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CLAUSES**Version control**

Version No.	Date	Comments
1.0	31/12/02	Agreed version.
2.0	06/08/03	Baseline copy of Version 1.1 following Contract Anomalies
3.0	05/11/03	Baseline copy of 2.3
3.1	21/01/04	Applying CCN 1115, CCN 1114a
3.2	09/06/04	Applying CCN 1115, CCN 1114a
3.3	17/06/04	Applying CCN 1123a
3.4	30/06/04	Correcting Anomaly
3.5	23/07/04	Applying CCN 1131b
3.6	19/08/04	Correcting Anomalies to CCN 1131b
4.0	26/08/04	Baseline copy of 3.6

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

BETWEEN:

- (1) Post Office Ltd whose registered office is situated at 80-86 Old Street, London EC1V 9NN ("Post Office"); and
- (2) Fujitsu Services (Pathway) Limited whose registered office is at 26 Finsbury Square, London EC2A 1SL ("Fujitsu Services").

RECITALS

WHEREAS:

- (a) On 15 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 Post Office (collectively "the Authorities") entered into certain agreements (the "Related Agreements") for the design, development, integration and establishment by ICL Pathway Limited of a computerised service infrastructure and for certain services to be provided thereon;
- (b) Such agreements comprised:
 - (i) an agreement between DSS and ICL Pathway Limited for, inter alia, the provision by ICL Pathway Limited of services relating to a benefit payment card (the "DSS Agreement");
 - (ii) an agreement between Post Office Counters Ltd and ICL Pathway Limited for, inter alia, the provision by ICL Pathway Limited of the Horizon Service Infrastructure and for the services to be provided thereon (the "Post Office Agreement"); and
 - (iii) an agreement among DSS, Post Office Counters Ltd and ICL Pathway Limited for the supply of a service infrastructure and the provision of certain services which were of common interest to both DSS and Post Office Counters Ltd (the "Authorities Agreement");
- (c) On 24 May 1999, DSS and ICL Pathway Limited entered into an agreement under which, inter alia, the DSS Agreement was terminated on that date;
- (d) On 24 May 1999 Post Office Counters Ltd and ICL Pathway Limited entered into an agreement (the "Letter Agreement") under which they agreed that certain changes should be made to the Post Office Agreement and the Authorities Agreement with effect from that date;
- (e) Under the Letter Agreement Post Office Counters Ltd and ICL Pathway Limited agreed, inter alia, to replace the Post Office Agreement and the Authorities Agreement (each as

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amended under change control procedures) with a single agreement (the "Codified Agreement") codifying the changes to those agreements agreed in the Letter Agreement;

- (f) Pursuant to the Letter Agreement, the Codified Agreement came into effect on 28 July, 1999;
- (g) Various changes have been made to the Codified Agreement since 28 July, 1999, pursuant to the Change Control Procedure contained therein, including, in particular, the change introduced by CCN 850 which introduced NBS and the implementation of PIN Pads.
- (h) On 1 October 2001 Post Office Counters Ltd changed its name to Post Office Ltd;
- (i) On 2 April 2002:
 - (i) ICL PLC (Company No: 142200) changed its name to Fujitsu Services Holdings Plc;
 - (ii) International Computers Limited (Company No: 96056) changed its name to Fujitsu Services Limited;
 - (iii) ICL Pathway Limited (Company No: 3011561) changed its name to Fujitsu Services (Pathway) Limited; and
 - (iv) ICL Pathway Asset Company Limited (Company No: 3011564) changed its name to Fujitsu Services (Pathway Asset Company) Limited;
- (j) On 31 December 2002 the Parties signed CCN1100 to introduce and incorporate agreed changes on and with effect from the Amendment Date and agreed a timetable for additional work (set out in Schedule 12); and
- (k) This agreement (the "Agreement") is the Codified Agreement as amended by CCN 1100.

NOW THEREFORE IT IS HEREBY AGREED as follows:

1. PERFORMANCE OF SERVICES

- 1.1 Fujitsu Services shall perform the following Services in accordance with all applicable provisions hereof:
 - 1.1.1 the Operational Services;
 - 1.1.2 the Development Services;
 - 1.1.3 the Business Continuity Services;

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- 1.1.4 the Branch Hardware Implementation Services;
 - 1.1.5 the Banking Implementation Activities; and
 - 1.1.6 the Transfer Services and the NBS Transfer Services.
- 1.2 Notwithstanding paragraph 1.1 above, Fujitsu Services shall not be required to deliver any element of a Service which is connected to or dependent upon:
- 1.2.1 NBS until the relevant derivative event(s) in the NB Project Plan shall have occurred; and
 - 1.2.2 Debit Card in a Branch until all of Debit Card Conditions have been satisfied in respect of that Branch.
- 1.3 For illustration purposes only, a schematic overview of the Services is attached as Annex A to this Agreement.

2. INTRODUCTION OF SERVICES AND INFRASTRUCTURE TO BRANCHES

- 2.1 Subject to Clause 2.2, the Services and the Branch Infrastructure shall be capable of introduction in all Branches.
- 2.2 Where a network connection is required to deliver a Service and such network connection is unavailable at a Horizon Counter Position (due to characteristics particular to that Horizon Counter Position) Fujitsu Services shall not be obliged to deliver that Service at that Horizon Counter Position.

3. [NOT USED]

4. DOCUMENTATION

- 4.1 Fujitsu Services shall provide to Post Office one hard copy and one electronic copy of the Listed Documentation, Specially Written Documentation and Developed Documentation at no additional charge.
- 4.2 Fujitsu Services shall maintain and keep up to date the Core Document Set as part of the Charge for the Operational Services and SI Support Service.

5. CONSUMABLES

- 5.1 Post Office shall have the option of obtaining all or any of the Post Office Consumables in such quantities as may be reasonably required by Post Office by giving Fujitsu Services not less than thirty (30) days prior written notice thereof. The Post Office Consumables shall be supplied in accordance with all applicable provisions hereof including the provisions set out in Schedule 14.

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5.2 Fujitsu Services shall deliver any Post Office Consumables to an authorised representative of Post Office at times and locations to be mutually agreed between Fujitsu Services and Post Office (such agreement not to be unreasonably withheld or delayed).

5.3 Fujitsu Services shall provide all Fujitsu Services Consumables which are required for the performance of the Services.

6. CHANGES TO SERVICES

6.1 Subject to Clause 6.2, Fujitsu Services shall not introduce any product or service into the Horizon Service Infrastructure or Services, nor make any change to Services or the Horizon Service Infrastructure, without Post Office's prior written consent.

6.2 Fujitsu Services may issue further Releases of Software in accordance with the CCD entitled "Pathway Release Policy" (PA/STR/003) from time to time as necessary to remedy defects in the provision of the Services or for the purpose of maintenance of the Horizon Service Infrastructure or the Applications.

7. DEVELOPMENT OF NEW BUSINESS OPPORTUNITIES

7.1 Fujitsu Services shall, if so requested by Post Office, work with Post Office to identify and develop new business opportunities for Post Office and Fujitsu Services.

7.2 It is the shared vision of the Parties that the services provided by Fujitsu Services will be extended to support radical business change in Post Office back office operations, which shall promote cost efficiency through the elimination of redundant processing steps and boundaries between different suppliers' systems, as far as practicable, cost effective and desirable to Post Office.

8. SECURITY

8.1 Fujitsu Services shall deliver and continue to provide a secure system in respect of all transactions which, as far as this 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 Post Office.

8.2 Notwithstanding any other provision of this Agreement to the contrary, Fujitsu Services' obligations regarding the application of electronic signatures to be applied to data transmitted and received across the link between the Data Centres and the NBE to ensure the authenticity and integrity of that data shall be limited to the use of MACs in accordance with paragraph 8.1.4.2 of the CCD entitled "NBS Definition" (BP/SPE/035).

8.3 Fujitsu Services shall use all reasonable endeavours to maintain the security of the Services and shall comply with the security requirements set out in Schedule 2.

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8.4 Fujitsu Services shall offer all reasonable assistance to Post Office in preventing fraudulent use of the Services and Horizon Service Infrastructure by Post Office's employees and Agents.

8.5 Notwithstanding any other provision of this Agreement to the contrary, in respect of:

8.5.1 data transmitted and received between the DC Authorisation Agent and the Merchant Acquirer;

8.5.2 data transmitted and received between the DCM and the Merchant Acquirer; and

8.5.3 Sensitive DC Data included in a BIMS Report (as that term is defined in paragraph 6.1.1 of Annex 3 to Schedule 15) submitted pursuant to paragraph 6.2 of Annex 3 to Schedule 15),

(individually and collectively "DC Data"),

the obligations of Fujitsu Services as to whether or not such DC Data are encrypted and, if so, the method of encryption used (the "DC Data Security Obligations"), shall be as specified in the CCD entitled "DC MoP Functional Description" (EF/SER/001) (in respect of the DC Data referred to in Clauses 8.5.1 and 8.5.2) and the CCD entitled "Network Banking Reconciliation and Incident Management" (NB/PRO/002) (in respect of the DC Data referred to in Clause 8.5.3).

8.6 The obligations of Fujitsu Services in this Agreement regarding the:

8.6.1 elimination of the potential for any fraud or unauthorised disclosure of data ;

8.6.2 provision of significant barriers to attacks from internal conspiracy and collusion to defraud Post Office;

8.6.3 prevention of corruption or loss of data; and

8.6.4 preservation and security of data,

shall, to the extent applicable to DC Data, be construed so as to be consistent with the level of security which is achieved by complying with and fulfilling the DC Data Security Obligations.

9. UNDERTAKINGS

9.1 Technical Standards

Fujitsu Services undertakes that:

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- 9.1.1 the Services shall comply with, and be provided in accordance with, the policies and standards specified in Schedule 2 and all components and equipment used in the course of the provision of the Services shall operate in accordance with their technical specifications;
- 9.1.2 the provision of the Services shall not cause electrical interference beyond the limits laid down in the relevant standard specified in Schedule 2, save to the extent that any such interference is caused by Rate Boards and provided that for the purpose of this Clause 9.1.2 the Services shall be deemed to include the operation of any testing and monitoring instruments used in connection with the provision of the Services;
- 9.1.3 the Horizon Service Infrastructure shall be provided in accordance with and comply with all relevant applicable industry standards, as these are listed in Schedule 2.

9.2 Performance of Services

Fujitsu Services undertakes that:

- 9.2.1 the Services shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;
- 9.2.2 Fujitsu Services shall discharge its obligations under this 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;
- 9.2.3 the Services shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments;
- 9.2.4 the Services shall be performed in accordance with all applicable service levels in this Agreement (and, for the avoidance of doubt, Fujitsu Services shall ensure migration of appropriate automated systems without any reduction in existing service or security levels to Post Office's clients and customers);
- 9.2.5 Fujitsu Services shall provide the Operational Services using the Applications functioning on the Horizon Service Infrastructure;
- 9.2.6 the interfaces to all external systems connected to the Horizon Service Infrastructure shall operate in accordance with the applicable AIS and TIS; and
- 9.2.7 the Services shall be performed in such a way as to cause a minimum of disruption to the business of Post Office and the End Users.

9.3 Products

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Fujitsu Services undertakes that:

- 9.3.1 During the term of this Agreement all components of the Horizon Service Infrastructure shall operate in accordance with their respective specifications, except that, for the avoidance of doubt, it is agreed that Post Office shall have no remedy for breach of this undertaking in relation to errors or interruptions to Services which cause a failure of a SLT or an ARL;
- 9.3.2 Post Office shall acquire title to the items in which it is to acquire title under Clause 12.1 free from all encumbrances and Post Office shall have the right to quiet possession of such items supplied hereunder;
- 9.3.3 all Post Office Consumables shall be compatible with the Horizon Service Infrastructure.

