

Consultation to Amend Agency Contracts

A Decision by Royal Mail Wholesale

15<sup>th</sup> February 2011

Consultation to Amend Agency Contracts– decision document

**1. Summary**

- 1.1 On 4th January 2011 Royal Mail Wholesale (RMW) issued a consultation document to gain the views of its Agency Operator customers about introducing a minimum spend requirement to the Access agreements for Agency Customers.
- 1.2 In the consultation document we asked our customers to respond to four questions by 31<sup>st</sup> January 2011. In total we received 6 responses.
- 1.3 Following consideration of these responses, RMW has decided to introduce a minimum spend requirement with a minor adjustment to the original proposal that was put forward in the consultation document. The issue is raised in paragraph 3 and discussed in paragraph 4 below.
- 1.4 The proposed revisions to the Agency Access agreements are annexed to this document (Annex A: Agency National Operator Agreement; Annex B: Agency Zonal Operator Agreement; Annex C: Agency Premium Zonal Operator Agreement) and will come into effect from 4<sup>th</sup> April 2011. Customers are asked to sign and return a copy of the relevant annex to authorise the variations to their Access agreements prior to the 4<sup>th</sup> April 2011.

**2. Purpose**

- 2.1 This document summarises the feedback received from RMW's Agency Operator customers following a consultation on a proposal to amend the Agency Access agreements that was issued on 4<sup>th</sup> January 2011, and finalises RMW's proposal with the relevant contractual changes detailed by contract type in the annexes A to C.

**3. Responses to Consultation**

- 3.1 For ease of reference and to provide the necessary context to the responses from our customers the full narrative from each question as contained in the original proposal has been reproduced below in italicised text.

3.2 Consultation Narrative to Question 1

*Both RMW and Agency Operators have costs involved in setting up a new Agency Customer: for RMW, in setting up and maintaining a credit account; for the Agency Operator, sales resource in identifying new sales opportunities, setting up a credit account and managing the sales uploads and reporting requirements of each Agency Customer's daily postings to RMW. Costs such as these are normally absorbed once a new posting customer achieves a reasonable level of volume. However, the Agency Operator Agreements do not stipulate any minimum volumes for Agency Customers, as such circumstances outlined above were not envisaged when we agreed the arrangements jointly with our customers.*

**Consultation Question 1: Do you agree that it is reasonable to cover customer acquisition and maintenance costs through stipulating minimum posting volumes within terms and conditions? If not, please provide an alternative means of absorbing such costs?**

All respondents agreed with the principle and one respondent expanded to say that it is perfectly reasonable to introduce minimum volumes to a contract that is offering a discount on postage.

### 3.3 Consultation Narrative to Question 2

*Since it is a condition of the Agency Customer Agreement to abide to the terms of their agent's Access Agreement, our proposal is to introduce a new condition to the Agency Operator Agreement that covers a minimum spend per Agency Customer. We propose that the entry criterion be based on a minimum postage spend of £5000 per annum, with measurement being commensurate with the start date of each specific Agency Customer Agreement. If an Agency Customer does not meet this minimum spend level, we propose to seek to cover the administrative costs of account set up and maintenance from the Agency Operator. The administrative charge will be £560 (+VAT) per Agency Customer.*

*We propose that the administrative fee will also apply to any Agency Customer account that was opened and subsequently closed within the 12 months if, during the time that it was operational, it did not meet the minimum spend level. Similarly, it will also apply to any existing Agency Customer account that does not meet the minimum spend level in each 12 month period since initially becoming operational. Agency Customer accounts which are closed and subsequently re-opened will be measured from the first activation date.*

*The spend level and charges may be amended by RMW once a year, at the same time as tariff changes at a level not to exceed RPI.*

*Similarly, we would expect Agency Operators to 'back-to-back' these requirements with Agency Customers.*

**Consultation Question 2: Do you agree that it is reasonable to cover the costs of setting up a new customer account, as described above, where costs cannot be covered automatically through postage spend? If not, please describe your alternative proposal.**

All respondents agreed that it is reasonable to cover costs for any new customer set up.

One respondent agreed but felt that the cost proposed seemed a bit high.

One respondent agreed and stated that if costs could not be covered by volume throughput it is common practise to apply account charges for maintenance.

Two respondents agreed with the principles but did not agree that a charge should be raised to the Agency Operator because of the way in which the Agency Access

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agreements treat disbursements and believed that the proposal should be amended to apply any applicable charge to the relevant Agency Customer.

