

## RESTRICTED - CONTRACTS

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SECRETARY OF STATE FOR SOCIAL  
SECURITY

- and -

POST OFFICE COUNTERS LTD

- and -

PATHWAY GROUP LIMITED

INFORMATION TECHNOLOGY  
SERVICES AGREEMENT FOR  
BRINGING TECHNOLOGY TO  
POST OFFICES AND  
BENEFITS PAYMENTS

VOLUME 1

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### INFORMATION TECHNOLOGY SERVICES AGREEMENT FOR BRINGING TECHNOLOGY TO POST OFFICES AND BENEFITS PAYMENTS

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THIS AGREEMENT is made the fifteenth day of May 1996

BETWEEN:

(1) The Secretary of State for Social Security, acting through and on behalf of the Department of Social Security and on behalf of the Department of Health and Social Services for Northern Ireland ("DSS");

(2) Post Office Counters Ltd whose registered office is situated at Drury House, 1-16 Blackfriars Road, London SE1 9UA ("POCL");

(DSS and POCL being referred to collectively as "the AUTHORITIES"); and

(3) Pathway Group Limited whose registered office is at ICL House, Putney, London, SW15 ("the CONTRACTOR").

### RECITALS

WHEREAS:

(a) The AUTHORITIES wish to contract for the design, development, integration and establishment of the Service Infrastructure (as defined herein) and for the Services (as defined herein);

(b) On 30 August 1994 the AUTHORITIES placed an advertisement in the Official Journal of the European Communities for the supply of the Service Infrastructure and the Services;

(c) All parties recognise and commit to the overall service objectives of the Related Agreements which can be expressed as:

- a fraud-free method of paying benefits at post offices that is automated, has lower end-to-end costs than the current paper-based process, with continuously reducing overall administration costs year on year;
- extending automation to POCL's other client transactions, its products and its support processes to improve competitiveness, increase efficiency, and to enable greater commercial opportunities for POCL;
- full and speedy reconciliation of benefits payments, with accounting arrangements consistent with recognised accounting practices;
- an improved overall service to the AUTHORITIES' customers.

(d) On 13 April 1995 the AUTHORITIES issued their Statement of Service Requirements to potential suppliers (including the CONTRACTOR) in respect of the supply of the Service Infrastructure and the Services;

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(e) The CONTRACTOR submitted its Proposal dated 8 June 1995 in response to the Statement of Service Requirements;

(f) On 29 February 1996 the AUTHORITIES invited potential suppliers (including the CONTRACTOR) to submit Tenders in respect of the supply of the Service Infrastructure and the Services;

(g) The CONTRACTOR submitted a Tender on 21 March 1996; and

(h) On 16 April 1996 the AUTHORITIES invited potential suppliers (including the CONTRACTOR) to submit Retenders in respect of the supply of the Service Infrastructure and the Services;

(i) The CONTRACTOR submitted a Retender on 22 April 1996;

(j) On the basis of the CONTRACTOR's Proposal, Tender and Retender, the AUTHORITIES have selected the CONTRACTOR to supply the Service Infrastructure and the Services and the CONTRACTOR undertakes to supply the same on the terms set out below.

NOW THEREFORE IT IS HEREBY AGREED as follows:

**PART 1 : INTRODUCTION****Clause 101. Contract Structure****101.1 The Related Agreements**

This agreement forms part of a suite of three related agreements between the parties ("the Related Agreements") comprising:

- (a) this agreement between DSS, POCL and the CONTRACTOR ("the AUTHORITIES' Agreement");
- (b) a separate agreement between DSS and the CONTRACTOR ("the DSS Agreement"); and
- (c) a separate agreement between POCL and the CONTRACTOR ("the POCL Agreement").

**101.2 Precedence of the Related Agreements**

In the event of and to the extent only of any conflict or inconsistency between the provisions of this AUTHORITIES' Agreement and the provisions of the DSS Agreement or the POCL Agreement, the provisions of this AUTHORITIES' Agreement shall prevail.

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**101.3 Amendments to Clauses and Schedules of the Related Agreements**

101.3.1 The provisions of the Related Agreements may not be amended unless such amendment is approved on behalf of the relevant parties at the appropriate levels of authority as follows:

- (a) subject to the change control procedures specified in Schedule A5, amendments to the Clauses, Annexes and Schedules of the AUTHORITIES' Agreement must be approved by the BA Project Director or his successor on behalf of DSS and by the POCL Development Director or his successor on behalf of POCL and by the Managing Director or his successor on behalf of the CONTRACTOR;
- (b) except as provided by paragraph (d) below, and subject to the change control procedures specified in Schedule A5, amendments to the Clauses and Schedules of the DSS Agreement must be approved by the BA Project Director or his successor on behalf of DSS and by the Managing Director or his successor on behalf of the CONTRACTOR;
- (c) except as provided by paragraph (e) below, and subject to the change control procedures specified in Schedule A5, amendments to the Clauses and Schedules of the POCL Agreement must be approved by the POCL Development Director or his successor on behalf of POCL and by the Managing Director or his successor on behalf of the CONTRACTOR;
- (d) any amendment to the Clauses or Schedules of the DSS Agreement which conflicts or is inconsistent with the Double Key Requirements in Schedule B4 or the Double Key Solutions in Schedule B5 in whole or in part shall be subject to the approval of all three parties in accordance with paragraph (a) above;
- (e) any amendment to the Clauses or Schedules of the POCL Agreement which conflicts or is inconsistent with the Double Key Requirements in Schedule B4 or of the Double Key Solutions in Schedule B5 in whole or in part shall be subject to the approval of all three parties in accordance with paragraph (a) above;
- (f) notwithstanding the foregoing provisions of this Clause, but subject to the change control procedures specified in Schedule A5, in the event of a future change in policy by the Government, DSS may release the CONTRACTOR from its obligations to both

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AUTHORITIES under Clause 106.1 without POCL's approval.

101.3.2 (a) If the CONTRACTOR and DSS agree any amendment to the DSS Agreement without the approval of POCL being obtained to such amendment, and POCL's approval should have been obtained pursuant to Clause 101.3.1(d), such purported amendment shall be invalid, and DSS shall indemnify the CONTRACTOR for all costs and expenses reasonably incurred by the CONTRACTOR as a direct result of such purported amendment.

(B) If the CONTRACTOR and POCL agree any amendment to the POCL Agreement without the approval of DSS having been obtained to such amendment, and DSS's approval should have been obtained pursuant to Clause 101.3.1(e), such purported amendment shall be invalid, and POCL shall indemnify the CONTRACTOR for all costs and expenses reasonably incurred by the CONTRACTOR as a direct result of such purported amendment.

101.3.3 The CONTRACTOR need not agree to any amendment to any Related Agreement if such amendment would place it in breach of any of its obligations under any other Related Agreement.

**101.4 Other Changes**

Changes in connection with the Related Agreements which do not require any amendment to the Related Agreements may be approved by the parties to the relevant contract, subject to the change control procedures specified therein as follows:

- (a) changes under the AUTHORITIES' Agreement may be approved by the BA/POCL Procurement Manager or his successor on behalf of DSS and on behalf of POCL and by the Managing Director or his successor on behalf of the CONTRACTOR in accordance with the change control procedures specified in Schedule A5;
- (b) changes under the DSS Agreement may be approved by the BA/POCL Procurement Manager or his successor on behalf of DSS and by the Managing Director or his successor on behalf of the CONTRACTOR in accordance with the change control procedures specified in Schedule A5 of the DSS Agreement;
- (c) changes under the POCL Agreement may be approved by the BA/POCL Procurement Manager or his successor of

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POCL and by the Managing Director or his successor of the CONTRACTOR in accordance with the change control procedures specified in Schedule A5 of the POCL Agreement.

**101.5 Rights and Remedies of the AUTHORITIES under the Related Agreements**

101.5.1 The rights and remedies of each AUTHORITY against the CONTRACTOR under the AUTHORITIES' Agreement are concurrent and may be exercised concurrently or separately by either AUTHORITY with or without the consent of the other AUTHORITY.

101.5.2 Except as provided by Clause 101.5.4, the rights and remedies of DSS against the CONTRACTOR under the DSS Agreement are not concurrent with those of POCL and may only be exercised by DSS.

101.5.3 Except as provided by Clause 101.5.5, the rights and remedies of POCL against the CONTRACTOR under the POCL Agreement are not concurrent with those of DSS and may only be exercised by POCL.

101.5.4 If in the event of Default by the CONTRACTOR under the DSS Agreement, DSS elects not to exercise any of its rights and remedies against the CONTRACTOR under that Agreement, such rights and remedies shall be exercisable against the CONTRACTOR by POCL in DSS's name within three (3) months of such election as if POCL were DSS and the CONTRACTOR shall be liable to POCL as if POCL were DSS, provided that POCL has suffered or risks suffering direct loss or damage as a result of such Default which is not remediable under the POCL Agreement and provided, further, that the POCL Agreement has not been terminated. In any such action, the CONTRACTOR shall be entitled to the same substantive defences and procedural rights and remedies against POCL as it would have had against DSS if such action were brought by DSS (including the right to obtain discovery from POCL and DSS of those documents in relation to which the CONTRACTOR would have had a right of discovery if the action had been brought by DSS) in addition to those it is entitled to against POCL itself. However, POCL shall not be entitled to exercise DSS's rights and remedies against the CONTRACTOR under the DSS Agreement (a) without first having consulted fully with DSS, or (b) where DSS has settled its own claim against the CONTRACTOR in respect of such Default and POCL has approved such settlement. POCL shall promptly notify the CONTRACTOR in writing of its approval of such settlement.



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101.5.5 If in the event of Default by the CONTRACTOR under the POCL Agreement POCL elects not to exercise its rights and remedies against the CONTRACTOR under that Agreement, such rights and remedies shall be exercisable against the CONTRACTOR by DSS in POCL's name within three (3) months of such election as if DSS were POCL and the CONTRACTOR shall be liable to DSS as if DSS were POCL, provided that DSS has suffered or risks suffering direct loss or damage as a result of such Default which is not remediable under the DSS Agreement and provided, further, that the DSS Agreement has not been terminated. In any such action, the CONTRACTOR shall be entitled to the same substantive defences and procedural rights and remedies against DSS as it would have had against POCL if such action were brought by POCL (including the right to obtain discovery from DSS and POCL of those documents in relation to which the CONTRACTOR would have had a right of discovery if the action had been brought by POCL) in addition to those it is entitled to against DSS itself. However, DSS shall not be entitled to exercise POCL's rights and remedies under the POCL Agreement (a) without first having consulted fully with POCL, or (b) where POCL has settled its own claim against the CONTRACTOR in respect of such Default and DSS has approved such settlement. DSS shall promptly notify the CONTRACTOR in writing of its approval of such settlement.

101.5.6 The CONTRACTOR shall not be liable to either AUTHORITY for any failure to perform or delay in performing any of its obligations to that AUTHORITY under the Related Agreements where the CONTRACTOR proves that such failure or delay has been directly caused by the failure of either AUTHORITY to perform any of the obligations applicable to that AUTHORITY or to both AUTHORITIES under the Related Agreements. This Clause shall not apply to Clause 808, which shall be governed by the specific rule stated in Clause 808.2.

101.5.7 Before settling any claim by it under the Related Agreements, the relevant AUTHORITY shall first consult fully with the other AUTHORITY. Settlement by either AUTHORITY of a claim by it against the CONTRACTOR under the Related Agreements shall protect the CONTRACTOR from the other AUTHORITY making a claim in respect of the same Default, provided that such AUTHORITY has approved such settlement. The AUTHORITY approving such settlement shall promptly notify the CONTRACTOR in writing of such approval.

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**101.6 Obligations and Liabilities of the AUTHORITIES under the Related Agreements**

101.6.1 For the avoidance of doubt, the parties acknowledge that nothing in the Related Agreements shall be deemed or construed to create a partnership between the AUTHORITIES, and neither AUTHORITY shall be jointly or severally liable for any of the obligations of the other AUTHORITY under the Related Agreements.

101.6.2 Without limitation to Clause 101.6.1, where any obligation under the Related Agreements is expressed to be binding on both AUTHORITIES, such obligation will be binding on each AUTHORITY individually and one AUTHORITY shall not be liable for any failure by the other AUTHORITY to comply with that obligation.

**Clause 102. Interpretations**

102.1 As used in the AUTHORITIES' Agreement:

102.1.1 the terms and expressions set out in Schedule A1 shall have the meanings ascribed therein;

102.1.2 the masculine includes the feminine and the neuter; and

102.1.3 the singular includes the plural and vice versa.

102.2 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof.

102.3 Headings are included in the AUTHORITIES' Agreement for ease of reference only and shall not affect the interpretation or construction of the AUTHORITIES' Agreement.

