IN STRICTEST CONFIDENCE

To Bruce McNiven
Chris French
Andy Radka
John Meagher
Douglas Craik

Copy Mena Rego Kevin Corrigan Jerome Brice Liz Blackburn

Copy (letter only): John Cook

From Keith Baines

11 June 1999

Letter and Heads of Agreement

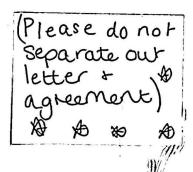
We have now agreed an amended Letter and Heads of Agreement with ICL Pathway which will form the basis of changes to the contracts in order to produce the codified agreement to be signed on 16th July.

I enclose a copy for your personal use. Parts of it may be shared with other programme staff on a need to know basis only. Please note the confidentiality clauses on page 4 of the Heads of Agreement document.

The document needs to be read alongside the existing contract - where there are differences this document takes precedence.

GRO

Keith Baines Head of Horizon Commercial GRO



HERBERT SMITH 2/2/2022- De Please scan all of this as one document!



[ON POCL LETTERHEAD]

Keith Todd Esq., ICL plc, 26 Finsbury Square, London, EC2A 1DS.

24 May 1999

Dear Mr. Todd,

POCL AUTOMATION PROJECT

POCL, ICL Pathway, ICL and DSS have been negotiating, with the assistance of HM Treasury, the withdrawal of DSS from further involvement in the Project and certain material amendments to the existing contracts between the parties.

Most recently, negotiations have proceeded on the basis that the Project will be amended to introduce a new service, the Benefits Payment Service or BPS, and the draft Heads of Agreement dated May 1999 between POCL, ICL Pathway and ICL (document reference 207738/10582 CA991020027 JRT 060599.2352) (the "Heads") reflect that position.

Ministers have decided that the Project will be scaled down and completed on the basis that the claims of each party against the others will be settled on the following terms:

- 1. The Heads as amended by Schedule 1 to this letter take effect from the date hereof.
- ICL Pathway will complete its obligations under the Related Agreements, as the same are amended by the Heads, and as the Related Agreements and the Heads are further amended by this letter.
- 3. POCL will pay ICL Pathway the sums set out in Schedule 2 to this letter in the manner and at the times set out in Schedule 2.
- 4. ICL Pathway will provide services under the Related Agreements (as amended) until 31st March 2005 (notwithstanding any later date that may appear in the Related Agreements or the Heads). On cessation of the services, POCL will have the option, subject to due payment of all sums payable up to that date, to purchase from ICL Pathway for the sum of £1 the Project Assets (using the definition of that term in the Heads which is expressed to be 'ICL's view'), such Project Assets to be sold "as is", free of encumbrances including perpetual royalty free licences of all IPRs in accordance with the Related Agreements but

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with all express or implied warranties and conditions excluded to the full extent permitted by law.

- 5. In parallel with performance of ICL Pathway's obligations under 2 above, and following our discussions with you, we wish to confirm our desire to use the Core System for network banking and the provision of services (via smart cards) for Modern Government. We will therefore work with you to revive and continue the discussions on the Public Private Partnership which we have previously considered. It is hoped that we can together develop a business strategy in these areas which we can deliver through appropriate arrangements under a Public Private Partnership in order to leverage the use of the Core System and develop to the full its potential for the delivery of electronic business services.
- 6. ICL Pathway shall provide such services as may be agreed by ICL Pathway and POCL for Royal Mail, DVLA, NAS, Girobank and the Co-op (and other POCL clients as may be agreed) at marginal running costs.
- 7. This letter agreement will come into effect on signature and will remain binding on all parties unless and until replaced by a comprehensive codification of the relevant terms of the Related Agreements, the Heads and this letter (a "Codified Agreement") which is agreed between all the parties thereto. The parties will use reasonable endeavours to produce and agree such a codification by 16 July, 1999. This provision shall be without prejudice to any change to this letter, the Heads or the Related Agreements which is agreed between the relevant parties in accordance with the terms of the document in question.
- 8. In the event of any disagreement concerning the terms to be included in the Codified Agreement, POCL and ICL Pathway will negotiate in good faith to reach a resolution of the matter in question. If the Managing Director of POCL (or any equivalent executive) and the Commercial Director of ICL are unable to reach resolution of the matter at their initial meeting to discuss the same they shall invite an expert to give guidance and act as a facilitator. Where the matter in question is of a programme or technical nature, the expert shall be Peter Copping of PA Consulting Group (or, if he is not available, a person chosen in accordance with paras. 6.2 and 6.3 of Schedule 6 to the Heads). Where the matter is of any other nature the expert shall be an independent City solicitor to be agreed between ICL Pathway and POCL within 7 days of the date of this letter or, in default of agreement, to be appointed at the request of either of them by the President for the time being of the Law Society. ICL Pathway and POCL do not expect that the identification and notification of the disagreement, reference of the disagreement to the expert and obtaining his guidance should take longer than 7 days.

