

CODIFIED AGREEMENT

POST OFFICE COUNTERS LTD

- and -

ICL PATHWAY LIMITED

**INFORMATION TECHNOLOGY SERVICES AGREEMENT FOR BRINGING TECHNOLOGY TO
POST OFFICES**

CODIFIED AGREEMENT

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Version control

Version Reference	Reason for Change	Frozen/issue date
1.0	Original baseline	28 July 1999
1.1a	Applying CCN313a to introduce Clause 512	
1.1b	Formatting changes only to aid version control (new header and footer)	
1.2a	Applying CCN245c to introduce Clause 102.5.4; CCN525 to Clauses 503, 504.3, 509.1; CC533 to postcode before recitals; CCN560 to Clause 606.2.1.1	
1.2b	Revising amendment to Clause 606.2.1.1	
1.2c	Revising clauses to change the function of A17 to record the baselining process (redlined against version 1.2b only)	
1.2d	Drafting revisions at clauses 102.5.1, 810.10 and 810.12	
1.2	Baseline copy of 1.2d	8 February 2000
1.3a	Incorporating CCN582 to 603.3.1	
1.3	Baseline copy of 1.3a (finalising schedule version table and correcting clause 810.10.2)	14 April 2000
1.4a	Applying CCN 619 with addition to Clause 202, modify Clause 206 and modify Clause 903.1.1	
1.4	Baseline copy of 1.4a	25 July 2000
2.0a	Applying CCN687 to 509.1	
2.0b	Addition of missing references to CCNs 699 & 720	
2.0	Baseline copy of 2.0b	12 January 2001

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THIS CODIFIED AGREEMENT is made the 28th day of July, 1999

BETWEEN:

- (1) Post Office Counters Ltd whose registered office is situated at Gavrelle House, 2-14 Bunhill Row, London EC1Y 8HQ; and
- (2) ICL Pathway Limited whose registered office is at 26 Finsbury Square, London EC2A 1SL ("the Contractor").

RECITALS

WHEREAS:

- (a) On 15th May, 1996, 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") and POCL (collectively "the Authorities") entered into certain agreements (the "Related Agreements") for the design, development, integration and establishment by the Contractor of a computerised service infrastructure and for certain services to be provided thereon;
- (b) Such agreements comprised:
 - (i) an agreement between DSS and the Contractor for, inter alia, the provision by the Contractor of services relating to a benefit payment card (the "DSS Agreement");
 - (ii) an agreement between POCL and the Contractor for, inter alia, the provision by the Contractor of the POCL Service Infrastructure and for the POCL Services (as hereinafter defined) to be provided thereon the ("POCL Agreement"); and
 - (iii) an agreement among DSS, POCL and the Contractor for the supply of a service infrastructure and the provision of certain services which were of common interest to both DSS and POCL (the "Authorities Agreement");
- (c) Each of the Related Agreements has been amended from time to time in accordance with the change control procedures contained therein;
- (d) On 24th May, 1999, DSS and the Contractor entered into an agreement under which, inter alia, the DSS Agreement was terminated on that date;
- (e) On 24th May, 1999 POCL and the Contractor entered into an agreement (the "Letter Agreement") under which they agreed that certain changes should be made to the POCL Agreement and the Authorities Agreement with effect from that date.
- (f) Under the Letter Agreement POCL and the Contractor agreed, inter alia, to replace the POCL Agreement and the Authorities Agreement (each as amended under change control procedures) with a single agreement (the "Codified Agreement") codifying the changes to those agreements agreed in the Letter Agreement;

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(g) This Codified Agreement is the Codified Agreement referred to in the Letter Agreement.

NOW THEREFORE IT IS HEREBY AGREED as follows:

PART 1 : INTRODUCTION

Clause 101. Contract Structure

101.1 The Codified Agreement

Without prejudice to Clause 810.10 of this Codified Agreement, each of the POCL Agreement and the Authorities Agreement is hereby terminated and replaced by the provisions of this Codified Agreement with immediate effect.

101.2 Amendments to Clauses, Schedules and Annexes of this Codified Agreement

The provisions of this Codified Agreement shall only be amended in accordance with the Change Control Procedure.

101.3 Failure by POCL to perform its Obligations

The Contractor shall not be liable to POCL for any failure to perform or delay in performing its obligations hereunder where the Contractor proves that such failure or delay has been directly caused by the failure of POCL to perform any of its obligations under this Codified Agreement. This Clause shall not apply to Clause 809, which shall be governed by the specific rule stated in Clause 809.2.

Clause 102. Interpretation

102.1 As used in this Codified 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 this Codified Agreement for ease of reference only and shall not affect the interpretation or construction of this Codified Agreement.

102.4 References in this Codified Agreement to Clauses, Parts and Schedules are, unless otherwise provided, references to the clauses, parts and schedules of this Codified

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Agreement. References to CCDs and CRDs are to the documents agreed as such from time to time.

102.5.1 Subject to Clause 102.5.2, in the event and to the extent only of any conflict or inconsistency between provisions of this Codified Agreement, the following order of precedence shall apply:-

- (a) the Clauses and Schedule A1;
- (b) Schedules A2 to A14;
- (c) the Service Definition Schedules and Schedule G6;
- (d) Schedule A15;
- (e) Schedule A16;
- (f) all other Schedules except Schedule A17;
- (g) CCDs and Schedule A17; and
- (h) CRDs.

102.5.2 In the event of any conflict or inconsistency in relation to Service Levels, the provisions of the Service Level Schedules shall prevail over those of the Service Definition Schedules and Schedules A15, A16 and G6 (but not the Clauses or Schedules A1 to A14) to the extent of such conflict or inconsistency.

102.5.3 For the avoidance of doubt, POCL acknowledges that a particular solution in Schedule A16 shall not be treated as being in conflict or inconsistent with any requirement in Schedule A15, or the Service Definition Schedules or Schedule G6, merely because the solution states that the requirement will be met in a particular form, manner, quantity, time or place.

102.5.4 "Working Documents" do not affect or introduce any contractual obligations between any of the parties.

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

102.7 Where this Codified Agreement imposes upon either party an obligation which was also imposed on that party under the Authorities Agreement or POCL Agreement then to the extent that such obligation has been performed under the Authorities Agreement or POCL Agreement it shall be deemed to have been performed under the corresponding provision of this Codified Agreement (but continuing obligations shall continue under this Codified Agreement).

102.8 Where any provision of this Codified Agreement requires or permits a matter to be agreed between the parties or approved by either of the parties and such provision was also

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contained in the Authorities Agreement or POCL Agreement, any agreement reached or approval given under the Authorities Agreement or POCL Agreement shall be deemed to have been reached or given under the corresponding provision of this Codified Agreement.

- 102.9 References in CCDs, CRDs and Schedules agreed prior to the date of this Codified Agreement to NR2 or NR2+ shall be construed so as to refer to such of CSR or CSR+ as shall be appropriate having regard to the functionality of the item or service to which such reference relates, as determined by the SADD and any relevant Release Contents Description. Likewise, references in such CCDs, CRDs and Schedules to other items, services or matters affected by subsequent agreements between the parties (including this Codified Agreement) shall be construed to reflect most appropriately the effect of such subsequent agreements.
- 102.10 It is expressly agreed that Clause 201.6 and (notwithstanding that they refer to CCDs) the definitions of "Core System" and "CSR+" shall take precedence over all other provisions of this Codified Agreement (including the Schedules) which define the Core System, CSR+, the Core System Services or the POCL Services.

Clause 103. Severability

If any of the provisions of this Codified Agreement is judged to be invalid, illegal or unenforceable, the continuation in full force and effect of the remainder of them will not be prejudiced but such provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

Clause 104. Law and Jurisdiction

- 104.1 This Codified Agreement shall be governed by and shall be interpreted in accordance with English Law and, subject to Clause 807, the parties submit to the exclusive jurisdiction of the English Courts.
- 104.2 Except as specified in Clause 101, this Codified Agreement is binding on POCL and its successors and permitted assignees and on the Contractor and the Contractor's successors and permitted assignees.

Clause 105. Entire Agreement

- 105.1 This Codified Agreement constitutes the entire understanding between the parties relating to the subject matter of this Codified Agreement. Each of the parties acknowledges that in entering into this Codified Agreement it has not relied on any representation, warranty, promise or assurance, whether or not in writing, and whether or not negligent, given or made by any other party as an inducement to enter into this Codified Agreement. Accordingly no party shall have any right of action (except in the case of fraud) against any other party arising out of any such representation, warranty, promise or assurance.

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- 105.2 This Codified Agreement supersedes the Letter Agreement, the schedules to the Letter Agreement, the Heads of Agreement referred to in the Letter Agreement, the POCL Agreement and the Authorities Agreement, each of which shall be of no further effect (but without prejudice to rights and liabilities of the Parties accruing under the Letter Agreement, the schedules thereto or the Heads of Agreement between 24 May, 1999 and the date of this Codified Agreement).
- 105.3 The parties acknowledge that the consent agreement (the "Consent Agreement") dated 16th September, 1997 among DSS, POCL, ICL plc, the Contractor and ICL Pathway Asset Company Limited shall not be terminated by the execution of this Codified Agreement and that references in the Consent Agreement to the "POCL Agreement", the "Authorities Agreement" or the "Related Agreements" or any provisions thereof shall be references to this Codified Agreement or (as the case may be) the equivalent provisions of this Codified Agreement.