10. CHARGES

- 10.1 Post Office shall pay to Fujitsu Services, throughout the term of this Agreement, each of the following Charges:
 - 10.1.1 the Operational Charges set out in paragraph 2 of Schedule 10 (as adjusted in accordance with paragraph 5 of Schedule 10);
 - 10.1.2 the Availability Fees set out in paragraph 3 of Schedule 10;
 - 10.1.3 the SI Commitment Fee and related charges set out in paragraph 4 of Schedule 10 (as adjusted in accordance with paragraph 6.1 of Schedule 10) and the Additional SI Charges described in paragraph 6.2 of Schedule 10;
 - 10.1.4 the Implementation Charges set out in paragraph 7 of Schedule 10;
 - 10.1.5 the Operational Business Change Charges set out in paragraph 8 of Schedule 10; and
 - 10.1.6 the Network Banking Implementation Charges referred to in paragraph 11 of Schedule 10.
- 10.2 Fujitsu Services shall credit to Post Office each of the Special Discounts and Post Office shall pay to Fujitsu Services the Supplemental Charge set out in paragraph 9 of Schedule 10.
- 10.3 Post Office shall pay to Fujitsu Services the charges for the supply of any Post Office Consumables purchased by Post Office as calculated in accordance with Schedule 14.
- 10.4 All Fujitsu Services Consumables shall be supplied at the expense of Fujitsu Services.

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- 10.5 Except as otherwise expressly agreed in this Agreement, or as generally provided for under the Change Control Procedure or in Work Orders, no other amounts shall be payable by Post Office to Fujitsu Services in consideration of the Services to be provided by Fujitsu Services under this Agreement.

11. PAYMENT

- 11.1 Payment of Charges in relation to the Services performed hereunder shall be made in accordance with the invoicing and payment procedure specified in Schedule 9.
- 11.2 In the event that Fujitsu Services, in accordance with the terms of this Agreement, enters into a supply contract or a sub-contract in connection with this Agreement, Fujitsu Services shall ensure that a term is included in the supply contract or sub-contract which requires Fujitsu Services 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).

12. OWNERSHIP

12.1 Hardware

12.1.1 Subject to Clause 12.1.2, ownership of, and risk in, the Initial Infrastructure shall vest in Fujitsu Services. Ownership of any other hardware shall be determined in accordance with Schedule 23.

12.1.2 Ownership of Paypoles and risk in PIN Pads shall each be as specified in Schedule 24.

12.2 Post Office Consumables

Ownership of any Post Office Consumables supplied hereunder shall vest in Post Office upon delivery thereof in accordance with Clause 5.2.

- 12.3 Notwithstanding the second sentence of Clause 12.1.1, ownership of, and risk in, Rate Boards shall vest in and remain with Post Office.

12.4 Post Office Data

Fujitsu Services acknowledges that the Post Office Data is the property of Post Office and Post Office hereby reserves all Intellectual Property Rights which may subsist in the Post Office Data.

13. INTELLECTUAL PROPERTY RIGHTS

Listed Documentation

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- 13.1 In consideration of the payment of the relevant Charges Fujitsu Services hereby grants, or shall procure that the owner of the Intellectual Property Rights in Listed Documentation grants, Post Office a perpetual, royalty-free, irrevocable (subject to Clause 13.12) and non-exclusive licence to use, copy and modify solely in connection with the Services the Listed Documentation.
- 13.2 The grant of rights contained in Clause 13.1 does not authorise any use or disclosure of the Listed Documentation in question which would constitute a breach of the obligations of confidentiality contained in Clause 50 or any other obligations of confidentiality which have been accepted by Post Office.

Fujitsu Services' Software

- 13.3 Where Fujitsu Services uses any Fujitsu Services Software in connection with the provision of the Services Fujitsu Services shall grant to Post Office, or shall procure that Post Office is granted, a non-exclusive, royalty-free licence to Use such Fujitsu Services Software during the term of this Agreement for the purposes of receiving the Services.

Third Party Software

- 13.4 In respect of Third Party Software, Fujitsu Services shall in consideration of the payment of the relevant Charges:
- 13.4.1 use all reasonable efforts to procure the right to grant to Post Office a perpetual, royalty-free, irrevocable (subject to Clause 13.12) and non-exclusive sub-licence to Use such Third Party Software, subject to Clause 13.6 and Clause 13.7, and, by the entering into of this Agreement, shall grant such sub-licences; or
- 13.4.2 if Fujitsu Services is unable to procure the right to grant the sub-licence referred to in Clause 13.4.1 Fujitsu Services shall procure that the third party grants to Post Office a royalty-free and non-exclusive licence to Use the Third Party Software subject to Clause 13.6 and Clause 13.7, and shall use all reasonable endeavours to ensure that such licence is perpetual and (subject to Clause 13.12) irrevocable;
- 13.4.3 Post Office'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 Clause 13.4.1 or any licence granted under Clause 13.4.2 shall not detract from the rights granted to Post Office hereunder. Without prejudice to the generality of the foregoing, Post Office accepts the licence terms relating to the Escher Upgrade Software set out in Schedule 13.

Internal Code

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- 13.5 In consideration of the payment of the relevant Charges Fujitsu Services hereby grants to Post Office or shall procure prior to the commencement of any use by Post Office that the relevant Third Party grants to Post Office 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 13.12, 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 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. Post Office 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 Post Office.
- 13.6 Post Office shall be entitled to engage a third party to Use the Specially Written Software and to Use Fujitsu Services' Software, (and Fujitsu Services shall use all reasonable endeavours to enable a third party engaged by Post Office to use Internal Code and Third Party Software) subject to and in accordance with this Agreement on behalf of Post Office provided that such third party shall have entered into an appropriate Agreed Form NDA.
- 13.7 Post Office shall be entitled to copy the appropriate Fujitsu Services' 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, Post Office 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 [Fujitsu Services or the Third Party Software Owner]."

Deposited Software/Escrow Arrangements

- 13.8 Fujitsu Services 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 Post Office, Fujitsu Services, the Third Party Software Owner (if applicable) and the NCC shall agree.
- 13.9 Fujitsu Services hereby grants to Post Office a perpetual, royalty-free, irrevocable (subject to Clause 13.12) 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 Post Office 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 13.8 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Deposited Software.
- 13.10 Subject to any necessary consents (which Fujitsu Services shall use all reasonable endeavours to obtain) any licence or sub-licence granted by Fujitsu Services to Post Office hereunder shall be transferable in accordance with the provisions of Clause 47.4.

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- 13.11 Subject to any necessary consents (which Fujitsu Services shall use all reasonable endeavours to obtain) any rights to Use Software or use Listed Documentation granted hereunder to Post Office are hereby granted to and are fully exercisable by members of the Post Office Group and End Users.
- 13.12 Fujitsu Services may at any time by notice in writing terminate any licence granted under Clause 13.1, Clause 13.3, Clause 13.4, Clause 13.5, Clause 13.9 or Clause 35.1.2 if Post Office is in Default of its obligations under the relevant Clause in relation to such licence and Post Office shall fail to remedy such Default within thirty (30) days of written notice to Post Office 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 Post Office, Post Office shall cease to use the Software which is the subject matter of such licence and shall either return or destroy all copies of such Software, as directed by Fujitsu Services.
- 13.13 Fujitsu Services warrants and represents that:
- 13.13.1 Post Office's use of the Horizon Service Infrastructure and the receipt of the Services shall not infringe any Intellectual Property Rights of any third party; and
- 13.13.2 Fujitsu Services has the full capacity and authority to grant the licences referred to in this Clause 13.
- 13.14 Specially Written Software and Specially Written Documentation
- 13.14.1 The Intellectual Property Rights in any Specially Written Software and Specially Written Documentation shall be vested in Post Office upon acceptance of the Specially Written Software and Fujitsu Services hereby assigns absolutely to Post Office (by way of present assignment of future Intellectual Property Rights) the Intellectual Property Rights in such Specially Written Software and Specially Written Documentation for the full term during which the rights in such Intellectual Property Rights and any renewals or extensions shall subsist. Fujitsu Services shall procure that its employees, sub-contractors and sub-contractors' employees shall waive absolutely and irrevocably in favour of Post Office their moral rights granted under the Copyright Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.
- 13.14.2 Post Office hereby grants to Fujitsu Services a perpetual, irrevocable, non-exclusive, royalty-free licence for each member of the Fujitsu Services Group to use, operate, copy, modify and merge with (in the case of software) other computer programs and (in the case of documents) other documents the Specially Written Software and Specially Written Documentation:
- 13.14.2.1 for the purpose of providing the Services; and

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13.14.2.2 for any other purpose subject to obtaining the prior written consent of Post Office, such consent not to be unreasonably withheld or delayed.

13.14.3 The licences granted in Clause 13.14.2 include a right to grant sub-licences to sub-contractors of a member of Fujitsu Services Group subject to the relevant member of Fujitsu Services Group imposing obligations of confidentiality on those sub-contractors similar to those set out in Clause 50. Where the sub-licence only permits use by the sub-contractor in question for the purpose of providing, or in connection with the provision of, the Services, no prior consent of Post Office to the sub-licence shall be required. In any other case the prior written consent of Post Office, such consent not to be unreasonably withheld or delayed, shall be required.

13.15 Developed Documentation

13.15.1 Subject to Clause 13.16, where Developed Documentation:

13.15.1.1 consists wholly of original work (that is, it does not incorporate any pre-existing material in which the Intellectual Property Rights are owned by the Fujitsu Services Group); or

13.15.1.2 is a derivative work based predominantly on material in which the Intellectual Property Rights are owned by a member of the Royal Mail Group or have been licensed to Fujitsu Services by Post Office or under a licence procured by and at the cost of Post Office;

then, as between Post Office and Fujitsu Services, the Intellectual Property Rights in such Developed Documentation shall be vested in Post Office upon acceptance of the Developed Documentation and Fujitsu Services hereby assigns absolutely (by way of present assignment of future Intellectual Property Rights) to Post Office the Intellectual Property Rights in such Developed Documentation for the full term during which the rights in such Intellectual Property Rights and any renewals or extensions shall subsist. Fujitsu Services shall procure that its employees, sub-contractors and sub-contractors' employees shall waive absolutely and irrevocably in favour of Post Office their moral rights granted under the Copyright Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.

13.15.2 Post Office hereby grants to Fujitsu Services a perpetual, irrevocable, non-exclusive, royalty-free licence for each member of the Fujitsu Services Group to use, copy, modify and merge with other documents Developed Documentation:

13.15.2.1 for the purpose of providing the Services; and

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13.15.2.2 for any other purpose subject to obtaining the prior written consent of Post Office, such consent not to be unreasonably withheld or delayed.

13.15.3 The licences granted in Clause 13.15.2 include a right to grant sub-licences to sub-contractors of a member of Fujitsu Services Group subject to the relevant member of Fujitsu Services Group imposing obligations of confidentiality on those sub-contractors similar to those set out in Clause 50. Where the sub-licence only permits use by the sub-contractor in question for the purpose of providing, or in connection with the provision of, the Services no prior consent of Post Office to the sub-licence shall be required. In any other case the prior written consent of Post Office, such consent not to be unreasonably withheld or delayed, shall be required.

13.15.4 Where Developed Documentation does not fall within Clause 13.15.1 the Intellectual Property Rights in such Developed Documentation shall, as between Post Office and Fujitsu Services, be vested in Fujitsu Services or its licensors but Fujitsu Services shall grant to Post Office, or shall procure that Post Office is granted, a perpetual, irrevocable, non-exclusive, royalty-free licence for Post Office and its sub-contractors to Use such Developed Documentation, subject to Clause 13.16.2.

13.16 Use of Internal Design Documentation and Specially Commissioned Design Documentation

13.16.1 Subject to Clause 13.16.2, Post Office and a third party engaged by Post Office, shall be entitled to use Horizon Design Documentation:

13.16.1.1 to support the evaluation, selection or procurement of third party Applications or Branch Hardware for integration into the Horizon Service Infrastructure;

13.16.1.2 to assist a third party in its development of an Application or Branch Hardware for integration into the Horizon Service Infrastructure;

13.16.1.3 to assist with integration of the Horizon Service Infrastructure with other systems; and

13.16.1.4 to understand how to replace the Horizon Service Infrastructure and the Applications in the long term, including interfaces with software to be retained beyond the term of this Agreement,

each a "Design Purpose", and where reasonably required by Post Office for any one or more Design Purposes, Fujitsu Services agrees to provide Post Office and such third party with access to such Horizon Design Documentation.