102.4 References in this AUTHORITIES' Agreement to Clauses, Parts, Annexes and Schedules are, unless otherwise provided, references to the clauses, parts, annexes and schedules of the AUTHORITIES' Agreement.

102.5 In the event and to the extent only of any conflict or inconsistency between the Clauses and Schedule A1 and the Schedules (other than Schedule A1), the Clauses and Schedule A1 shall prevail. In the event and to the extent only of any conflict or inconsistency between the Schedules (other than Schedule A1), the provisions of Schedules 2, A2



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to A12, B3, B7 and B8 shall prevail over those of all other Schedules (other than Schedule A1) and the provisions of Schedules B1 and B4 shall prevail over those of Schedules B2 and B5. Notwithstanding the foregoing, if and only to the extent that Schedule 3 expressly states that a particular requirement in Schedule B1 and B4 will be met by Schedules B2 and B5 in a particular form, manner or quantity, or at a particular time or place, the provisions of Schedule 3 will prevail. Moreover, for the avoidance of doubt, the AUTHORITIES acknowledge that a particular solution in Schedules B2 or B5 shall not be treated as being in conflict or inconsistent with any requirement in Schedule B1 or B4 merely because the solution states that the requirement will be met in a particular form, manner, quantity, time or place.

102.6 The Recitals are not legally binding, but are intended as a guide to the interpretation and construction of the AUTHORITIES' Agreement.

**Clause 103. Severability**

If any provision of the AUTHORITIES' Agreement is held invalid, illegal or unenforceable for any reason by any court or regulatory body of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the AUTHORITIES' Agreement had been executed with the invalid illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the AUTHORITIES' Agreement, the AUTHORITIES and the CONTRACTOR shall immediately commence good faith negotiations to remedy such invalidity. However, if the AUTHORITIES and the CONTRACTOR fail to conclude such negotiations within a reasonable period of time, the AUTHORITIES' Agreement shall terminate without further liability to any party (subject to Clause 902.7).

**Clause 104. Law and Jurisdiction**

104.1 The AUTHORITIES' Agreement shall be considered as a contract made in England and according to English Law and, subject to Clause 807, shall be subject to the exclusive jurisdiction of the English Courts to which the parties hereby submit.

104.2 Except as specified in Clause 101, the AUTHORITIES' Agreement is binding on the relevant AUTHORITIES and their

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successors and permitted assignees and on the CONTRACTOR and the CONTRACTOR's successors and permitted assignees.

**Clause 105. Entire Agreement**

The Related Agreements constitute the entire understanding between the parties relating to the subject matter of the Related Agreements and, save as may be expressly referred to or referenced herein, supersede all prior representations, agreements, negotiations or understandings with respect thereto, whether oral or in writing, except in respect of any fraudulent misrepresentation made by any party.

**Clause 106. General Principles**

106.1 The CONTRACTOR will not have the right to seek and arrange for the Card to be used in retail outlets other than in post offices and DSS offices in normal circumstances.

106.2 The CONTRACTOR shall deliver and continue to provide a secure system in respect of all transactions which as far as the Related Agreements require eliminates the potential for benefit payment fraud and any other fraud or unauthorised disclosure of data and provides pro-active detection processes and significant barriers to attacks from internal conspiracy and collusion to defraud the AUTHORITIES.

106.3 The Services and the Service Infrastructure shall be capable of introduction in all post offices.

**PART 2 : PERFORMANCE OF SERVICES AND SUPPLY OF PRODUCTS****Clause 201. Performance of Services**

201.1 Until transposed in accordance with Clauses 201.4 and 201.5, the CONTRACTOR shall be responsible for meeting the requirements specified in Schedule B1 in the manner specified in Schedule B2 by performing the Services to be more particularly described in the relevant Schedules of the DSS Agreement and the POCL Agreement. The AUTHORITIES shall perform at their own cost and expense the AUTHORITIES Responsibilities listed in Schedules B2 and B5 and as otherwise expressly specified herein, and shall use all reasonable endeavours to perform such AUTHORITY Responsibilities in accordance with any agreed timetable specified in Schedule B7 or elsewhere herein. However, for the avoidance of doubt, and subject to Clause 102.5, the

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parties acknowledge that the AUTHORITIES' acceptance of the CONTRACTOR's solutions in Schedule B2 and B5, and their agreement to the service descriptions contained in the relevant Schedules of the DSS Agreement and the POCL Agreement, shall not relieve the CONTRACTOR of its obligation to meet the requirements specified in Schedules B1 and B4, as modified by Schedule 3.

201.2 To support the performance of the Services, the CONTRACTOR shall supply the Service Architecture Design Document in accordance with Schedules B1 and B2 and all other applicable provisions hereof.

201.3 The CONTRACTOR shall be responsible for meeting the Double Key Requirements specified in Schedule B4 in the manner specified in Schedule B5 by performing the Services to be more particularly described in the relevant Schedules of the DSS Agreement and the POCL Agreement.

201.4 Schedule B1 and Schedule B2 shall cease to have effect from three (3) months after execution of the AUTHORITIES' Agreement, provided that Schedules B1 and B2 shall have been

- (a) clarified pursuant to Clause 201.10; and
- (b) transposed and/or extrapolated to the relevant Schedules of the Related Agreements as specified in Schedule 2.

The foregoing process of clarification, transposition and extrapolation shall not add to the CONTRACTOR's obligations under the Related Agreements as at the date hereof. Any variation (including additions, reductions and modifications) to the CONTRACTOR's obligations under the Related Agreements arising out of such clarification, transposition and extrapolation may only be made in accordance with Clause 101.3.

201.5 Schedule B3 shall cease to have effect three (3) months after execution of the AUTHORITIES' Agreement, provided that Schedule B3 shall have been extrapolated into the relevant Schedules of the POCL Agreement and of the DSS Agreement as specified in Schedule 2. The foregoing process of extrapolation shall not add to the CONTRACTOR's obligations under the Related Agreements as at the date hereof. Any addition to the CONTRACTOR's obligations under the Related Agreements arising out of such extrapolation may only be made in accordance with Clause 101.3.

201.6 Schedules 3, A6, B4, B5, B7, B8 and C5 shall be extrapolated into the relevant Schedules of the Related Agreements as specified in Schedule 2, but shall still have

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effect after such extrapolation. The foregoing process of extrapolation shall not add to the CONTRACTOR's obligations under the Related Agreements as at the date hereof. Any addition to the CONTRACTOR's obligations under the Related Agreements arising out of such extrapolation may only be made in accordance with Clause 101.3.

201.7 The CONTRACTOR and the AUTHORITIES shall use all reasonable endeavours to reach agreement on the clarification of Schedule B1, the extrapolation and transposition of Schedules B1 and B2 and the extrapolation of Schedules 3, A6, B3, B4, B5, B7, B8 and C5 as soon as reasonably practicable after the date of execution hereof.

201.8 In the event that the parties hereto are unable to reach agreement on the clarification of Schedule B1, the extrapolation and transposition of Schedules B1 and B2 and the extrapolation of Schedules 3, A6, B3, B4, B5, B7, B8 and C5 within three (3) months of the date of execution hereof:

201.8.1 (a) the AUTHORITIES may at any time up to six (6) months after such failure to reach agreement jointly by notice in writing to the CONTRACTOR terminate the AUTHORITIES' Agreement as from the date of service of such notice or such later date as may be specified therein without further liability other than pursuant to Clause 201.9; and

(b) DSS may at any time up to six (6) months after such failure to reach agreement by notice in writing to the CONTRACTOR terminate the DSS Agreement and POCL may at any time up to six (6) months after such failure to reach agreement by notice in writing to the CONTRACTOR terminate the POCL Agreement as from the date of service of such notice or such later date as may be specified therein without further liability other than pursuant to Clause 201.9; or

201.8.2 the CONTRACTOR may at any time up to six (6) months of such failure to reach agreement terminate the Related Agreements by notice in writing as from the date of service of such notice or such later date as may be specified therein to the AUTHORITIES without further liability other than pursuant to Clause 201.9; or

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201.8.3 the parties may agree pursuant to Clause 101.3 to extend the period of three (3) months specified in Clauses 201.4, 201.5 and 201.8; or

201.8.4 if requested by the CONTRACTOR as part of and at the same time as any agreement to extend the three (3) month period referred to in Clause 201.8.3, the AUTHORITIES shall agree to extend the timetable specified in Schedule B7 at paragraph 2 and table entries (vi) and (vii) for a period not exceeding the period of the extension agreed under Clause 201.8.3.

201.9 In the event of termination of the Related Agreements pursuant to Clause 201.8, the AUTHORITIES shall indemnify the CONTRACTOR for all costs and expenses reasonably incurred by the CONTRACTOR after the date of execution hereof directly in connection with performing (but not tendering for) the Related Agreements (excluding any costs for cancellation of supply contracts for items ordered but not delivered and the CONTRACTOR's overheads in relation to its sites, other than in relation to staff) up to a limit of ten million pounds (£10,000,000) until the end of the three month period specified in Clauses 201.4, 201.5 and 201.8 and up to a limit of one third of that amount for each of the three (3) consecutive additional months (pro-rated for periods of less than a month) for which such period is extended pursuant to Clause 201.8.3, up to a maximum of twenty million pounds (£20,000,000) overall. The CONTRACTOR shall provide documentary evidence in support of all claims hereunder. The CONTRACTOR shall take all reasonable steps to mitigate such costs and expenses including without limitation ensuring that any sub-contract entered into in connection herewith affords the CONTRACTOR rights of termination equal to those enjoyed by the parties under Clause 201.8.

201.10 Before or as part of the process of extrapolation and transposition referred to in Clause 201.4, Schedule B1 shall be clarified so far as reasonably possible to remove any typographical errors, inconsistencies, ambiguities and imprecise or contractually unenforceable language, and to provide agreed mechanisms for completing any blank spaces and agreements to agree.

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### PART 3 : CONSIDERATION

#### Clause 301. Charges

##### 301.1 Charging Structure

The overall charging structure for the Related Agreements shall be as specified in Schedule A6.

##### 301.2 Variation of Charges

The Charges governed by the overall charging structure for the Related Agreements shall be subject to variation in accordance with the procedures set out in Schedule A6.

#### Clause 302. Value Added Tax

The Charges are exclusive of Value Added Tax, which the relevant AUTHORITY shall pay to the CONTRACTOR at the rate and in the manner prescribed by law from time to time, subject to the production by the CONTRACTOR of a valid tax invoice giving the requisite details of the taxable supply.

### PART 4 : DEVELOPMENT AND IMPLEMENTATION OF STEADY STATE SERVICES

#### Clause 401. Development Services

401.1 The CONTRACTOR shall perform the following Development Services in accordance with Schedules B1 and B2:

401.1.1 development of the Service Architecture Design Document;

401.1.2 the development of all necessary interfaces to allow the full integration of the Service Infrastructure and the Steady State Services into the Service Environment, so as to create the Service Architecture.

#### Clause 402. Operational Trial

402.1 The CONTRACTOR shall, during the Operational Trial Period, make available the Operational Trial System (which for the purposes of this Clause 402 shall include the Service Architecture Design Document) for the Operational Trial as set out in Schedules C1 to C5 to be performed in accordance with the timetable set out in Schedule C2. The



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AUTHORITIES shall be entitled to subject all Basic DSS Services, Basic POCL Services, Optional DSS Services and Optional POCL Services to the Operational Trial, but, in relation to Optional DSS Services and Optional POCL Services, the rights of termination granted pursuant to this Clause shall apply only to the particular Optional DSS Service or Optional POCL Service being tested.

402.2 The objectives of the Operational Trial shall be as specified in Schedule C1.

402.3 The AUTHORITIES shall accept the Operational Trial System in accordance with the Operational Trial Procedures.

402.4 The Operational Trial shall be recorded as successful and the CONTRACTOR notified accordingly where all the Operational Trial Criteria are met in accordance with the Operational Trial Procedures.

402.5 The Operational Trial shall be recorded as unsuccessful and the CONTRACTOR notified accordingly where any of the Operational Trial Criteria are not met in accordance with the Operational Trial Procedures.

402.6 If the Operational Trial in respect of the Operational Trial System has not been recorded as successful pursuant to Clause 402.4 by the end of the Operational Trial Period (including any extension to the Operational Trial Period pursuant to Clauses 402.6.2.2 or 402.6.3.2):

402.6.1 DSS shall have the right to terminate the relevant DSS Services or the DSS Agreement and POCL shall have the right to terminate the POCL Agreement or, if appropriate, the relevant POCL Application Service, pursuant to Clause 902.2; or

402.6.2 the AUTHORITIES shall have the right, without prejudice to their other rights and remedies:

402.6.2.1 to accept such part of the Operational Trial System as the AUTHORITIES may decide and pay a pro-rated Charge therefor or such other charge as may be agreed between the parties;

402.6.2.2 to extend the Operational Trial Period for up to two (2) consecutive additional periods of the same duration or of such shorter duration as the AUTHORITIES may notify to the CONTRACTOR, during which the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which caused the Operational Trial to be recorded as unsuccessful; or

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402.6.2.3 (subject to Clause 402.13) to terminate this AUTHORITIES' Agreement in accordance with Clause 902.2.