Clause 106. General Principles

- 106.1 POCL shall control the rights for using and marketing the POCL Services provided in post offices. The Contractor shall have no control over the use or marketing of the POCL Services.
- 106.2 The Contractor shall offer all reasonable assistance to POCL in preventing fraudulent use of the POCL Services and POCL Service Infrastructure by POCL's employees and Agents.
- 106.3 The POCL Services and the POCL Service Infrastructure shall be provided in accordance with and comply with all relevant applicable industry standards, as these are listed in Schedule A2.
- 106.4 The Contractor shall, if so requested by POCL, work with POCL to identify and develop new business opportunities for POCL and the Contractor.
- 106.5 For the avoidance of doubt, the Contractor shall ensure migration of appropriate automated systems without any reduction in existing service or security levels to POCL's clients and customers.
- 106.6 Except as otherwise agreed from time to time between POCL and the Contractor, POCL will retain control itself of its critical business processes and relationships, such as:
- 106.6.1 customer interface, including quality of service (such as queuing time and other customer charter measures) to its customers, network format, location of offices and service standards;
 - 106.6.2 contractual relationships with Agents;
 - 106.6.3 contractual relationships with its clients;
 - 106.6.4 policy control of its network;

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- 106.6.5 its reconciliation, settlement and key infrastructure support processes;
- 106.6.6 its relationship with its suppliers; and
- 106.6.7 its product and service design.
- 106.7 The Contractor shall not restrict POCL from using the POCL Services and the POCL Service Infrastructure for its existing and future clients, Agents, customers, products and services.
- 106.8 The Contractor's and its subcontractors' contacts with Agents shall be arranged via POCL.
- 106.9 The POCL Service Infrastructure (other than any Public Service Telecommunications Networks) may not be used other than by POCL without the prior written consent of POCL to provide any services to:
- (a) POCL's current clients in respect of current products and services;
 - (b) POCL's current clients in respect of new products and services;
 - (c) new clients in respect of current products and services;
 - (d) new clients in respect of new products and services; or
 - (e) POCL's current market domains (including:
 - personal cash and banking services - cash withdrawals and deposits, cashing cheques, benefit payments and postal orders;
 - communications - letter and parcel services including stationery and greetings products, other telecommunications retail products and services;
 - corporate cash services - cash management services for business customers, including business deposits, cash handling and processing;
 - entertainment and leisure services - lotteries, fishing licences, membership applications, TV licences and cable TV bill payment, tickets for events;
 - personal savings and budgeting - savings and investment accounts, household bill payment and pre-payment, credit services, personal pensions, household insurance;
 - travel services - foreign exchange, international money transfer and documentation including passports, travel tickets and motor vehicle licences, car insurance and membership of motoring organisations, travel insurance;
 - insurance - other general risk insurance and life assurance products;

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- information services - about the products and services offered by POCL and its clients;
 - benefit payment services).
- 106.10 The Contractor shall deliver and continue to provide a secure system in respect of all transactions which as far as this Codified Agreement requires eliminates the potential for any fraud or unauthorised disclosure of data and provides detection procedures and significant barriers to attacks from internal conspiracy and collusion to defraud POCL.
- 106.11 The POCL Services and the POCL Service Infrastructure shall be capable of introduction in all post offices.
- 106.12 For the avoidance of doubt, and without limitation to the generality of Clause 902.2, any failure by the Contractor to comply with any of the provisions of Clauses 106.7, 106.8 or 106.9 shall be treated as a Default for the purposes of Clause 902.2.

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

- 201.1 [Not used]
- 201.2 Subject to Clause 201.6 the Contractor shall be responsible for meeting the requirements specified in Schedule A15 in accordance with the Solutions specified in Schedule A16 by performing the Core System Services referred to in Clause 201.3. However, for the avoidance of doubt, and subject to Clauses 102.5 and 201.6, the parties acknowledge that POCL's acceptance of the Contractor's solutions in Schedule A16 and their agreement to the service descriptions contained in the relevant Schedules of this Codified Agreement, shall not relieve the Contractor of its obligation to meet such of those requirements specified in Schedule A15 as relate to the Core System, CSR+ and, subject to Clause 301.10, other Releases as referred to in Clause 210.
- 201.3 Subject to Clause 201.6 the Contractor shall perform the following Core System Services in accordance with all applicable provisions hereof:
- 201.3.1 the Development Services pursuant to Clause 403;
 - 201.3.2 the Implementation Services pursuant to Clause 404;
 - 201.3.3 the Operational Services pursuant to Clause 405;
 - 201.3.4 the Management Services pursuant to Clause 602; and
 - 201.3.5 the Transfer Services pursuant to Clause 904.
- 201.4 The Contractor shall, at no cost to POCL:-

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201.4.1 strip out from, or suppress in, the Core System Release the functionality of; and

201.4.2 strip out from CSR+

all software relating exclusively to the aborted benefit encashment service or to PAS or CMS (as defined under the DSS Agreement).

201.5 To support the performance of the POCL Services, the Contractor shall supply to POCL one hard copy and one electronic copy of each version of the Service Architecture Design Document in accordance with all applicable provisions hereof. For the avoidance of doubt, the Contractor acknowledges that agreement by POCL to the SADD shall not relieve the Contractor of its obligation to continue to perform the POCL Services in accordance with all applicable provisions of this Codified Agreement

201.6 Notwithstanding any other provision of this Codified Agreement to the contrary, the Contractor's obligations in relation to those elements of the Core System Services which are dependent on software releases are limited to the provision of:-

- (a) following the Core System Release, such of those elements as are dependent on the Core System Release;
- (b) following CSR+, such of those elements as are dependent on CSR+; and
- (c) in further Releases pursuant to Clause 210, such additional Core System Services as may be agreed in accordance with the Change Control Procedure and the provisions of Clause 301.10

and references to the Core System Services and any category of them shall be construed accordingly.

Clause 202. Performance of Optional POCL Services

POCL shall have the option, exercisable on prior written notice to the Contractor, of obtaining any of the Optional POCL Services described in Schedule C1.

Such Optional POCL Services shall be performed in accordance with all applicable provisions hereof.

Notwithstanding any other provision in this Codified Agreement, or in any CCD or CRD, to the contrary, the Contractor shall not be obliged to carry out Services as Operational Business Change, or otherwise supply equipment, in excess of the limits relating to Counter positions, Horizon configurations, single position gateway configurations and multi-position gateway configurations set out in rows numbered 3 to 6 in Annex 5 to Schedule A12 to this Codified Agreement.

Clause 203. Performance of POCL Client Services

The Contractor shall provide POCL with such services as may be agreed by the Contractor and POCL in relation to Royal Mail, DVLA, DNS, Girobank plc and the Co-operative Bank plc (and other POCL

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clients as may be agreed). Such services shall be performed in accordance with all applicable provisions of this Codified Agreement.

Clause 204. Performance of Additional POCL Services

The Contractor undertakes to perform at any time during the term of this Codified Agreement such Additional POCL Services as may be agreed by it and POCL in accordance with the provisions of Clause 101.2 for the purposes contemplated by this Codified Agreement and within the scope of the Advertisement. Such Additional POCL Services shall be performed in accordance with all applicable provisions of this Codified Agreement.

Clause 205. Supply of Core System Products

205.1 To support the performance of the POCL Services, the Contractor shall supply the following Core System Products in accordance with all applicable provisions hereof:

205.1.1 all of the Products comprising the POCL Service Infrastructure;

205.1.2 the Documentation.

205.2 The Contractor warrants that the Documentation comprises:

- (a) a complete set of operating manuals; and
- (b) a complete set of manuals for the POCL Service Architecture.

205.3 In addition to one hard copy of the Documentation provided by the Contractor, the Contractor shall provide POCL with an electronic copy at no additional charge.

Clause 206. Supply of Optional Products

POCL shall have the option, exercisable on prior written notice to the Contractor, of obtaining, as Optional Products, all or any items specified in paragraph 12 of Schedule A12 to this Codified Agreement which are of the same type as the equivalent elements of the POCL Service Infrastructure provided by the Contractor for use on the POCL Premises.

The Optional Products shall be supplied in accordance with all applicable provisions hereof.

Clause 207. Supply of Additional Products

The Contractor undertakes to supply at any time during the term of this Codified Agreement such Additional Products as may be agreed by it and POCL in accordance with the provisions of Clause 101.2 for the purposes contemplated by this Codified Agreement and within the scope of the Advertisement. Such Additional Products shall be supplied in accordance with all applicable provisions hereof.

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Clause 208. Supply of POCL Consumables

POCL shall have the option of obtaining all or any of the POCL Consumables in such quantities as may be reasonably required by POCL by giving the Contractor not less than thirty (30) days prior written notice thereof. The POCL Consumables shall be supplied in accordance with all applicable provisions hereof.

Clause 209. Contractor Consumables

The Contractor shall provide all Contractor Consumables which are required for the performance of the POCL Services.

Clause 210 Further Releases

- 210.1 Subject to the Change Control Procedure, further Releases of Software to provide additional functionality relevant to the Core System shall be provided by the Contractor by way of upgrades to CSR or CSR+.
- 210.2 The Contractor may also issue further Releases of Software from time to time as necessary to remedy defects in the provision of the POCL Services or for the purpose of maintenance of the POCL Service Infrastructure.

Clause 211 Further Use of the Core System

In parallel with the performance of the Contractor's obligations under this Codified Agreement, POCL confirms its desire to use the Core System for network banking and the provision of services (via smart cards) for Modern Government. POCL will therefore work with the Contractor to revive and continue the discussions on the Public Private Partnership considered by the parties prior to the date of this Codified Agreement. It is hoped that the parties can together develop a business strategy in these areas which they can deliver through appropriate arrangements under a Public Private Partnership in order to leverage the use of the Core System and develop to the full POCL's potential for the delivery of electronic business services.

PART 3 : CONSIDERATION**Clause 301. Charges****301.1 Core System Charges**

The Charges for the provision of the POCL Service Infrastructure and the Core System Services shall be calculated in accordance with Part A of Schedule A12 to this Codified Agreement.

301.2 Charges for Optional POCL Services

The Charges for any Optional POCL Services shall be calculated in accordance with paragraph 8 of Schedule A12 to this Codified Agreement.

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301.3 Charges for POCL Client Services

The Charges for any POCL Client Services shall be calculated in accordance with paragraph 9 of Schedule A12 to this Codified Agreement.

301.4 Charges for Additional POCL Services

The Charges for Additional POCL Services shall be as set out in paragraph 10 of Schedule A12 to this Codified Agreement.

301.5 Core System Products

The costs of supply of the Core System Products are included within the charges referred to in Clause 301.1 above.

301.6 Optional Products

The Charges for the supply of any Optional Products shall be calculated in accordance with paragraph 12 of Schedule A12 to this Codified Agreement.

301.7 Additional Products

The Charges for the supply of any Additional Products shall be calculated in accordance with the Contractor's then current list prices but shall in no event exceed the prices then generally offered in the United Kingdom for such products on similar terms.

301.8 POCL Consumables

The Charges for the supply of any POCL Consumables shall be as specified in Schedule B4.

301.9 Contractor Consumables

All Contractor Consumables shall be supplied at the expense of the Contractor.

301.10 Further Releases

301.10.1 Further releases of Software which fall within Clause 210.1 shall be provided either:-

301.10.1.1 on the basis of appropriate time and material charges (as set out in paragraph 14 of Schedule A12) which shall be invoiced monthly in arrears; or

301.10.1.2 for a fixed price to be agreed (on payment terms to be agreed) which shall not be audited

as elected by POCL.

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301.10.2 Further releases of Software which fall within Clause 210.2 shall be provided at no cost to POCL.

Clause 302. Packaging

No additional charge shall be made for packaging used by the Contractor. All such packaging shall be removed by the Contractor at no additional cost when no longer required.

Clause 303. Payment

303.1 In consideration of the supply of the Products and the performance of the POCL Services in accordance with the provisions of this Codified Agreement POCL shall pay the Charges.

303.2 Payment of Charges in relation to the POCL Services performed hereunder shall be made in accordance with the invoicing and payment procedure specified in Schedule A10.