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13.16.2 Post Office agrees :

13.16.2.1 that (irrespective of ownership of the Intellectual Property Rights in Developed Documentation) it will not use any Horizon Design Documentation for any purpose other than a Design Purpose;

13.16.2.2 not to disclose Horizon Design Documentation to any third party save where such disclosure is required for a Design Purpose and the third party to whom it is disclosed has (1) entered into such confidentiality commitments as Fujitsu Services may reasonably request (written confirmation of which shall be provided by Post Office to Fujitsu Services prior to release of such documentation), and (2) delivered a written undertaking to Fujitsu Services that it will use such Horizon Design Documentation solely for the Design Purposes;

13.16.2.3 all Horizon Design Documentation shall be treated as Confidential Information of Fujitsu Services and shall be subject to the provisions of Clause 50 and such other confidentiality commitments as Fujitsu Services may reasonably request as a precondition for its provision; and

13.16.2.4 access to Horizon Design Documentation shall not serve to transfer any Intellectual Property Rights in the documentation or information contained therein to the Post Office or any third party.

13.16.3 For the purposes of determining ownership of Intellectual Property Rights in any Specially Commissioned Design Documentation, such documentation shall be deemed to fall within the definition of Developed Documentation or Specially Written Documentation, whichever is applicable to it.

13.17 Other Intellectual Property Rights

13.17.1 Ownership of the Intellectual Property Rights in all materials created by or on behalf of Fujitsu Services for the purposes of this Agreement (other than Specially Written Software, Specially Written Documentation and such Developed Documentation as is referred to in Clause 13.15.1) shall, as between Post Office and Fujitsu Services (subject always to express agreement to the contrary in any Work Order or CCN and subject also to the licences contained in this Agreement), vest in Fujitsu Services or its licensors.

13.17.2 Except as explicitly stated herein, nothing in this Agreement shall transfer ownership of or grant licences (including rights under patents) under any pre-existing or independently developed intellectual property of either Party.

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13.17.3 Intellectual Property Rights shall not be transferred from third parties to Fujitsu Services when Fujitsu Services act as Systems Integrator of Applications procured from third parties.

14. LICENCES FOR FUJITSU SERVICES TO USE INTELLECTUAL PROPERTY RIGHTS

14.1 Post Office hereby grants to Fujitsu Services a non-exclusive licence to use for the term of this Agreement any software, documentation, logos, designs or other material (referred to in this Clause as "material"), which are reasonably required by Fujitsu Services for the purpose of performing the Services (and in which the Intellectual Property Rights vest in Post Office) solely for the purposes of performing the Services. Post Office hereby grants to Fujitsu a non-exclusive sub-licence or right, as specified in the table in paragraph 1.2 of Schedule 13, to use the software listed in that table for the term of this Agreement solely for the purposes of performing the Services and/or running the Applications. Such sub-licence or right shall in respect of each item of software:

14.1.1 be on the terms;

14.1.2 subject to the restrictions; and

14.1.3 include any additional rights (for example, to operate, copy, modify, or merge the software with other software),

that are specified or referred to in the table in paragraph 1.2 of Schedule 13 as being applicable to that software.

14.2 Upon termination of this Agreement or upon Fujitsu Services ceasing to use such material referred to in Clause 14.1, Fujitsu Services shall either return or destroy all copies of such material as directed by Post Office. As part of the licence and sub licence referred to in Clause 14.1, Fujitsu Services shall be entitled to copy such material provided any Post Office copyright markings and security markings are preserved and adhered to, and subject to Clause 45.4, Fujitsu Services 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.

14.3 Neither Fujitsu Services nor any sub-contractor, nor any other person, shall have a lien on any item owned by or leased to Post Office for any sum due to Fujitsu Services, sub-contractor or other person, and Fujitsu Services shall take all reasonable steps to ensure that the title of Post Office and the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with such items.

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- 14.4 Post Office hereby grants Fujitsu Services the rights, in respect of the Third Party Data, specified or referred to in the table in paragraph 1.3 of Schedule 13, subject to the restrictions specified or referred to in that table.

15. DATABASES

Post Office shall have the right to use the Services and the Horizon Service Infrastructure to capture, develop and use databases containing information in relation to its customers. Any assistance provided by Fujitsu Services pursuant to this Clause over and above the performance of its other obligations hereunder shall be treated as Development Services and shall be subject to agreement of a Work Order under Schedule 9 and Schedule 20.

16. RIPOSTE 32 & WEBRIPOSTE SOFTWARE

- 16.1 Fujitsu Services has deposited a copy of the source code of the Riposte 32 and WebRiposte Software at Fujitsu Services' offices in Feltham.
- 16.2 Fujitsu Services has provided to Post Office certificates signed by Fujitsu Services' Managing Director confirming that the actions described in Clause 16.1 have occurred, and has provided to Post Office a copy of the relevant contractual documentation confirming Fujitsu Services' right of access to such source code and confirming that Fujitsu Services has all other rights to such source code necessary for the performance of its obligations under this Agreement.
- 16.3 Post Office agrees that upon the Riposte 32 and WebRiposte Software becoming Deposited Software and the relevant source code being deposited with NCC in accordance with Clause 13.8, Fujitsu Services shall no longer be obliged to retain a copy of the source code at its offices in Feltham and Fujitsu Services and each officer of Fujitsu Services shall be released from any liability arising from the certificates referred to in Clause 16.2.

17. DATA**17.1 Post Office Data**

- 17.1.1 Fujitsu Services shall not delete or remove any copyright notices contained within or relating to the Post Office Data.
- 17.1.2 Fujitsu Services shall preserve the integrity of the Post Office Data once Fujitsu Services has received such Post Office Data, shall prevent any corruption or loss of the Post Office Data and shall comply with the validation procedures set out in the applicable CCDs referred to in Schedule 18 as such procedures may be updated and amended from time to time. Fujitsu Services shall not be liable for any loss or corruption of Post Office Data nor for any failure to perform the Services if it can prove that such loss or corruption or failure to perform the Services was caused by Post Office Data which was lost or corrupted before

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Fujitsu Services received it, and Fujitsu Services has complied with the validation rules in relation to such Post Office Data.

17.1.3 In the event that the Post Office Data is altered, corrupted or lost in the course of performing the Services Post Office shall have the option, in addition to any other remedies that may be available to it either under this Agreement or otherwise, to elect either of the following remedies:

17.1.3.1 Post Office may require Fujitsu Services at its own expense to restore or procure the restoration of the Post Office Data; or

17.1.3.2 Post Office may itself restore or procure restoration of the Post Office Data, and shall be repaid by Fujitsu Services any reasonable expenses so incurred.

17.1.4 For the purposes of Clauses 17.1.2 and 17.1.3, the term "Post Office Data" shall include the data of Post Office's clients.

17.1.5 Post Office Data constitutes Confidential Information, and may not be reproduced without the prior written consent of Post Office except as necessary to perform the Services.

17.2 Personal Data

Both Parties warrant that if and to the extent they have obligations under the Data Protection Act 1998 which arise in connection with any personal data (as referred to in that Act) processed under this Agreement, they will duly observe all such obligations.

18. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

18.1 Subject always to Post Office's proper observance of its obligations under this Clause, Fujitsu Services shall indemnify Post Office 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 Horizon Service Infrastructure, the Listed Documentation, Horizon Design Documentation and any documents provided pursuant to paragraph 9 of Schedule 20 (for the purposes of this paragraph 18 together "documentation") by or on behalf of Post Office or in connection with the Services.

18.2 Fujitsu Services shall promptly notify Post Office if any claim or demand is made or action brought against Fujitsu Services to which this Clause applies.

18.3 Post Office shall promptly notify Fujitsu Services if any claim or demand is made or action brought against Post Office to which Clause 18.1 may apply. Fujitsu Services shall at its own expense conduct any litigation arising therefrom and all negotiations in

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connection therewith and Post Office hereby agrees to grant to Fujitsu Services exclusive control of any such litigation and such negotiations. Fujitsu Services 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 Post Office 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.

- 18.4 Post Office shall at the request of Fujitsu Services afford to Fujitsu Services all reasonable assistance for the purpose of contesting any claim or demand made or action brought against Post Office to which Clause 18.1 may apply or any claim or demand made or action brought against Fujitsu Services to which Clause 18.2 may apply. Fujitsu Services shall reimburse Post Office for all costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.
- 18.5 Post Office 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 18.1 may apply or any claim or demand made or action brought against Fujitsu Services to which Clause 18.2 may apply.
- 18.6 If a claim or demand is made or action brought to which Clause 18.1 may apply or in the reasonable opinion of Fujitsu Services is likely to be made or brought, Fujitsu Services may at its own expense either:
- 18.6.1 modify any or all of the Horizon Service Infrastructure or the documentation or the Services (as the case may be) 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 Horizon Service Infrastructure or the documentation or the Services (as the case may be), so as to avoid the infringement or the alleged infringement but without disrupting the performance of the 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 Post Office (whether by passing any form of acceptance testing or otherwise), such acceptance not to be unreasonably withheld or delayed, and shall reimburse Post Office all reasonable costs directly incurred by them; or
- 18.6.2 procure a licence to use the Horizon Service Infrastructure or the documentation or Services (as the case may be) on terms which afford to Post Office no more extensive rights than those originally applicable hereunder and which are acceptable to Post Office and shall reimburse Post Office all reasonable costs directly incurred by it.
- 18.7 The foregoing provisions of this Clause 18 shall not apply insofar as any such claim or demand or action is in respect of:

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- 18.7.1 any use by or on behalf of Post Office of the Horizon Service Infrastructure or the documentation or Services (as the case may be) in combination with any item not supplied or approved (such approval not to be unreasonably withheld or delayed) by Fujitsu Services where such use of the Horizon Service Infrastructure or the Listed Documentation or Services (as the case may be) directly gives rise to the claim, demand or action; or
 - 18.7.2 any modification carried out by or on behalf of Post Office to any item supplied by Fujitsu Services under this Agreement if such modification is not authorised by Fujitsu Services in writing; or
 - 18.7.3 any use by Post Office of the Horizon Service Infrastructure or the documentation or Services (as the case may be) in a manner not reasonably to be inferred from the specification or requirements of Post Office.
- 18.8 If Fujitsu Services has availed itself of its rights to modify the Horizon Service Infrastructure or the documentation or the Services (as the case may be) or to supply substitute products or services pursuant to Clause 18.6.1 (or Post Office has unreasonably withheld its acceptance of such substitute products or services) or to procure a licence under Clause 18.6.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, or if Post Office has unreasonably withheld its acceptance of any items modified or substituted by Fujitsu Services in accordance with Clause 18.6, then Fujitsu Services shall have no further liability thereafter under this Clause 18 in respect of the said claim, demand or action.
- 18.9 If a modification or substitution in accordance with Clause 18.6.1 above is not possible so as to avoid the infringement and Fujitsu Services has been unable to procure a licence in accordance with Clause 18.6.2, Clause 18.1 shall apply.
- 18.10 Post Office hereby warrants and represents that any instructions given in relation to Fujitsu Services' use of any third party item supplied directly or indirectly by Post Office shall not cause Fujitsu Services to infringe any third party's Intellectual Property Rights in such item. Post Office shall, to the extent reasonably possible, assign to Fujitsu Services any indemnity in its favour in relation to the Intellectual Property Rights in such third party items.
- 18.11 The foregoing states the entire liability of Fujitsu Services with regard to the infringement of any Intellectual Property Right by the use or possession of the Horizon Service Infrastructure and the documentation by or on behalf of Post Office or in connection with the Services.

19. USE OF SERVICES AND HORIZON SERVICE INFRASTRUCTURE

- 19.1 Fujitsu Services shall not restrict Post Office from using the Services and the Horizon Service Infrastructure for its existing and future clients, Agents, customers, products and services.