For the purposes of the foregoing, the "relevant" DSS Services or POCL Application Services mean the Services in respect of which the Operational Trial has been recorded as unsuccessful.

402.7 If, pursuant to Clause 402.6.1, DSS terminates any of the DSS Services and/or POCL terminates any of the POCL Application Services, but neither terminates all of the DSS Services or POCL Services, as appropriate, nor terminates the DSS Agreement or the POCL Agreement (as appropriate) the AUTHORITIES shall have the right without prejudice to their other rights and remedies:

402.7.1 to accept such part of the Operational Trial System as the AUTHORITIES may decide and pay a pro-rated Charge therefor or such other charge as may be agreed between the parties;

402.7.2 to extend the Operational Trial Period for up to two (2) additional consecutive periods of the same duration or of such shorter duration as the AUTHORITIES may notify to the CONTRACTOR, during which the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which caused the Operational Trial to be recorded as unsuccessful; or

402.7.3 (subject to Clause 402.13) to terminate this AUTHORITIES' Agreement in accordance with Clause 902.2.

402.8 If, pursuant to Clause 402.6.1, DSS terminates all of the DSS Services or DSS or POCL terminates the DSS Agreement or the POCL Agreement (as appropriate), the other AUTHORITY shall have the right without prejudice to its other rights and remedies:

402.8.1 to accept such part of the Operational Trial System as the relevant AUTHORITY may decide and pay a pro-rated Charge therefor or such other charge as may be agreed between it and the CONTRACTOR; or

402.8.2 to extend the Operational Trial Period for up to two (2) additional consecutive periods of the same duration or of such shorter duration as the AUTHORITIES may notify to the CONTRACTOR during which the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which



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caused the Operational Trial to be recorded as unsuccessful; or

402.8.3 (subject to Clause 402.13) to terminate this AUTHORITIES' Agreement in accordance with Clause 902.2.

402.9 In the event that either AUTHORITY extends the Operational Trial Period for a period pursuant to Clause 402.8.2 and the Operational Trial has not been recorded as successful by the end of that period, the relevant AUTHORITY shall have the right without prejudice to its other rights and remedies:

402.9.1 to accept such part of the Operational Trial System as the relevant AUTHORITY may decide and pay a pro-rated Charge therefor or such other charge as may be agreed between it and the CONTRACTOR; or

402.9.2 to extend the Operational Trial Period for a further period in accordance with Clause 402.8.2 up to a maximum of three (3) consecutive periods in total; or

402.9.3 (subject to Clause 402.13) to terminate this AUTHORITIES' Agreement in accordance with Clause 902.2.

402.10 The AUTHORITIES will perform the AUTHORITIES' Trial Responsibilities as set out in Schedule C4.

402.11 For the avoidance of doubt, the CONTRACTOR acknowledges that successful completion of acceptance testing of any part of the Operational Trial Systems shall not relieve it of its obligation to continue to perform the Services hereunder in accordance with all applicable provisions hereof.

402.12 Unless otherwise agreed by the AUTHORITIES, no part of the Operational Trial System shall be tested under this Clause until it has first successfully completed acceptance testing under Clause 403 of the DSS Agreement or Clause 403 of the POCL Agreement (as appropriate).

402.13 Notwithstanding the foregoing provisions of this Clause, the AUTHORITIES shall have no right of termination of the AUTHORITIES' Agreement in relation to failure of the Operational Trial System successfully to complete the Operational Trial except in accordance with Schedules A7 and C5.

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**Clause 403. Roll Out of Service Infrastructure**

403.1 The AUTHORITIES shall accept the elements of the Service Infrastructure in accordance with the Roll Out Acceptance Procedures contained in Schedule A7. The Acceptance Criteria for the Service Infrastructure shall be as specified in Schedule B6.

403.2 The Roll Out Acceptance Test in relation to any such element shall be recorded as successful and the CONTRACTOR notified accordingly where all the Acceptance Criteria for any such element are met in accordance with the Roll Out Acceptance Procedures.

403.3 The Roll Out Acceptance Test in relation to any such element shall be recorded as unsuccessful and the CONTRACTOR notified accordingly where any of the relevant Acceptance Criteria for any such element are not met in accordance with the Roll Out Acceptance Procedures.

403.4 If the Roll Out Acceptance Test in respect of the relevant element of the Service Infrastructure has not been recorded as successful pursuant to Clause 403.2 by the end of the Roll Out Acceptance Period (including any extension to the Roll Out Acceptance Period pursuant to Clause 403.4.2) , the AUTHORITIES shall have the right without prejudice to their other rights and remedies (excluding the right to terminate in accordance with Clause 902.2):

403.4.1 to accept such part of the Service Infrastructure as the AUTHORITIES may decide ;

403.4.2 to extend the Roll Out Acceptance Period for a period or periods, specified by the AUTHORITIES, during which the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which caused the Roll Out Acceptance Test to be recorded as unsuccessful; or

403.4.3 to reject the relevant element of the Service Infrastructure, in which case the CONTRACTOR shall either provide a replacement element of the Service Infrastructure, or repair the relevant element of the Service Infrastructure (as agreed by the parties, such agreement not to be unreasonably withheld or delayed) in which case such replacement or repaired element shall be subject to Roll Out Acceptance Testing in accordance with this Clause 403.

403.5 Unless otherwise agreed by the AUTHORITIES, no element of the Service Infrastructure shall be eligible

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for testing under this Clause until it has first successfully completed acceptance testing under Clause 404 of the DSS Agreement or Clause 404 of the POCL Agreement (as appropriate).

**Clause 404. Roll Out of Steady State Services**

404.1 The AUTHORITIES shall accept the elements of the Steady State Services in accordance with the Roll Out Acceptance Procedures contained in Schedule A7.

404.2 The Roll Out Acceptance Test in relation to any such element shall be recorded as successful and the CONTRACTOR notified accordingly where all the Acceptance Criteria are met in accordance with the Roll Out Acceptance Procedures. The Acceptance Criteria for the Steady State Services shall be as specified in Schedules D2 and E2 of the DSS Agreement and Schedules D2, E2, F2 and G4 of the POCL Agreement, as appropriate.

404.3 The Roll Out Acceptance Test in relation to any such element shall be recorded as unsuccessful and the CONTRACTOR notified accordingly where the relevant Acceptance Criteria are not met in accordance with the Roll Out Acceptance Procedures.

404.4 If the Roll Out Acceptance Test in respect of the relevant element of the Steady State Services has not been recorded as successful pursuant to Clause 404.2 by the end of the Roll Out Acceptance Period (including any extension of the Roll Out Acceptance Period pursuant to Clause 404.4.2), the AUTHORITIES shall have the right without prejudice to their other rights and remedies (excluding the right to terminate in accordance with Clause 902.2):

404.4.1 to accept such part of the Steady State Services as the AUTHORITIES may decide and pay a pro-rated Charge therefor or such other charge, as may be agreed between the parties; or

404.4.2 to extend the Roll Out Acceptance Period for a period or periods, specified by the AUTHORITIES, during which the CONTRACTOR shall use reasonable endeavours to correct the deficiency or Acceptance Incident which caused the Roll Out Acceptance Test to be recorded as unsuccessful.

404.5 Unless otherwise agreed by the AUTHORITIES, no element of the Steady State Services shall be eligible for testing under this Clause until it has first successfully completed acceptance testing under Clause 404 of the DSS

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Agreement or Clause 404 of the POCL Agreement (as appropriate).

**PART 5 : OWNERSHIP, LICENCES AND RISK****Clause 501. Ownership of Intellectual Property Rights in the design of the Service Architecture**

501.1 Ownership of any Intellectual Property Rights in the overall design of the Service Architecture (as set out in the Service Architecture Design Document) which arise as a result of the performance of the Services shall vest in the CONTRACTOR. Any use by the CONTRACTOR of the overall design of the Service Architecture within the United Kingdom other than in connection with the Related Agreements shall be subject to the prior written agreement of the AUTHORITIES on reasonable commercial terms (such agreement not to be unreasonably withheld or delayed).

501.2 The CONTRACTOR shall not do anything to prejudice the security of the Services, including the Cards and any tokens issued in lieu thereof.

**Clause 502. Licences to use Intellectual Property Rights**

502.1 Any Software licensed to DSS under the DSS Agreement is hereby licensed to POCL on the same terms and subject to the same conditions as it is licensed to DSS under the DSS Agreement to the extent necessary to permit POCL to use the POCL Services and the Services hereunder.

502.2 Any Software licensed to POCL under the POCL Agreement is hereby licensed to DSS on the same terms and subject to the same conditions as it is licensed to POCL under the POCL Agreement to the extent necessary to permit DSS to use the DSS Services and the Services hereunder.

502.3 Any DSS Software licensed to the CONTRACTOR under the DSS Agreement is hereby licensed to the CONTRACTOR on the same terms and subject to the same conditions as it is licensed to the CONTRACTOR under the DSS Agreement to the extent necessary to permit the CONTRACTOR to perform the POCL Services and the Services hereunder.

502.4 Any POCL Software licensed to the CONTRACTOR under the POCL Agreement is hereby licensed to the CONTRACTOR on the same terms and subject to the same conditions as it is licensed to the CONTRACTOR under the POCL Agreement to the extent necessary to permit the CONTRACTOR to perform the DSS Services and the Services hereunder.

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**Clause 503. Databases**

POCL shall have the right to use the POCL Services and the Service Infrastructure to capture, develop and use databases containing information in relation to its customers. Any use of DSS Data in the development of such databases shall be subject to the prior written consent of DSS (such consent not to be unreasonably withheld or delayed). Any assistance provided by the CONTRACTOR pursuant to this Clause over and above the performance of its other obligations hereunder shall be treated as an Additional POCL Service.

**Clause 504. Riposte 32 Software**

504.1 The CONTRACTOR shall ensure that, within seven (7) days after execution hereof, a copy of the source code of the Riposte 32 Software is provided to the CONTRACTOR's European Development and Support Centre.

504.2 The CONTRACTOR shall within seven (7) days after such copy of the source code is provided to the CONTRACTOR's European Development and Support Centre provide to the AUTHORITIES a certificate signed by the CONTRACTOR's Managing Director that this has occurred, and provide to the AUTHORITIES a copy of the relevant contractual documentation confirming the CONTRACTOR's right of access to such source code and that the CONTRACTOR has all other rights to such source code necessary for the performance of its obligations under the Related Agreements. For the avoidance of doubt, such supporting documentation shall not include details of the prices paid by the CONTRACTOR to its sub-contractors or licensors.

**PART 6 : CONTRACT AND SERVICE MANAGEMENT****Clause 601. Monitoring**

The AUTHORITIES shall be entitled to monitor the performance by the CONTRACTOR of its obligations under the AUTHORITIES' Agreement in accordance with the procedures set out in Schedule A4.

**Clause 602. Management Interfaces and Services Management**

The parties shall establish the management interfaces set out in Schedule A4. All contract management of the AUTHORITIES' Agreement shall be performed in accordance with the provisions of Schedule A4.

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**Clause 603. Communications**

603.1 Except as otherwise expressly provided no communication from one party to another shall have any validity under the AUTHORITIES' Agreement unless made in writing by or on behalf of DSS, POCL or the CONTRACTOR, as the case may be.

603.2 Any notice or other communication whatsoever which any party hereto is required or authorised by the AUTHORITIES' Agreement to give or make to another shall be given or made either by post in a prepaid letter, or by telex or by facsimile transmission confirmed by post in a prepaid letter, addressed to such other party in the manner referred to in Clause 603.3 below and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of the AUTHORITIES' Agreement to have been given or made after two days, for a letter, or four hours, for a telex or facsimile transmission.

603.3 For the purposes of Clause 603.2 above the address of each party shall be:

603.3.1 For DSS:

3rd Floor  
Terminal House  
52 Grosvenor Gardens  
London SW1W OAB

For the attention of

Andrew Stott

Telephone

Facsimile

**GRO**

603.3.2 For POCL:

3rd Floor  
Terminal House  
52 Grosvenor Gardens  
London SW1W OAB

For the attention of

Andrew Stott

Telephone

Facsimile

**GRO**



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603.3.3 For the CONTRACTOR:  
Pathway Group Limited  
Forest Road  
Feltham  
Middlesex TW13 7EJ

For the attention of

J H Bennett, Managing Director

Telephone

Facsimile

**GRO**

603.4 Any party may change its address for service by notice as provided in this Clause 603.

**Clause 604. Transfer and Sub-Contracting**

604.1 The AUTHORITIES' Agreement is personal to the CONTRACTOR. The CONTRACTOR shall not assign, novate, sub-contract or otherwise dispose of the AUTHORITIES' Agreement or any part thereof without the previous consent in writing of the AUTHORITIES.