303.3 In the event that the Contractor, in accordance with the terms of this Codified Agreement, enters into a supply contract or a sub-contract in connection with this Codified Agreement, the Contractor shall ensure that a term is included in the supply contract or sub-contract which requires the Contractor to pay all sums due thereunder to the relevant supplier or sub-contractor within a specified period, not to exceed thirty (30) days, from the date of receipt of a valid invoice as defined by the terms of the supply contract or sub-contract (as appropriate).

Clause 304. Value Added Tax

It is hereby agreed that the Charges are exclusive of Value Added Tax, which POCL 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, IMPLEMENTATION AND PERFORMANCE OF OPERATIONAL SERVICES**Clause 401. Transfer of Assets and Agreements****401.1 Sale and Purchase**

401.1.1 POCL, free of encumbrances, liens, charges, mortgages, pledges or other third party rights, shall sell and transfer and the Contractor shall purchase and accept the POCL Transferred Assets (if any) listed in Schedule A9.

401.1.2 Subject to Clause 401.1.3, the POCL Transferred Assets are sold and transferred by POCL to the Contractor "as is" and POCL provides no warranty as to the state, quality or fitness for purpose of the POCL Transferred Assets and all such statutorily implied warranties are hereby excluded. POCL warrants it has good title to the POCL Transferred Assets.

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401.1.3 To the extent to which POCL is legally able to do so, POCL hereby assigns all POCL's rights against manufacturers, suppliers and third parties in respect of the POCL Transferred Assets to the Contractor. POCL shall at the Contractor's request and expense give to the Contractor reasonable assistance to enable the Contractor to enforce such rights.

401.1.4 Title to and risk in the POCL Transferred Assets shall pass to the Contractor on the Transfer Date.

401.2 Sale Consideration

401.2.1 As consideration for the agreement by POCL to sell the POCL Transferred Assets, the Contractor hereby agrees to pay to POCL the sum of £1 (if and when requested).

401.2.2 It is hereby agreed that the sum to be paid pursuant to this Clause 401.2.1 is exclusive of Value Added Tax, which the Contractor shall pay to POCL at the rate and in the manner prescribed by law from time to time, in addition to the sum payable in Clause 401.2.1, subject to the production by POCL of a valid tax invoice giving the requisite details of the taxable supply.

401.3 ISDN Lines

401.3.1 With effect from the Transfer Date POCL shall assign to the Contractor the benefit of all agreements entered into between POCL and British Telecom Plc to the extent relating to the provision of ISDN lines in Outlets in connection with services to be migrated to the POCL Services (the "Relevant ISDN Agreements") and the Contractor agrees to assume and duly perform all of POCL's obligations in relation to the Relevant ISDN Agreements. The parties shall, unless otherwise agreed, enter into a deed of novation with British Telecom PLC to effect such assignment and assumption on the Transfer Date or as soon as reasonably practicable thereafter.

401.3.2 POCL undertakes to pay, discharge and satisfy all liabilities and obligations arising in the period up to the Transfer Date when the same fall due to be paid, satisfied or discharged in respect of the Relevant ISDN Agreements and to indemnify the Contractor from and against such liabilities and against any and all losses, costs, liabilities and expenses arising out of or in connection therewith. The Contractor undertakes to reimburse POCL upon the Transfer Date in respect of all pre-payments made by POCL which relate to any period following the Transfer Date. The Contractor and POCL shall prior to the Transfer Date prepare and agree a written statement itemising such pre-payments.

401.3.3 The Contractor undertakes to pay, discharge and satisfy all liabilities and obligations arising after the Transfer Date when the same fall due to be paid, satisfied or discharged in respect of the Relevant ISDN Agreements and to indemnify POCL from and against such liabilities and against any and all losses, costs, liabilities and expenses arising out of or in connection therewith.

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401.4 Completion

401.4.1 Completion of the sale and purchase and/or transfer shall take place on the Transfer Date at the offices of POCL.

401.4.2 Upon completion POCL shall deliver to the Contractor:

401.4.2.1 quiet possession of all the relevant POCL Transferred Assets;

401.4.2.2 executed documentation sufficient for the purpose of transferring title to the relevant POCL Transferred Assets;

401.4.2.3 copies of documentation relating to the Relevant ISDN Agreements including relevant technical information and terms and conditions of such Relevant ISDN Agreements.

401.4.3 Upon completion of the Transfer the Contractor shall pay to POCL in a manner to be agreed between the parties the sum specified in Clause 401.2.1.

401.5 Transfer of Undertakings (Protection of Employment) Regulations 1981

401.5.1 In the event that, by virtue of the application for whatever reason of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended or replaced from time to time) to the assumption of responsibility by the Contractor for the provision of all or any part of the POCL Services hereunder, there is transferred to the Contractor any contract of employment of any employee of POCL, and provided that the Contractor:

- (i) shall not have offered employment to such employee or otherwise have encouraged him to seek or to claim employment with the Contractor; and
- (ii) shall have notified POCL in writing of the Contractor's intention to terminate the employment of such employee at least fourteen (14) days before terminating such employment; and
- (iii) shall immediately after such notification to POCL have given POCL reasonable opportunity to offer such employee reemployment with POCL; and
- (iv) shall have terminated the employment of such employee as soon after the date on which the Contractor first became aware of the transfer to it of his employment as permitted under the relevant contract of employment,

POCL, subject always to the Contractor's proper observance of its obligations under this Clause, shall fully indemnify the Contractor from and against any and all liabilities and obligations which the Contractor may incur in connection therewith (including any liabilities and obligations, accruing prior to such transfer of employment, in relation to personal injury, sexual discrimination and any liabilities

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and obligations arising after such transfer of employment on the subsequent termination of employment by the Contractor of any such employees so transferred to it).

- 401.5.2 In the event of any claim or demand being made or action brought to which Clause 401.5.1 applies, POCL shall be promptly notified thereof and POCL shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom. The Contractor, its sub-contractors, agents and employees shall at the request of POCL 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.

Clause 402. Operational Trial

- 402.1 The Contractor shall, during the Operational Trial Period, make available the Operational Trial System for the Operational Trial as set out in Schedules L1 to L5 to be performed in accordance with the timetable set out in Schedule L2
- 402.2 The objectives of the Operational Trial shall be as specified in Schedule L1.
- 402.3 Operational Trial and the Operational Trial System shall be used to test the Core System for the purposes of Schedule A11.
- 402.4 [Not used]
- 402.5 [Not used]
- 402.6 [Not used]
- 402.7 POCL will perform its Operational Trial Responsibilities as set out in Schedule L4.
- 402.8 For the avoidance of doubt, the Contractor acknowledges that successful completion of acceptance testing of any part of the Operational Trial System shall not relieve it of its obligation to continue to perform the POCL Services hereunder in accordance with all applicable provisions hereof.
- 402.9 Notwithstanding the foregoing provisions of this Clause, POCL shall have no right of termination of this Codified Agreement in relation to failure of the Operational Trial System successfully to complete the Operational Trial except in accordance with Schedules A11 and L5.

Clause 403. Development Services

The Contractor shall perform the following Development Services:

- 403.1 development of the Automated Payment Service as described in Schedule E1;

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- 403.2 development of EPOSS as described in Schedule F1;
- 403.3 development of the POCL Infrastructure Services as described in Schedule G1;
- 403.4 development of the OBCS as described in Schedule H1;
- 403.5 development of the Logistics Feeder Service as described in Schedule K1;
- 403.6 development of Optional POCL Services as described in Schedule C1 ;
- 403.7 development of the Service Architecture Design Document; and
- 403.8 development of the Contingency Services as described in Schedules E9, F9, G11, H9 and K9.

Clause 404. Implementation of POCL Service Infrastructure and Operational Services

- 404.1 The Contractor shall implement the POCL Service Infrastructure in accordance with the provisions and timetable in Schedule G6. Elements of the POCL Service Infrastructure shall be subject to Acceptance.
- 404.2 POCL may on prior written notice defer implementation of any part of the Operational Services and of any of the POCL Service Infrastructure until successful completion of the Operational Trial under the foregoing provisions of this Clause.
- 404.3 The Contractor shall implement the Automated Payment Service in accordance with the timetable in, and the provisions of, Schedule E4. Elements of the Automated Payment Service shall be subject to Acceptance.
- 404.4 The Contractor shall implement EPOSS in accordance with the timetable in, and the provisions of, Schedule F4. Elements of EPOSS shall be subject to Acceptance.
- 404.5 The Contractor shall implement the POCL Infrastructure Services in accordance with the timetable in, and the provisions of, Schedule G6. Elements of the POCL Infrastructure Services shall be subject to Acceptance.
- 404.6 The Contractor shall implement OBCS in accordance with the timetable in, and provisions of, Schedule H4. Elements of OBCS shall be subject to Acceptance.
- 404.7 The Contractor shall implement the Logistics Feeder Service in accordance with the timetable in, and provisions of, Schedule K4.

Clause 405. Performance of Operational Services

Subject to the Release Authorisation Board authorising commencement of National Rollout of the Core System and subject to Clause 201.6, the Contractor shall, from the date of CSR Acceptance, perform the following Operational Services:

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- 405.1 the Automated Payment Service, in accordance with the provisions of Schedule E1;
- 405.2 EPOSS, in accordance with the provisions of Schedule F1;
- 405.3 the POCL Infrastructure Services, in accordance with the provisions of Schedule G1;
- 405.4 the OBCS in accordance with the provisions of Schedule H1;
- 405.5 the Logistics Feeder Service in accordance with the provisions of Schedule K1;
- 405.6 the POCL Contingency Services in accordance with the provisions of Schedules E9, F9, G11, H9 and K9;
- 405.7 any Optional POCL Services ordered pursuant to Clause 202 in accordance with the provisions of Schedule C1.

Clause 406. Inspection of POCL Premises

- 406.1 The Contractor confirms that it has been offered the opportunity to inspect the POCL Premises in order to satisfy itself that the POCL Premises are suitable for the installation and operation of the Products in the POCL Service Infrastructure and the supply of the POCL Services. However, the Contractor does not warrant that the use of such Products when installed will comply with applicable Health and Safety legislation or that the POCL Premises will comply with such legislation, only that installation work carried out by the Contractor and the Products as installed in their immediately surrounding environment will so comply. The Contractor shall not be liable for any delay or Default directly caused by any delay or failure in obtaining any third party consents or licences which are necessary to permit such installation.
- 406.2 In relation to any work at the POCL Premises which is required as referred to in paragraph 3.2 of Annex 4 to Schedule A12, the Contractor shall inspect the POCL Premises, specify the necessary work and, subject to POCL's prior written approval of the work to be done and the costs thereof, carry out such work. The costs of such work shall be chargeable to POCL in accordance with paragraphs 6 and 13 of, and Annex 4 to Schedule A12. POCL reserves the right to arrange for such work to be done by parties other than the Contractor in accordance with procedures and specifications reasonably agreed by the parties. The Contractor will not be liable for any delay or Default directly caused by such changes being made by a party other than the Contractor.
- 406.3 POCL shall only be liable to pay for the Contractor's costs for those changes to the POCL Premises which are strictly necessary to install the Products to enable the Contractor to perform the POCL Services, and these costs shall only be chargeable pursuant to the charging structure in Annex 4 to Schedule A12. The Contractor will minimise such installation and operations costs.