### 3.4 Consultation Narrative to Question 3

*To keep administration costs to a minimum, we propose that these charges be raised on an annual review basis, once a year every April, and will include any Agency Customer account that has been opened 12 months within the period 1<sup>st</sup> April – 31<sup>st</sup> March and not met the minimum spend level. As an example, an Agency Customer account signed in February 2011, and did not meet the minimum spend between 1<sup>st</sup> April 2011 and 31<sup>st</sup> March 2012, will have a charge raised against it for the administrative fee to be invoiced to the Agency Operator following a review in April 2012.*

*We propose to begin to review Agency Customer revenue spend from April 2011, and then once a year, every April. This means, for example, that an Agency Customer who signs an Agency Customer Agreement in April 2011 and doesn't spend £5000 by 31<sup>st</sup> March 2012 will have a fee of £560 (+VAT) raised against it in the April 2012 review; if that same Agency Customer continues to have an account the following year and again does not meet the minimum spend requirement of £5000 between 1<sup>st</sup> April 2012 – 31<sup>st</sup> March 2013, they will have the administrative fee of £560 (+VAT) raised against it in the April 2013 review. For clarity, Royal Mail will raise only one invoice each April for an Agency Operator pertaining to the total number of their agency customers who have not met the minimum annual spend criteria within the previous financial year.*

*We appreciate that you will need to administer some changes to your internal processes as well as to the terms that you have with Agency Customers, so we will not seek to apply any such fees to any Agency Customer account that you have opened and now wish to terminate providing that the termination takes place by 1<sup>st</sup> April 2011. This means that unless you request a closure of an Agency Customer account by 1<sup>st</sup> April 2011, this proposal will apply to all current and new Agency Customer accounts.*

**Consultation Question 3: Do you agree with the timings outlined above? If not, what alternative implementation do you propose?**

All respondents agreed with the timing. No respondents expanded on their response.

### 3.5 Consultation Narrative to Question 4

*It is hoped that there will be no need to apply these charges as we believe that this situation can be anticipated and managed by the Agency Operator via its own terms and conditions, prior to account set up. The proposed changes to the contractual terms between Royal Mail and the Agency Operator, however, would ensure that the Agency Operator Agreements remain cost effective.*

**Consultation Question 4: Do you have any other observations on the proposals in this consultation document? If so, do those observations lead you to a different conclusion to ours? If so, please explain.**

One respondent offered the following observations: "I believe that the intent here is to give fair warning and to allow/encourage the Agency Operator to nullify the requirement for these charges to apply in any case; to that end, and provided that the objective is made clear, the amends should be supported by the industry". No further observations were offered.

#### **4. RMW's Response and Decision**

- 4.1 In response to the comment from one respondent who felt that the cost seemed a bit high, we undertook a base cost review to establish the charge that would be necessary to cover our costs for account set up and annual maintenance. Whilst we appreciate that each individual customer will measure its cost base for account set up and maintenance relevant to its own company resources and processes, and these may vary according to company size, we have put forward a charge that is cost reflective to Royal Mail. We are therefore keeping the charge at £560 plus VAT for the financial year commencing 4<sup>th</sup> April 2011.
- 4.2 We agree with customers that it is not appropriate to raise any applicable charges to the Agency Operator provided that the Agency Operator has fulfilled its obligation to inform all Agency Customers of the minimum annual spend requirement.
- 4.3 We therefore will make an amendment to our original proposal to reflect that any applicable charges for Agency Customer accounts that do not meet the minimum annual spend are made to each relevant Agency Customer. The contractual changes detailed in the annexes A to C reflect this variation to the original proposal.
- 4.4 For clarity, following the amendment that RMW will raise any applicable charge to each relevant Agency Customer, and not the Agency Operator, this still involves RMW completing a review of all Agency Customer accounts only once a year every April.

#### **5. Next Steps**

- 5.1 Agency Operator customers are asked to formalise the proposed variations by signing the relevant annex to the Agency Operator Agreement that they hold and returning it to Jenny Ledger at 148 Old St, London. EC1V 9HQ by 1<sup>st</sup> April 2011.

## Annex A

### The following variations will apply to the Access Agency National Operator Agreement

#### Background and Interpretation

This variation notice is supplemental to and varies the terms of an Access Agency National Operator Agreement dated the Commencement Date between the Customer and Royal Mail (**Agency National Operator Agreement**).

All words and expressions defined and rules of interpretation contained in the Agency National Operator Agreement and Agency Customer Agreement shall have the same meanings in this Agreement unless the context requires otherwise.