604.2 The AUTHORITIES hereby consent to the CONTRACTOR's sub-contracting of its obligations specified in Schedule A10 to the respective sub-contractors specified therein on the date hereof. Additional or substitute subcontractors may be approved from time to time in accordance with Clause 604.1 after the date hereof, in which case Schedule A10 shall be amended accordingly. Notwithstanding any sub-contracting permitted in the Related Agreements, the CONTRACTOR shall remain primarily responsible for the acts and omissions of its sub-contractors committed by them in the course of performing or purporting to perform any of the Services hereunder on the CONTRACTOR's behalf as though such acts or omissions were its own.

604.3 Subject to Clause 604.4, DSS shall be entitled to:

604.3.1 assign, novate or otherwise dispose of its rights and obligations under the AUTHORITIES' Agreement or any part thereof (including, where appropriate, requiring the grant by the CONTRACTOR or its licensors of a direct licence of any Software other than Third Party Software, and requiring the CONTRACTOR to use all reasonable endeavours to procure the grant of a direct licence of any Third Party Software) to any contracting authority (as defined in Regulation 3(1) of the Public Services

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Contracts Regulations 1993) (a "Contracting Authority"); or

604.3.2 novate the AUTHORITIES' Agreement to any other body (including but not limited to any private sector body) which performs any of the functions that previously had been performed by DSS,

provided that any such assignment, novation or other disposal pursuant to Clause 604.3.1 or 604.3.2 shall not increase the burden of the CONTRACTOR's obligations pursuant to the AUTHORITIES' Agreement.

604.4 If the AUTHORITIES' Agreement is novated to a body which is not a Contracting Authority pursuant to Clause 604.3.2 (in the remainder of this Clause any such body is referred to as the "transferee"):

604.4.1 the transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the AUTHORITIES' Agreement or any part thereof with the previous consent in writing of the CONTRACTOR;

604.4.2 the rights acquired by the transferee relating to the Use of the Software shall not extend beyond the activities previously performed by DSS and, in particular, the transferee shall not be entitled to perform any service bureau or facilities management services utilising the Software for any third party.

604.4.3 the rights of the transferee under Clause 610 shall cease; and

604.4.4 the following Clauses shall be varied from the date of the novation or the date of the change of status (as appropriate) as set out below as if the AUTHORITIES' Agreement had been amended by the parties in accordance with Clause 101.3:

- (a) in Clause 804, the words "or (in the case of sums due to DSS) with any department, office or agency of the Crown" shall be deleted;
- (b) in Clause 606.1, the words "to the Crown or POCL, or their respective servants or agents is the property of the Crown or POCL, as appropriate" shall be replaced with "to each AUTHORITY or their servants or agents is the property of the relevant AUTHORITY";
- (c) in Clause 1001.1.1, the words "on Her Majesty's Service (which term shall in this Clause 1001



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include all persons employed or engaged by the Crown and all persons providing services to the Crown) or employed by or providing services to the Post Office Group" in the second line shall be replaced with "employed by or providing services to DSS or the Post Office Group or acting on their behalf" and the reference to "Her Majesty's Service or the Post Office Group (as appropriate)" in the eighth line shall be replaced with "DSS or the Post Office Group (as appropriate)";

- (d) in Clause 1001.1.2, the words "on Her Majesty's Service or employed by the Post Office Group" shall be replaced with "employed by the AUTHORITIES or acting on their behalf"; and
- (e) in Clause 1001.2, the words "with the Post Office Group or for Her Majesty's Service" shall be replaced with "with the Post Office Group or DSS".

604.5 POCL shall be entitled to assign, novate or otherwise dispose of its rights and obligations under the AUTHORITIES' Agreement or any part thereof (including, where appropriate, requiring the grant by the CONTRACTOR or its licensors of a direct licence of any Software other than Third Party Software, and requiring the CONTRACTOR to use all reasonable endeavours to procure the grant of a direct licence of any Third Party Software) to any other body which performs any of the functions that previously had been performed by POCL, provided that any such assignment, novation or other disposal shall not increase the burden of the CONTRACTOR's obligations pursuant to the AUTHORITIES' Agreement.

604.6 The AUTHORITIES shall be entitled to disclose, to the extent necessary for the purposes of the Related Agreements, to any transferee any Confidential Information of the CONTRACTOR which relates to the performance of the Services hereunder by the CONTRACTOR. In such circumstances the AUTHORITIES shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the Services hereunder and for no other purposes and, for the avoidance of doubt, the transferee shall be bound by the confidentiality undertaking contained herein in relation to such Confidential Information.

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**Clause 605: Time****605.1 Timetable**

The CONTRACTOR shall perform the Services hereunder in accordance with any timescales specified in Schedule B7 and elsewhere herein as "contractual milestones" and shall use all reasonable endeavours to perform the Services hereunder in accordance with any other timescales specified in Schedule B7 and elsewhere herein, which shall be treated as "target dates". In the event of any failure to meet any target date, the CONTRACTOR shall provide the AUTHORITIES with a method statement showing how it intends to recover any lost time. For the avoidance of doubt, time shall not be of the essence in relation to any contractual milestone unless notice is served in accordance with Clause 605.4.

**605.2 Extension of Time**

605.2.1 If the performance of the Related Agreements by the CONTRACTOR be delayed by reason of Default by either AUTHORITY or by its employees or authorised agents, the CONTRACTOR shall be entitled to a reasonable extension of time and to any reasonable additional costs which it can show were directly incurred by the CONTRACTOR as a result of the delay. The CONTRACTOR shall notify the AUTHORITIES in writing within three (3) working days of becoming aware of such Default.

605.2.2 If the performance of the AUTHORITIES' Agreement by any party be delayed by reason of any force majeure event (as defined in Clause 605.3), all parties shall be entitled to a reasonable extension of time subject to there being no entitlement to any additional costs or expenses incurred as a result of the delay. The party so delayed shall notify the other parties in writing within one (1) working day of becoming aware of such force majeure event.

**605.3 Force Majeure**

605.3.1 For the purposes of the AUTHORITIES' Agreement the expression "Force Majeure" shall mean any cause affecting the performance by a party hereto of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof) (i) Governmental Regulations (subject to Clause 605.5), (ii) fire, (iii) flood, (iv) any disaster or an industrial dispute affecting a third party. Any act, event, omission,

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happening or non-happening will only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions of the affected party, its agents or employees, and only if a substitute third party is not reasonably available (having regard, without limitation, to the cost and quality of such substitute) to perform the affected obligation. In no event shall any fraudulent act or omission by any party or third party relating to the Services hereunder for which the CONTRACTOR is liable under Clause 808 constitute Force Majeure.

605.3.2 No party hereto shall in any circumstances be liable to any other party hereto for any loss of any kind whatsoever including but not limited to any damages or abatement of Charges whether directly or indirectly caused to or incurred by the other party by reason of any failure or delay in the performance of its obligations under the AUTHORITIES' Agreement which is due to Force Majeure. Notwithstanding the foregoing, each party shall use all reasonable endeavours to continue to perform, or resume performance of, such obligations under the AUTHORITIES' Agreement for the duration of such Force Majeure event. In the case of the CONTRACTOR, the parties shall agree an orderly process for such continuation or resumption of performance (such agreement not to be unreasonably withheld or delayed), and the CONTRACTOR shall comply with such process.

605.3.3 If the CONTRACTOR shall become aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall forthwith notify the other parties within one (1) working day and shall inform the other parties of the period which it is estimated that such failure or delay shall continue. If either AUTHORITY shall become aware of circumstances of Force Majeure which give rise to any such failure or delay on its part, it shall forthwith notify the other parties within one (1) working day and shall inform the other parties of the period which it is estimated that such failure or delay shall continue.

605.3.4 It is expressly agreed that any failure by the CONTRACTOR to perform, or any delay by the CONTRACTOR in performing, its obligations under the AUTHORITIES' Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which the CONTRACTOR shall have entered into any contract, supply arrangement or sub-contract or otherwise shall be regarded as a failure or delay due to Force Majeure only in the event that such person firm or

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company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise as a result of circumstances of Force Majeure and there is no substitute person, firm or company reasonably available (having regard, without limitation, to the cost and quality of such substitute) to perform the affected obligation.

605.3.5 [Not used]

605.3.6 If any Force Majeure event prevents any party from performing its obligations hereunder for a period in excess of ninety (90) consecutive days, the AUTHORITIES may after consultation with the CONTRACTOR and taking into account the CONTRACTOR's views jointly terminate the AUTHORITIES' Agreement in accordance with Clause 902.1.4.

**605.4 Time of the Essence**

Where the AUTHORITIES after undue delay by the CONTRACTOR notify the CONTRACTOR that time is of the essence of the AUTHORITIES' Agreement and any of its obligations stated in such notice shall not have been performed by the CONTRACTOR by any reasonable date stated in the notice, the AUTHORITIES may terminate the AUTHORITIES' Agreement in accordance with Clause 902.2.3. In relation to the timescales specified herein. The AUTHORITIES may only give notice making time of the essence in relation to timescales specified herein as "contractual milestones".

**605.5 Political Risk**

605.5.1 Notwithstanding the provisions of Clause 605.3, a change of, or new, Governmental Regulation:

- (a) shall not excuse the AUTHORITIES from performing their obligations to meet any minimum revenue guarantees applicable under Schedule A6 and, without limitation to the foregoing, if the due date for the application of such minimum revenue guarantees (or any agreed extension thereof) is delayed directly as a result of any change in, or new, Governmental Regulation, the AUTHORITIES agree to meet such minimum revenue guarantees from the date when they would have become payable but for such change in, or new, Governmental Regulation;
- (b) shall not entitle the AUTHORITIES to terminate the AUTHORITIES' Agreement under Clause 605.3.6, and any such purported termination shall be treated as a

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termination for convenience in accordance with Clause 902.6; and

- (c) shall not require the CONTRACTOR to perform any additional obligations, or any reduced or modified obligations resulting in increased cost to the CONTRACTOR, without its agreement in accordance with Clause 101.3.

605.5.2 Where a change of, or new, Governmental Regulation causes a material alteration in the frequency of benefit payments (as defined in Schedule A6), the Common Charging Mechanism in Schedule A6 shall be adjusted in accordance with the formula specified in that Schedule.

**Clause 606. Confidentiality**

606.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 (where relevant) to any Confidential Information the CONTRACTOR acknowledges that any Confidential Information (other than its own Confidential Information) obtained from or relating to the Crown or POCL, or their respective servants or agents, is the property of the Crown or POCL, as appropriate.

606.2 The CONTRACTOR hereby agrees that (other than as required by law):

606.2.1 the CONTRACTOR (and any person employed or engaged by the CONTRACTOR in connection with the AUTHORITIES' Agreement in the course of such employment or engagement) shall only use Confidential Information of either AUTHORITY for the purposes of the Related Agreements;

606.2.2 the CONTRACTOR (and any person employed or engaged by the CONTRACTOR in connection with the AUTHORITIES' Agreement in the course of such employment or engagement) shall not disclose any Confidential Information of either AUTHORITY to any third party (except its approved sub-contractors as listed in Schedule A10) or to the other AUTHORITY without the prior written consent of the relevant AUTHORITY, and each AUTHORITY shall from time to time notify the CONTRACTOR of the categories of that AUTHORITY's information which are not to be treated as Confidential Information in relation to the other AUTHORITY;

606.2.3 the CONTRACTOR shall take all necessary precautions to ensure that all Confidential Information of either AUTHORITY is treated as



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confidential and not disclosed (save as aforesaid) or used other than for the purposes of the Related Agreements by the CONTRACTOR's employees, servants, agents or sub-contractors including, without limitation, obtaining from any such agent or sub-contractor a signed confidentiality undertaking on substantially the same terms as are contained in this Clause; and

606.2.4 without prejudice to the generality of the foregoing neither the CONTRACTOR nor any person engaged by the CONTRACTOR whether as a servant or a consultant or otherwise shall use the Confidential Information of either AUTHORITY for the solicitation of business from the other AUTHORITY or from any third party by the CONTRACTOR or by such servant or consultant or by any third party.

606.3 The AUTHORITIES (other than as required by law):

606.3.1 shall treat as confidential all Confidential Information obtained from the CONTRACTOR, including but not limited to the Source Code of any Specially Written Software (as defined in the DSS Agreement or the POCL Agreement, as appropriate) ; and

606.3.2 shall not, subject to Clause 606.5, disclose to any third party without the prior written consent of the CONTRACTOR any Confidential Information obtained from the CONTRACTOR.