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- 19.2 Any use by Fujitsu Services of the overall design of the Horizon Service Architecture within the United Kingdom for purposes other than in connection with this Agreement shall be subject to the prior written agreement of Post Office on reasonable commercial terms (such agreement not to be unreasonably withheld or delayed).
- 19.3 The Horizon Service Infrastructure (other than any public service telecommunications networks) may not be used other than by Post Office without the prior written consent of Post Office to provide any services to:
- 19.3.1 Post Office's current clients in respect of current products and services;
 - 19.3.2 Post Office's current clients in respect of new products and services;
 - 19.3.3 new clients in respect of current products and services;
 - 19.3.4 new clients in respect of new products and services; or
 - 19.3.5 Post Office's current market domains (including:
 - 19.3.5.1 personal cash and banking services - cash withdrawals and deposits, cashing cheques, benefit payments and postal orders;
 - 19.3.5.2 communications - letter and parcel services including stationery and greetings products, other telecommunications retail products and services;
 - 19.3.5.3 corporate cash services - cash management services for business customers, including business deposits, cash handling and processing;
 - 19.3.5.4 entertainment and leisure services - lotteries, fishing licences, membership applications, TV licences and cable TV bill payment, tickets for events;
 - 19.3.5.5 personal savings and budgeting - savings and investment accounts, household bill payment and pre-payment, credit services, personal pensions, household insurance;
 - 19.3.5.6 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;
 - 19.3.5.7 insurance - other general risk insurance and life assurance products;

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19.3.1.8 information services - about the products and services offered by Post Office and its clients;

19.3.1.9 benefit payment services).

20. DAMAGE TO PHYSICAL PROPERTY

20.1 Each Party will be responsible for loss or damage caused to the physical property of the other if such loss or damage is occasioned by the negligence or wilful acts or omissions of the first-named Party.

20.2 Subject to Clause 20.3, where damage occurs to hardware used by Fujitsu Services to provide the Services, Fujitsu Services shall repair or replace the affected items with all possible speed and (subject to any rights arising under Clause 20.1) at its own cost.

20.3 Risk in PIN Pads and Paypoles, liability for loss of or damage thereto and responsibility for the costs of making good such loss and damage shall be as set out in Schedule 24.

21. DAMAGE TO PLANT, TACKLE AND TOOLS

21.1 All plant, tackle and tools at the Post Office Premises provided by or on behalf of Fujitsu Services shall stand at the risk and be in the sole charge of Fujitsu Services.

21.2 Fujitsu Services shall be required to remove all such plant, tackle and tools which it brings to the Post Office Premises.

21.3 Fujitsu Services shall ensure that all such plant, tackle and tools shall meet minimum safety standards required by law.

22. ACCESS TO POST OFFICE PREMISES

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

22.2 Post Office shall be responsible for maintaining the security of such land or Post Office Premises in accordance with its standard security requirements. Fujitsu Services shall comply with all reasonable security requirements of Post Office while on the Post Office Premises, and shall procure that all of its employees, agents and subcontractors shall likewise comply with such requirements. Post Office shall provide Fujitsu Services upon request copies of its written security procedures and shall afford Fujitsu Services upon request with an opportunity to inspect its physical security arrangements.

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23. HEALTH AND SAFETY HAZARDS

- 23.1 Fujitsu Services shall notify Post Office of any health and safety hazards in relation to Post Office Premises owned by or leased to Post Office which may arise in connection with the performance of this Agreement.
- 23.2 Post Office shall notify Fujitsu Services of any known health and safety hazards which may exist or arise at the Post Office Premises owned by or leased to Post Office and which may affect Fujitsu Services. Fujitsu Services shall draw these hazards to the attention of its employees and sub-contractors or any persons engaged by Fujitsu Services in the performance of this Agreement at such Post Office Premises.
- 23.3 Fujitsu Services shall inform all persons engaged in the performance of this Agreement at the Post Office Premises owned by or leased to Post Office of all such hazards and shall instruct such persons in connection with any necessary associated safety measures.

24. GOVERNANCE

- 24.1 The day-to-day activities which form the subject matter of this Agreement shall be monitored, managed and regulated through the use of the following procedures:
- 24.1.1 the meetings set out in paragraph 1 of Schedule 4;
- 24.1.2 the management roles set out in paragraph 2 of Schedule 4;
- 24.1.3 the reserved matters set out in paragraph 3 of Schedule 4;
- 24.1.4 the escalation procedures set out in paragraph 4 of Schedule 4; and
- 24.1.5 the relationship management set out in paragraph 5 of Schedule 4.
- 24.2 In relation to activities connected to Work Orders the procedures to be followed are set out in Schedules 9, 20 and 23.

25. MONITORING

Post Office shall be entitled to monitor the performance by Fujitsu Services of its obligations under this Agreement in accordance with the procedures set out in Schedule 19 and Schedule 4.

26. POST OFFICE RESPONSIBILITIES

- 26.1 Subject to the provisions of Clause 50 Post Office undertakes to provide at its own cost and expense to Fujitsu Services, all information, services, facilities and responses which it is expressed (which may be by cross reference to other provisions of this Agreement or CCDs) in Schedule 16 that Post Office will provide. Post Office shall use

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all reasonable endeavours to perform such Post Office Responsibilities in a timely fashion in accordance with Schedule 12 and any other agreed timetable specified in this Agreement. This Clause 26.1 is subject to the specific rules set out or referred to in Schedule 16 in respect of the NBS or Debit Card.

26.2 Without limitation to Clause 26.1, Post Office shall use all reasonable endeavours to ensure that its Agents co-operate with Fujitsu Services to the extent reasonably necessary to permit Fujitsu Services to perform the Services. In the event that any Agent fails to provide such co-operation, and Post Office is unable to secure such co-operation within six (6) months after receiving written notice thereof from Fujitsu Services, Fujitsu Services shall be relieved of liability for any failure or delay to perform the 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 Fujitsu Services can show were directly incurred by it as a result of the Agent's failure to provide such co-operation.

26.3 Fujitsu Services shall not be liable to Post Office for any failure to perform or delay in performing its obligations hereunder:

26.3.1 where Fujitsu Services proves that such failure or delay has been directly caused by the failure of Post Office to perform any of its obligations or responsibilities under this Agreement or any CCDs; or

26.3.2 to the extent such failure or delay arises as a result of the Rate Boards, the installation thereof by the Post Office or the connection of the Rate Boards to the Horizon Service Infrastructure.

This sub-Clause 26.3 shall not apply to Clause 31.2, which shall be governed by the specific rule stated in Clause 31.2.

27. FUJITSU SERVICES' PERSONNEL

27.1 Post Office reserves the right under this 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 27 include all persons employed or engaged by the Post Office Group and all persons other than Fujitsu Services and its sub-contractors providing services to the Post Office Group), or to any Branch any person employed or engaged

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by Fujitsu Services, or by a sub-contractor, whose admission would be, in the reasonable opinion of Post Office undesirable.

- 27.2 If and when directed by Post Office, Fujitsu Services 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 Agreement to any premises occupied by or on behalf any member of the Post Office Group or to any Branch, specifying the capacities in which they are concerned with this Agreement and giving such other particulars as Post Office may reasonably require. Fujitsu Services shall comply with any reasonable directions issued by the designated representative of Post Office as to which persons may be admitted to such premises and at what times.
- 27.3 If and when directed by Post Office, Fujitsu Services shall secure that any person employed or engaged by Fujitsu Services 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 Agreement.
- 27.4 Fujitsu Services' representatives, engaged within the boundaries of a Post Office Group establishment or Branch, 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 Branch and when outside that establishment or Branch.
- 27.5 The decision of Post Office 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 Branch shall be final and conclusive.

28. FUJITSU SERVICES' KEY PERSONNEL

- 28.1 The Parties acknowledge that the Key Personnel are essential to the fulfilment of Fujitsu Services' obligations hereunder.
- 28.2 Notwithstanding anything to the contrary in Clause 50, Post Office shall keep the CCD entitled "Fujitsu Services Key Personnel" (HR/CON/001) confidential in accordance with the provision of Schedule 6.
- 28.3 Fujitsu Services undertakes to use all reasonable endeavours to ensure that the Key Personnel are not removed or replaced for the duration of the activities relevant to them (described as "Tasks" in the CCD entitled "Fujitsu Services Key Personnel" (HR/CON/001). However, in the event that any of the Key Personnel become unavailable for any reason (including without limitation death, injury, sickness, promotion or resignation), Fujitsu Services shall have the right upon giving thirty (30) days' notice in writing (or such shorter period of notice as may be reasonably practicable) to Post Office to replace such an individual with another individual whose abilities and qualifications are appropriate for the services to be performed by such individual.

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- 28.4 The Parties acknowledge and agree that in order for Fujitsu Services to successfully complete its obligations under this Agreement, additional key personnel may be identified after the date of this Agreement. It shall be a responsibility of the Forums to identify and agree any such additional key personnel (together with any activities which are relevant to them).

29. LIQUIDATED DAMAGES AND POST OFFICE ADDITIONAL COST

- 29.1 In the event that the Services fail to meet the Service Levels contained in Schedule 15, Fujitsu Services shall pay Post Office liquidated damages and Post Office Additional Costs (such payment to be in the form of credit notes unless Post Office directs otherwise) calculated or determined in accordance with Schedule 15 and paid pursuant to Schedule 9.
- 29.2 Fujitsu Services shall pay Post Office the liquidated damages referred to in Clause 29.1 within thirty (30) days of the date on which Fujitsu Services is due to deliver the Service Management Report for the period to which the liquidated damages relate and Post Office Additional Costs within thirty (30) days of the Parties agreeing the amount of the same.
- 29.3 The Parties acknowledge that the liquidated damages referred to in this Clause are a reasonable and genuine pre-estimate of the loss likely to be suffered by Post Office.
- 29.4 Without prejudice to Clause 34.2 and paragraph 7 of Schedule 15:
- 29.4.1 liquidated damages payable in respect of any LDT failure (which is not an ARL failure to which paragraph 2.5.2 applies), whether that LDT failure occurs at, above or below the corresponding SLT, shall be Post Office's exclusive remedy in respect of any failure of that LDT and/or SLT; and
- 29.4.2 Post Office's Additional Costs or liquidated damages payable in respect of any ARL failure shall be Post Office's exclusive remedy in respect of that failure.

30. INJURY TO PERSONS; LOSS OF PROPERTY

- 30.1 Subject always to Post Office's proper observance of its obligations under this Clause, Fujitsu Services shall fully indemnify Post Office in respect of any personal injury or loss of or damage to Property incurred by Post Office, its contractors or their respective employees and authorised agents to the extent that such personal injury or loss of Property is caused by any Default of Fujitsu Services, its employees or agents in connection with the performance or purported performance of this Agreement.
- 30.2 In the event of any claim or demand being made or action brought to which Clause 30.1 applies, Fujitsu Services shall be promptly notified thereof and Fujitsu Services shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom. Fujitsu Services shall consult with and pay due regard to the interests (including the commercial interests of the Post Office Group

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and the public interest) and views of Post Office 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. Post Office, its employees and agents, shall at the request of Fujitsu Services 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.

- 30.3 Notwithstanding Clause 30.2, Post Office shall have the option to take over the conduct over any claim, demand or action to which this Clause applies. Should Post Office exercise the aforementioned option it shall indemnify Fujitsu Services against any loss, damage, cost or expense which it incurs in respect of that claim, demand or action over and above the monetary amount (which Fujitsu Services shall have notified to Post Office prior to Post Office exercising its option) at which Fujitsu Services was prepared to settle said claim, demand or action.

31. LIABILITY

- 31.1 Subject to the remaining sub-clauses of this Clause 31, Fujitsu Services shall be liable for all losses and shall indemnify Post Office against all costs, expenses, losses and damages incurred, including any legal costs (together referred to in this Clause 31 only as "Losses"), as a result of:

31.1.1 any unauthorised third party access to the Horizon Service Infrastructure;

31.1.2 any unauthorised third party access to the Post Office Service Environment which is gained through the Horizon Service Infrastructure;

31.1.3 any "hacking" into the systems used by Fujitsu Services to provide the Services (whether or not constituting an offence under the Computer Misuse Act 1990);

31.1.4 any other form of fraud.

- 31.2 If and to the extent that Fujitsu Services proves that any of the matters referred to in Clause 31.1 have been caused by Post Office's non-performance of any of its obligations or responsibilities under this Agreement upon the performance of which Fujitsu Services' obligations depend the provisions of Clause 31.1 shall not apply. The foregoing is in place of the general rule stated in Clause 26.3.