If the parties have used all reasonable endeavours to agree the terms of the Codified Agreement, including pursuing the dispute resolution procedure

above, but by 16 July, 1999 material issues still remain unresolved, POCL shall have the right (to be exercised by a written notice served on ICL Pathway by 30 July, 1999) to terminate the agreement contained in this letter including, for the avoidance of doubt, the Heads and the Related Agreements as amended. Where POCL does not exercise this right of termination this letter shall continue in force. However, this shall not prevent POCL and ICL Pathway from agreeing to replace this letter in its entirety with an incomplete Codified Agreement which incorporates those matters which have been agreed and, as regards matters which have not been agreed, carries forward the relevant parts of the agreement contained in this letter. In the event that POCL does exercise its right of termination pursuant to this paragraph, it will make a payment of £150 million to ICL Pathway less the sum of £68 million referred to in Schedule 2, paragraph 1 if, at the date of such termination, the sum of £68 million has already been paid to ICL Pathway.

9. The terms of this letter shall be in full and final settlement of all claims and counterclaims which any of POCL, ICL and ICL Pathway (the "Parties") may have against any other of them under or in connection with the Related Agreements arising from or in connection with acts or events which occurred or should have occurred, or statements that were made on or prior to the date of this letter (whether or not such have been made the subject of a claim or counterclaim at the date hereof). Each of the Parties hereby waives any rights whatsoever which it might have against any other Party arising from or in connection with such acts, events or statements.

Words defined directly or by reference in the Heads bear the same meaning in this letter, unless the context otherwise requires. In the event of any conflict between the terms of this letter (including its schedules), the Heads, and any of the Related Agreements, the order of precedence shall be as follows (and so that the document listed earlier prevails over the document listed later):

This letter (including its schedules)
The Heads
The Related Agreements.

Any amendment to this letter shall, to be valid, be made in writing under the hands of the signatories hereto or persons holding equivalent positions in the department, agency or company in question.

In the event of any disagreement concerning the terms of, or arising under, this letter the Heads or the Related Agreements, the Parties or such of them as are in disagreement shall negotiate in good faith to reach an amicable resolution of the matter in question, but in default of resolution within a reasonable period any relevant Party (that is a Party having a direct interest in the matter in question) may apply to the courts of England & Wales for the matter to be resolved in accordance with English law. This provision shall be without prejudice to the specific provision for the

resolution of disputes relating to Acceptance which is contained in the Heads and the provision in paragraph 8 as to the resolution of disagreements concerning terms to be included in the Codified Agreement.

For the sake of completeness please confirm your agreement to the above matters by signing the attached photocopy.

signing the attached photocopy.
Yours sincerely,
On original:
Signed for and on behalf of the Post Office Counters Ltd.
By S. J. Sweetman (signed)
Name S. J. Sweetman
Title Managing Director
On photocopy:
We hereby agree the terms of the above letter
R. Christou (signed)
for and on behalf of ICL plc
•
R. Christou (signed)
•••••••

for and on behalf of ICL Pathway Limited

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SCHEDULE 1

[The amendments in Schedule 1 have been incorporated into the POCL/ICL Heads (ref: CA991450103 (note: this is a copy of the document referred to in paragraph 2 of this letter)]

SCHEDULE 2

Payment Schedule

1. Capital Sum Payments

1.1 ICL Pathway shall be paid a Capital Sum of £480 million. The Capital Sum is to be paid in four equal Progress Payments, subject to retention described below, each to be paid upon the later to occur of (i) achieving the Completion of Roll-Out to the cumulative number of Post Offices set out below and (ii) the date set out opposite the cumulative number of Post Offices:

Cumulative number of Post Offices completed	Date
1,800	1/11/1999
6,000	1/5/2000
12,000	1/11/2000
The number of post offices to achieve CS Completion Date	1/3/2001

A further £68 million (in addition to the £480 million described above) will be paid to ICL Pathway on Acceptance of the Core System.

Retention of 25% shall be withheld from each Progress Payment.

Upon achieving approval by the Release Authorisation Board of CSR+ (as referred to in Schedule 5 of the Heads), the sums retained on the first two Progress Payments ("the First Retention Sum") shall be converted into an availability fee ("the First Availability Fee") to be paid as described below.

At the end of each calendar month following the later to occur of (i) conversion of the First Retention Sum or (ii) 1 January 2001, POCL shall pay to ICL Pathway in respect thereof an amount equal to the First Retention Sum divided by the lesser of 48 and the number of months from the date of such conversion to 31 March 2005 until the full amount of the First Retention Sum is paid.