606.4 The provisions of Clauses 606.1, 606.2 and 606.3 shall not apply to any information which:

606.4.1 is or becomes public knowledge other than by breach of this Clause 606; or

606.4.2 is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party.

606.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.

606.4.4 is independently developed without access to the Confidential Information.

606.5 DSS and POCL may disclose any Confidential Information obtained from the CONTRACTOR to the extent necessary for purposes connected with the Related Agreements:

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606.5.1 to any servant or agent of DSS (in DSS's case) or of the Post Office Group (in POCL's case) provided that DSS and POCL respectively have required that such information is treated as confidential by such servants or agents, including requiring such servants or agents to enter into a confidentiality undertaking where appropriate; and

606.5.2 subject to the prior written agreement of POCL and DSS, to any other third party (in which case the disclosing AUTHORITY shall notify the CONTRACTOR of such disclosure), provided that the relevant AUTHORITY shall have taken reasonable steps to ensure that the third party shall observe substantially the same terms as are contained in this Clause, including, without limitation, obtaining a signed confidentiality undertaking between the third party and the disclosing AUTHORITY or the CONTRACTOR.

606.6 Nothing in this Clause 606 shall prevent the CONTRACTOR or the AUTHORITIES from using data-processing techniques, ideas and know-how gained during the performance of the Related Agreements in the furtherance of its normal business, to the extent that this does not relate to a disclosure of Confidential Information or an infringement by the AUTHORITIES or the CONTRACTOR of any Intellectual Property Right.

**Clause 607. Health and Safety Hazards**

607.1 The CONTRACTOR shall notify the relevant AUTHORITY of any health and safety hazards in relation to Premises owned by or leased to that AUTHORITY which may arise in connection with the performance of the AUTHORITIES' Agreement.

607.2 The relevant AUTHORITY shall notify the CONTRACTOR of any known health and safety hazards which may exist or arise at the Premises owned by or leased to that AUTHORITY and which may affect the CONTRACTOR. The CONTRACTOR shall draw these hazards to the attention of its employees and sub-contractors or any persons engaged by the CONTRACTOR in the performance of the AUTHORITIES' Agreement at such Premises.

607.3 The CONTRACTOR shall inform all persons engaged in the performance of the AUTHORITIES' Agreement at the Premises owned by or leased to the relevant AUTHORITY of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

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**Clause 608. Protection of Personal Data and Social Security Administration Act**

608.1 The CONTRACTOR's attention is hereby drawn to the Data Protection Act 1984.

608.2 All parties warrant that they will duly observe all their obligations under the Data Protection Act which arise in connection with the AUTHORITIES' Agreement.

608.3 Section 123 of the Social Security Administration Act 1992 shall apply to this AUTHORITIES' Agreement. It is an offence for any person to disclose any information obtained while carrying out administrative work where that information relates to a particular person. All parties warrant that they will duly observe all their obligations under the Social Security Administration Act 1992 which arise in connection with the AUTHORITIES' Agreement.

**Clause 609. Publicity**

609.1 Except with the written consent of both AUTHORITIES (which shall not be unreasonably withheld or delayed), the CONTRACTOR shall not make any press announcements about or publicise the AUTHORITIES' Agreement in any way. The AUTHORITIES shall consult the CONTRACTOR before making any press announcement about or publicising the AUTHORITIES' Agreement, other than pursuant to any legal obligation or in any internal publication of DSS or the Post Office Group.

609.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause 609.1 by all its servants, employees, agents, consultants and sub-contractors.

609.3 The CONTRACTOR shall have no right to use the brand or logo of any Post Office Group member without POCL's prior written consent, nor to use the brand or logo of any part of DSS without DSS's prior written consent nor to use the AUTHORITIES' joint brands and logos (if any) without the AUTHORITIES' prior written consent. The CONTRACTOR shall do nothing to injure such logos and brands or the reputation of the AUTHORITIES and, if it uses such brands and logos, shall take all reasonable steps to enable the AUTHORITIES to protect such logos and brands and the reputation of the AUTHORITIES but in no event less than the steps it would take in relation to its own logos, brands and reputation.

609.4 The AUTHORITIES shall have no right to use the brand or logo of the CONTRACTOR or its sub-contractors without



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the CONTRACTOR's prior written consent. The AUTHORITIES shall do nothing to injure such logo and brands or the reputation of the CONTRACTOR or its sub-contractors and, if either AUTHORITY uses such brands or logos, it shall take all reasonable steps to enable the CONTRACTOR and its sub-contractors to protect such logo and brands and the reputation of the CONTRACTOR and its sub-contractors, but in no event less than the steps they would take in relation to their own logos, brands and reputations.

**Clause 610. CONTRACTOR's Personnel**

610.1 The AUTHORITIES reserve the right under the AUTHORITIES' Agreement to refuse to admit (a) (in DSS's case) to any premises occupied by or on behalf of the Crown (which term shall in this Clause include all persons employed or engaged by the Crown and all persons other than the CONTRACTOR and its sub-contractors providing services to the Crown) or (b) to any premises occupied by or on behalf of any member of the Post Office Group or to any post office (in POCL's case) any person employed or engaged by the CONTRACTOR, or by a sub-contractor, whose admission would be, in the reasonable opinion of the relevant AUTHORITY, undesirable.

610.2 If and when directed by the relevant AUTHORITY, the CONTRACTOR shall provide a list of the names and addresses of all persons who it is expected may require admission in connection with the performance of the AUTHORITIES' Agreement to any premises occupied by or on behalf of the Crown or by or on behalf of any member of the Post Office Group or to any post office (as appropriate), specifying the capacities in which they are concerned with the AUTHORITIES' Agreement and giving such other particulars as the relevant AUTHORITY may reasonably require. The CONTRACTOR shall comply with any reasonable directions issued by the designated representative of the relevant AUTHORITY as to which persons may be admitted to such premises and at what times.

610.3 If and when directed by the relevant AUTHORITY, the CONTRACTOR shall secure that any person employed or engaged by the CONTRACTOR or by a sub-contractor, who is specified in the direction or is one of a class of persons who may be so specified, shall sign a statement that he understands that the Official Secrets Acts 1911 to 1989 apply to him both during the term of and after the expiry or termination of the AUTHORITIES' Agreement.

610.4 The CONTRACTOR's representatives, engaged within the boundaries of a Crown or Post Office Group establishment or

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post office, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment or post office and when outside that establishment or post office.

610.5 The decision of the relevant AUTHORITY as to whether any person is to be refused admission to any premises occupied by or on behalf of the Crown or the Post Office Group or to a post office (as appropriate) shall be final and conclusive.

**Clause 611. Waiver**

611.1 The failure of any party to insist upon strict performance of any provision of the AUTHORITIES' Agreement, or the failure of any party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the AUTHORITIES' Agreement.

611.2 A waiver of any Default in relation to the AUTHORITIES' Agreement shall not constitute a waiver of any subsequent Default.

611.3 No waiver of any of the provisions of the AUTHORITIES' Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other parties in writing in accordance with the provisions of Clause 603.

**Clause 612. Access to Premises**

612.1 Any land or premises (including temporary buildings) made available to the CONTRACTOR by the AUTHORITIES in connection with the AUTHORITIES' Agreement shall be made available to the CONTRACTOR on such terms and conditions as may be agreed between the CONTRACTOR and the relevant AUTHORITY. The CONTRACTOR shall have the use of such land or premises as licensee and shall vacate the same upon the termination or expiry of the AUTHORITIES' Agreement or at such earlier date as the relevant AUTHORITY may reasonably determine.

612.2 The relevant AUTHORITY shall be responsible for maintaining the security of such land or premises in accordance with its standard security requirements. The CONTRACTOR shall comply with all reasonable security requirements of the relevant AUTHORITY while on the premises, and shall procure that all of its employees, agents and subcontractors shall likewise comply with such

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requirements. The relevant AUTHORITY shall provide the CONTRACTOR upon request copies of its written security procedures and shall afford the CONTRACTOR upon request with an opportunity to inspect its physical security arrangements.

**Clause 613. Security Requirements**

The CONTRACTOR shall comply with the security requirements as set out in Schedule A2.

**Clause 614. CONTRACTOR's Key Personnel**

The parties acknowledge that the CONTRACTOR's key personnel specified in Schedule A12 are essential to the fulfilment of its obligations hereunder. The CONTRACTOR undertakes to use all reasonable endeavours to ensure that such key personnel are not removed or replaced during the term hereof. However, in the event that any of its key personnel becomes unavailable for any reason (including without limitation death, injury, sickness promotion or resignation), the CONTRACTOR shall have the right upon giving thirty (30) days' notice in writing (or such shorter period of notice as may be reasonably practicable) to the AUTHORITIES to replace such an individual with another individual whose abilities and qualifications are appropriate for the services to be performed by such individual.

**PART 7 : WARRANTIES AND STANDARDS****Clause 701. Authority and Approval**

The CONTRACTOR warrants and represents that it has full capacity and authority and all necessary consents (including but not limited to, where its procedures so require, the consent of its Parent Company) to enter into and to perform the AUTHORITIES' Agreement and that the AUTHORITIES' Agreement is executed by a duly authorised representative of the CONTRACTOR.

**Clause 702. Performance of Services**

The CONTRACTOR warrants and represents that:

702.1 the Services hereunder shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all reasonable skill, care and diligence;

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702.2 the CONTRACTOR shall discharge its obligations under the AUTHORITIES' Agreement with all reasonable skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with the best of its own established internal procedures;

702.3 the Services hereunder shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments;

702.4 the Services hereunder shall be fully integrated within the Service Architecture;

702.5 the Services hereunder shall be performed in accordance with all applicable provisions of the Service Architecture Design Document;

702.6 the Services hereunder shall be compatible with the Service Environment as at the date hereof, as set out in Schedule 1;

702.7 the Services hereunder shall be performed in such a way as to cause a minimum of disruption to the business of the AUTHORITIES and the End Users.

**Clause 703. Performance of Products**

The CONTRACTOR warrants and represents that:

703.1 at the Operational Trial Acceptance Date the Operational Trial System shall meet the Operational Trial Criteria and the regulations and standards specified in Schedule A2;

703.2 at the Operational Trial Acceptance Date and thereafter during the term of the AUTHORITIES' Agreement all components of the Service Infrastructure shall operate in accordance with their respective technical specifications, except that, for the avoidance of doubt, it is agreed that the AUTHORITIES shall have no remedy for breach of this warranty in relation to errors or interruptions to Services covered by paragraph 4.1(a) of Schedule A6 of the DSS Agreement or POCL Agreement (as appropriate); and

703.3 the Service Infrastructure will be compatible with the Service Environment as at the date hereof, as specified in Schedule 1.

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### **Clause 704. Intellectual Property Rights**

The CONTRACTOR warrants and represents that:

704.1 neither AUTHORITY's use and operation of the Service Architecture and the provision of the Services hereunder shall infringe any Intellectual Property Rights of any third party;

704.2 the CONTRACTOR has the full capacity and authority to grant the licences referred to in Clause 502;

704.3 it is able to comply with Clauses 903.1.2 and 903.1.3.

### **Clause 705. Industry Standards**

The CONTRACTOR warrants and represents that the Services hereunder and the Service Infrastructure shall comply with, and be provided in accordance with, all relevant applicable industry standards as specified in Schedule A2.

### **Clause 706. Statements and Representations**

The CONTRACTOR warrants and represents that all statements and representations made to the AUTHORITIES in connection with tendering for and entering into the AUTHORITIES' Agreement are, to the best of its knowledge, information and belief, true and accurate at the time of making such statements and representations and that, from the date of execution hereof, it will advise the AUTHORITIES of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading.

### **Clause 707. Disclaimer of Implied Terms**

Except as expressly stated in the AUTHORITIES' Agreement, all terms, warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) are hereby excluded to the extent permitted by law.

## **PART 8 : REMEDIES**

### **Clause 801. Audit**

801.1 The CONTRACTOR shall keep or cause to be kept the Records.



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801.2 The CONTRACTOR shall grant or procure the grant to the AUTHORITIES, any statutory or regulatory auditors of the AUTHORITIES and their respective authorised agents the right of reasonable access to the Records and shall provide all reasonable assistance at all times for six (6) years after the creation of the relevant Records for the purposes of carrying out an audit of the CONTRACTOR's compliance with the AUTHORITIES' Agreement including all activities, Charges, performance, security and integrity in connection therewith. Each party shall bear its own expenses incurred pursuant to this Clause. On termination, the CONTRACTOR shall within a reasonable time to be agreed by the parties transfer the Records to the AUTHORITIES or a replacement contractor, as instructed by the AUTHORITIES. The CONTRACTOR shall thereafter be relieved from any further liabilities under this Clause in relation to such Records.

