so described;
- (b) the security of its buildings and vehicles;
- (c) the avoiding, identifying and taking action in respect of offences under the Act in relation to postal articles conveyed by the Licensee;

(d) the collection and analysis of statistics on the achievement of the purposes set out in paragraph 13.2; and

(e) any other measures that the Authority may deem necessary.

13.4 The Authority may require the Licensee to amend its procedures to ensure that the matters mentioned in paragraph 13.3 are provided for.

13.5 The Licensee shall use all reasonable endeavours at all times to apply its mail integrity protection procedures.

13.6 The Licensee shall allow the Authority to inspect all matters relating to the procedures established under paragraphs 13.2 and 13.3 and any related physical facilities.

13.7 The mail integrity procedures of the Licensee may be reviewed by the Authority. The Licensee shall cooperate in the conduct of any review.

#### **14. ~~Accounting Separation~~ Separate Accounting**

14.1 The Licensee shall keep annually independently audited accounting and financial records for each of service groups specified in paragraph 14.1.

14.2 The Licensee shall keep separate accounts to distinguish between ~~for~~ each of the following service groups:

(a) postal services which are within the scope of the universal services, pursuant to this Licence;

(b) any other postal service comprising the conveyance of postal articles including all postal services which are outside the scope of the universal services; and

(c) any service or activity not comprising the conveyance of postal articles.

14.3 The accounting systems must be sufficient so as to enable the Authority to determine turnover in relation to postal services that are within the scope of the universal services and any postal services outside this scope.

#### **15. Provision of Universal Services**

15.1 The Licensee may be designated as a universal service provider with an obligation to provide the universal service or parts thereof, as determined in its designation as a universal service provider and as may be decided by the Authority from time to time in accordance with the Act.