Following the first period of three consecutive months occurring after CS Completion Date during which in each month ICL Pathway shall have achieved service levels which relate to the performance of (as opposed to the operation of) the Core System which exceed the Termination Review Thresholds (as

referred to in Schedule A8 of the Authorities Agreement) the sums retained on the third and fourth Progress Payments (the "Second Retention Sum") shall be converted into a further availability fee ("the Second Availability Fee").

At the end of each calendar month following such conversion of the Second Retention Sum, POCL shall pay to ICL Pathway in respect thereof an amount equal to the Second Retention Sum divided by the lower of 48 and the number of months from the date of such conversion to 31 March 2005 until the full amount of the Second Retention Sum is paid.

If in the event that after nine months following the CS Completion Date, completion of Roll Out (by reference to Annex 3 to Schedule 4 of the Heads as the same may have been amended through change control) has not been achieved, then retentions from the Second Availability Fee will be made to a maximum sum of £4m and will be released in full upon completion of Roll Out.

- 1.2 All Progress Payments to ICL Pathway will be made within 30 days of the date on which the Progress Payment becomes payable.
- 1.3 Subject to Clause 2.6 of this Schedule all payments to be made without set off or deduction whatsoever.
- 1.4 In the event that Acceptance of the Core System is delayed then payment of the next Progress Payment following the delay will be adjusted in accordance with paragraph 3.1 of Schedule 7 of the Heads as amended in accordance with Schedule 1 of this letter.
- 1.5 The final Progress Payment will be due on the date of completion of National Roll-Out or, if National Roll-Out has not been completed by 31/3/2001, on the CS Completion Date.
- 1.6 In the event that the Roll-Out program changes from the program set out in Annex 3 to Schedule 4 of the Heads then the relevant Progress Payments will be adjusted in accordance with paragraph 3.1 of Schedule 7 of the Heads as amended in accordance with Schedule 1 of this letter.
- 1.7 The payments assume that the following paragraphs of Schedule 7 of the Heads shall apply:
 - Paragraphs 1.1, 1.2, 1.3 and 1.5 (Infrastructure program in Post Offices)
 - Paragraph 2.1 (Training)
 - Paragraph 4.1 (In Office migration)

1.8 For the avoidance of doubt, the transition costs associated with converting existing Benefits Agency customers with cards back to order books as referred to in paragraph 7 of this letter have not been taken into account in calculating the payments.

2. Operating Payments

2.0 In addition, payments with respect to operating the Core System shall be made on a monthly basis from 1/4/2001 in accordance with the table below ("Monthly Operating Fee"). The Monthly Operating Fee shall be calculated by taking the periodic payment figure and dividing by the number of months in the period.

Period	Periodic Payment				
1/4/2001 - 31/12/2001	£63m ·				
1/1/2002 - 31/12/2002	£85m				
1/1/2003 - 31/12/2003	£87m				
1/1/2004 - 31/12/2004	£81m				
1/1/2005 - 31/3/2005	£21m				

- 2.1 If the CS Completion Date has not been achieved by 31/3/01 the Monthly Operating Fee shall be adjusted pro rata to the number of Post Offices installed relative to the number planned to be installed at the CS Completion Date provided however that Roll-Out has taken place in at least 90% of those planned to be installed. For the avoidance of doubt amounts paid pursuant to the Capital Sum include operating and maintenance costs incurred prior to 1 April 2001.
- 2.2 The payments assume an RPI of 2.5% from the date of this letter until 31/3/2005. In the event that RPI is not equal to 2.5% over this period, the payments will be adjusted to take into account the actual rate.
- 2.3 The parties acknowledge that the Monthly Operating Fees include:
 - (i) a Transaction volume cost element of 7% of the amount in the table above, which is based upon the Transaction volume forecast as set out in Annex 4 to Schedule 4 of the Heads for the period up to 31/03/2005; and

(ii) an Outlet cost element of 32% of the amount in the table above, which is based upon the parties' intention that Pathway will roll out the Core System to 18,573 Outlets.

The amount of the Transaction volume cost element shall be adjusted for each month by the proportion of the actual Transaction volume (calculated in accordance with Annex 1 to Schedule 4 of the Heads) to the Transaction volume forecast in the month in question, and the Outlet cost element will be adjusted for each month by the proportion which the actual number of Outlets to which services are being provided during such month bears to 18,573.

In addition, POCL shall pay for the cost of Pathway carrying out operational business change in excess of the limits set out in the Related Agreements on an incremental basis at marginal cost plus 10%.