801.3 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by the CONTRACTOR or any third party the AUTHORITIES reserve for themselves, any statutory or regulatory auditors of the AUTHORITIES and their respective authorised agents or (in the case of DSS) any Crown body the right of immediate access to the Records described in Clause 801.1 and Clause 801.2 above and the CONTRACTOR agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of the AUTHORITIES' Agreement or at any time thereafter.

801.4 Whenever DSS requires it, and solely for the purposes of enabling DSS's accounting officer to meet his obligations under the Exchequer and Audit Departments Act 1866, the CONTRACTOR:

801.4.1 shall disclose to DSS whatever information DSS requires concerning the prices DSS has paid or may have to pay under the AUTHORITIES' Agreement; and

801.4.2 shall produce whatever evidence DSS requires in support of the information provided under Clause 801.4.1 above.

For the avoidance of doubt, such information shall not include information concerning prices paid by the CONTRACTOR to its sub-contractors or suppliers.

801.5 In connection with the AUTHORITIES' Agreement, the CONTRACTOR must not enter into any other contract or agreement with any person unless that contract or agreement contains a provision equivalent to Clause 801.4 allowing DSS to obtain price information and evidence (as described in Clause 801.4) from that person. This Clause 801.5 does



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not apply if the CONTRACTOR has entered into a contract or agreement following a competitive tendering exercise in which the CONTRACTOR accepted the tender with the lowest price.

801.6 DSS must use information provided under Clauses 801.4 and 801.5 for the purposes of the Exchequer and Audit Departments Act 1866 and for no other purpose.

801.7 The CONTRACTOR shall provide the AUTHORITIES at no additional cost with copies of the annual and interim audited accounts of the CONTRACTOR and its approved subcontractors within fourteen (14) days of such accounts having been lodged at Companies House or its local equivalent to Companies House.

801.8 Without in any way limiting the application of the other Clauses of this AUTHORITIES' Agreement, the CONTRACTOR acknowledges that for the purpose of examining and certifying DSS's accounts or for examining (pursuant to Section 6(1) of the National Audit Act 1983) the economy, efficiency and effectiveness with which DSS has used its resources, the Comptroller and Auditor General may examine such documents as he may reasonably require which are owned, held or are otherwise within the control of the CONTRACTOR and may require the CONTRACTOR to produce such oral and written explanations as he considers necessary.

801.9 The CONTRACTOR shall ensure that the terms of its contracts with its sub-contractors require the sub-contractors to permit examination by, and provide explanation to, the Comptroller and Auditor General in the manner described in Clause 801.8.

801.10 All information obtained by DSS or POCL pursuant to this Clause or Schedule A3 shall be treated as Confidential Information.

801.11 The parties shall comply with the provisions of Schedule A3.

**Clause 802. Liquidated Damages and Delay**

802.1 In the event that:

802.1.1 the CONTRACTOR fails to make available the Operational Trial System or any part thereof for the Operational Trial pursuant to Clause 402.1; or

802.1.2 the Operational Trial is not recorded as successful pursuant to the relevant provisions of the AUTHORITIES' Agreement, and the AUTHORITIES elect to

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extend the relevant testing period in accordance with the relevant provisions hereof,

the CONTRACTOR shall, at the option of the relevant AUTHORITY either credit against the Charges or pay to the relevant AUTHORITY liquidated damages calculated in accordance with Schedule C5. Unless the relevant AUTHORITY exercises its option to recover such liquidated damages as a payment to it, the relevant AUTHORITY shall be deemed to have exercised its option to recover such liquidated damages as a credit against the Charges.

802.2 The CONTRACTOR shall credit the relevant AUTHORITY with, or pay to the relevant AUTHORITY, the liquidated damages within thirty (30) days of receipt of a valid claim by the AUTHORITY.

802.3 The parties acknowledge that the liquidated damages specified in Schedule C5 are a genuine pre-estimate of the loss likely to be suffered by the relevant AUTHORITY and that the figures therein are reasonable.

802.4 The liquidated damages specified in this Clause are without prejudice to any other rights and remedies of the AUTHORITIES, except where they are specified in Schedules A8 and C5 to be the AUTHORITIES' exclusive remedy in damages, in which case such credit or payment of the relevant liquidated damages shall be in full and final settlement of the CONTRACTOR's liability in respect of the Default to which they relate. Except in accordance with Schedules A8 and C5, the AUTHORITIES shall have no right of termination in relation to any such Default.

802.5 The provisions of Schedule A8 shall apply in relation to liquidated damages and service credits under all the Related Agreements.

**Clause 803. Additional Resources**

In the event that the Services hereunder are not provided in accordance with all applicable provisions hereof as a result of the Default of the CONTRACTOR, the CONTRACTOR shall, at the request of the AUTHORITIES and without prejudice to the AUTHORITIES' other rights and remedies, arrange all such additional resources as are reasonably necessary to correct the said failure as early as practicable thereafter and at no additional charge to the AUTHORITIES.

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**Clause 804. Recovery of Sums Due**

If any sum of money shall be due from the CONTRACTOR, the same may be deducted from any sum then due or which at any time thereafter may become due to the CONTRACTOR under the Related Agreements or under any other agreement between the CONTRACTOR and the relevant AUTHORITY or (in the case of sums due to DSS) with any department, office or agency of the Crown or (in the case of sums due to POCL) with any member of the Post Office Group.

**Clause 805. Intellectual Property Rights Indemnity**

805.1 Subject always to the AUTHORITIES' proper observance of their obligations under this Clause 805, the CONTRACTOR shall indemnify the AUTHORITIES against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis), losses and damages arising from or incurred by reason of any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Right by the use or possession of the Products, Services hereunder or Service Architecture by or on behalf of the AUTHORITIES or in connection with the Services hereunder.

805.2 The CONTRACTOR shall promptly notify the AUTHORITIES if any claim or demand is made or action brought against the CONTRACTOR to which this Clause applies.

805.3 The AUTHORITIES shall promptly notify the CONTRACTOR if any claim or demand is made or action brought against the AUTHORITIES to which Clause 805.1 may apply. The CONTRACTOR shall at its own expense conduct any litigation arising therefrom and all negotiations in connection therewith and the AUTHORITIES hereby agree to grant to the CONTRACTOR exclusive control of any such litigation and such negotiations. The CONTRACTOR shall consult with and pay due regard to the interests (including the commercial interests of the Post Office Group and the public interest) and views of the AUTHORITIES in the conduct of any defence to any claim or demand hereunder, and shall, where it is reasonable to do so, comply with such interests and views.

805.4 The AUTHORITIES shall at the request of the CONTRACTOR afford to the CONTRACTOR all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the AUTHORITIES to which Clause 805.1 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 805.2

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may apply. The CONTRACTOR shall reimburse the AUTHORITIES for all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.

805.5 The AUTHORITIES shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right to which Clause 805.1 may apply or any claim or demand made or action brought against the CONTRACTOR to which Clause 805.2 may apply.

805.6 If a claim or demand is made or action brought to which Clause 805.1 may apply or in the reasonable opinion of the CONTRACTOR is likely to be made or brought, the CONTRACTOR may at its own expense either:

805.6.1 modify any or all of the Products, the Service Architecture or the Services hereunder without reducing the performance and functionality of the same, or substitute alternative products, service architecture or services of equivalent performance and functionality for any or all of the Products, the Service Architecture or the Services hereunder, so as to avoid the infringement or the alleged infringement but without disrupting the performance of the Services hereunder, provided that the terms herein shall apply mutatis mutandis to such modified or substituted items or services and such modified or substituted items shall be acceptable to the AUTHORITIES (whether by passing any form of acceptance testing or otherwise), such acceptance not to be unreasonably withheld or delayed, and shall reimburse the AUTHORITIES' all reasonable costs directly incurred by them; or

805.6.2 procure a licence to use the Products, Service Architecture and Services hereunder on terms which afford to the AUTHORITIES no more extensive rights than those originally applicable hereunder and which are acceptable to the AUTHORITIES, and shall reimburse the AUTHORITIES' all reasonable costs directly incurred by them.

805.7 The foregoing provisions of this Clause 805 shall not apply insofar as any such claim or demand or action is in respect of:

805.7.1 any use by or on behalf of the AUTHORITIES of the Products, the Service Architecture or Services hereunder in combination with any item not supplied

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or approved (such approval not to be unreasonably withheld or delayed) by the CONTRACTOR where such use of the Products, Service Architecture or Services hereunder directly gives rise to the claim, demand or action; or

805.7.2 any modification carried out by or on behalf of the AUTHORITIES to any item supplied by the CONTRACTOR under the AUTHORITIES' Agreement if such modification is not authorised by the CONTRACTOR in writing; or

805.7.3 any use by the AUTHORITIES of the Products, Service Architecture or Services hereunder in a manner not reasonably to be inferred from the specification or requirements of the AUTHORITIES.

805.8 If the CONTRACTOR has availed itself of its rights to modify the Products, Service Architecture or the Services hereunder or to supply substitute products, service architecture or services pursuant to Clause 805.6.1 (or the AUTHORITIES have unreasonably withheld their acceptance of such substitute products, service architecture or Services) or to procure a licence under Clause 805.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, or if the AUTHORITIES have unreasonably withheld their acceptance of any items modified or substituted by the CONTRACTOR in accordance with Clause 805.6, then the CONTRACTOR shall have no further liability thereafter under this Clause 805 in respect of the said claim, demand or action.

805.9 If a modification or substitution in accordance with Clause 805.6.1 above is not possible so as to avoid the infringement and the CONTRACTOR has been unable to procure a licence in accordance with Clause 805.6.2 Clause 805.1 shall apply.

805.10 The AUTHORITIES hereby warrant and represent that any instructions given in relation to the CONTRACTOR's use of any third party item supplied directly or indirectly by the AUTHORITIES shall not cause the CONTRACTOR to infringe any third party's Intellectual Property Rights in such item. The AUTHORITIES shall, to the extent reasonably possible, assign to the CONTRACTOR any indemnity in their favour in relation to the Intellectual Property Rights in such third party items.

805.11 The foregoing states the entire liability of the CONTRACTOR with regard to the infringement of any Intellectual Property Right by the use or possession of the Products and Service Architecture by or on behalf of the



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AUTHORITIES or in connection with the receipt of the Services hereunder.

**Clause 806. Remedies Cumulative**

Except as otherwise expressly provided in the AUTHORITIES' Agreement, all remedies available to the CONTRACTOR or to the AUTHORITIES for breach of the AUTHORITIES' Agreement are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

**Clause 807. Alternative Dispute Resolution Procedure**

807.1 All disputes between either or both of the AUTHORITIES and the CONTRACTOR arising out of or relating to the AUTHORITIES' Agreement shall be referred, by any party involved in the dispute, to the Contracts Steering Group (as specified in Schedule A4) for resolution.

807.2 If any dispute cannot be resolved pursuant to Clause 807.1 within a maximum of fourteen (14) days after it has been referred under Clause 807.1, that dispute shall be referred to the PDA Board (currently comprising the chief Executive of the SSA(NI), the POCL Development Director, the BA Project Director and the BA/POCL Programme Director) of the AUTHORITIES and the Managing Director of the CONTRACTOR for resolution.

807.3 If the dispute cannot be resolved by the relevant parties' representatives nominated under Clause 807.2 within a maximum of fourteen (14) days after it has been referred under Clause 807.2 the dispute may be referred:

807.3.1 if the dispute is of a technical nature or is expressed by the AUTHORITIES' Agreement to be subject to expert determination, by agreement between the relevant parties it may be referred for final determination to an expert (the "Expert") who shall be deemed to act as expert and not as arbitrator; and

807.3.2 in all other aspects it shall be determined pursuant to Clause 104.1.

807.4 The Expert shall be selected by mutual agreement or, failing agreement, within fourteen (14) days after a request by one relevant party to the other(s), shall be chosen at the request of any party by the President for the time being of the Institution of Electrical Engineers who shall be requested to choose a suitably qualified and experienced Expert for the dispute in question.



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807.5 Fourteen (14) days after the Expert has accepted the appointment the relevant parties shall submit a written report on the dispute to the Expert and to each other and seven (7) days thereafter shall submit any written replies they wish to make to the Expert and to each other.

807.6 The relevant parties will then afford the Expert all necessary assistance which the Expert requires to consider the dispute including but not limited to full access to the Service Environment and any documentation or correspondence relating to the Service Environment.

807.7 The Expert shall be instructed to deliver his determination to the relevant parties within fourteen (14) days or such other period as may be agreed between the relevant parties after the submission of the written reports pursuant to Clause 807.5.