The current contractual terms between the parties of an Agency Customer Agreement state at clause 5 that the Agency Customer can post access mailing items in accordance with the terms and conditions of their agent's Operator Access Agreement:

*“Royal Mail confirms that in consideration of the payment to it of all Charges relating to the Agency Customer's Mailing Items, Royal Mail will provide the Agency Customer Services to the Agency Customer throughout this Agency Customer Agreement in accordance with the Operator Access Agreement including Schedule 1.”*

#### Variations

In consideration for the continuation of the Services, the Customer and Royal Mail agree that with effect from the 4<sup>th</sup> April 2011 the following variations to the Agency National Operator Agreement shall be made:

The current clause 3.2 of the Agency National Operator Agreement shall be deleted in its entirety and the following new clause 3.2 shall be inserted:

- “3.2 The Customer shall and in relation to clause 3.2.1 only, each Agency Customer shall:
- 3.2.1 observe and perform their respective obligations in accordance with this Agreement and the relevant Agency Customer Agreement;
  - 3.2.2 prior to the signing of an Agency Customer Agreement by an Agency Customer, provide to the Agency Customer a copy of the applicable Operator Access Agreement (as defined in the Agency Customer Agreement) the terms of which each Agency Customer must comply with under the Agency Customer Agreement, together with continual updates on and copies of any variation to the Operator Access Agreement within 7 days of such variation coming into effect

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The Customer shall indemnify Royal Mail against any liability, loss or claim suffered or reasonably incurred by Royal Mail as a result of any breach by it of clause 3.2.2.”

The following two new paragraphs shall be inserted as new paragraphs into the Agency National Operator Agreement, at paragraph 3.2 of Schedule 1 and paragraph 3.18 of Schedule 1:

“3.2.5 in the 12 month period from the date specified in clause 2 of any executed Agency Customer Agreement, and in each successive 12 month period or, if earlier, the period ending on the termination of the Agency Customer Agreement or closure of the Agency Customer Credit Account, in aggregate hand over to Royal Mail the number of Mailing Items in respect of which the Access Charges payable by the Agency Customer under this Agreement amount to at least £5000.”

“3.18 If the Customer does not meet the requirements of paragraph 3.2.5, Royal Mail shall:

3.18.1 charge the Agency Customer an administrative fee of £560 (plus VAT if applicable) per Agency Customer Credit Account that fails to meet the Minimum Spend Level;

3.18.2 raise an invoice to the Agency Customer for any due administrative charges once a year, in April to include any Agency Customer Credit Account that has been opened 12 months within the period 1<sup>st</sup> April – 31<sup>st</sup> March and not met the Minimum Spend Level, with the provisions of clause 11 of this Agreement applying to any such invoice;

3.18.3 apply the charge set out at paragraph 3.18.1 to any Agency Customer Credit Account that was opened and subsequently closed within the 12 months of it being opened if, during the time that it was operational, it did not meet the Minimum Spend Level;

3.18.4 apply the charge set out at paragraph 3.18.1 to any Agency Customer Credit Account that does not meet the Minimum Spend Level in each 12 month period since initially becoming operational. Agency Customer credit accounts which are closed and subsequently re-opened will be measured from the first activation date.

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3.18.5 be entitled to vary the charge set out at paragraph 3.18.1 annually at the time Royal Mail adjusts its Access tariffs at a level not to exceed the Retail Price Index.”

The following new definitions shall be inserted in alphabetical order into the Agency National Operator Agreement, at clause 1.1 (Definitions and interpretation):

**Minimum Spend Level** has the meaning ascribed thereto in paragraph 3.2.5 of Schedule 1;

### **General**

Save as amended by this variation notice, which shall take precedence in relation to the matters to which it relates, the terms of the Agency National Operator Agreement and Agency Customer Agreement shall otherwise remain in full force and effect.

This variation notice and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of England and Wales.

The Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this variation notice or its subject matter or formation (including non-contractual disputes or claims).

**This document has been entered into on the date stated below.**



## Annex B

The following variations will apply to the Access Agency Zonal Operator Agreement

### Background and Interpretation

This variation notice is supplemental to and varies the terms of an Access Agency Zonal Operator Agreement dated the Commencement Date between the Customer and Royal Mail (**Agency Zonal Operator Agreement**).

All words and expressions defined and rules of interpretation contained in the Agency Zonal Operator Agreement and Agency Customer Agreement shall have the same meanings in this Agreement unless the context requires otherwise.