- 2.4 The payments are based on the services comprised in the Core System Release. For the avoidance of doubt the payments assume costs relating to all aspects of the system including maintenance of the Post Office and data centre infrastructure including help desk support, all telecoms charges including line costs and usage charges, and Management Information Systems.
- 2.5 ICL Pathway will be subject to service level commitments and liquidated damages according to the Related Agreements and that these will be set off against payment. The service level commitments and liquidated damages relating to Counter Transaction Times will need to be adjusted to take reasonable account of the exclusion of BES.
- 2.6 POCL's rights to set off any sum against payments to Pathway shall be as set out by Clause 804 of the Authorities Agreement, save that POCL shall not be entitled to set off any sum due other than under this letter agreement.

24th May, 1999

POCL

and

ICL Pathway Limited

and

ICL plc

HEADS OF AGREEMENT

CA991450.103

Subject to Contract

Without Prejudice

THESE HEADS OF AGREEMENT are made the 24th day of May, 1999

BETWEEN:

- (1) Post Office Counters Ltd., whose registered office is situated at King Edward Building, King Edward Street, London EC1A 1AA;
- (2) ICL Pathway Limited whose registered office is at 26 Finsbury Square, London EC2A 1DS ("Pathway"); and
- (3) ICL plc, whose registered office is at 26 Finsbury Square, London EC2A 1DS ("ICL").

RECITALS:

WHEREAS

- 1. By Agreements each dated 15 May 1996 made between:
 - (i) Pathway, POCL and DSS (the "Authorities Agreement");
 - (ii) Pathway and the DSS (the "DSS Agreement"); and
 - (iii) Pathway and POCL (the "POCL Agreement")

as amended through change control (together "the Related Agreements"), Pathway agreed to design, develop and implement an automated system for the provision of, inter alia, benefit payment, automated payment and point of sale services at Post Offices, together with reconciliation and transaction information services for the DSS and POCL, and thereafter to operate and support such services until expiry of the Related Agreements in 2005 (the "Project").

- 2. Disputes arose between Pathway, DSS and POCL in relation to the Project.
- 3. Whilst work continued on the Project, the parties conducted frequent negotiations in relation to such disputes throughout 1998 and up to the date of these Heads, with the active involvement of HM Treasury acting as mediator and/or facilitator.
- 4. The parties agree to enter into these Heads with a view to resolving [to resolve] such disputes and continuing [to continue] with the Project on the basis hereinafter appearing (the "Updated Project").

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1. Status of Agreement

These Heads are intended to be legally enforceable.

- 2. Interpretation
- 2.1 Words and expressions used in these Heads shall unless the context otherwise requires, bear the meanings ascribed to them in Schedule 1.
- 2.2 Unless otherwise defined herein, terms defined in the Related Agreements shall have the same meanings in these Heads.
- 2.3 Unless otherwise stated herein, references to paragraphs and Schedules shall mean the paragraphs and Schedules of these Heads.
- 3. [not used]
- 4. Full and Final Settlement

The Effective Date shall be the date that this letter agreement is countersigned by ICL and ICL Pathway.

- 5. Benefit Payment Service
- 5.1 [Not used]
- 5.2 [Not used]
- 5.3 As soon as reasonably practicable ICL, Pathway and POCL shall negotiate in good faith a comprehensive agreement (the "Updated POCL Agreement") which sets out all the parties' rights and obligations in relation to the Core System, including testing, acceptance, implementation and pricing thereof and the detailed timetable applicable thereto.
- To the extent not amended by these Heads, the provisions of the Authorities
 Agreement and the POCL Agreement shall apply (save that POCL and Pathway
 release all obligations and waive all rights they may have in respect of each other
 under the Authorities Agreement and the POCL Agreement in respect of BES, PAS
 and CMS) until the Codified Agreement is entered into and shall be incorporated in
 the Updated POCL Agreement save as agreed by the parties.
- 6. Pricing

The terms as to pricing in the Updated POCL Agreement shall be in accordance with the commercial agreement set out in this letter agreement.



7. Timetable

The timetable to be contained in the Updated POCL Agreement shall be in accordance with Schedule 5.

8. Acceptance Provisions

The provisions as to Acceptance to be contained in the Updated POCL Agreement shall be in accordance with Schedule 6.

9. Commercial Matters

The Updated POCL Agreement shall make provision for certain commercial matters in accordance with Schedule 7.

- 10. [Not used]
- 11. Fujitsu Guarantee
- 11.1 ICL shall procure that Fujitsu shall upon the Effective Date provide to POCL:
 - 11.1.1 a legally binding and enforceable guarantee in the form contained in Schedule 10; and
 - 11.1.2 a legal opinion by a Japanese law firm in the form contained in Schedule 11.
- 11.2 In addition, ICL shall upon the Effective Date enter into such documentation as shall be necessary to ensure that its existing guarantees under the Related Agreements continue in force in respect of the Updated POCL Agreement.
- 12. [Not used]
- 13. Future Work
- 13.1 POCL and Pathway agree to identify and prioritise any outstanding CCNs and to raise and/or approve new CCNs, all as required to cover Outstanding Agreements to Agree and other matters, in each case relevant to the Core System Release. The parties shall use all reasonable endeavours to achieve approval of all such CCNs so as not to delay Acceptance of the Core System Release.
- 13.2 POCL shall, in a timely fashion, discharge any outstanding Contracting Authorities obligations as referred to in Schedule B05 of the Authorities Agreement and Schedule A16 of the POCL Agreement ("CARS"), including "ongoing" CARs relevant to the Core System Release and the Updated POCL Agreement.