- 31.3 [Not used]

- 31.4 In the case of NBS or in relation to the operation of the NBS, Clause 31.1.4 shall not apply unless the fraud in question was perpetrated by a person who was at the time in question:

31.4.1 an employee, agent or sub-contractor of Fujitsu Services (such agents or subcontractors being together referred to as, "Current NBS Participants");

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- 31.4.2 a former employee, agent or sub-contractor of Fujitsu Services, who was an employee, agent or sub-contractor (as the case may be) of Fujitsu Services at any time on or after 14 April 2001 (such agents or subcontractors being together referred to as, "Former NBS Participants") and who satisfies the Information Condition;
 - 31.4.3 an employee, agent or sub-contractor of the Current NBS Participants who satisfies the Information Condition;
 - 31.4.4 a former employee, agent or sub-contractor of a Current NBS Participant who was an employee, agent or sub contractor (as the case may be) of that Current NBS Participant at any time on or after 14 April 2001 and who satisfies the Information Condition; or
 - 31.4.5 a former employee, agent or sub-contractor of a Former NBS Participant who was an employee, agent or sub-contractor (as the case may be) of such Former NBS Participant while that Former NBS Participant was a Current NBS Participant and who satisfies the Information Condition.
- 31.5 Fujitsu Services shall not be liable for or indemnify Post Office in respect of any Losses:
- 31.5.1 where the Losses incurred by Post Office relate solely to the NBS or the operation of NBS.
 - 31.5.2 where such Losses were incurred as a result of any unauthorised access or hacking referred to therein into an element or elements (used solely for the operation of the NBS) of either the Post Office Service Architecture or the NB System (excluding elements of the Post Office Service Architecture or the NB System located at Branches).
 - 31.5.3 where the unauthorised access, hacking or fraud was perpetrated through or by use of, the NBE or elements of the Horizon Service Infrastructure at NBE premises other than by the persons referred to in Clause 31.4.
 - 31.5.4 where such Losses were incurred as a result of any unauthorised access or hacking or fraud arising as a result of Post Office's design, development and/or introduction of new AP Transaction types using the AP-ADC Facility, or any fraud perpetrated by Post Office contractors, subcontractors, employees or agents in connection with such design, development, introduction or use unless the root cause of such unauthorised access, hacking or fraud was:
 - 31.5.4.1 defects in Fujitsu Service's design or implementation of the AP-ADC Facility;

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- 31.5.4.2 a failure by Fujitsu Services to maintain the AP-ADC Facility in accordance with Clause 6.1 or to process such new Transactions in accordance with its obligations set out in this Agreement; or
 - 31.5.4.3 a defect in such design, development, introduction or use resulting from an error in the CCD entitled "AP-ADC Reference Manual" (AP/MAN/002) the presence of which is solely or mainly attributable to a breach by Fujitsu Services of its obligations set out in Clause 9.2.1 or 9.2.2 when it assisted Post Office to produce that CCD under Work Order.
- 31.6 Post Office shall not have any right of action against Fujitsu Services in respect of any costs, expenses, losses or damages arising as a result of the loss, theft or compromise of a MAC Key or a password/passphrase shared between the Merchant Acquirer and the Data Centres or the subsequent use of such MAC Key or such password/passphrase (as the case may be) except to the extent that such loss, theft or compromise or such costs, expenses, losses, or damages arise as a result of the fraud or Default of Fujitsu Services or of its employees, agents or subcontractors.
- 31.7 In this Clause 31, the "Information Condition" means that the person concerned either:
 - 31.7.1 is or has been entitled to have access in the course of fulfilling their duties or obligations as employee, agent or sub-contractor (as the case may be) to information concerning the design or performance of security measures used by or in the NB System; or
 - 31.7.2 is not or was not entitled to have access to information concerning the design or performance of security measures used by or in the NB System, but:
 - 31.7.2.1 used such information obtained as a result of their relationship with Fujitsu Services in perpetrating the fraud in question; and
 - 31.7.2.2 Fujitsu Services fails to show that it had taken all reasonable steps and precautions to prevent that information being obtained.
- 31.8 In the case of Debit Card, Fujitsu Services shall not be liable for and Post Office shall not have any right of action against Fujitsu Services in respect of any costs, expenses, losses or damages arising as a result of:
 - 31.8.1 fraud in connection with or unauthorised disclosure of;
 - 31.8.2 loss or corruption of; or
 - 31.8.3 hacking in connection with,

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DC Data, irrespective of whether such DC Data are inside or outside the Horizon Service Infrastructure unless and to the extent that such arises from a Default of Fujitsu Services.

31.9 In the case of NBS₁ or Debit Card and ETU, Fujitsu Services shall not be liable for any costs, expenses, losses or damages suffered or incurred by Post Office in relation to:

31.9.1 Banking Transactions falsely or incorrectly authorised unless and to the extent caused by a failure of the NB System or of the NBS which is (in either case) a Default;

31.9.2 DC Transactions or ETU Transactions falsely or incorrectly authorised unless and to the extent caused by a failure of Debit Card or ETU respectively which is a Default; and

31.9.3 Fraudulent use of an NB Token or an ETU Token by any person, unless and to the extent that such use is carried out by or involves collusion with Fujitsu Services' employees, or otherwise arises from a Default or fraud of Fujitsu Services.

31.10 If, after the Amendment Date, Post Office accepts a Design Proposal which includes a third party interface or third party application which was either not selected by Fujitsu Services or was selected by Fujitsu Services subject to clearly disclosed limitations notified to Post Office, Fujitsu Services shall not, under Clause 31.1, be liable for or indemnify Post Office against any Losses incurred by Post Office resulting from unauthorised access to the Horizon Service Infrastructure, "hacking" and other fraudulent and criminal activities provided Fujitsu Services has operated such interfaces or applications in accordance with the technical and operational specifications agreed between Post Office and Fujitsu Services in respect of such interfaces or applications and has exercised reasonable care and skill in implementing such interfaces and carrying out the integration of such applications.

31.11 In relation to data processing (involving either automated or manual processing or both) under this Agreement, Fujitsu Services shall not be in breach and shall not be liable to Post Office for any failure to perform its obligations, or delay in performing such obligations, to the extent it can demonstrate to Post Office's satisfaction (Post Office acting reasonably) that such failure or delay occurred as a result of a Design Limit being exceeded.

32. LIMITATION OF LIABILITY

32.1 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.

32.2 Subject always to Clause 32.1 and Clause 32.3, the liability of each Party for Defaults shall be subject to the financial limits set out in this Clause 32.2.

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- 32.2.1 The aggregate liability in relation to any Default arising during the period 15 May 2002 to 31 March 2003 (inclusive) or in any Financial Year thereafter which results in direct loss of or damage to the Property of the other Party shall in no event exceed:
- 32.2.1.1 one and a half million pounds (£1,500,000) per period in the case of Post Office; and
- 32.2.1.2 ten million pounds (£10,000,000) per period in the case of Fujitsu Services.
- 32.2.2 The aggregate liability of Post Office for all Defaults (other than a Default governed by Clause 32.2.1) arising during the period 15 May 2002 to 31 March 2003 (inclusive) or in any Financial Year thereafter shall in no event exceed four million five hundred thousand pounds (£4,500,000) per period.
- 32.2.3 The aggregate liability under this Agreement of Fujitsu Services for all Defaults (other than a Default governed by Clauses 32.2.1, 32.2.4 or 32.2.5):
- 32.2.3.1 for the period from 1 January 2002 to 31 March 2003 (inclusive) shall not exceed £1,729,000;
- 32.2.3.2 for the Financial Year ending on 31 March 2004 shall not exceed £7,139,000; and
- 32.2.3.3 in any Financial Year thereafter shall not exceed 10% of the Operational Charges for the previous Financial Year.
- 32.2.4 Subject to Clause 32.2.5 the aggregate liability of Fujitsu Services for all Defaults (other than a Default governed by Clause 32.2.1) relating to a particular Work Order shall not exceed 100% of the Charges payable pursuant to that Work Order.
- 32.2.5 Where Fujitsu Services is engaged under a series of related Work Orders covering two or more of the following Development Process Stages:
- 32.2.5.1 Solution Specification Stage;
- 32.2.5.2 Solution Build and Test Stage; and
- 32.2.5.3 Implementation Stage,
- the aggregate liability of Fujitsu Services for all Defaults (other than a Default governed by Clause 32.2.1) relating to such Work Orders shall not exceed 100% of the aggregate Charge for all such Work Orders and this limit shall apply in lieu of the limit in Clause 32.2.4.

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- 32.2.6 The aggregate liability of Fujitsu Services for all Defaults (other than a Default governed by Clause 32.2.1) relating to NBS prior to NBS Acceptance shall not exceed 100% of the Network Banking Implementation Charges.
- 32.3 The liability of Fujitsu Services under this Agreement for the fraud or other criminal activities of Fujitsu Services, its employees or subcontractors shall be limited to fifteen million pounds (£15,000,000) per Fraud Event. Such sum shall be increased in line with increases to the Retail Prices Index.
- 32.4 Subject to Clause 32.5, the financial limits specified in Clause 32.2 shall (notwithstanding the reference to Defaults) apply to the aggregate of all claims for monetary relief which either Party may have against the other either under this Agreement or otherwise in relation to the subject matter of this Agreement, including as well as claims arising from defaults all claims for liquidated damages and Post Office Additional Cost pursuant to Clause 29 and Schedule 15, all claims to be indemnified pursuant to Clauses 18, 30 or 31 and all other claims or costs which are compensatable in money or money's worth.
- 32.5 The financial limits applicable to Post Office under Clause 32.2 shall be exclusive of and additional to any liability of Post Office to pay any Charges, the Transfer Payment, NBS Transfer Payment or any Termination Charges or NBS Termination Charges which may become properly due and payable to Fujitsu Services in accordance with the provisions hereof or any sum by way of interest thereon that a court may award.
- 32.6 Subject always to Clause 32.1, in no event shall any Party be liable to the other Party for indirect or consequential loss or damage. For the avoidance of doubt, this Clause shall not be deemed or construed to affect Fujitsu Services' liability under Clause 31.
- 32.7 The provisions of Clause 32.6 shall not be taken as limiting the right of Post Office to claim from Fujitsu Services for:
- 32.7.1 additional operational and administrative costs and expenses; and/or
- 32.7.2 expenditure or charges rendered unnecessary as a result of any Default by Fujitsu Services.
- 32.8 The Parties expressly agree that should any limitation or provision contained in this Clause be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any Party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- 32.9 For the avoidance of doubt, it is acknowledged that nothing in this 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 Fujitsu Services' common law and contractual obligations to mitigate (whether for the purpose of calculating the Termination Payment or otherwise) no

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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" as it appeared in versions of this Agreement prior to introduction of CCN 1100.

33. TERM AND TERMINATION**33.1 Term**

The term of this Agreement shall, unless terminated earlier in accordance with the provisions of Clause 34 or extended at the option of Post Office in accordance with the provisions of Clause 33.2, be for a period commencing on 28 July, 1999 and ending on 31 March 2010.

33.2 Post Office Term Extension Option

33.2.1 If Post Office wishes to consider extending the term of this Agreement beyond the period referred to in Clause 33.1, not less than 18 months prior to expiry of this Agreement it shall notify Fujitsu Services in writing of its wish to do so. In addition to any provision set out in Schedule 22, within 20 Business Days of the delivery of such notice Fujitsu Services shall meet with Post Office and in good faith discuss and explore the basis on which it would propose extending the term of this Agreement.

33.2.2 Such basis shall be based upon the following high-level principles:

33.2.2.1 a Branch Hardware refresh (including full or partial replacement and/or refurbishment) shall be undertaken by Fujitsu Services on a funding basis to be agreed;

33.2.2.2 Operational Charges will be reduced to take account of the new Branch Hardware;

33.2.2.3 Operational Charges will otherwise be increased or reduced to take account of actual costs relative to those contemplated in this Agreement as at the Amendment Date;

34. TERMINATION OF AGREEMENT

34.1 Post Office may at any time by notice in writing terminate this Agreement with effect from the date of service of such notice or such later date as may be specified therein if:

34.1.1 there is a change of control, as defined by Section 416 of the Income and Corporation Taxes Act 1988, in Fujitsu Services or the Guarantor; or

34.1.2 Fujitsu Services or the Guarantor, being an individual, or where Fujitsu Services 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

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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 the benefit of his creditors; or any similar event occurs under the law of any other jurisdiction; or

34.1.3 Fujitsu Services or the Guarantor, being a company, passes a resolution, or the Court makes an order that Fujitsu Services 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 Fujitsu Services or of the Guarantor) of Fujitsu Services 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 Fujitsu Services 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

34.1.4 any provision hereof other than Clause 34 expressly entitles Post Office to terminate this Agreement; or

34.1.5 the circumstances in Clause 49.5 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 Fujitsu Services specifying the obligation in question and requiring it to be performed or within such other period as may be requested by Fujitsu Services and agreed by Post Office, such agreement not to be unreasonably withheld or delayed.