Clause 407. Marking of Products

The Contractor shall ensure that each Product in the POCL Service Infrastructure is clearly marked

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with a functional title or code so that it can be readily identified in the relevant Documentation and related to its proper place in the POCL Service Infrastructure.

Clause 408. Delivery of Products and POCL Consumables

The Contractor shall deliver any Products and POCL Consumables to an authorised representative of POCL at times and locations to be mutually agreed between the Contractor and POCL (such agreement not to be unreasonably withheld or delayed). Any Software supplied as a Product will be delivered in object code.

Clause 409. Products and Services

The Contractor shall not introduce any product or service into the POCL Service Infrastructure or POCL Services, nor make any change to any Products or POCL Services, without POCL's prior written consent in accordance with Schedule A5.

Clause 410. Contingency Services

The Contractor shall perform the Contingency Services in accordance with the provisions of Schedules E9, F9, G11, H9 and K9.

Clause 411. Acceptance of Core System

411.1 Provisions relating to CSR Acceptance are set out in Schedule A11.

411.2 The Contractor agrees that if, following CSR Acceptance, any fault arises in connection with the Core System which:

- (a) was not identified as an Acceptance Incident; but which
- (b) might reasonably have been expected to have been identified as an Acceptance Incident had the Acceptance Criteria, Acceptance Specifications and Acceptance Tests agreed in relation to the Core System prior to execution of this Codified Agreement been appropriately revised and applied (i) to reflect in all material respects the removal from the Services of BES, PAS and CMS (in each case as defined under the Related Agreements immediately prior to 24 May, 1999) and (ii) to ensure that the Core System were not affected by such removal

then the Contractor shall remedy such fault in accordance with Clause 411.3 below at the expense of the Contractor.

411.3 In the case of category (a) faults (as defined in Schedule A11) such remedy shall be effected forthwith on discovery of the fault and in the case of category (b) faults (as so defined) it shall be effected promptly following discovery of the fault.

411.4 The occurrence of a fault to which Clause 411.2 applies shall not invalidate CSR Acceptance or entitle POCL to claim that CSR Acceptance has not, or should not have,

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taken place, or that any sum due to the Contractor upon CSR Acceptance should be withheld or repaid.

- 411.5 CSR+ shall be subject to Release authorisation by the Release Authorisation Board but not subject to Acceptance.

Clause 412. Inventory

- 412.1 The CCD entitled "CSR Asset Register" contains an inventory of the hardware and software to be used to provide the host and network facilities of the POCL Service Infrastructure and located in the Contractor's datacentres as at Acceptance of the Core System.
- 412.2 The Contractor undertakes to maintain throughout the term of this Codified Agreement hardware and software in relation to the POCL Service Infrastructure providing, as a whole, equivalent capability to those listed in the CSR Asset Register.
- 412.3 The Contractor may replace, upgrade, remove or decommission hardware and software from time to time comprised in the POCL Service Infrastructure provided that it continues at all times to comply with its undertaking contained in Clause 412.2.

PART 5 : OWNERSHIP, LICENCES AND RISK**Clause 501. Ownership of Hardware**

Ownership of the Hardware shall either vest in POCL upon acceptance thereof or shall remain in the Contractor (or its licensors), as specified in Schedule B2. However, POCL shall not acquire title to any Intellectual Property Rights in the Hardware.

Clause 502. Ownership of Software

Ownership of the media on which such Software is supplied by the Contractor shall either vest in POCL upon acceptance thereof or shall remain in the Contractor (or its licensors), as specified in Schedule B1. However, POCL shall not acquire title to any Intellectual Property Rights in the Software, other than Specially Written Software, the Intellectual Property Rights in which are specified in Schedule B1 as vesting in POCL, the ownership to which shall vest in POCL upon acceptance thereof.

Clause 503. Ownership of Documentation

Ownership of the media on which such Documentation is supplied by the Contractor shall vest in POCL. However, POCL shall not acquire title to the Intellectual Property Rights in the Documentation created by the Contractor. POCL shall retain title to the Intellectual Property Rights of any POCL-owned material incorporated into Documentation.

Clause 504. Ownership of POCL Data and Intellectual Property Rights in the POCL Service Architecture

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- 504.1 The Contractor acknowledges that the POCL Data is the property of POCL and POCL hereby reserves all Intellectual Property Rights which may subsist in the POCL Data. The Contractor shall not delete or remove any copyright notices contained within or relating to the POCL Data.
- 504.2 The Contractor shall preserve the integrity of the POCL Data once the Contractor has received such POCL Data, shall prevent any corruption or loss of the POCL Data and shall comply with the validation procedures set out in Schedule B8 as such procedures may be updated and amended from time to time. The Contractor shall not be liable for any loss or corruption of POCL Data nor for any failure to perform the POCL Services if it can prove that such loss or corruption or failure to perform the POCL Services was caused by POCL Data which was lost or corrupted before the Contractor received it, and the Contractor has complied with the validation rules in relation to such POCL Data.
- 504.3 In the event that the POCL Data is altered, corrupted or lost in the course of performing the POCL Services POCL shall have the option, in addition to any other remedies that may be available to it either under this Codified Agreement or otherwise, to elect either of the following remedies:
- 504.3.1 POCL may require the Contractor at its own expense to restore or procure the restoration of the POCL Data; or
- 504.3.2 POCL may itself restore or procure restoration of the POCL Data, and shall be repaid by the Contractor any reasonable expenses so incurred.
- 504.4 For the purposes of Clauses 504.2 and 504.3, the term "POCL Data" shall include the data of POCL's clients.
- 504.5 Ownership of any Intellectual Property Rights in that part of the design of the POCL Service Architecture (as set out in the Service Architecture Design Document) which is developed during the performance of the POCL Services shall vest in the Contractor. Any use by the Contractor of the overall design of the POCL Service Architecture within the United Kingdom for purposes other than in connection with this Codified Agreement shall be subject to the prior written agreement of POCL on reasonable commercial terms (such agreement not to be unreasonably withheld or delayed).
- 504.6 POCL Data constitutes Confidential Information, and may not be reproduced without the prior written consent of POCL except as necessary to perform the POCL Services.
- 504.7 The Contractor shall not do anything to prejudice the security of the POCL Services.

Clause 505. Ownership of POCL Consumables

Ownership of any POCL Consumables supplied hereunder shall vest in POCL upon delivery thereof in accordance with Clause 408.

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Clause 506. Licences to use Intellectual Property Rights

- 506.1 In consideration of the payment of the relevant Charges the Contractor hereby grants, or shall procure that the owner of the Intellectual Property Rights in the Specially Written Software and the Documentation (other than the Specially Written Software, and Documentation in which ownership of the Intellectual Property Rights vests in POCL pursuant to Clause 502) grants POCL a perpetual, royalty-free, irrevocable (subject to Clause 506.12) and non-exclusive licence to Use the relevant Specially Written Software, to use and copy solely in connection with the Services the Documentation listed in Part A of Schedule B3 and to use, copy and modify solely in connection with the Services the Documentation listed in Part B of Schedule B3.
- 506.2 [Not Used]
- 506.3 In consideration of the payment of the relevant Charges the Contractor hereby grants to POCL a royalty-free, non-exclusive licence to Use the Contractor's Software. Such licence to Use the Contractor's Software shall, subject to Clause 506.12, be perpetual and irrevocable. POCL's licence to Use such Contractor's Software shall be subject to any additional terms and conditions specified in Schedule B1 which do not detract from the rights granted to POCL hereunder.
- 506.4 In respect of Third Party Software supplied hereunder, the Contractor shall in consideration of the payment of the relevant Charges:
- 506.4.1 use all reasonable efforts to procure the right to grant to POCL a perpetual, royalty-free, irrevocable (subject to Clause 506.12) and non-exclusive sub-licence to Use such Third Party Software, subject to Clause 506.6 and Clause 506.7, and, by the entering into of this Codified Agreement shall grant such sub-licence; or
- 506.4.2 if the Contractor is unable to procure the right to grant the sub-licence referred to in Clause 506.4.1 the Contractor shall procure, prior to the commencement of the Operational Trial Period (or in respect of Optional Products or Additional Products, prior to the provision thereof), that the third party grants to POCL a royalty-free and non-exclusive licence to Use the Third Party Software subject to Clause 506.6 and Clause 506.7, and shall use all reasonable endeavours to ensure that such licence is perpetual and (subject to Clause 506.12) irrevocable;
- POCL's licence or sub-licence to Use such Third Party Software shall be subject to any additional terms and conditions imposed by the licensor, provided that any terms of any sub-licence granted under sub-Clause 506.4.1 or any licence granted under sub-Clause 506.4.2 shall not detract from the rights granted to POCL hereunder.
- 506.5 In consideration of the payment of the relevant Charges the Contractor hereby grants to POCL or shall procure prior to the commencement of any use by POCL that the relevant Third Party grants to POCL a royalty-free non-exclusive licence to use the Internal Code in connection with the Hardware of which it forms an integral part. Such licence to use the Internal Code shall, subject to Clause 506.12, be perpetual and irrevocable. On the sale or transfer of an item of Hardware of which Internal Code is an integral part, licence to use

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such Internal Code in combination with the said item of Hardware shall pass to the purchaser or other transferee of the said item of Hardware. POCL shall take all reasonable steps to ensure that the purchaser or transferee of the said item of Hardware agrees to comply with the licence to use the Internal Code that was previously enjoyed by POCL.