- - 14. [Tripartite Agreement
 - 14.1 [Not used]
 - 14.2 The parties hereto shall use all reasonable endeavours to enter into the Updated POCL Agreement as soon as reasonably practicable.
 - 14.3 The Updated POCL Agreement will replace the Authorities Agreement and the POCL Agreement in their entirety.
 - 15. [[Not used]
 - 16. Miscellaneous
 - 16.1 Confidentiality

Each party agrees to keep confidential and not to disclose to anyone else the existence or the terms of this document or the negotiations relating thereto (together "Confidential Information").

Notwithstanding the above, any party may disclose Confidential Information

- (A) if and to the extent required by law;
- (B) if and to the extent that the other parties have given prior written consent to the disclosure;
- (C) to its professional advisers;
- (D) to the extent requested by H.M. Government;
- (E) 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 paragraph);
- (F) to the Post Office;
- (G) to Fujitsu;
- (H) potential arrangers of funding for the Project or the Updated Project; or
- (I) if and to the extent reasonably necessary to be disclosed for the purpose of arranging and maintaining funding generally for ICL and/or Pathway.

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 paragraph, mutatis mutandis.

16.2 [Announcements and Publicity

[No public announcement or public circular (including a media release) relating to the subject matter of these Heads 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.]

[to be confirmed by HMT.]

16.3 No Representation

Each of the parties acknowledges that in entering into these Heads 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 these Heads. 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.

16.4 [Severability

If any of the provisions of these Heads 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.]

16.5 [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.]

16.6 [Governing Law and Jurisdiction

These Heads are governed by and shall be interpreted in accordance with English Law and the parties submit to the exclusive jurisdiction of the English Courts.]



16.7 Headings

The headings in these Heads shall not affect its interpretation.

16.8 Singular/Plural

Throughout these Heads, whenever required by the context, the use of the singular shall be construed to include the plural, the use of the plural shall be construed to include the singular and the use of any gender shall include all genders.

16.9 Schedules

The Schedules to these Heads and the annexes to the Schedules constitute an integral part hereof.

Signed for and on behalf of POST OFFICE COUNTERS LTD

Ву:	Date:
Name:	
Title:	
	,
Signed for and on behalf of ICL PLC	
Ву:	Date:
Name:	
Title:	
Signed for and on behalf of ICL PATHWAY LII	MITED
*	
Ву:	Date:
Name:	
Title:	

SCHEDULE 1

Definitions

Acceptance the meaning given to it in paragraph 2.1 of Schedule 6

BA the Benefits Agency

Banking Act the Banking Act 1987

Benefit Payment the benefit payment service described in Schedule 3
Service or BPS

Commercial Director means the Director, Commercial and Legal Affairs of ICL or his successor from time to time

Core Observation the meaning given to it in paragraph 1.2(a) of Schedule 5
Period

Core System and Core the meanings given to them in paragraph 1.1 of Schedule 5 System Release

Counter Equipment the PCs, printers, screens, local area network and other equipment installed by Pathway in Post Offices for the provision of the POCL Services, OBCS, LFS and BPS

CS Completion Date the meaning given to it in paragraph 5 of Schedule 8

Development Phase the phase specified in paragraph 2.2.3 of Schedule 5

DSS

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 Security for Northern Ireland

Effective Date the meaning given to it in paragraph 4 of these Heads

FSA the Financial Services Authority

Managing Director of the meaning given to it in Schedule 9 POCL

Modern Government [the government services as described in the White Paper dated

Q

] entitled: [

Network Banking Service the meaning given to it in paragraph 4 of Schedule 5

PIN

personal identification number

POCL

(except in Schedule 9, where it bears the definition contained in that Schedule) Post Office Counters Ltd., whose registered office is situated at King Edward Building, King Edward Street, London EC1A 1AA, or such other subsidiary of the Post Office as may be nominated from time to time to take over the rights and obligations of Post Office Counters Ltd. under the Updated POCL Agreement

]]

Post Office

the statutory corporation so named and formed under the Post

Office Act 1969 (as amended)

PPP Heads

the heads set out in Schedule 9

Release

any of the software releases referred to in Schedule 5

Release Authorisation

Board

in relation to any Release, a meeting of Pathway and POCL chaired by the POCL Horizon Programme Director to review readiness

reports and decide whether that Release should go into live

operation

Scorecard

the meaning given to it in paragraph 4.2 of Schedule 4

SSA

Social Security Agency of the Northern Ireland Office

Tripartite Agreement

the meaning given to it in paragraph 14.1 of these Heads

Updated POCL Agreement

the meaning given to it in paragraph 5.3 of these Heads

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SCHEDULE 2

[INTENTIONALLY LEFT BLANK.]