34.2 Subject to paragraph 9.3 of Schedule 24, Post Office may at any time by notice in writing terminate this Agreement with effect from the date of service of such notice or such later date as may be specified therein, if Fujitsu Services is in material or persistent Default of any obligation under this Agreement and:

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

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- 34.2.2 such 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).
- 34.3 Fujitsu Services may at any time by notice in writing to Post Office terminate this Agreement with effect from the date of service of such notice or such later date as may be specified therein, in the event of the material or persistent failure by Post Office to pay Charges which have not been disputed by Post Office and Post Office shall have failed to remedy such failure to pay within thirty (30) days of written notice to Post Office specifying such failure to pay and requiring its remedy or within such other period as may be requested by Post Office and agreed by Fujitsu Services, such agreement not to be unreasonably withheld or delayed.
- 34.4 In the event of any termination of this Agreement pursuant to Clause 34.1.1 or Clause 34.2 or Clause 34.3 Post Office shall return the Horizon Service Infrastructure or any part thereof (other than any part in relation to which it has exercised the option to acquire under Clause 35), in which case Fujitsu Services shall at no additional cost to Post Office, remove such parts of the Horizon Service Infrastructure and shall make good any damage to the Post Office Premises occasioned by such removal.
- 34.5 Post Office shall only be permitted to exercise its rights pursuant to Clause 34.1.1 for three (3) months after each such change of control and shall not be permitted to exercise such rights where Post Office has agreed in advance in writing to the particular change of control and such change of control takes place as proposed. Fujitsu Services shall notify Post Office 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.
- 34.6 Post Office may terminate this Agreement by giving Fujitsu Services not less than twelve (12) months' notice. In the event of such notice being given, Post Office shall on termination hereof pay to Fujitsu Services the Termination Charge calculated in accordance with Schedule 22.
- 34.7 Post Office may at its discretion (without being obliged to give any reasons) raise a Change Request to terminate any service or Application introduced through the Change Control Procedure after the approval of CCN 1100 provided that:
- 34.7.1 such service or Application was, at the time of introduction, a wholly new service or Application and not merely a variation of an existing service;
- 34.7.2 where such service or Application has been developed by Fujitsu Services, it has been developed at Post Office's cost;
- 34.7.3 the termination of such service or Application shall not involve the termination of any infrastructure or service on which any other service or Application is dependent; and

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34.7.4 the impact of terminating such service or Application has been agreed and described in the CCN introducing the same.

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

34.9 The provisions of Clauses 1.1.6, 13, 17.2, 18, 26.3, 31, 32, 34, 35, 37, 39, 45, 50, 57, 58, 61, the provisions of Schedules 1, 3, 10, 22 and 24 and paragraphs 2.2.3.4 and 2.4 of Schedule 13 shall survive the termination of this Agreement by Post Office or Fujitsu Services or the expiry of this Agreement.

35. RIGHTS ON EXPIRY OR TERMINATION OF AGREEMENT

35.1 In the event of termination or expiry of this Agreement, Post Office shall, without prejudice to Post Office's other rights and remedies but subject to payment of all sums due and payable to Fujitsu Services up to the date of termination, have the option, exercisable at any time within one month after notice of termination, to acquire from Fujitsu Services or to require Fujitsu Services to permit the Next Supplier to acquire from it, in consideration of the Transfer Payment the Project Assets, which shall comprise:

35.1.1 any or all of the hardware that is comprised within the Horizon Service Infrastructure and/or that:

35.1.1.1 is being used; or

35.1.1.2 had previously been used in Branches 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 each case in connection with the performance of the Services (other than where such hardware is not owned by Fujitsu Services or any of its subsidiary companies);

35.1.2 subject to Clause 35.7, copies of and a non-exclusive licence to use for the purpose of making continued provision of services equivalent to the Services, all Software (other than Specially Written Software) and all other software (in Source Code (where Fujitsu Services has the right to such Source Code) and object code format (and including up to date copies of archive and back-up versions of such software)), data, tools, utilities, documentation and any other item necessary to provide the Services including, without limitation, all software and other items used for production, development, training and testing in relation to the Services;

35.1.3 to the extent not licensed pursuant to Clause 35.1.2, a non-exclusive licence (and copies of relevant materials) of all necessary Intellectual Property Rights

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which are owned by Fujitsu Services and used in connection with the performance of this Agreement; and

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

35.2 The Licences referred to in Clause 35.1.2 and 35.1.3:

35.2.1 shall not be subject to payment other than the Transfer Payment;

35.2.2 shall, in the case of third party licences granted pursuant to Clause 35.1.2, be subject to any applicable licence terms, provided that Fujitsu Services shall procure that such terms shall not detract from Post Office's or the Next Suppliers' ability to provide services equivalent to the Services;

35.2.3 without limiting the generality of the foregoing, shall permit Post Office and the Next Supplier to Use such software, and use such documentation and other materials; and in the case of Fujitsu Services Software and documentation, modify, adapt, enhance and develop the same and in the case of third party software, modify, adapt, enhance and develop the same where Fujitsu Services has such rights available to it;

35.2.4 shall be perpetual and irrevocable, subject to Clause 13.12 and (in the case of any third party licences granted pursuant to Clause 35.1.2) subject to termination in accordance with the applicable licence terms referred to in paragraph 35.2.2 above;

35.2.5 without limiting the generality of the foregoing, shall permit use by members of the Post Office Group and End Users; and

35.2.6 subject to Clause 35.7, shall pertain to the versions of all software, data, tools, utilities, documentation and other materials then in use by Fujitsu Services in the provision of the Services, provided that where Fujitsu Services is unable to provide any such version of software, tools or utilities it shall provide Post Office with the then commercially available version of such software, tools and utilities.

35.3 Notwithstanding the generality of Clauses 35.1.1 to Clause 35.2 Post Office agrees:

35.3.1 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 Horizon

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Service Infrastructure and the Applications or are otherwise to be provided pursuant to Schedule 22 (including, for the avoidance of doubt, the Exit Plan);

35.3.2 in the case of Escher Upgrade Software the provisions of paragraph 2 of Schedule 13 shall apply in lieu thereof.

35.4 In the event that Post Office exercises any of the options in Clause 35.1, Post Office shall pay to Fujitsu Services on completion of such option a sum equal to the Transfer Payment.

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

35.5.1 Fujitsu Services shall return to Post Office all Post Office Group Property in its possession;

35.5.2 Fujitsu Services shall render all practicable assistance to Post Office, if requested, to the extent necessary to effect an orderly assumption by Post Office or a replacement contractor of the services theretofore performed by Fujitsu Services under this Agreement and Post Office shall reimburse Fujitsu Services for such assistance at the rates then prevailing for customers of Fujitsu Services for the same or similar services;

35.5.3 Post Office shall be entitled on termination to offer any employee or sub-contractor (being an individual) of Fujitsu Services 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 Fujitsu Services' obligations under this Agreement employment or an agreement for services with Post Office and Fujitsu Services agrees that if such person accepts such offer Fujitsu Services 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

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

35.5.3.2 subject always to Post Office's proper observance of its obligations under Clause 35.5.3.3, Fujitsu Services shall fully indemnify Post

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Office from and against any and all liabilities which Post Office may incur in connection with or as a result of any claim or demand whatsoever by any employee or former employee of Fujitsu Services or of any of Fujitsu Services' subcontractors or agents in respect of his employment with Fujitsu Services or such subcontractor or agent (or, pursuant to the application of the Transfer of Undertakings (Protection of Employment) Regulations 1981, with Post Office or the Next Supplier 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 35.5.3.1 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;

35.5.1.3 in the event of any claim or demand being made or action brought to which Clause 35.5.3.2 applies, Fujitsu Services shall be promptly notified thereof and Fujitsu Services shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom. Post Office, its sub-contractors, agents and employees shall at the request of Fujitsu Services 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.

35.6 All the assets to be acquired pursuant to the exercise by Post Office of its option under Clause 35.1 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.

35.7 The Parties have agreed to populate the CCD entitled "Transfer Asset Register" with details of all Software data, tools, utilities, documentation and other items necessary to perform the Services and run the Applications, and to agree, in accordance with the guidance contained in that CCD, the most appropriate treatment of such item. Notwithstanding any other provision of this Agreement, the categorisation and proposed treatment of such items agreed in that CCD shall take precedence over Clauses 35.1.2 and 35.2.6 which shall be deemed superseded by such CCD when agreed by the Parties.

36. [NOT USED]

37. AUDIT

37.1 Fujitsu Services shall keep or cause to be kept the Records.

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- 37.2 Fujitsu Services shall grant or procure the grant to Post Office, any statutory or regulatory auditors of Post Office 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 Fujitsu Services' compliance with this 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, Fujitsu Services shall within a reasonable time to be agreed by the Parties, transfer the Records to Post Office or a Next Supplier, as instructed by Post Office. Following settlement of all Charges due and payable under this Agreement, Fujitsu Services shall be released from any further liabilities under this Clause in relation to such Records.
- 37.3 Without prejudice to the foregoing, in the event of an investigation into suspected fraudulent activity or other impropriety by Fujitsu Services or any third party Post Office reserves for itself, any statutory or regulatory auditors of Post Office and their respective authorised agents the right of immediate access to the Records described in Clause 37.1 and Clause 37.2 above and Fujitsu Services agrees to render all necessary assistance to the conduct of such investigation at all times during the currency of this Agreement or at any time thereafter.
- 37.4 Fujitsu Services shall provide Post Office at no additional cost with copies of the annual and interim audited accounts of Fujitsu Services and its approved subcontractors within fourteen (14) days of such accounts having been lodged at Companies House or its local equivalent to Companies House.
- 37.5 All information obtained by Post Office pursuant to this Clause and Schedule 3 shall be treated as Confidential Information.
- 37.6 The Parties shall comply with the provisions of Schedule 3.
- 37.7 Notwithstanding the provisions of this Clause 37 and anything else to the contrary in this Agreement, all access to the audit trail of Transactions held by Fujitsu Services in respect of Transaction data created on or after the date of commencement of NB Pilot (Soft Launch) shall be conducted as Audit Record Queries or as Old Format Queries and shall be subject to the limits set out in the Information retrieval and audit section of the CCD entitled "Service Description for the Security Management Service" (CS/SER/016).

38. ADDITIONAL RESOURCES

In the event that the Services are not provided in accordance with all applicable provisions hereof as a result of the Default of Fujitsu Services, Fujitsu Services shall, at the request of Post Office and without prejudice to Post Office'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 Post Office.

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39. RECOVERY OF SUMS DUE

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

40. AUTHORITY AND APPROVAL

Fujitsu Services 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 Agreement and that this Agreement is executed by a duly authorised representative of Fujitsu Services.

41. STATEMENTS AND REPRESENTATIONS

Fujitsu Services warrants and represents that all statements and representations made to Post Office in connection with tendering for and entering into this Agreement, the Post Office 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 Post Office 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.

42. DISCLAIMER OF IMPLIED TERMS

Except as expressly stated in this 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.

43. 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.

44. RELATIONSHIP OF PARTIES

44.1 Post Office shall control the rights for using and marketing the Services provided in Branches. Fujitsu Services shall have no control over the use or marketing of the Services.

44.2 Except as otherwise agreed from time to time between Post Office and Fujitsu Services, Post Office will retain control itself of its critical business processes and relationships, such as:

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- 44.2.1 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;
 - 44.2.2 contractual relationships with Agents;
 - 44.2.3 contractual relationships with its clients;
 - 44.2.4 policy control of its network;
 - 44.2.5 its reconciliation, settlement and key infrastructure support processes;
 - 44.2.6 its relationship with its suppliers; and
 - 44.2.7 its product and service design.
- 44.3 Fujitsu Services' and its subcontractors' contacts with Agents shall be arranged via Post Office.