- 506.6 POCL shall be entitled to engage a third party to Use the Specially Written Software and to Use the Contractor's Software, (and the Contractor shall use all reasonable endeavours to enable POCL to engage a third party to use Internal Software and Third Party Software) subject to and in accordance with this Codified Agreement on behalf of POCL provided that such third party shall have entered into a confidentiality undertaking in accordance with Clause 607.3.2.
- 506.7 POCL shall be entitled to copy the appropriate Contractor's Software, Internal Code and Third Party Software in order to create as many archival or back-up copies of the same as are necessary. When copying Software POCL shall include the original machine readable copyright notice, and a label affixed to the media identifying the Software and stating: "This medium contains an authorised copy of copyrighted software which is the property of [the Contractor or the Third Party Software Owner]."
- 506.8 The Contractor shall place the Source Code of the Deposited Software in escrow with the NCC on the basis of the appropriate standard agreement or on such other terms as POCL, the Contractor, the Third Party Software Owner (if applicable) and the NCC shall agree. Such escrow agreement shall be entered into within thirty (30) days of 15 May, 1996.
- 506.9 The Contractor hereby grants to POCL a perpetual, royalty-free, irrevocable (subject to Clause 506.12) and non-exclusive licence to Use, reproduce, modify, adapt and enhance (and to authorise a third party to Use, reproduce, modify, adapt and enhance) the Source Code version of the Deposited Software. However, the foregoing licence shall only become effective if POCL becomes entitled to obtain access to the Source Code version of the Deposited Software pursuant to the source code escrow agreement referred to in Clause 506.8 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Deposited Software.
- 506.10 Subject to any necessary consents (which the Contractor shall use all reasonable endeavours to obtain) any licence or sub-licence granted by the Contractor to POCL hereunder shall be transferable in accordance with the provisions of Clause 604.4.
- 506.11 Subject to any necessary consents (which the Contractor shall use all reasonable endeavours to obtain) any rights to Use granted hereunder to POCL are hereby granted to and are fully exercisable by members of the Post Office Group and End Users.
- 506.12 The Contractor may at any time by notice in writing terminate any licence granted under Clause 506.1, Clause 506.3, Clause 506.4, Clause 506.5, Clause 506.9 or Clause 903.1.2 if POCL is in Default of its obligations under the relevant Clause in relation to such licence and POCL shall fail to remedy such Default within thirty (30) days of written notice to POCL 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. Upon termination of the relevant licence to POCL, POCL shall cease to use the Software

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which is the subject matter of such licence and shall either return or destroy all copies of such Software, as directed by the Contractor.

Clause 507. Risk in Products

- 507.1 Risk in the Products shall remain with the Contractor unless title in any Products passes to POCL, in which case risk in such Products shall pass to POCL at the same time as title passes.
- 507.2 Notwithstanding the provisions of Clause 507.1, each party shall be liable for any loss of or damage to any Products or part thereof supplied under this Codified Agreement if such loss or damage is occasioned by the negligence or wilful acts or omissions of that party.
- 507.3 The Contractor shall with all possible speed make good any loss or damage affecting the Core System Products and shall notwithstanding such loss or damage proceed with and complete the installation of the POCL Service Infrastructure (where appropriate) and the performance of the POCL Services in accordance with this Codified Agreement. Subject to Clause 507.2, the Contractor shall pay the costs of making good such loss or damage.

Clause 508. Damage to Plant, Tackle and Tools

- 508.1 All plant, tackle and tools at the POCL Premises provided by or on behalf of the Contractor shall stand at the risk and be in the sole charge of the Contractor.
- 508.2 The Contractor shall be required to remove all such plant, tackle and tools which it brings to the POCL Premises.
- 508.3 The Contractor shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

Clause 509. Licences for the Contractor to use Intellectual Property Rights

- 509.1 POCL hereby grants to the Contractor a non-exclusive licence to use any software, documentation, logos, designs or other material (referred to in this clause as "material") which are reasonably required by the Contractor for the purpose of performing the POCL Services and in which the Intellectual Property Rights vest in POCL for the term of this Codified Agreement solely for the purposes of performing the POCL Services and for no other purposes. POCL hereby grants to the Contractor a non-exclusive sub-licence to use any software listed in table 2 of Schedule B01 for the term of this Codified Agreement solely for the purposes of performing the POCL Services and for no other purposes. The Contractor shall be entitled to copy such material for operational purposes in accordance with the foregoing licence and sub-licence and in order to make back up copies of such material. Upon termination of this Codified Agreement or upon the Contractor ceasing to use such material, the Contractor shall either return or destroy all copies of such material as directed by POCL. As part of the foregoing licence and sub licence, the Contractor shall be entitled to copy such material provided any POCL copyright markings and security markings are preserved and adhered to, and subject to the third sentence of Clause 610.3, the

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Contractor shall be entitled to incorporate parts of such material into a document subject to the source of the material being acknowledged in the receiving document.

- 509.2 Neither the Contractor nor any sub-contractor, nor any other person, shall have a lien on any Products owned by or leased to POCL for any sum due to the Contractor, sub-contractor or other person, and the Contractor shall take all reasonable steps to ensure that the title of POCL and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with such Products.

Clause 510. Databases

POCL shall have the right to use the POCL Services and the POCL Service Infrastructure to capture, develop and use databases containing information in relation to its customers. 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 511. Riposte 32 Software

- 511.1 The Contractor shall ensure that, within seven (7) days after 24th May, 1996, a copy of the source code of the Riposte 32 Software is provided to the Contractor's European Development and Service Centre.
- 511.2 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 POCL a certificate signed by the Contractor's Managing Director that this has occurred, and provide to POCL 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 this Codified Agreement. 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.

Clause 512 Transfer of HAPS Disaster Recovery Hardware

- 512.1 The title in the hardware installed on POCL premises in Leicester in accordance with the document HAPS Disaster Recovery, shall be transferred to POCL when the HAPS system is no longer required (as determined by POCL). This hardware will be transferred to POCL for £1 (one pound).

PART 6 : CONTRACT AND SERVICE MANAGEMENT

Clause 601. Monitoring

POCL shall be entitled to monitor the performance by the Contractor of its obligations under this Codified Agreement in accordance with the procedures set out in Schedule A4.

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Clause 602. Management Interfaces and Management Services

- 602.1 The parties shall establish the management interfaces set out in Schedule A4. All contract management of this Codified Agreement shall be performed in accordance with the provisions of Schedule A4.
- 602.2 In relation to the Automated Payments Service, EPOSS, the POCL Infrastructure Services, the OBCS and the LFS, the POCL Services shall be managed in accordance with the provisions of Schedules E5, F5 G7, H5 and K5 respectively. The Contractor shall provide the Management Services specified in Schedules E5, F5, G7, H5 and K5. The Contingency Services shall be managed in accordance with the provisions of Schedules E9, F9, G11, H9 and K9. The Transfer Services shall be managed in accordance with the provisions of Schedule A7.

Clause 603. Communications

- 603.1 Except as otherwise expressly provided no communication from one party to the other shall have any validity under this Codified Agreement unless made in writing by or on behalf of 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 this Codified Agreement to give or make to another shall be given or made either by post in a prepaid letter, 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 this Codified Agreement to have been given or made after two days, for a letter, or four hours, for facsimile transmission.
- 603.3 For the purposes of Clause 603.2 above the address of each party shall be:

603.3.1 For POCL:

Post Office Counters Ltd.,
1st Floor,
20-23 Greville Street,
London EC1N 8SS.

For the attention of:

Head of Horizon Commercial

Telephone
Facsimile



603.3.2 For the Contractor:

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ICL Pathway Limited
Forest Road,
Feltham,
Middlesex TW13 7EJ.

For the attention of:
Managing Director of ICL Pathway Limited.

Telephone 
Facsimile

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 This Codified Agreement is personal to the Contractor. The Contractor shall not assign, novate, sub-contract or otherwise dispose of this Codified Agreement or any part thereof without the previous written consent of POCL.
- 604.2 POCL hereby consents to the Contractor having subcontracted its obligations specified in Schedule A8 to the respective sub-contractors specified therein. Additional or substitute sub-contractors may be approved from time to time in accordance with Clause 604.1 after the date hereof, in which case Schedule A8 shall be amended accordingly. Notwithstanding any sub-contracting permitted in this Codified Agreement, 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 POCL Services on the Contractor's behalf as though such acts or omissions were its own.
- 604.3 [Not used]
- 604.4 POCL shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Codified 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 this Codified Agreement.
- 604.5 POCL shall be entitled to disclose, to the extent necessary for the purposes of this Codified Agreement, to any transferee any Confidential Information of the Contractor which relates to the performance of the POCL Services by the Contractor. In such circumstances POCL shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the POCL Services 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. POCL Responsibilities

- 605.1 Subject to the provisions of Clause 607 POCL undertakes to provide at its own cost and expense to the Contractor, all information, services, facilities and responses designated as POCL Responsibilities in Schedules A16, E3, F3, G5, H3 and K3. POCL shall use all reasonable endeavours to perform such POCL Responsibilities in a timely fashion in accordance with any agreed timetable specified in Schedule B9 or elsewhere herein.
- 605.2 Without limitation to Clause 605.1, POCL shall use all reasonable endeavours to ensure that its Agents co-operate with the Contractor to the extent reasonably necessary to permit the Contractor to perform the POCL Services. In the event that any Agent fails to provide such co-operation, and POCL is unable to secure such co-operation within six (6) months after receiving written notice thereof from the Contractor, the Contractor shall be relieved of liability for any failure or delay to perform the POCL Services which is directly caused by the Agent's failure to provide such co-operation and shall be entitled to any reasonable additional costs and expenses which the Contractor can show were directly incurred by it as a result of the Agent's failure to provide such co-operation.

Clause 606. Time**606.1 Timetable**

- 606.1.1 The Contractor shall use its reasonable endeavours to perform the POCL Services in accordance with the timetable specified in Schedule B9 and shall achieve Acceptance of the Core System not later than the Final Deadline for CSR Acceptance. In the event of failure to meet any target date in such timetable the Contractor shall provide POCL 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 date unless notice is served in accordance with Clause 606.4.
- 606.1.2 Before POCL exercises its option for any Optional POCL Service, and before POCL and the Contractor agree on the supply of any Additional POCL Service, POCL and the Contractor shall agree a timetable for the performance of such POCL Services and such timetable shall be incorporated into this Codified Agreement in accordance with the Change Control Procedure.

606.2 Extension of Time

- 606.2.1 Subject to Clause 606.2.2 and 606.3 below, if Acceptance or Rollout of the Core System is changed or delayed from the agreed procedure and/or timetable:
- 606.2.1.1 to the extent that such change or delay is caused by the Default of POCL the Contractor will be entitled to a time and cost adjustment to compensate for such change or delay. Except that any such delay to Rollout caused by the Default of POCL shall be disregarded to the extent that the aggregate duration of all such delays does not exceed 42 days. The Contractor shall notify

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POCL in writing within three (3) working days of becoming aware of such Default; and

606.2.1.2 to the extent that compensation is not payable by POCL under paragraph 606.2.1.1 or liquidated damages are not payable by the Contractor under Schedule L5, such costs will lie where they fall.

606.2.2 In the event of any such change or delay as is referred to in paragraph 606.2.1 above, for the purpose of determining and resolving to what extent each party is at fault (if at all) and the time and cost adjustment applicable the following procedure will apply:-

606.2.2.1 within seven days of a request by either of them, the Managing Director of POCL (or any equivalent executive) and the Commercial Director of ICL shall meet to resolve these issues. In the event that these issues are not resolved to the satisfaction of both parties in so meeting then;

606.2.2.2 within seven days of a request by either of them, the Chief Executive of the Post Office and the Chief Executive Officer of ICL shall meet to resolve these issues. In the event that these issues are not resolved to the satisfaction of both parties in so meeting then;

606.2.2.3 the Chief Executive of the Post Office and the Chief Executive Officer of ICL shall together decide how any remaining dispute should be resolved, whether by reference to binding expert determination, mediation, arbitration, or such other means as agreed upon by both parties.