The current contractual terms between the parties of an Agency Customer Agreement state at clause 5 that the Agency Customer can post access mailing items in accordance with the terms and conditions of their agent's Operator Access Agreement:

*“Royal Mail confirms that in consideration of the payment to it of all Charges relating to the Agency Customer's Mailing Items, Royal Mail will provide the Agency Customer Services to the Agency Customer throughout this Agency Customer Agreement in accordance with the Operator Access Agreement including Schedule 1.”*

### Variations

In consideration for the continuation of the Services, the Customer and Royal Mail agree that with effect from the 4<sup>th</sup> April 2011 the following variations to the Agency Zonal Operator Agreement shall be made:

The current clause 3.2 of the Agency Zonal Operator Agreement shall be deleted in its entirety and the following new clause 3.2 shall be inserted:

- “3.2 The Customer shall and in relation to clause 3.2.1 only, each Agency Customer shall:
- 3.2.1 observe and perform their respective obligations in accordance with this Agreement and the relevant Agency Customer Agreement;
  - 3.2.2 prior to the signing of an Agency Customer Agreement by an Agency Customer, provide to the Agency Customer a copy of the applicable Operator Access Agreement (as defined in the Agency Customer Agreement) the terms of which each Agency Customer must comply with under the Agency Customer Agreement, together with continual updates on and copies of any variation to the Operator Access Agreement within 7 days of such variation coming into effect

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The Customer shall indemnify Royal Mail against any liability, loss or claim suffered or reasonably incurred by Royal Mail as a result of any breach by it of clause 3.2.2.”

The following two new paragraphs shall be inserted as new paragraphs into the Agency Zonal Operator Agreement, at paragraph 3.2 of Schedule 1 and paragraph 3.15 of Schedule 1:

“3.2.5 in the 12 month period from the date specified in clause 2 of any executed Agency Customer Agreement, and in each successive 12 month period or, if earlier, the period ending on the termination of the Agency Customer Agreement or closure of the Agency Customer Credit Account, in aggregate hand over to Royal Mail the number of Mailing Items in respect of which the Access Charges payable by the Agency Customer under this Agreement amount to at least £5000.”

“3.15 If the Customer does not meet the requirements of paragraph 3.2.5, Royal Mail shall:

3.15.1 charge the Agency Customer an administrative fee of £560 (plus VAT if applicable) per Agency Customer Credit Account that fails to meet the Minimum Spend Level;

3.15.2 raise an invoice to the Agency Customer for any due administrative charges once a year, in April to include any Agency Customer Credit Account that has been opened 12 months within the period 1<sup>st</sup> April – 31<sup>st</sup> March and not met the Minimum Spend Level, with the provisions of clause 11 of this Agreement applying to any such invoice;

3.15.3 apply the charge set out at paragraph 3.15.1 to any Agency Customer Credit Account that was opened and subsequently closed within the 12 months of it being opened if, during the time that it was operational, it did not meet the Minimum Spend Level;

3.15.4 apply the charge set out at paragraph 3.15.1 to any Agency Customer Credit Account that does not meet the Minimum Spend Level in each 12 month period since initially becoming operational. Agency Customer credit accounts which are closed and subsequently re-opened will be measured from the first activation date.

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3.15.5 be entitled to vary the charge set out at paragraph 3.15.1 annually at the time Royal Mail adjusts its Access tariffs at a level not to exceed the Retail Price Index.”

The following new definitions shall be inserted in alphabetical order into the Agency Zonal Operator Agreement, at clause 1.1 (Definitions and interpretation):

**Minimum Spend Level** has the meaning ascribed thereto in paragraph 3.2.5 of Schedule 1;

### **General**

Save as amended by this variation notice, which shall take precedence in relation to the matters to which it relates, the terms of the Agency Zonal Operator Agreement and Agency Customer Agreement shall otherwise remain in full force and effect.

This variation notice and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of England and Wales.

The Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this variation notice or its subject matter or formation (including non-contractual disputes or claims).

**This document has been entered into on the date stated below.**

## Annex C

### The following variations will apply to the Access Premium Agency Zonal Operator Agreement

#### Background and Interpretation

This variation notice is supplemental to and varies the terms of an Access Premium Agency Zonal Operator Agreement dated the Commencement Date between the Customer and Royal Mail (**Premium Agency Zonal Operator Agreement**).

All words and expressions defined and rules of interpretation contained in the Premium Agency Zonal Operator Agreement and Agency Customer Agreement shall have the same meanings in this Agreement unless the context requires otherwise.