45. PUBLICITY

- 45.1 No public announcement or public circular (including a media release) relating to the subject matter of this 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.
- 45.2 Each Party shall take all reasonable steps to ensure the observance of the provisions of Clause 45.1 by all its servants, employees, agents, consultants and sub-contractors.
- 45.3 Fujitsu Services shall have no right to use the brand or logo of any Royal Mail Group member without Post Office's prior written consent. Fujitsu Services shall have no right to use the brand or logo of any part of Post Office without Post Office's prior written consent.
- 45.4 Fujitsu Services shall do nothing to injure such logos and brands or the reputation of Post Office and, if it uses such brands or logos, it shall take all reasonable steps to enable Post Office to protect such logos and brands and the reputation of Post Office but in no event less than the steps it would take in relation to its own logos, brands and reputation.
- 45.5 Post Office shall have no right to use the brands or logo of Fujitsu Services or its sub-contractors without Fujitsu Services' prior written consent. Post Office shall do nothing to injure such logo and brands or the reputation of Fujitsu Services or its sub-contractors and, if it uses such brands or logos, it shall take all reasonable steps to enable Fujitsu Services and its sub-contractors to protect such logo and brands and the

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reputation of Fujitsu Services and its sub-contractors, but in no event less than the steps it would take in relation to its own logos, brands and reputation.

46. COMMUNICATIONS & NOTICES

- 46.1 Except where expressly stated otherwise, a notice under this Agreement shall only be effective if it is in writing and sent to a Party at its address or number and for the attention of the individual set out below:

PARTY AND TITLE OF INDIVIDUAL	ADDRESS	FACSIMILE NO.	TELEPHONE NO.
Post Office Limited	Calthorpe House, 15-20 Phoenix Place, London, WC1X 0DG	GRO	
<u>For the attention of:</u> Contract Manager (FS)			
Fujitsu Services (Pathway) Limited	Forest Road, Feltham, Middlesex, TW13 7EJ	GRO	
<u>For the attention of:</u> Business Unit Director of Fujitsu Services (Pathway) Limited			

Provided that a Party may change its notice details on giving notice to the other Party of the change in accordance with this Clause.

- 46.2 Any notice given under this Agreement in accordance with Clause 46.1 shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

46.2.1 if delivered personally, on delivery;

46.2.2 if sent by first class post, two clear Working Days after the date of posting; and

46.2.3 if sent by facsimile, at the expiration of four hours after the time it was transmitted,

provided that in each case where delivery by hand or by facsimile occurs after 6.00 p.m. on a Business Day or on a day which is not a Working Day, service shall be deemed to occur at 9.00 a.m. on the next following Working Day.

47. TRANSFER AND SUB-CONTRACTING**CLAUSES Version 4.0**

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- 47.1 This Agreement is personal to Fujitsu Services. Fujitsu Services shall not assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the previous written consent of Post Office.
- 47.2 Subject to Clause 47.6 Post Office hereby consents to Fujitsu Services having subcontracted its obligations specified in Schedule 7 to the respective sub-contractors specified therein. Additional or substitute sub-contractors may be approved from time to time in accordance with Clause 47.1 after the date hereof, in which case Schedule 7 shall be amended accordingly. Notwithstanding any sub-contracting permitted in this Agreement, Fujitsu Services shall remain primarily responsible for the acts and omissions of its sub-contractors committed by them in the course of performing or purporting to perform any of the Services on Fujitsu Services' behalf as though such acts or omissions were its own.
- 47.3 Post Office hereby agrees that, subject to it having given Fujitsu Services the relevant confirmation referred to in the table of work and events in Schedule 12, if so requested by Fujitsu Services (Pathway) Limited, it will enter into a deed of novation (subject to agreement on the precise terms of such deed (such agreement not to be unreasonably withheld)) under which the entire benefit and burden of Fujitsu Services (Pathway) Limited's rights and obligations under this Agreement is transferred to Fujitsu Services Limited (Company number 96056) and Post Office accepts the covenant of Fujitsu Services Limited in lieu of the covenant of Fujitsu Services (Pathway) Limited (as though Fujitsu Services had always been party to this Agreement in place of Fujitsu Services (Pathway) Limited).
- 47.4 Post Office shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof (including, where appropriate, requiring the grant by Fujitsu Services or its licensors of a direct licence of any Software other than Third Party Software, and requiring Fujitsu Services 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 Post Office, provided that any such assignment, novation or other disposal shall not increase the burden of Fujitsu Services' obligations pursuant to this Agreement.
- 47.5 Post Office shall be entitled to disclose, to the extent necessary for the purposes of this Agreement, to any transferee any Confidential Information of Fujitsu Services which relates to the performance of the Services by Fujitsu Services. In such circumstances Post Office shall authorise the transferee to use such Confidential Information only for purposes relating to the performance of the 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.
- 47.6 The consent referred to in Clause 47.2 and any approval which may be granted in respect of additional or substitute sub-contractors pursuant to Clause 47.2 is provided, and shall be granted (as the case may be), on the understanding that Fujitsu Services shall keep Post Office informed of the general nature and scope of the work to be sub-

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contracted and the duration of the relevant sub-contracts (such information to be recorded in Schedule 7) and shall consult with Post Office prior to amending or supplementing such arrangements or commitments and shall take account of all reasonable requests and comments that Post Office shall make in connection therewith.

48. NON-SOLICITATION

48.1 Subject to Clause 35.5.3, neither Party shall during the currency of the Agreement or for a period of six months thereafter without the written permission of the other (not to be unreasonably withheld) either on its own account or for any other person, firm or undertaking either directly or indirectly knowingly solicit or entice away from the other (the "Previous Employer") any Key Individual who is or has been in the previous three months either:

48.1.1 an employee of the Previous Employer; or

48.1.2 engaged by the Previous Employer as a contractor performing the services of such an employee.

48.2 In the event that such Key Individual is employed or engaged by the other Party with the agreement of (such agreement to include without limitation agreed transfer of work and associated staff between the parties during the term of the Agreement) or after redundancy from the Previous Employer, the Previous Employer shall not (unless agreed otherwise) be paid any sum by the other Party by way of compensation.

48.3 If either Party is in breach of this condition that Party will pay to the other Party by way of liquidated damages and not by way of penalty the Solicitation Fee.

48.4 Nothing in this clause is intended to prevent or frustrate the right of any individual to seek employment as he thinks fit.

49. FORCE MAJEURE

49.1 For the purposes of this 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 49.7), (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 affected Party, its agents or employees, and only if

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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 Services for which Fujitsu Services is liable under Clause 31.1 constitute a force majeure event.

- 49.2 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 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 Agreement for the duration of such Force Majeure event. In the case of Fujitsu Services, the Parties shall agree an orderly process for such continuation or resumption of performance (such consent not to be unreasonably withheld or delayed), and Fujitsu Services shall comply with such process. Fujitsu Services shall remain liable to perform the Business Continuity Services, save where such Business Continuity Services are themselves also affected by Force Majeure, in which case Fujitsu Services shall be required to use all reasonable endeavours to perform such Business Continuity Services.
- 49.3 If Fujitsu Services 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 Post Office within one (1) Working Day and shall inform Post Office of the period which it is estimated that such failure or delay shall continue. If Post Office shall become aware of circumstances of Force Majeure which give rise to any such failure or delay on its part, it shall forthwith notify Fujitsu Services within one (1) Working Day and shall inform Fujitsu Services of the period which it is estimated that such failure or delay shall continue.
- 49.4 It is expressly agreed that any failure by Fujitsu Services to perform, or any delay by Fujitsu Services in performing, its obligations under this Agreement which results from any failure or delay in the performance of its obligations by any person, firm or company with which Fujitsu Services 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.
- 49.5 If any Force Majeure event prevents any Party from performing its obligations hereunder for a period in excess of ninety (90) consecutive days, Post Office may after consulting with Fujitsu Services and taking into account Fujitsu Services' views, terminate this Agreement in accordance with Clause 34.1.5.

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49.6 Extension of Time

If the performance of this Agreement by either Party be delayed by reason of any Force Majeure event (as defined in Clause 49.1), 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.

49.7 Political Risk

Notwithstanding the provisions of Clauses 49.1 to 49.5, a change of, or new, Governmental Regulation:

49.7.1 shall not entitle Post Office to terminate this Agreement under Clause 49.5, and any such purported termination shall be treated as a termination for convenience in accordance with Clause 34.6; and

49.7.2 shall not require Fujitsu Services to perform any additional obligations, or any reduced or modified obligations resulting in increased cost to Fujitsu Services, without its agreement in accordance with the Change Control Procedure.

50. CONFIDENTIALITY

50.1 Without prejudice to the application of the Official Secrets Acts 1911 to 1989 (where relevant) to any Confidential Information Fujitsu Services acknowledges that any Confidential Information (other than its own Confidential Information) obtained from or relating to Post Office, or its servants or agents, is the property of Post Office.

50.2 Each Party agrees to keep confidential, and not to disclose to anyone else, Confidential Information.

Notwithstanding the above, any Party may disclose Confidential Information:

50.2.1 if and to the extent required by law;

50.2.2 if and to the extent that the other Party has given prior written consent to the disclosure;

50.2.3 to its professional advisers;

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

50.2.5 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);

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- 50.2.6 to Royal Mail Group;
 - 50.2.7 to Fujitsu Services Holdings Plc, Fujitsu Services Limited or its Parent Companies;
 - 50.2.8 to Fujitsu Services' approved sub contractors as listed in Schedule 7;
 - 50.2.9 to potential arrangers of funding for the investment required in connection with this Agreement;
 - 50.2.10 if and to the extent reasonably necessary to be disclosed for the purpose of arranging and maintaining funding generally for Fujitsu Services Holdings Plc or Fujitsu Services;
 - 50.2.11 which is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;
 - 50.2.12 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or
 - 50.2.13 which is independently developed without access to the Confidential Information.
- 50.3 From the earlier of 1 October 2008 and the date on which Post Office serves notice on Fujitsu Services of its intention to terminate this Agreement, Post Office shall be entitled to disclose Confidential Information to bona fide potential Next Suppliers of the Services to the extent that such disclosure is reasonably required to enable any potential Next Supplier to prepare a reasonably detailed tender proposal to Post Office in relation to the provision of services equivalent to the Services. Post Office shall ensure that prior to any Confidential Information being disclosed to any such potential Next Supplier, such potential Next Supplier shall enter into an Agreed Form NDA and shall immediately inform Fujitsu Services if it has reason to believe that the potential Next Supplier is in breach of the undertakings contained in that confidentiality agreement.
- 50.4 The Parties hereby agree that (other than as required by law):
- 50.4.1 each Party (and any person employed or engaged by it in connection with this Agreement in the course of such employment or engagement) shall only use Confidential Information of the other Party for the purposes of this Agreement;
 - 50.4.2 each Party receiving Confidential Information from the other Party shall take all necessary precautions to ensure that no Confidential Information of the other Party is used other than for the purposes of this Agreement by the receiving Party's employees, servants, agents or sub-contractors including, without limitation, obtaining from any such agent or sub-contractor a signed

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confidentiality undertaking on substantially the same terms as are contained in this Clause; and

50.4.3 without prejudice to the generality of the foregoing:

50.4.1.1 neither Fujitsu Services nor any person engaged by Fujitsu Services (whether as a servant or a consultant or otherwise) shall use the Confidential Information of Post Office for the solicitation of business from any third party or away from Post Office; and

50.4.1.2 Post Office may discharge the obligation imposed on it by Clause 50.4.2 to obtain signed confidentiality undertakings, in so far as such Clause relates to individuals who are provided to the Post Office to perform the tasks of Post Office employees under a framework resource agreement ("Framework Agreement") with a third party (such individuals being referred to in this Clause as "Contractors") by including within such Framework Agreement:

- (i) an obligation of confidentiality in respect of Fujitsu Services' Confidential Information which shall be binding on such third party and each Contractor and continue in effect until at least three years after the Framework Agreement is terminated or expires; and
- (ii) a provision requiring all of Fujitsu Services' Confidential Information held by each Contractor in tangible form to be returned to the Post Office, and all such information held in electronic form to be irretrievably deleted or destroyed, on termination or expiry of that Contractor's assignment.

50.5 [Not used]

50.6 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.

50.7 Nothing in this Clause 50 shall prevent Fujitsu Services or Post Office from using data-processing techniques, ideas and know-how gained during the performance of this 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 Post Office or Fujitsu Services of any Intellectual Property Right.