606.2.3 If the performance of this Codified Agreement by either party be delayed by reason of any force majeure event (as defined in Clause 606.3), both 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 party in writing within one (1) working day of becoming aware of the force majeure event.

606.3 Force Majeure

606.3.1 For the purposes of this Codified 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 606.5), (ii) fire, (iii) flood, or (iv) any disaster or an industrial dispute affecting a third party. Any act, event, omission, 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

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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 third party or party in relation to the POCL Services for which the Contractor is liable under Clause 809.1 constitute a force majeure event.

- 606.3.2 Neither party hereto shall in any circumstances be liable to the 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 this Codified 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 this Codified 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 consent not to be unreasonably withheld or delayed), and the Contractor shall comply with such process. The Contractor shall remain liable to perform the POCL Contingency Services, save where such POCL Contingency Services are themselves also affected by Force Majeure, in which case the Contractor shall be required to use all reasonable endeavours to perform such POCL Contingency Services.
- 606.3.3 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 POCL within one (1) working day and shall inform POCL of the period which it is estimated that such failure or delay shall continue. If POCL 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 Contractor within one (1) working day and shall inform the Contractor of the period which it is estimated that such failure or delay shall continue.
- 606.3.4 It is expressly agreed that any failure by the Contractor to perform, or any delay by the Contractor in performing, its obligations under this Codified 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 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.
- 606.3.5 [Not used]
- 606.3.6 If any Force Majeure event prevents any party from performing its obligations hereunder for a period in excess of ninety (90) consecutive days, POCL may after

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consulting with the Contractor and taking into account the Contractor's views, terminate this Codified Agreement in accordance with Clause 902.1.5.

606.4 Time of the Essence

Where POCL after undue delay by the Contractor notifies the Contractor that time is of the essence of this Codified 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, POCL may terminate this Codified Agreement in accordance with Clause 902.2.3. In relation to the timescales specified herein, POCL may only give notice making time of the essence in relation to the Final Deadline for CSR Acceptance.

606.5 Political Risk

Notwithstanding the provisions of Clause 606.3, a change of, or new, Governmental Regulation:

606.5.1 shall not entitle POCL to terminate this Codified Agreement under Clause 606.3.6, and any such purported termination shall be treated as a termination for convenience in accordance with Clause 902.6; and

606.5.2 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 the Change Control Procedure.

Clause 607. Confidentiality

607.1 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 POCL, or its servants or agents, is the property of POCL.

607.2 Each party agrees to keep confidential, and not to disclose to anyone else, Confidential Information.

Notwithstanding the above, any party may disclose Confidential Information

607.2.1 if and to the extent required by law;

607.2.2 if and to the extent that the other parties have given prior written consent to the disclosure;

607.2.3 to its professional advisers;

607.2.4 to the extent requested by H.M. Government;

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- 607.2.5 if and to the extent that the Confidential Information is in the public domain or falls into the public domain without breach of any applicable confidentiality obligation (including this clause);
- 607.2.6 to the Post Office;
- 607.2.7 to Fujitsu;
- 607.2.8 to the Contractor's approved sub contractors as listed in Schedule A8;
- 607.2.9 potential arrangers of funding for the investment required in connection with this Codified Agreement;
- 607.2.10 if and to the extent reasonably necessary to be disclosed for the purpose of arranging and maintaining funding generally for ICL plc or the Contractor;
- 607.2.11 which is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party;
- 607.2.12 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
- 607.2.13 which is independently developed without access to the Confidential Information.
- 607.3 The Contractor hereby agrees that (other than as required by law):
- 607.3.1 the Contractor (and any person employed or engaged by the Contractor in connection with this Codified Agreement in the course of such employment or engagement) shall only use Confidential Information of POCL for the purposes of this Codified Agreement;
- 607.3.2 the Contractor shall take all necessary precautions to ensure that no Confidential Information of POCL is used other than for the purposes of this Codified Agreement 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
- 607.3.3 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 POCL for the solicitation of business from POCL or from any third party by the Contractor or by such servant or consultant or by any third party.
- 607.4 POCL (other than as required by law) shall treat as confidential all Confidential Information, obtained from the Contractor, including but not limited to the Source Code of the Specially Written Software (other than Specially Written Software in which ownership of the Intellectual Property Rights vests in POCL pursuant to Clause 502).

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- 607.5 In the event that Confidential Information is disclosed by any party to its professional advisers, that party shall procure that its professional advisers comply with the restrictions contained in this Clause, *mutatis mutandis*.
- 607.6 Nothing in this Clause 607 shall prevent the Contractor or POCL from using data-processing techniques, ideas and know-how gained during the performance of this Codified Agreement 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 POCL or the Contractor of any Intellectual Property Right.

Clause 608. Health and Safety Hazards

- 608.1 The Contractor shall notify POCL of any health and safety hazards in relation to POCL Premises owned by or leased to POCL which may arise in connection with the performance of this Codified Agreement.
- 608.2 POCL shall notify the Contractor of any known health and safety hazards which may exist or arise at the POCL Premises owned by or leased to POCL 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 this Codified Agreement at such POCL Premises.
- 608.3 The Contractor shall inform all persons engaged in the performance of this Codified Agreement at the POCL Premises owned by or leased to POCL of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

Clause 609. Protection of Personal Data

- 609.1 The Contractor's attention is hereby drawn to the Data Protection Act 1984.
- 609.2 Both parties warrant that they will duly observe all their obligations under the Data Protection Act which arise in connection with this Codified Agreement.

Clause 610. Publicity

- 610.1 No public announcement or public circular (including a media release) relating to the subject matter of this Codified Agreement will be made unless it has first been agreed between the parties in writing. This restriction shall not apply to any announcement intended solely for internal distribution by the party in question or any disclosure required by any legal, accounting or regulatory requirement.
- 610.2 Each party shall take all reasonable steps to ensure the observance of the provisions of Clause 610.1 by all its servants, employees, agents, consultants and sub-contractors.
- 610.3 The Contractor shall have no right to use the brand or logo of any Post Office Group member without POCL's prior written consent. The Contractor shall have no right to use the brand or logo of any part of POCL without POCL's prior written consent. The Contractor shall do nothing to injure such logos and brands or the reputation of POCL and, if it uses

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such brands or logos, it shall take all reasonable steps to enable POCL to protect such logos and brands and the reputation of POCL but in no event less than the steps it would take in relation to its own logos, brands and reputation.

- 610.4 POCL shall have no right to use the brands or logo of the Contractor or its sub-contractors without the Contractor's prior written consent. POCL shall do nothing to injure such logo and brands or the reputation of the Contractor or its sub-contractors and, if it 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 it would take in relation to its own logos, brands and reputation.

Clause 611. Contractor's Personnel

- 611.1 POCL reserves the right under this Codified Agreement to refuse to admit to any premises occupied by or on behalf of any member of the Post Office Group (which expression shall in this Clause 611 include all persons employed or engaged by the Post Office Group and all persons other than the Contractor and its sub-contractors providing services to the Post Office Group), or to any post office any person employed or engaged by the Contractor, or by a sub-contractor, whose admission would be, in the reasonable opinion of POCL undesirable.
- 611.2 If and when directed by POCL, 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 this Codified Agreement to any premises occupied by or on behalf any member of the Post Office Group or to any post office, specifying the capacities in which they are concerned with this Codified Agreement and giving such other particulars as POCL may reasonably require. The Contractor shall comply with any reasonable directions issued by the designated representative of POCL as to which persons may be admitted to such premises and at what times.
- 611.3 If and when directed by POCL, 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 this Codified Agreement.
- 611.4 The Contractor's representatives, engaged within the boundaries of a Post Office Group establishment or 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.
- 611.5 The decision of POCL as to whether any person is to be refused admission to any premises occupied by or on behalf of the Post Office Group or to a post office shall be final and conclusive.

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Clause 612. Waiver

No forbearance or delay by any party in enforcing its rights will prejudice or restrict the rights of that party, subject to the express timescales set out herein, and no waiver of any such rights or of any breach of any contractual term will be deemed to be a waiver of any other right or of any later breach.

Clause 613. Access to POCL Premises

613.1 Any land or POCL Premises (including temporary buildings) made available to the Contractor by POCL in connection with this Codified Agreement shall be made available to the Contractor on such terms and conditions as may be agreed between the Contractor and POCL. The Contractor shall have the use of such land or POCL Premises as licensee and shall vacate the same upon the termination or expiry of this Codified Agreement or at such earlier date as POCL may reasonably determine.

613.2 POCL shall be responsible for maintaining the security of such land or POCL Premises in accordance with its standard security requirements. The Contractor shall comply with all reasonable security requirements of POCL while on the POCL Premises, and shall procure that all of its employees, agents and subcontractors shall likewise comply with such requirements. POCL 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 614. Security Requirements

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

Clause 615. Contractor's Key Personnel

The parties acknowledge that the Contractor's key personnel specified in Schedule A14 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 POCL 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 this Codified Agreement and that this Codified Agreement is executed by a duly authorised representative of the Contractor.

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Clause 702. Performance of POCL Services

The Contractor warrants and represents that:

- 702.1 the POCL Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 702.2 the Contractor shall discharge its obligations under this Codified Agreement with all due 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 POCL Services shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments;
- 702.4 the POCL Services shall be performed in accordance with all applicable service levels in this Codified Agreement;
- 702.5 the POCL Services shall be fully integrated within the POCL Service Architecture and the POCL Service Infrastructure;
- 702.6 the POCL Services shall be performed in accordance with all applicable provisions of the Service Architecture Design Document;
- 702.7 the POCL Services shall be compatible with the POCL Service Environment as at the date hereof, as set out in Schedule 1;
- 702.8 the POCL Services shall be performed in such a way as to cause a minimum of disruption to the business of POCL 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 During the term of this Codified Agreement all components of the POCL Service Infrastructure shall operate in accordance with their respective specifications, except that, for the avoidance of doubt, it is agreed that POCL shall have no remedy for breach of this warranty in relation to errors or interruptions to POCL Services covered by paragraph 4.1(a) and 4.3 of Schedule A6;
- 703.3 POCL shall acquire title to the Products in which it is to acquire title under Clauses 501, 502 and 503 free from all encumbrances and POCL shall have the right to quiet possession of such Products supplied hereunder;

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703.4 the Core System Products will be compatible with the POCL Service Environment as at the date hereof, as specified in Schedule 1;

703.5 all Optional and Additional Products and POCL Consumables shall be compatible with the POCL Service Infrastructure and the POCL Service Environment.

Clause 704. Intellectual Property Rights

The Contractor warrants and represents that:

704.1 POCL's use and operation of the Products and the POCL Service Architecture and the provision of the POCL Services shall not 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 506;

704.3 it can comply with Clauses 903.1.3 and 903.1.4.