The current contractual terms between the parties of an Agency Customer Agreement state at clause 5 that the Agency Customer can post access mailing items in accordance with the terms and conditions of their agent's Operator Access Agreement:

*“Royal Mail confirms that in consideration of the payment to it of all Charges relating to the Agency Customer's Mailing Items, Royal Mail will provide the Agency Customer Services to the Agency Customer throughout this Agency Customer Agreement in accordance with the Operator Access Agreement including Schedule 1.”*

#### Variations

In consideration for the continuation of the Services, the Customer and Royal Mail agree that with effect from the 4<sup>th</sup> April 2011 the following variations to the Premium Agency Zonal Operator Agreement shall be made:

The current clause 3.2 of the Premium Agency Zonal Operator Agreement shall be deleted in its entirety and the following new clause 3.2 shall be inserted:

- “3.2 The Customer shall and in relation to clause 3.2.1 only, each Agency Customer shall:
- 3.2.1 observe and perform their respective obligations in accordance with this Agreement and the relevant Agency Customer Agreement;
  - 3.2.2 prior to the signing of an Agency Customer Agreement by an Agency Customer, provide to the Agency Customer a copy of the applicable Operator Access Agreement (as defined in the Agency Customer Agreement) the terms of which each Agency Customer must comply with under the Agency Customer Agreement, together with continual updates on and copies of any variation to

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the Operator Access Agreement within 7 days of such variation coming into effect

The Customer shall indemnify Royal Mail against any liability, loss or claim suffered or reasonably incurred by Royal Mail as a result of any breach by it of clause 3.2.2.”

The following two new paragraphs shall be inserted as new paragraphs into the Premium Agency Zonal Operator Agreement, at paragraph 3.2 of Schedule 1 and paragraph 3.15 of Schedule 1:

“3.2.3 in the 12 month period from the date specified in clause 2 of any executed Agency Customer Agreement, and in each successive 12 month period or, if earlier, the period ending on the termination of the Agency Customer Agreement or closure of the Agency Customer Credit Account, in aggregate hand over to Royal Mail the number of Mailing Items in respect of which the Access Charges payable by the Agency Customer under this Agreement amount to at least £5000.”

“3.15 If the Customer does not meet the requirements of paragraph 3.2.3, Royal Mail shall:

3.15.1 charge the Agency Customer an administrative fee of £560 (plus VAT if applicable) per Agency Customer Credit Account that fails to meet the Minimum Spend Level;

3.15.2 raise an invoice to the Agency Customer for any due administrative charges once a year, in April to include any Agency Customer Credit Account that has been opened 12 months within the period 1<sup>st</sup> April – 31<sup>st</sup> March and not met the Minimum Spend Level, with the provisions of clause 11 of this Agreement applying to any such invoice;

3.15.3 apply the charge set out at paragraph 3.15.1 to any Agency Customer Credit Account that was opened and subsequently closed within the 12 months of it being opened if, during the time that it was operational, it did not meet the Minimum Spend Level;

3.15.4 apply the charge set out at paragraph 3.15.1 to any Agency Customer Credit Account that does not meet the Minimum Spend Level in each 12 month period since initially becoming operational. Agency Customer credit accounts which are closed and subsequently re-opened will be measured from the first activation date.

## ROYAL MAIL WHOLESALE

3.15.5 be entitled to vary the charge set out at paragraph 3.15.1 annually at the time Royal Mail adjusts its Access tariffs at a level not to exceed the Retail Price Index.”

The following new definitions shall be inserted in alphabetical order into the Premium Agency Zonal Operator Agreement, at clause 1.1 (Definitions and interpretation):

**Minimum Spend Level** has the meaning ascribed thereto in paragraph 3.2.3 of Schedule 1;

### **General**

Save as amended by this variation notice, which shall take precedence in relation to the matters to which it relates, the terms of the Premium Agency Zonal Operator Agreement and Agency Customer Agreement shall otherwise remain in full force and effect.

This variation notice and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of England and Wales.

The Customer irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this variation notice or its subject matter or formation (including non-contractual disputes or claims).

**This document has been entered into on the date stated below.**

ROYAL MAIL WHOLESale

**I am a director/authorised signatory of the Customer to an Access Agency  
Operator Agreement with Royal Mail and**

**ACCEPT / REJECT**

**(please delete as appropriate)**

**the variations contained in this Letter and its Annexes dated 15<sup>th</sup> February 2011  
of which this is a copy.**

**Company:**

**Signature:**

**Print Name:**

**Position:**

**Date:**