51. REMEDIES CUMULATIVE

Except as otherwise expressly provided in this Agreement, all remedies available to Fujitsu Services or to Post Office for breach of this Agreement are cumulative and may

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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.

52. DISCRIMINATION

52.1 Fujitsu Services 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.

52.2 Fujitsu Services shall take all reasonable steps to ensure the observance of the provisions of Clause 52.1 by all servants, employees, agents and consultants of Fujitsu Services and all sub-contractors.

53. EXPORT

For the purpose of this Agreement only, Post Office confirms that no hardware, software or documentation provided to Post Office pursuant to this Agreement nor their direct product(s) will be exported by Post Office unless in accordance with any appropriate UK Government export licensing controls.

54. VAT

All sums payable under this Agreement are stated exclusive of VAT. Where VAT is properly chargeable by either party in respect of any taxable supply, the other party shall pay to the first-mentioned party an amount equal to the amount of any VAT chargeable in respect of the supply in question (subject to the production by the first-mentioned party of a valid tax invoice giving the requisite details of the taxable supply).

55. GUARANTEE

55.1 Fujitsu Services shall procure that simultaneously with the execution of this Agreement:

55.1.1 Fujitsu Services Holdings plc shall execute and deliver to Post Office a guarantee in the form set out in Part A of Schedule 8; and

55.1.2 Fujitsu Limited shall execute and deliver to Post Office a guarantee in the form set out in Part B of Schedule 8.

55.2 Breach of Clause 55.1 shall constitute a Default not capable of remedy.

56. INSURANCE

Fujitsu Services shall to the extent reasonably possible insure or make provision for self-insurance against all losses and damages which are the result of its fault or negligence in performing the Services, including workman's compensation, public liability, product liability, property damage and professional indemnity. Fujitsu Services will, if requested in writing by Post Office, produce to Post Office a certificate of

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insurance showing the applicable coverage currently in force, and will also give Post Office prior written notice of (where possible), or written notice no later than thirty (30) days after, alteration or cancellation of such insurance.

57. INTERPRETATION

57.1 As used in this Agreement:

57.1.1 the terms and expressions set out in Schedule 1 shall have the meanings ascribed therein;

57.1.2 the masculine includes the feminine and the neuter; and

57.1.3 the singular includes the plural and vice versa.

57.2 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. The preceding sentence shall be without prejudice to any rights under Clause 49.7 and any rights Fujitsu Services may have under Schedule 2 to charge Post Office for the cost of compliance with any such subsequent statute, enactment, order, regulation or instrument or subsequent re-enactment thereof.

57.3 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

57.4 References in this Agreement to Clauses, Annexes and Schedules are, unless otherwise provided, references to the clauses of, and annexes and schedules to, this Agreement (and the Schedules and Annexes form part of this Agreement). References to CCDs and CRDs are to the documents agreed as such from time to time.

57.5 Subject to Clauses 57.6 and 57.7, in the event and to the extent only of any conflict or inconsistency between provisions of this Agreement, the following order of precedence shall apply:

57.5.1 the Clauses and Schedule 1;

57.5.2 all other Schedules;

57.5.3 CCDs subject to Hard Change Control;

57.5.4 all other CCDs and (subject to Clause 57.7) all Work Orders; and

57.5.5 CRDs.

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- 57.6 Working Documents do not affect or introduce any contractual obligations between any of the Parties.
- 57.7 To the extent that a Work Order purports to describe the terms on which a particular Work Package will be performed it shall govern the terms on which the particular Work Package will be performed and shall take precedence over any provision of this Agreement in conflict with those terms. To the extent that a Work Order purports to make other amendments to the terms of this Agreement it shall have the precedence priority stated in Clause 57.5.
- 57.8 The Recitals are not legally binding, but are intended as a guide to the history, interpretation and construction of this Agreement.
- 57.9 References in CCDs and CRDs to items, services or matters affected by subsequent agreements between the Parties shall be construed to reflect most appropriately the effect of such subsequent agreements.

58. AMENDMENTS TO CLAUSES, SCHEDULES AND ANNEXES OF THIS AGREEMENT AND CCDS

Unless expressly provided otherwise in the provisions of this Agreement, the provisions of this Agreement (being its Clauses, Schedules and Annexes) and the CCDs shall only be amended in accordance with the Change Control Procedure.

59. SEVERABILITY

If any of the provisions of this 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.

60. DISPUTE RESOLUTION PROCEDURE

Any dispute arising out of or in connection with this agreement shall be resolved in accordance with the Dispute Resolution Procedure described in Annex 2 to Schedule 4.

61. LAW AND JURISDICTION

- 61.1 This Agreement shall be governed by and shall be interpreted in accordance with English Law and, subject to Clause 60, the Parties submit to the exclusive jurisdiction of the English Courts.
- 61.2 This Agreement is binding on Post Office and its successors and permitted assignees and on Fujitsu Services and its successors and permitted assignees.

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62. ENTIRE AGREEMENT

- 62.1 This Agreement constitutes the entire understanding between the Parties relating to the subject matter of this Agreement. Each of the Parties acknowledges that in entering into this 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 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.
- 62.2 This Agreement supersedes the Letter Agreement, the schedules to the Letter Agreement, the Heads of Agreement referred to in the Letter Agreement, the Post Office 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 referred to in the Letter Agreement between 24 May, 1999 and 29 July, 1999).
- 62.3 The Parties acknowledge that the consent agreement (the "Consent Agreement") dated 16 September 1997 among DSS, Post Office, ICL plc, Fujitsu Services and ICL Pathway Asset Company Limited shall not be terminated by the execution of this Agreement and that references in the Consent Agreement to the "Post Office Agreement", the "Authorities Agreement" or the "Related Agreements" or any provisions thereof shall be references to this Agreement or (as the case may be) the equivalent provisions of this Agreement.
- 62.4 The Parties agree that:
- 62.4.1 to the extent that amendments were required to the provisions of the Clauses and Schedules of this Agreement in order to reflect the matters agreed in the CCNs listed in Part A and B of the CCD entitled "Application of CCNs to Contract Baseline" (POL/HOR/CON/002) those amendments have been made. Subject to Clauses 62.4.2, 62.4.3 and 62.4.4 below, the said CCNs have accordingly been superseded by this 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 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);
- 62.4.2 the following provisions of the Second Supplemental Agreement between the parties dated 24 September 1999 (CCN560) have been reflected by amendment to this Agreement:
- 62.4.2.1 Clause 5 and Schedule 3 thereof;
- 62.4.2.2 Clause 10 thereof;

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

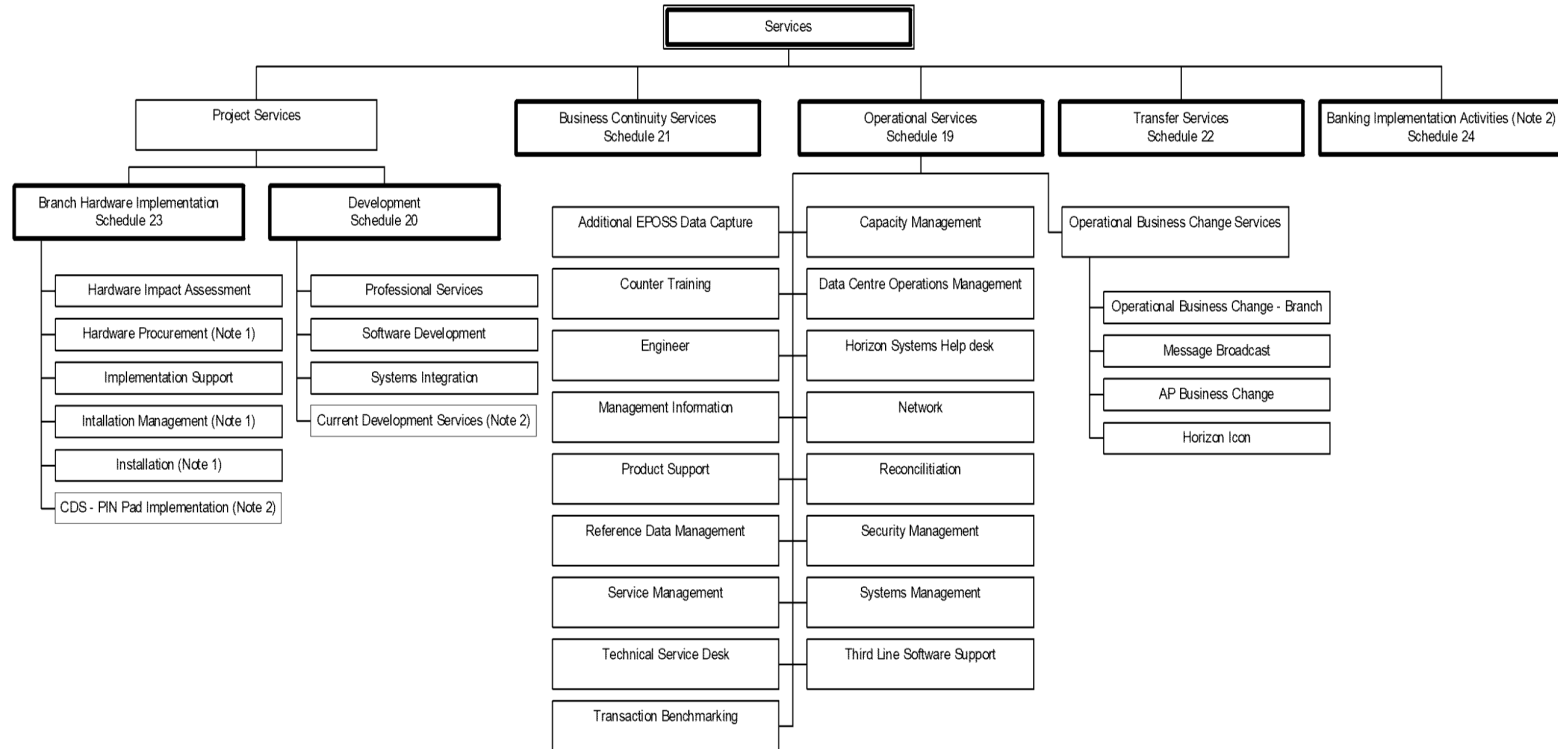
62.4.3 save to the extent referred to in Clause 62.4.2 above as having been reflected in this Agreement the provisions of the Second Supplemental Agreement (CCN560) and of the Side Agreement dated 24 September 1999 (CCN560) and of the Side Agreement dated 24 September 1999 (CCN561) have not been reflected by amendment to this Agreement and accordingly shall remain in effect insofar as applicable;

62.4.4 those CCNs and Change Requests formally submitted on or prior to 1 July 1999 and not listed in the CCD entitled "Application of CCNs to Contract Baseline" are not relevant to this Agreement and shall forthwith cease to have effect;

62.4.5 the provisions of the CCNs listed in Part C of the CCD entitled "Application of CCNs to Contract Baseline" (POL/HOR/CON/002) (including any provisions set out in any attachments to those CCNs) have not been reflected by amendment to this Agreement (save that the provisions in CCNs 754c and 829 relating to the payment of Charges by Post Office have been incorporated into Schedule 10 of this Agreement and such provisions contained in CCNs 754c and 829 are superseded with the effect that no payments of Charges shall be due under CCNs 754c and 829 to Fujitsu Services from Post Office, and further, save to the extent that any provisions of those CCNs are identified (in Part C of the CCD entitled "Application of CCNs to Contract Baseline" (POL/HOR/CON/002) as having been incorporated into and superseded by the provisions of this Agreement) and accordingly shall remain in effect insofar as applicable.

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Annex A (Schematic Overview)



Note 1: Services in question may be provided by Fujitsu Services or others.

Note 2: Banking Implementation Activities are Current Development Services (“CDS”) but are shown separately because identified separately in the definition of ‘Services’ and dealt with in Schedule 24 rather than Schedule 23 (in relation to PIN Pad Implementation) and Schedule 20 (in relation to all other Banking Implementation services).

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

Signed by)	
for and on behalf of)	
POST OFFICE LTD)	S.J. Sweetman
in the presence of:)	(signed on 28th July, 1999)

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

Signed by)	
for and on behalf of)	R. Christou
FUJITSU SERVICES LIMITED)	(signed on 28th July, 1999)
in the presence of:-)	

Myles Blewett
Masons
30 Aylesbury Street
London EC1R 0ER

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