Clause 705. Technical Standards

The Contractor warrants and represents that:

705.1 the POCL Services shall comply with, and be provided in accordance with, the policies and standards specified in Schedule A2 and all components and equipment used in the course of the provision of the POCL Services shall operate in accordance with their technical specifications;

705.2 the provision of the POCL Services shall not cause electrical interference beyond the limits laid down in the relevant standard specified in Schedule A2, provided that for the purpose of this Clause 705.2 the POCL Services shall be deemed to include the operation of any testing and monitoring instruments used in connection with the provision of the POCL Services.

Clause 706. Statements and Representations

The Contractor warrants and represents that all statements and representations made to POCL in connection with tendering for and entering into the POCL Agreement and the Authorities Agreement were, 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 POCL 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 this Codified 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.

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PART 8 : REMEDIES**Clause 801. Audit**

- 801.1 The Contractor shall keep or cause to be kept the Records.
- 801.2 The Contractor shall grant or procure the grant to POCL, any statutory or regulatory auditors of POCL 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 this Codified 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 POCL or a replacement contractor, as instructed by POCL. The Contractor shall thereafter be released 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 POCL reserves for itself, any statutory or regulatory auditors of POCL and their respective authorised agents 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 this Codified Agreement or at any time thereafter.
- 801.4 The Contractor shall provide POCL 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.
- 801.5 All information obtained by POCL pursuant to this Clause and Schedule A3 shall be treated as Confidential Information.
- 801.6 The parties shall comply with the provisions of Schedule A3.

Clause 802. Service Credits and Delay

- 802.1 It is acknowledged that liquidated damages shall be payable by the Contractor to POCL under Schedule L5 in the circumstances referred to in paragraph 3.3 of Schedule A11.
- 802.2 In the event that the POCL Services fail to meet the Service Levels contained in Schedules E8, F8, G10, H8 or K8, the Contractor shall, without prejudice to any other rights and remedies of POCL at the option of POCL either (i) as an adjustment to the Charges, credit POCL with Service Credits calculated in accordance with Schedules B10, E8, F8, G10, H8 and K8 as appropriate, or (ii) pay POCL liquidated damages calculated in accordance with Schedules B10, E8, F8, G10, H8 and K8 as appropriate. Unless POCL exercises its option to recover liquidated damages as a payment to it, POCL shall be deemed to have exercised its option to recover Service Credits as credit to it. Any such reductions shall be applied in accordance with paragraph 6 of Schedule A10.

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- 802.3 The Contractor shall credit POCL with the Service Credits or pay POCL the liquidated damages as referred to in Clauses 802.1 or 802.2 within thirty (30) days of receipt of a valid claim by POCL.
- 802.4 The parties acknowledge that the liquidated damages and Service Credits specified in the relevant Schedules referred to in this Clause are a genuine pre-estimate of the loss likely to be suffered by POCL and that the figures therein are reasonable.
- 802.5 The liquidated damages and Service Credits specified in this Clause are without prejudice to any other rights and remedies of POCL, except where they are specified in Schedule A6 to be POCL's exclusive remedy in damages, in which case such credit or payment of the relevant liquidated damages or Service Credits 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 Schedule A6, POCL shall have no right of termination in relation to any such Default as is referred to in clause 802.2 above.

Clause 803. Additional Resources

In the event that the POCL Services 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 POCL and without prejudice to POCL's 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 POCL.

Clause 804. Recovery of Sums Due

If any sum of money shall be due from the Contractor under this Codified Agreement, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Codified Agreement. There shall be no other right of set-off or deduction in respect of sums due to the Contractor under this Codified Agreement.

Clause 805. Intellectual Property Rights Indemnity

- 805.1 Subject always to POCL's proper observance of its obligations under this Clause, the Contractor shall indemnify POCL 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 or POCL Services by or on behalf of POCL or in connection with the POCL Services.
- 805.2 The Contractor shall promptly notify POCL if any claim or demand is made or action brought against the Contractor to which this Clause applies.
- 805.3 POCL shall promptly notify the Contractor if any claim or demand is made or action brought against POCL 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 POCL hereby agrees to grant to the Contractor exclusive control of any such litigation and

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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 POCL 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 POCL 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 POCL 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. The Contractor shall reimburse POCL 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 POCL 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 or the POCL Services without reducing the performance and functionality of the same, or substitute alternative products or services of equivalent performance and functionality for any or all of the Products or the POCL Services, so as to avoid the infringement or the alleged infringement but without disrupting the performance of the POCL Services, 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 POCL (whether by passing any form of acceptance testing or otherwise), such acceptance not to be unreasonably withheld or delayed, and shall reimburse POCL all reasonable costs directly incurred by them; or
 - 805.6.2 procure a licence to use the Products and POCL Services on terms which afford to POCL no more extensive rights than those originally applicable hereunder and which are acceptable to POCL and shall reimburse POCL all reasonable costs directly incurred by it.
- 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 POCL of the Products or POCL Services in combination with any item not supplied or approved (such approval not to be unreasonably withheld or delayed) by the Contractor where such use of the Products or POCL Services directly gives rise to the claim, demand or action; or
 - 805.7.2 any modification carried out by or on behalf of POCL to any item supplied by the Contractor under this Codified Agreement if such modification is not authorised by the Contractor in writing; or

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- 805.7.3 any use by POCL of the Products or POCL Services in a manner not reasonably to be inferred from the specification or requirements of POCL.
- 805.8 If the Contractor has availed itself of its rights to modify the Products or the POCL Services or to supply substitute products or services pursuant to Clause 805.6.1 (or POCL has unreasonably withheld its acceptance of such substitute products 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 POCL has unreasonably withheld its 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 POCL hereby warrants and represents that any instructions given in relation to the Contractor's use of any third party item supplied directly or indirectly by POCL shall not cause the Contractor to infringe any third party's Intellectual Property Rights in such item. POCL shall, to the extent reasonably possible, assign to the Contractor any indemnity in its 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 by or on behalf of POCL or in connection with the receipt of the POCL Services.

Clause 806. Remedies Cumulative

Except as otherwise expressly provided in this Codified Agreement, all remedies available to the Contractor or to POCL for breach of this Codified 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. Dispute Resolution Procedure

Except to the extent that paragraph 6 of Schedule A11 requires otherwise, in the event of any disagreement concerning the terms of, or arising under, this Codified Agreement, the parties shall negotiate in good faith to reach an amicable resolution of the matter in question, but in default of resolution within a reasonable period either party may apply to the Courts of England & Wales for the matter to be resolved in accordance with English law.

Clause 808. Injury to Persons; Loss of Property

- 808.1 Subject always to POCL's proper observance of its obligations under this Clause, the Contractor shall fully indemnify POCL in respect of any personal injury or loss of or damage to Property incurred by POCL or its respective employees and authorised agents to the extent that such personal injury or loss of Property is caused by any Default of the Contractor, its employees or agents in connection with the performance or purported

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performance of this Codified Agreement.

- 808.2 In the event of any claim or demand being made or action brought to which Clause 808.1 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 POCL 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. POCL, its 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 809. Liability

- 809.1 The Contractor shall be liable for all losses and shall indemnify POCL against all costs, expenses, losses and damages incurred (including any legal costs) as a result of:
- (a) any unauthorised third party access to the POCL Service Architecture;
 - (b) any "hacking" into the systems used by the Contractor to provide the POCL Services (whether or not constituting an offence under the Computer Misuse Act 1990); or
 - (c) any other form of fraud (in relation to any of the POCL Services).
- 809.2 Clause 809.1 shall not apply if and to the extent that any of the matters referred to therein have been caused by POCL's non-performance of any obligation under this Codified Agreement upon the performance of which the Contractor's obligations under this Codified Agreement in respect of risk for fraud are expressed to depend. The foregoing is in place of the general rule stated in Clause 101.3.
- 809.3 In any case where POCL incurs any costs, expenses, losses or damages as referred to in Clause 809.1, Clause 809.1 shall be presumed to apply unless the Contractor proves that Clause 809.2 applies.

Clause 810. Limitation of Liability

- 810.1 Neither 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.

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- 810.2.1 The aggregate liability for all Defaults resulting in direct loss of or damage to the Property of any other party under this Codified Agreement shall in no event exceed:
- 810.2.1.1 nine million pounds (£9,000,000), in the case of POCL; and
- 810.2.1.2 ten million pounds (£10,000,000) per Year in relation to such Defaults arising during that Year, in the case of the Contractor.
- 810.2.2 The aggregate liability per Year under this Codified Agreement of POCL for all Defaults (other than a Default governed by Clause 810.2.1) arising during that Year shall in no event exceed four million five hundred thousand pounds (£4,500,000).
- 810.2.3 The aggregate liability under this Codified Agreement of the Contractor for all Defaults (other than a Default governed by Clause 810.2.1) shall in no event exceed two hundred million pounds (£200,000,000).
- 810.2.4 Subject to Clause 810.2.5, the financial limits specified in Clause 810.2 apply to all claims for monetary relief which either party may have against the other either under this Codified Agreement or otherwise in relation to the subject matter of this Codified Agreement, including all claims for liquidated damages and Service Credits pursuant Clause 802, all claims to be indemnified pursuant to Clauses 805 or 808 and all other claims or costs which are compensatable in money or money's worth.
- 810.2.5 The financial limits applicable to POCL under Clause 810.2 shall be exclusive of and additional to any liability of POCL to pay any Charges (including any adjustment pursuant to Clause 606.2.1.1), the Transfer Payment or any Termination Charges 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 shall not be deemed or construed to affect the Contractor's liability under Clause 809.
- 810.4 The provisions of Clause 810.3 shall not be taken as limiting the right of POCL 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

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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 this Codified Agreement shall be deemed or construed to relieve either party of its common law duty to the other party against which a claim may be made to mitigate any loss which is the subject of such claim. In applying the Contractor's common law and contractual obligations to mitigate (whether for the purpose of calculating the Termination Payment or otherwise) no regard shall be paid to the manner in which the Roll Out Payment is stated to be apportioned in the definition of the term "Roll Out Payment".

810.7 POCL and the Contractor shall use all reasonable endeavours to resolve outstanding agreements to agree by 20th December, 1999.

810.8 The Contractor shall not be liable for any failure or delay in performing any of its obligations under this Codified Agreement where such failure or delay is the direct consequence of a failure by POCL and the Contractor to resolve any outstanding agreements to agree for so long as such failure to resolve continues.

810.9 For the avoidance of doubt, the parties agree that POCL shall not be liable to indemnify or otherwise compensate the Contractor for any additional costs, expenses, losses or damages incurred directly or indirectly as a result of the failure by the Contractor and POCL to resolve any outstanding agreements to agree.