[This schedule of conditions has been deleted but not blacklined.]

SCHEDULE 3

[INTENTIONALLY LEFT BLANK.]

[Schedule 3 and its annexures which related to the Benefit Payment Service have been deleted but, for ease of reading, not blacklined.]

SCHEDULE 4

Pricing

[Schedule 4 (excluding annexes) has been deleted but not blacklined. Wording is based on Schedule 2 of the Letter Agreement to be inserted.]

ANNEX 1 TO SCHEDULE 4

Transaction Metrics for Charges

It is proposed that transactions should be counted for charging purposes according to the following rules. The default is that 1 customer-facing transaction in reference data = 1 chargeable transaction. The following are the main exceptions:

<u>Transaction items</u>: 1 chargeable transaction per transcash item. For the avoidance of doubt, there will be no chargeable transaction associated with the fee payable on the transcash item.

<u>Postal orders</u>: I chargeable transaction per customer session, regardless of number of postal orders sold. For the avoidance of doubt, there will be no chargeable transaction associated with the fee(s) payable on the postal order(s). Where postal stamps are sold to make up the odd amount of a postal order value (e.g. the 27p of a postal order of value £35.27), these stamps will be counted as a chargeable transaction in accordance with the metrics for postal stamps (see below).

<u>Phone cards</u>: Sales of phone cards of the same denomination to be rolled up within a customer session. For example, if a customer buys $2 \times £2.00$ cards this would be 1 chargeable transaction; however if the customer buys $1 \times £2.00$ and $1 \times £5.00$ cards this would be 2 chargeable transactions.

Saving stamps: 1 chargeable transaction per client, per customer session regardless of the quantity and combination of saving stamp values sold. For example, if a customer buys 1 x £2.00 and 2 x £5.00 British Gas saving stamps and 2 x £2.00 BBC licence stamps this would result in 2 chargeable transactions.

Postage stamps: Sales of postage stamps within a customer session to be rolled up into 1 chargeable transaction regardless of quantity and combinations of stamps sold. For the avoidance of doubt, postage stamps includes definitive and special issue stamps of all values, stamp books and postage-paid stationery. It does not include other postal products such as datapost or special delivery. For example, if a customer buys 2 x 1st class, 42p of other postage, 3 x stamp books (10 x 2nd class) and a book of 10 x 1st class stamps, this would be 1 chargeable transaction.

Because it is recognised that the volumes of postage stamp sales in the Workload Brief is subject to statistical uncertainty in deriving the average value of transactions, the charges will if necessary be adjusted retrospectively as follows:

• The actual average value of stamp sales per transaction will be calculated by dividing the total value of stamp sales recorded on Horizon by the number of customer sessions in which stamp sales were recorded.

- The intended average value of stamp sales will be calculated as £2.51 multiplied by the average RPI for the relevant invoicing year and divided by the average RPI for the year ending February 1996.
- The adjusted amount payable for postage stamp sale transactions will be calculated by multiplying the charges by the actual average value and dividing by the intended average value, any under or over payment will be included as an adjustment to the next monthly invoice.
- This adjustment will be calculated annually during the roll-out, and a final
 adjustment factor, to apply in all subsequent years, will be calculated at the end of
 the first full invoicing year following completion of roll-out.

Retail items sold over the post office counter: Charged as 1 transaction per line, i.e. 1 item of each of 2 different lines = 2 transactions, 2 of the same line = 1 transaction.

Entry of sales not transacted through Horizon: i.e. postshop, vending, lottery etc. Charged as 1 transaction per batch entry for each product (e.g. 60 lottery ticket sales and 60 vending items = 2 transactions).

<u>Reversals</u>: Where transactions are subsequently reversed, the transaction itself will be chargeable as usual, the reversal will not be chargeable, and any related fresh transaction will be chargeable.

<u>Use of scales</u>: Each price look-up for postage items using the scales link or by manually keyed input will incur a transaction charge for the EPOS Scales transaction in the Day 1 scorecard (scoring under Terminal, EPOS, Scales, SIS batch and no other columns) unless the counter clerk aborts the transaction without proceeding to a subsequent stamp sale transaction. These scales transactions will only be initiated by the clerk selecting them from the screen or keyboard, and will not be initiated by customers placing items on the scales without clerk intervention.

