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Keith Baines
Head of Horizon Commercial
Post Office Counters Limited
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London WC1X 0DG

27 June 2001

Dear Keith

CCN 411a - Charges

Thank you for your letter of 31 May 2001. Having looked into the issue you have raised it appears there must be a misunderstanding on POCL's part as to the work covered by the charges set out in the Codified Agreement. Before describing some of the background to the issue, ICL Pathway's contractual position is as follows:

Clause 810.10 of the current version of the Codified Agreement (version 2.0) states that the parties agree that:

"to the extent that amendments were required to the provisions of the Clauses and Schedules of [the] Codified Agreement in order to reflect the matters agreed in the CCNs listed in Schedule A17 those amendments have been made..... the said CCNs have, accordingly, been superseded by [the] Codified Agreement to that extent but this shall be without prejudice to the application of the said CCNs to matters other than the Clauses and Schedules of [the] Codified Agreement (including their application toany charges or credits specified in the said CCN which shall be due or which shall become due to be paid or allowed)....." [my underlining]

CCN 411a is listed in Schedule A17. The amendments described in that CCN to Requirement and Solution 543 have been made. In accordance with Clause 810.10, CCN 411a has been superseded, but that is without prejudice to the charges specified in that CCN which are due or which shall become due to be paid.

The total amount due in accordance with "Sheet 3" of CCN 411a is £288,690.32. 50% of that sum became due on signature of the CCN, 25% on completion of Direct Interface Testing and the remaining 25% on commencement of Roll-Out of CSR+. In addition, there are support charges of 15% of that total, payable on an annual basis commencing upon Roll-Out of CSR+. Although not stated in your letter, I understand (from Yemisi Rotimi's email to Graham Wingrove of 26/3/01) that: POCL has paid the invoice raised in respect of the first of the payment milestones, and does not dispute that payment; that POCL has paid the invoice raised in respect of the second payment milestone, but is now requesting a refund of that payment; and that POCL has refused to pay the invoice raised in respect of the final payment milestone, but has indicated that the annual support charges will be paid. In summary, I take it that POCL's position is that ICL Pathway is not entitled to 50% of its software development charges. The argument you have raised in support of this position leads me to suspect, as I mentioned above, that there has been a misunderstanding as to what is covered by the charges specified in the Codified Agreement.



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CCN 411a was originally listed (i.e. in version 1.0 of the Codified Agreement signed on 28 July 1999) in Part 1 of Schedule A17. The relevant wording of Clause 810.10 in version 1 stated that:

"....[the] CCNs listed in Part 1 of Schedule A17 have been agreed, shall be deemed to have been raised in relation to this Codified Agreement and shall be incorporated in this Codified Agreement as soon as reasonably practicable following its execution....."

That is precisely what happened. The amendments described in CCN 411a were made to the relevant provisions and introduced in the next "baseline" of the Codified Agreement at version 1.2 under CCN 609. CCN 609 also amended the wording of Clause 810.10, changing it from a requirement that CCNs listed in Part 1 of Schedule A17 be incorporated in the Codified Agreement to an agreement that such incorporation had occurred, on the basis described above.

CCN 411a was submitted on 10 June 1999, approved by POCL on 11 June 1999 and approved by ICL Pathway on 29 June 1999. As such this CCN appears to be unique, having been the only CCN, so far as I can tell, which was submitted and approved in the window between the "Letter Agreement" signed in May 1999 and signature of the Codified Agreement on 28 July 1999. Clearly, the charges described in CCN 411a were not included in the pricing for CSR and CSR + described in the Letter Agreement (as the CCN post dates the Letter Agreement). As the original wording of Clause 810.10 makes clear, the CCN 411a charges were not included in the pricing set out in Schedule A12 of the Codified Agreement as the intention was that the CCNs would be incorporated after signature of the Codified Agreement. Furthermore, the charges described in CCN 411a could not have been subsumed in Schedule A12 prior to signature of the Codified Agreement as the "rules" on codification would not have allowed that.

ICL Pathway's invoices in respect of CCN 411a have, therefore, been properly raised and the outstanding invoice should be paid without further delay.

I would be happy to discuss this at the next Contract Administration Board.

Yours sincerely

GRO

COLIN LENTON-SMITH

Commercial & Finance Director