807.8 Decisions of the Expert shall be final and binding and not subject to appeal.

807.9 The Expert shall have the same powers to require any relevant party to produce any documents or information to him and the other relevant parties as an arbitrator and each relevant party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

807.10 The fees of the Expert shall be borne by the relevant parties in the proportions determined by the Expert having regard (amongst other things) to the conduct of the relevant parties in relation to the dispute in question.

807.11 Work and activity to be carried out under the AUTHORITIES' Agreement shall not cease or be delayed by this alternative dispute resolution procedure. However, during the currency of any alternative dispute resolution procedure, the AUTHORITIES shall not be entitled to exercise any right of termination which would otherwise arise in respect of the dispute which forms the subject matter of such procedure.

**Clause 808. Liability**

808.1 Except as otherwise specified in Schedule B8 in relation to benefit payment, the CONTRACTOR shall be liable for all losses and shall indemnify the AUTHORITIES against all costs, expenses, losses and damages incurred (including any legal costs) as a result of:

- (a) use of copied, altered or forged Cards;

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- (b) any unauthorised third party access to the Service Architecture;
- (c) any impersonation of Card holders which successfully defeats extended validation procedures;
- (d) any "hacking" into systems used by the CONTRACTOR to provide the Services (whether or not constituting an offence under the Computer Misuse Act 1990)
- (e) drawing of any benefit payments by Card holders or their proxies where at the time of payment notification had been given by DSS to the CONTRACTOR to withhold payment or cancel a proxy authorisation;
- (f) any other form of fraud (in relation to any of the Services).

808.2 Except as otherwise specified in Schedule B8 in relation to benefit payment, Clause 808.1 shall not apply if and to the extent that any of the matters referred to therein have been caused by the AUTHORITIES' non-performance of any obligation under the AUTHORITIES' Agreement upon the performance of which the CONTRACTOR's obligations under the AUTHORITIES' Agreement in respect of risk for fraud are expressed to depend. The foregoing is in place of the general rule stated in Clause 101.5.6.

808.3 In any case where either or both of the AUTHORITIES incur any costs, expenses, losses or damages as referred to in Clause 808.1, Clause 808.1 shall be presumed to apply unless the CONTRACTOR proves that Clause 808.2 applies.

808.4 In relation to benefit payment only, the responsibilities of the parties for the investigation of fraudulent losses and the agreed apportionment of costs under this AUTHORITIES' Agreement are defined in Schedule B8.

**Clause 809. Injury to Persons; Loss of Property**

809.1 Subject always to the AUTHORITIES' proper observance of their obligations under this Clause, the CONTRACTOR shall fully indemnify the AUTHORITIES in respect of any personal injury or loss of or damage to Property incurred by the AUTHORITIES or their respective employees and authorised agents to the extent that such personal injury or loss of Property is directly caused by any Default of the CONTRACTOR, its employees or agents, in connection with the performance or purported performance of the AUTHORITIES' Agreement.

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809.2 In the event of any claim or demand being made or action brought to which Clause 809.1 applies, the CONTRACTOR shall be promptly notified thereof and the CONTRACTOR shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom. The CONTRACTOR shall consult with and pay due regard to the interests (including the commercial interests of the Post Office Group and the public interest) and views of the AUTHORITIES in the conduct of any defence to any claim or demand hereunder, and shall, where it is reasonable to do so, comply with such interests and views. The AUTHORITIES, their employees and agents, shall at the request of the CONTRACTOR afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any reasonable expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of such claim or demand or action.

**Clause 810. Limitation of Liability**

810.1 No party hereto excludes or limits its liability to any other party for death or personal injury or any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

810.2 Subject always to Clause 810.1, the liability of each party for Defaults shall be subject to the financial limits set out in this Clause 810.2.

810.2.1 The aggregate liability for all Defaults resulting in direct loss of or damage to the Property of any other party under all the Related Agreements shall in no event exceed:

810.2.1.1 ten million pounds (£10,000,000), in the case of POCL's liability to the CONTRACTOR;

810.2.1.2 one million pounds (£1,000,000) in the case of DSS's liability to the CONTRACTOR;

810.2.1.3 fifty million pounds (£50,000,000), in the case of the CONTRACTOR's liability to DSS; and

810.2.1.4 ten million pounds (£10,000,000) per Year in relation to such Defaults arising during that Year, in the case of the CONTRACTOR's liability to POCL.

810.2.2 The aggregate liability of each party for all Defaults resulting in direct loss of or damage to

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the Property of any other party under the AUTHORITIES' Agreement shall in no event exceed:

810.2.2.1 one million pounds (£1,000,000), in the case of POCL's liability to the CONTRACTOR;

810.2.2.2 one hundred thousand pounds (£100,000) in the case of DSS's liability to the CONTRACTOR;

810.2.2.3 five million pounds (£5,000,000), in the case of the CONTRACTOR's liability to DSS; and

810.2.2.4 one million pounds (£1,000,000) per Year in relation to such Defaults arising during that Year, in the case of the CONTRACTOR's liability to POCL.

810.2.3 The aggregate liability per Year under all the Related Agreements of the AUTHORITIES for all Defaults (other than a Default governed by Clauses 810.2.1 and 810.2.2) arising during that Year shall in no event exceed:

810.2.3.1 five million pounds (£5,000,000) in the case of DSS's liability to the CONTRACTOR;

810.2.3.2 five million pounds (£5,000,000) in the case of POCL's liability to the CONTRACTOR.

810.2.4 The aggregate liability per Year of the AUTHORITIES for all Defaults (other than a Default governed by Clauses 810.2.1 and 810.2.2) arising during that Year under the AUTHORITIES' Agreement shall in no event exceed:

810.2.4.1 five hundred thousand pounds (£500,000) in the case of DSS's liability to the CONTRACTOR;

810.2.4.2 five hundred thousand pounds (£500,000) in the case of POCL's liability to the CONTRACTOR.

810.2.5 The aggregate liability under all the Related Agreements of the CONTRACTOR for all Defaults (other than a Default governed by Clauses 810.2.1 and 810.2.2) shall in no event exceed:

810.2.5.1 two hundred million pounds (£200,000,000) in the case of the CONTRACTOR's liability to the AUTHORITIES.

810.2.6 [Not used]

810.2.7 [Not used]

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810.2.8 Subject to Clause 810.2.9, the financial limits specified in Clause 810.2 apply to all claims for monetary relief which any party may have against the other parties either under the Related Agreements or otherwise in relation to the subject matter of the Related Agreements, including all claims for liquidated damages pursuant to Clause 802, all claims to be indemnified pursuant to Clauses 805 and 809 and all other claims or costs which are compensable in money or money's worth.

810.2.9 The financial limits applicable to the AUTHORITIES under Clause 810.2 shall be exclusive of and additional to any liability of the AUTHORITIES to pay any Charge, any Termination Charge, any Transfer Payment or any amount payable under Clause 201.9 which may become properly due and payable to the CONTRACTOR in accordance with the provisions hereof or any sum by way of interest thereon that a court may award.

810.3 Subject always to Clause 810.1, in no event shall any party be liable to any other party for indirect or consequential loss or damage. For the avoidance of doubt, this Clause 810.3 shall not be deemed or construed to affect the CONTRACTOR's liability under Clause 808.

810.4 The provisions of Clause 810.3 shall not be taken as limiting the right of either AUTHORITY to claim from the CONTRACTOR for:

810.4.1 additional operational and administrative costs and expenses; and/or

810.4.2 expenditure or charges rendered unnecessary as a result of any Default by the CONTRACTOR.

810.5 The parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.

810.6 For the avoidance of doubt, it is acknowledged that nothing in the Related Agreements shall be deemed or construed to relieve any party of its common-law duty to any other party against which a claim may be made to mitigate any loss which is the subject of such claim.

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**PART 9 : TERM AND TERMINATION****Clause 901. Term**

The term of the AUTHORITIES' Agreement shall, unless terminated earlier in accordance with the provisions of Clause 902, be for a period commencing on the date hereof and ending five (5) years from the Roll-Out Completion Date.

**Clause 902. Termination of AUTHORITIES' Agreement**

902.1 The AUTHORITIES may jointly at any time by notice in writing terminate the AUTHORITIES' Agreement with effect from the date of service of such notice or such later date as may be specified therein if:

902.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in the CONTRACTOR or its GUARANTOR; or

902.1.2 the CONTRACTOR or the GUARANTOR, being an individual, or where the CONTRACTOR or the GUARANTOR is a firm, any partner or partners in that firm who together are able to exercise direct or indirect control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, shall at any time become bankrupt or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or appears unable to pay or to have no reasonable prospect of being able to pay a debt within the meaning of Section 268 of the Insolvency Act 1986 or he shall become apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 as amended by the Bankruptcy (Scotland) Act 1993 or any application shall be made under any bankruptcy or insolvency act for the time being in force for sequestration of his estate, or a trust deed shall be granted by him for behoof of his creditors; or any similar event occurs under the law of any other jurisdiction; or

902.1.3 the CONTRACTOR, being a company, passes a resolution, or the Court makes an order that the CONTRACTOR or the GUARANTOR be wound up otherwise than for the purpose of a bona fide reconstruction or amalgamation, or a receiver, manager or administrator



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on behalf of a creditor is appointed in respect of the business or any part thereof (which for the avoidance of doubt shall not include any subsidiary company of the CONTRACTOR or of the GUARANTOR) of the CONTRACTOR or the GUARANTOR, or circumstances arise which entitle the Court or a creditor to appoint a receiver, manager or administrator or which entitle the Court otherwise than for the purpose of a bona fide reconstruction or amalgamation to make a winding-up order, or the CONTRACTOR or the GUARANTOR is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or any similar event occurs under the law of any other jurisdiction; or

902.1.4 the circumstances in Clause 605.3.6 arise and either the obligation in question is not capable of being performed again, or, if it is so capable, is not so performed again within thirty (30) days of written notice to the CONTRACTOR specifying the obligation in question and requiring it to be performed or within such other period as may be requested by the CONTRACTOR and agreed by the AUTHORITIES, such agreement not to be unreasonably withheld or delayed; or

902.1.5 any provision hereof other than Clause 902 expressly entitles the AUTHORITIES to terminate the AUTHORITIES' Agreement.

902.2 The AUTHORITIES may jointly at any time by notice in writing terminate the AUTHORITIES' Agreement with effect from the date of service of such notice or such later date as may be specified therein, if the CONTRACTOR is in Default of any obligation under the AUTHORITIES' Agreement and:

902.2.1 the Default is capable of remedy and the CONTRACTOR shall have failed to remedy the Default within thirty (30) days of written notice to the CONTRACTOR specifying the Default and requiring its remedy or within such other period as may be requested by the CONTRACTOR and agreed by the AUTHORITIES, such agreement not to be unreasonably withheld or delayed;

902.2.2 the Default is not capable of remedy (and for the purposes of this Clause, failure to comply with a timescale shall not of itself be considered a Default not capable of remedy except pursuant to Clause 605.4); or

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902.2.3 notice has been served pursuant to Clause 605.4 making time of the essence and all or any of the obligations specified in the notice have not been performed by the time limit stated in the notice.

902.3[Not used].

902.4 In the event of any termination of the AUTHORITIES' Agreement pursuant to Clause 902.1 or Clause 902.2, the AUTHORITIES shall return the Service Infrastructure or any part thereof (other than any part in relation to which either or both of the AUTHORITIES has exercised an option to purchase under the Related Agreements), in which case the CONTRACTOR shall, at no additional cost to the AUTHORITIES, remove such parts of the Service Infrastructure and shall make good any damage to the Premises occasioned by such removal.

902.5 The AUTHORITIES shall only be permitted to exercise their rights pursuant to Clause 902.1.1 for three (3) months after each such change of control and shall not be permitted to exercise such rights where the AUTHORITIES have agreed in advance in writing to the particular change of control and such change of control takes place as proposed. The CONTRACTOR shall notify the AUTHORITIES in advance of any change of control taking place, if legally possible, or if not so possible as soon as reasonably practicable, and in any event no later than one (1) month after such change of control taking place.

902.6

902.6.1 The AUTHORITIES may jointly terminate the AUTHORITIES' Agreement by giving the CONTRACTOR not less than twelve (12) months' notice.

902.6.2 [Not used]

902.6.3 In the event of such notice being given, the AUTHORITIES shall on termination hereof pay to the CONTRACTOR the Termination Charge (calculated in accordance with Schedule A9).

902.6.4 [Not used]

902.6.5 [Not used]

902.7 Termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.

902.8 The provisions of Clauses 101, 102, 104, 502, 606, 608, 609, 801, 804, 805, 810, 902, 903 and 904 and the provisions of Schedules A1 and A9 shall survive the

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termination of this AUTHORITIES' Agreement by the AUTHORITIES.