810.10 The parties agree that:-

810.10.1 to the extent that amendments were required to the provisions of the Clauses and Schedules of this Codified Agreement in order to reflect the matters agreed in the CCNs listed in Schedule A17 those amendments have been made. Subject to sub Clauses 810.10.2, 810.10.3 and 810.10.5 below, the said CCNs have accordingly been superseded by this Codified Agreement to that extent but this shall be without prejudice to the application of the said CCNs to matters other than the Clauses and Schedules of this Codified Agreement (including their application to, or the introduction of, CCDs and CRDs and/or to any charges or credits specified in the said CCN which shall be due or which shall become due to be paid or allowed);

810.10.2 the following provisions of the Second Supplemental Agreement between the parties dated 24 September 1999 (CCN560) have been reflected by amendment to this Codified Agreement:

810.10.2.1 Clause 5 and Schedule 3 thereof;

810.10.2.2 Clause 10 thereof;

810.10.2.3 the amendments contained in Schedule 5 thereof as incorporated by Clause 11 thereof;

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- 810.10.3 save to the extent referred to in Clause 810.10.2 above as having been reflected in this Codified Agreement the provisions of the Second Supplemental Agreement (CCN560) and of the Side Agreement dated 24 September 1999 (CCN561) have not been reflected by amendment to this Codified Agreement and accordingly shall remain in effect insofar as applicable;
- 810.10.4 those CCNs and Change Requests formally submitted on or prior to 1 July, 1999 and not listed in Schedule A17 are not relevant to this Codified Agreement and shall forthwith cease to have effect;
- 810.10.5 the provisions of CCN649a, CCN650a, CCN662, CCN664a, CCN699 and CCN720 (including any provisions set out in any attachments to those CCNs) have not been reflected by amendment to the Codified Agreement and accordingly shall remain in effect insofar as applicable.
- 810.11 The parties shall identify and prioritise any outstanding CCN's and/or approve new CCNs, all as required to cover outstanding agreements to agree and other matters, in each case relevant to the Core System Release.
- 810.12 [Not used]
- 810.13 Notwithstanding any provision in this Codified Agreement, if, in connection with the performance by POCL of its responsibilities in relation to in-office data migration as referred to in the Migration Specification, there shall be a breach of the integrity of, or the introduction of any viruses into, any system or disk through use by POCL of a laptop computer supplied by the Contractor for use in in-office data migration then the consequences of such breach or introduction of viruses shall be as follows:-
- 810.13.1 POCL shall not be liable to the Contractor therefor and such breach or introduction of viruses shall not be a Default for the purposes of this Codified Agreement;
- 810.13.2 the Contractor shall accordingly not be entitled to any time or cost adjustment pursuant to Clause 606.2.1.1; and
- 810.13.3 the Contractor shall not be liable for liquidated damages and this Codified Agreement shall not be liable to termination, in each case as a result of any delay or reduction in Service Levels, caused by such breach or introduction of viruses, which could not reasonably be avoided or mitigated by the Contractor.

PART 9 : TERM AND TERMINATION

Clause 901. Term

The term of this Codified Agreement shall, unless terminated earlier in accordance with the provisions of Clause 902, be for a period commencing on the date hereof and ending on 31st March, 2005.

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Clause 902. Termination of Codified Agreement

- 902.1 POCL may at any time by notice in writing terminate this Codified 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 the 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 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 any provision hereof other than Clause 902 expressly entitles POCL to terminate this Codified Agreement; or
 - 902.1.5 the circumstances in Clause 606.3.6 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 POCL, such agreement not to be unreasonably withheld or delayed; or

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- 902.2 POCL may at any time by notice in writing terminate this Codified 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 this Codified 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 POCL, 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 606.4); or
 - 902.2.3 notice has been served pursuant to Clause 606.4 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 POCL may terminate this Codified Agreement in the circumstances referred to in paragraph 3 of Schedule A11.
- 902.4 In the event of any termination of this Codified Agreement pursuant to Clause 902.1, Clause 902.2 or 902.3 POCL shall return the POCL Service Infrastructure or any part thereof (other than any part in relation to which it has exercised the option to acquire under Clause 903), in which case the Contractor shall at no additional cost to POCL, remove such parts of the POCL Service Infrastructure and shall make good any damage to the POCL Premises occasioned by such removal.
- 902.5 POCL shall only be permitted to exercise its 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 POCL has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. The Contractor shall notify POCL 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 POCL may terminate this Codified 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, POCL shall on termination hereof pay to the Contractor the Termination Charge (calculated in accordance with Schedule A7).
 - 902.6.4 [Not used].

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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, 506, 607, 609, 610, 801, 804, 805, 810, (other than 810.7 and 810.10) 902, 903 and 904 and the provisions of Schedules A1, A3, A7 and A12, shall survive the termination of this Codified Agreement by POCL or the expiry of this Codified Agreement.

Clause 903. Rights on Expiry or Termination of Codified Agreement

903.1 In the event of termination or expiry of this Codified Agreement, POCL shall, without prejudice to POCL's other rights and remedies but subject to payment of all sums due and payable to the Contractor up to the date of termination, have the option, exercisable at any time within one month after notice of termination, to acquire from the Contractor or to require the Contractor to permit a replacement contractor to acquire from it, in consideration of the Transfer Payment, the Project Assets, which shall comprise:-

903.1.1 any or all of the hardware that is comprised within the POCL Service Infrastructure and/or that:

- (a) is being used; or
- (b) had previously been used in Outlets and is no longer being used (other than any such hardware that is no longer being used because it was replaced by spare, upgraded or alternative equipment)

in connection with the performance of the POCL Services (other than where such hardware is not owned by the Contractor or any of its subsidiary companies);

903.1.2 a non-exclusive licence to use for the continuation of services equivalent to the POCL Services any necessary Intellectual Property Rights which are owned by the Contractor and used in connection with the performance of this Codified Agreement. Such licence shall:

903.1.2.1 not be subject to payment other than pursuant to Clause 903.1.6;

903.1.2.2 be perpetual and irrevocable (subject to Clause 506.12); and

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

903.1.3 the right 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 POCL or to any person as may be designated for the purpose by POCL any sub-contracts, equipment rental or lease agreements and all other (non-employment)

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agreements entered into by the Contractor which are necessary to the performance of the POCL Services as POCL may designate;

903.1.4 a copy of all the Software and all other software, data, tools, utilities, documentation and any other item necessary to provide the POCL Services. Such software (other than any in respect of which POCL has exercised its option under Clause 903.1.2) shall be subject to any applicable licence terms, provided that such terms shall not detract from POCL's or a replacement contractor's ability to provide services equivalent to the POCL Services.

903.1.5 Notwithstanding the generality of Clauses 903.1.1 to Clause 903.1.4 POCL agrees only to exercise its rights under such Clauses to the extent that the relevant Project Assets apply to, and are required for the operation of, the Core System Services.

903.1.6 In the event that POCL exercises any of the options in Clause 903.1, POCL shall pay to the Contractor on completion of such option a sum equal to the Transfer Payment.

903.2 In the event that this Codified Agreement is terminated as provided for herein:

903.2.1 [Not used]

903.2.2 the Contractor shall return to POCL all Post Office Group Property in its possession;

903.2.3 the Contractor shall render all practicable assistance to POCL, if requested, to the extent necessary to effect an orderly assumption by POCL or a replacement contractor of the services theretofore performed by the Contractor under this Codified Agreement and POCL 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 POCL shall be entitled on termination to offer any employee or sub-contractor (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 this Codified Agreement employment or an agreement for services with POCL 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 this Codified Agreement) and no later than three (3) months prior to the expiry of this Codified Agreement (in the case of the termination of this Codified Agreement through the effluxion of time) the Contractor shall at the request of POCL provide to

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POCL or to a replacement contractor nominated by POCL details of the terms of employment of all Contractor personnel who are then employed in the performance of the POCL Services as reasonably required by POCL in order to permit compliance with the Transfer of Undertakings (Protection of Employment) Regulations 1981 by POCL or a replacement contractor;

- (b) subject always to POCL's proper observance of their obligations under Clause 903.2.5(c), the Contractor shall fully indemnify POCL from and against any and all liabilities which POCL 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 POCL 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 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 arise therefrom. POCL, its 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 All the assets to be acquired pursuant to the exercise by POCL of its option under Clause 903.1 shall be acquired "as is", but free from encumbrances and the parties agree that all express and implied warranties and conditions relating to such assets are excluded to the full extent permitted by law.

Clause 904. Transfer Services

In the event of termination of this Codified Agreement, the Contractor shall perform the Transfer Services as set out in Schedule A7.

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

1001.1 The Contractor shall neither:

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1001.1.1 offer or give or agree to give any person employed by the Post Office Group (which term shall include all persons employed or engaged by the Post Office Group and all persons providing services to 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 this Codified Agreement or any other agreement with the Post Office Group or for showing or forbearing to show favour or disfavour to any person in relation to this Codified Agreement; nor

1001.1.2 enter into this Codified Agreement if in connection with it commission has been paid or agreed to be paid to any person employed by the Post Office Group by the Contractor or on the Contractor's behalf or to the Contractor's knowledge, unless before this Codified Agreement is 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 POCL.

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, POCL may terminate this Codified Agreement by notice in writing to the Contractor pursuant to Clause 902.1.4. 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 POCL and provided always that POCL may recover from the Contractor the amount or value of any such gift, consideration or commission.

1001.3 The decision of POCL 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 Codified Agreement); or

1001.3.2 the right of POCL under this Clause 1001 to terminate the Codified Agreement; or

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.

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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. Export of Products

For the purpose of this Codified Agreement only, POCL confirms that neither the Products nor their direct product(s) will be exported by POCL unless in accordance with any appropriate UK Government export licensing controls.

Clause 1004. Guarantee

The Contractor shall procure that ICL Plc shall within thirty (30) days after the date hereof enter into and maintain a guarantee in the form set out in Schedule A13 and that Fujitsu Limited shall execute and deliver to POCL a guarantee as required by Clause 1.2 of the Deed of Guarantee and Indemnity dated 24th May, 1999 between Fujitsu Limited and POCL. Breach of this Clause shall constitute a Default not capable of remedy.

Clause 1005. 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 POCL Services, including workman's compensation, public liability, product liability, property damage and professional indemnity. The Contractor will, if requested in writing by POCL, produce to POCL a certificate of insurance showing the applicable coverage currently in force, and will also give POCL prior written notice of (where possible), or written notice no later than thirty (30) days after, alteration or cancellation of such insurance.

CODIFIED AGREEMENT

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

Signed by	)	
for and on behalf of	)	
POST OFFICE COUNTERS LTD	)	S. J. Sweetman
in the presence of:-	)	(signed)

Paul Lam-Po-Tang
Visiting Lawyer
Slaughter and May
35 Basinghall Street
London EC2V 5DB

Signed by	)	
for and on behalf of	)	
ICL PATHWAY LIMITED	)	R. Christou
in the presence of:-	)	(signed)

Myles Blewett
Masons
30 Aylesbury Street
London EC1R 0ER