Premium Mails Services: Each item requiring separate entry will count as 1 transaction (e.g. posting 3 datapost packages which require separate recording). Where items are entered as multiples (e.g. posting 2 parcels of the same weight with recorded delivery to the same zone) these will count as a single transaction.

Scales, premium services, and postal order transactions are additional to any related sale of postage stamps, but no more than 1 postage stamp sale will be recorded per customer session regardless of the use of those stamps.

ANNEX 2 TO SCHEDULE 4

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ANNEX 3 TO SCHEDULE 4

Rollout Profile

	,
Dates	Number of Post Offices
23/08/99	- 20
30/08/99	40
06/09/99	60
13/09/99	90
20/09/99	160
27/09/99	180
04/10/99	200
11/10/99	200
18/10/99	
	200
25/10/99	200
01/11/99	200
08/11/99	200
15/11/99	200
22/11/99	200
29/11/99	0
06/12/99	0
13/12/99	0
20/12/99	0
27/12/99	0
03/01/00	0
10/01/00	
17/01/00	180
	250
24/01/00 .	301
31/01/00	334
07/02/00	334
14/02/00	334
21/02/00	334
28/02/00	334
06/03/00	334
13/03/00	334
20/03/00	334
27/03/00	334
03/04/00	334
10/04/00	334
17/04/00	334
24/04/00	334
01/05/00	334
08/05/00	
15/05/00	
	334
22/05/00	334
29/05/00	334
05/06/00	334
12/06/00	334
19/06/00	334
26/06/00	. 334
03/07/00	334
10/07/00	334
17/07/00	334
24/07/00	334
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31/07/00		334			
07/08/00		334			
14/08/00		334			
21/08/00		334			
28/08/00		334			
04/09/00		334			
11/09/00		334			
18/09/00		334			
25/09/00		334			
02/10/00		334			
09/10/00		334			•
16/10/00		334			
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Annex 4 to Schedule 4

Transaction Volumes

	Year Commencing												
Millions	April 1	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Orderbook Transactions		789.4	775.8	749.8	696.8	611.6	251.9	7.3	0.0	0.0	0.0	0.0	0.0
Girocheque Transactions		52.0	52.0	52.0	48.9	43.9	18.4	0.5	0.0	0.0	0.0	0.0	0.0
OBCS	•	7.9	154.0	353.0	627.0	588.1	242.1	7.0	0.0	0.0	0.0	0.0	0.0
EPOSS			C						1				
APS			ι						J [°]				

[Forecast transaction volumes for EPOSS and APS to be inserted as set out in the Workload Compendium adjusted to reflect reduced footfall in post offices resulting from the elimination of the Benefit Payment Card]

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SCHEDULE 5

Timetable

Core System Release

1.1 Definitions

- 1.1.1 The Core System means the core POCL services for the POCL Infrastructure, EPOSS, OBCS and APS, each as defined in the Release Contents Description for NR2 (CCN 251). It does not cover APS for Post Office Smartcards. The POCL services for BES and the BA services for CMS and PAS required to support the benefit payment card, originally in NR2, are not used in the Core System and the BES software code shall be stripped out of NR2 at no additional cost to POCL.
- 1.1.2 The Core System Release means the release of the Core System.
- 1.2 Key Dates for Core System Release

The dates are:

- (a) Core Observation Period to commence 31.5.99 and last for 8 weeks.
- (b) Acceptance Phase to be completed by 16.8.99
- (c) Release authorisation to take place by 23.8.99
- (d) National rollout to commence by 23.8.99
- (e) National rollout to be completed by 30.4.2001
- (f) Final deadline for Acceptance to be 15.11.99
- 2. [Not used]
- 3. Pathway Release Plan Summary
- 3.1 Core System Release (CSR)

As described above this Release is subject to Acceptance and Release authorisation (as referred to in paragraph 4(ii) of Schedule 6) prior to commencement of national Roll-out.

3.2 CSR+

CSR+ will contain the POCL Services for APS (Smart) for Quantum and Watercard (each as defined in Requirements 543(b) and 543(f) in Schedule A15 of the POCL Agreement and the related solution in Schedule A16 of the POCL Agreement) and the Logistics Feeder Service (LFS) (as defined in CCN249a). This release is subject to Release authorisation only and is currently planned for April 2000.

- 3.3 [Not used]
- 3.4 [Not used]
- 3.5 [Not used].

3.6 Further Releases

Further releases of Core System software shall be provided by Pathway (by way of upgrades to CSR and/or CSR+) either:

- on the basis of appropriate time and material charges (as set out in paragraph 20.1 of Schedule A06 of the Authorities Agreement which shall be expanded to include Pathway's rates for senior management and consultants and to clarify that all expenses directly incurred by Pathway in connection with such further releases shall be paid by POCL) which shall be invoiced monthly in arrears; or
- for a fixed price to be agreed (on payment terms to be agreed), which shall not be audited

as elected by POCL provided that payment is made by POCL within 30 days of receipt of invoice and any such further releases are introduced through the change control process set out in the Related Agreements.