902.9 In the event of notice of termination of the AUTHORITIES' Agreement being given hereunder, DSS shall have the option exercisable at any time up to six (6) months after such notice to terminate the AUTHORITIES' Agreement to give notice to terminate the DSS Agreement pursuant to Clause 902.1.4 thereof and POCL shall have the option exercisable at any time up to six (6) months after such notice to terminate the AUTHORITIES' Agreement to give notice to terminate the POCL Agreement pursuant to Clause 902.1.4 thereof.

902.10 If either POCL terminates the POCL Agreement, or DSS terminates the DSS Agreement or all the DSS Services:

902.10.1 the terminating AUTHORITY shall have no further rights or obligations under the AUTHORITIES' Agreement, and none of the provisions of the AUTHORITIES' Agreement other than the provisions of Clauses 101, 102, 104, 301, 606, 608, 609, 801, 805, 810, 902, 903 and 904 and of Schedules A1, A3, A6 and A9 shall survive in relation to the terminating AUTHORITY; and

902.10.2 the non-terminating AUTHORITY shall have the option of terminating the AUTHORITIES' Agreement pursuant to Clause 902.1.5, provided that, if the terminating AUTHORITY terminated the POCL Agreement or the DSS Agreement (as appropriate) pursuant to Clause 902.6 of the POCL Agreement or the DSS Agreement (as appropriate), or terminated all the DSS Services (in the case of DSS) pursuant to Clause 903.5 of the DSS Agreement, then termination in accordance with this Clause 902.10 shall be treated as a termination for convenience in accordance with Clause 902.6.

902.11 In the event of the termination of any DSS Services or POCL Application Services or of any Related Agreement, the parties shall negotiate in good faith to make any necessary consequential amendments to the surviving Related Agreements in accordance with Clause 101.3. Until such consequential amendments have been made, the CONTRACTOR shall not be liable for any delay or failure in the performance of its obligations under the surviving Related Agreements which is directly caused by the termination of any DSS Services, POCL Services or Related Agreement.

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**Clause 903. Rights on Termination of AUTHORITIES' Agreement**

903.1 In the event of termination hereunder, in circumstances where the AUTHORITIES do not intend inviting the CONTRACTOR to continue to provide the Services hereunder or to provide services equivalent to the Services hereunder, DSS or POCL shall, without prejudice to the AUTHORITIES' other rights and remedies, have the option, exercisable at any time within four (4) months after notice of termination:

903.1.1 to acquire from the CONTRACTOR a non-exclusive licence to use (or authorise a replacement contractor to use) for the continuation of services equivalent to the Services hereunder in respect of any necessary Intellectual Property Rights which are owned by the CONTRACTOR and used in connection with the performance of the AUTHORITIES' Agreement. Such licence shall:

903.1.1.1 not be subject to payment other than pursuant to Clause 903.1.5;

903.1.1.2 be perpetual and irrevocable (subject to Clause 903.3); and

903.1.1.3 [Not used]

903.1.1.4 [Not used]

903.1.1.5 [Not used]

903.1.1.6 permit use by members of the Post Office Group and End Users.

903.1.2 to require that the CONTRACTOR shall assign or novate, or (if assignment or novation is not possible) arrange for the benefit thereof to be transferred, in favour of the AUTHORITIES or to any person as may be designated for the purpose by the AUTHORITIES any sub-contracts, equipment rental or lease agreements and all other (non-employment) agreements entered into by the CONTRACTOR which are necessary to the performance of the Services hereunder as the AUTHORITIES may designate;

903.1.3 to require that the CONTRACTOR shall at no cost to the AUTHORITIES (or a replacement contractor) forthwith release to the AUTHORITIES (or a replacement contractor) a copy of all the Software and all other software, data, tools, utilities, documentation and any other item necessary to provide the Services hereunder. Such software (other than any in respect of which the AUTHORITIES have

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exercised their option under Clause 903.1.1) shall be subject to any applicable licence terms, provided that such terms shall not detract from the AUTHORITIES' or a replacement contractor's ability to perform services equivalent to the Services.

903.1.4 Notwithstanding the generality of Clauses 903.1.1 to Clause 903.1.3 the AUTHORITIES agree only to exercise their rights under such Clauses when and only to the extent that it is necessary for the AUTHORITIES either to fulfil the purposes of the AUTHORITIES' Agreement themselves or to engage a third party so to do.

903.1.5 In the event that the AUTHORITIES' exercise any of the options in Clause 903.1, the AUTHORITIES shall pay to the CONTRACTOR the Transfer Payment calculated in accordance with Schedule A9.

903.1.6 If the AUTHORITIES' Agreement expires and the AUTHORITIES do not recompute the Services hereunder, they shall be obliged to exercise all of the options in this Clause, unless the CONTRACTOR elects to relieve the AUTHORITIES of this obligation in whole or in part.

903.2 In the event that the AUTHORITIES' Agreement is terminated as provided for herein:

903.2.1 the CONTRACTOR shall repay forthwith to the relevant AUTHORITIES all monies paid in relation to Services hereunder up to and including such date of termination other than monies in respect of any Services or part thereof properly performed in accordance with the AUTHORITIES' Agreement;

903.2.2 the CONTRACTOR shall return to POCL all Post Office Group Property in its possession and shall return to DSS all Property of DSS in its possession;

903.2.3 the CONTRACTOR shall render all practicable assistance to the AUTHORITIES, if requested, to the extent necessary to effect an orderly assumption by the AUTHORITIES or a replacement contractor of the services theretofore performed by the CONTRACTOR under the AUTHORITIES' Agreement and the AUTHORITIES shall reimburse the CONTRACTOR for such assistance at the rates then prevailing for customers of the CONTRACTOR for the same or similar services;

903.2.4 the AUTHORITIES shall be entitled on termination to offer any employee or sub-contractor



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(being an individual) of the CONTRACTOR who has during the six (6) months prior to such offer been involved for at least seventy-five per cent (75%) of his contracted working time in performing the CONTRACTOR's obligations under the AUTHORITIES' Agreement employment or an agreement for services with the AUTHORITIES and the CONTRACTOR agrees that if such person accepts such offer the CONTRACTOR shall release such person from any breach of contract with it (other than in relation to such person's obligations of confidentiality and notice of termination) which such acceptance may otherwise involve; and

903.2.5 (a) as soon as possible following any notice of termination being given (in the case of an early termination of the AUTHORITIES' Agreement) and no later than three (3) months prior to the expiry of the AUTHORITIES' Agreement (in the case of the termination of the AUTHORITIES' Agreement through the effluxion of time) the CONTRACTOR shall at the request of the AUTHORITIES provide to the AUTHORITIES or to a replacement contractor nominated by the AUTHORITIES details of the terms of employment of all CONTRACTOR personnel who are then employed in the performance of the Services hereunder as reasonably required by the AUTHORITIES in order to permit compliance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 by the AUTHORITIES or a replacement contractor;

(b) subject always to the AUTHORITIES' proper observance of their obligations under Clause 903.2.5(c), the CONTRACTOR shall fully indemnify the AUTHORITIES from and against any and all liabilities which the AUTHORITIES may incur in connection with or as a result of any claim or demand whatsoever by any employee or former employee of the CONTRACTOR or of any of the CONTRACTOR's sub-contractors or agents in respect of his employment with the CONTRACTOR or such sub-contractor or agent (or, pursuant to the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981, with either AUTHORITY or any replacement contractor) and/or its termination save to the extent such claim or demand both (i) is made by an employee identified within the relevant employment details referred to in Clause 903.2.5(a) as transferring pursuant to the Regulations and (ii) relates to employer's obligations accruing after the said transfer of



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employment which are clearly identified within the relevant employment details;

(c) in the event of any claim or demand being made or action brought to which Clause 903.2.5(b) applies, the CONTRACTOR shall be promptly notified thereof and the CONTRACTOR shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may rise therefrom. The AUTHORITIES, their sub-contractors, agents and employees shall at the request of the CONTRACTOR afford all reasonable assistance for the purpose of contesting any such claim or demand or action and shall be repaid any reasonable expense incurred in so doing and shall not make any admissions which may be prejudicial to the defence of any such claim or demand or action.

903.3 The CONTRACTOR may at any time by notice in writing terminate any licence granted under Clause 903.1.1 if the relevant AUTHORITY is in Default of its obligations under Clause 903.1.1 in relation to such licence and the relevant AUTHORITY shall fail to remedy such Default within thirty (30) days of written notice to the relevant AUTHORITY specifying the Default and requiring its remedy, provided that if the Default in question is caused by an Agent, such licence shall only be terminated in relation to Use by such Agent.

903.4 The AUTHORITIES shall only be entitled to exercise the options in Clause 903.1 and 903.2.4 to the extent that such exercise does not affect the CONTRACTOR's ability to perform any DSS Services or POCL Services.

**Clause 904. Transfer Services**

In the event of termination of the AUTHORITIES' Agreement pursuant to Clause 902, the CONTRACTOR shall perform the Transfer Services as set out in Schedule A9.

**PART 10 : MISCELLANEOUS****Clause 1001. Corrupt Gifts and Payments of Commission**

1001.1 The CONTRACTOR shall neither:

1001.1.1 offer or give or agree to give any person on Her Majesty's Service (which term shall in this Clause 1001 include all persons employed or engaged by the Crown and all persons providing services to the Crown) or employed by or providing services to

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the Post Office Group any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of the AUTHORITIES' Agreement or any other agreement with Her Majesty's Service or the Post Office Group (as appropriate) or for showing or forbearing to show favour or disfavour to any person in relation to the AUTHORITIES' Agreement; nor

1001.1.2 enter into the AUTHORITIES' Agreement if in connection with it commission has been paid or agreed to be paid to any person on Her Majesty's Service or employed by the Post Office Group by the CONTRACTOR or on the CONTRACTOR's behalf or to the CONTRACTOR's knowledge, unless before the AUTHORITIES' Agreement are made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the AUTHORITIES.

1001.2 In the event of any breach of this Clause 1001 by the CONTRACTOR or by anyone employed by the CONTRACTOR or acting on the CONTRACTOR's behalf (whether with or without the knowledge of the CONTRACTOR) or the commission of any offence by the CONTRACTOR or by anyone employed by the CONTRACTOR or acting on behalf of the CONTRACTOR under the Prevention of Corruption Acts, 1889 to 1916 in relation to this or any other contract with the Post Office Group or for Her Majesty's Service, the AUTHORITIES may terminate the AUTHORITIES' Agreement by notice in writing to the CONTRACTOR pursuant to Clause 902.1.5. Provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the AUTHORITIES and provided always that the AUTHORITIES may recover from the CONTRACTOR the amount or value of any such gift, consideration or commission.

1001.3 The decision of the AUTHORITIES shall be final and conclusive in any dispute, difference or question arising in respect of:

1001.3.1 the interpretation of this Clause (except so far as the same may relate to the amount recoverable from the CONTRACTOR under Clause 1001.2 in respect of any loss resulting from such termination of the AUTHORITIES' Agreement); or

1001.3.2 the right of the AUTHORITIES under this Clause 1001 to terminate the AUTHORITIES' Agreement; or

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1001.3.3 the amount or value of any such gift, consideration or commission.

**Clause 1002. Discrimination**

1002.1 The CONTRACTOR shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, regulation or other similar instrument relating to discrimination (whether in relation to race, gender, religion or otherwise) in employment.

1002.2 The CONTRACTOR shall take all reasonable steps to ensure the observance of the provisions of Clause 1002.1 by all servants, employees, agents and consultants of the CONTRACTOR and all sub-contractors.

**Clause 1003. Guarantee**

The CONTRACTOR shall procure that the GUARANTOR shall within thirty (30) days after the date hereof enter into and maintain a guarantee in the form set out in Schedule All. Breach of this Clause shall constitute a Default not capable of remedy.

**Clause 1004. Insurance**

The CONTRACTOR shall to the extent reasonably possible insure or make provision for self-insurance against all losses and damages which are the result of its fault or negligence in performing the Services hereunder, including workman's compensation, public liability, product liability, property damage and professional indemnity. The CONTRACTOR will, if requested in writing by either AUTHORITY, produce to the relevant AUTHORITY a certificate of insurance showing the applicable coverage currently in force, and will also give the AUTHORITIES' prior written notice of (where possible), or written notice no later than thirty (30) days after, alteration or cancellation of such insurance.

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IN WITNESS WHEREOF this Agreement has been executed on  
behalf of the parties as follows:

Signed for and on behalf of the Secretary of State for  
Social Security

By: .....

Name: PETER MATHISON

Title: Chief Executive, Benefits Agency

Date:.....

Signed for and on behalf of POCL

By:.....

Name: STUART SWEETMAN

Title: Managing Director, Post Office Counters Ltd

Date:.....

Signed for and on behalf of the CONTRACTOR

By:.....

Name: JOHN H BENNETT

Title: Managing Director, Pathway Group Limited

Date.....