4. [Not used]

SCHEDULE 6

Acceptance

- 1. Acceptance Testing
- 1.1 There will be an acceptance procedure in respect of the Core System Release (the "Acceptance Phase").
- 1.2 In respect of the Acceptance Phase there will be agreed:-
 - (i) a set of acceptance criteria;
 - (ii) a set of acceptance specifications;
 - (iii) a set of acceptance tests;
 - (iv) an acceptance timetable including, inter alia, a Core Observation Period;
 - (v) a Final Deadline for Acceptance; and
 - (vi) an Operational Trial Review Period (being the three week period immediately following the end of the Core Observation Period)

The timetable and dates referred to in this paragraph shall be consistent with those in Schedule 5.

- 1.3 [Not used]
- 2. Requirements for Acceptance
- 2.1 Subject to any extension pursuant to paragraph 2.4 of Schedule 6, acceptance ("Acceptance") will occur in respect of the Acceptance Phase once:-
 - (i) the acceptance tests referred to in paragraphs 1.2(iii) and 2.3 of Schedule 6 have been carried out successfully;
 - (ii) the Core Observation Period and the Operational Trial Review Period have expired;
 - (iii) the thresholds referred to in paragraph 2.2 of Schedule 6 have been met as at the end of the Core Observation Period taking into account all substantive faults raised by POCL beyond those defined in the Acceptance Specifications, as described in Paragraph 2.9 of Schedule A7 of the Authorities Agreement (6.1(d) faults); and

(iv) a timetable has been agreed between the parties to resolve all outstanding category B faults

in each case in respect of the Acceptance Phase.

- 2.2 The thresholds will not be met if in respect of the Acceptance Phase there are:
 - (i) one or more high severity deficiencies (also known as category A faults);
 - (ii) more than 20 medium severity deficiencies (also known as category B faults);
 or
 - (iii) more than 10 medium severity deficiencies in respect of any one Acceptance Specification

provided always that it is acknowledged that if an acceptance test is repeated following corrective work by Pathway, POCL shall have the right to test for and raise new faults which may be caused by that corrective work or may come to light only as a result of that corrective work.

- 2.3 It is agreed that, notwithstanding the provisions of paragraph 2.1 of Schedule 6, if at the end of the Core Observation Period all Acceptance Tests have been carried out and the thresholds referred to in paragraph 2.2 of Schedule 6 have not all been met, POCL shall permit Pathway to repeat the relevant Acceptance Tests in the two week period following the end of the Core Observation Period provided that POCL is given sufficient opportunity to review the results of such Acceptance Tests to its reasonable satisfaction prior to the end of the Operational Trial Review Period.
- 2.4 Subject to paragraph 2.2 of Schedule 6, once all Acceptance Tests have been successfully carried out and the Core Observation Period has expired in relation to any Acceptance Phase, no new faults may be raised for that Acceptance Phase. For this purpose, a "new fault" is a fault which had not occurred before the end of the relevant Core Observation Period and does not include faults which occurred before the end of the Core Observation Period but were not reported until after that date, POCL shall report to Pathway a an Acceptance incident within seven days of the relevant POCL test manager identifying or being notified of the same.
- 2.5 If, at the end of the Acceptance Phase the parties do not agree as to whether the Core System Release should be accepted, the provisions of paragraph 7 of Schedule 6 shall apply.
- 3. Consequences of failure to Achieve Acceptance
- 3.1 If Acceptance is not achieved in respect of the Acceptance Phase at the end of the Operational Trial Review Period Pathway shall be entitled to a period of three months in which to remedy the defaults, which (subject to paragraph 7.7 of Schedule

- 6) it shall do at its own expense. Upon the expiry of that period, or at such earlier date as the parties shall agree, the relevant Release shall be re-submitted in its entirety for acceptance testing (the "Second Acceptance Test").
- 3.2 If Acceptance is not successfully achieved at the end of the Second Acceptance Test then POCL shall have the right to terminate the Updated POCL Agreement, but without prejudice to all other remedies available to POCL under the Updated POCL Agreement and otherwise and without prejudice to paragraph 3.4 of Schedule 6.
- 3.3 [Not used]
- 3.4 Schedule C5 of the Authorities Agreement (liquidated damages to a maximum of 13 weeks of delay) shall apply on failure to achieve Acceptance of the Core System Release by 30th September, 1999 or failure to achieve the CS Completion Date by 31st March, 2001 (as such date is adjusted to reflect any delay in Acceptance), where either such failure is due to Default by Pathway (save that all such liquidated damages shall be payable to POCL).
- 3.5 If Acceptance of the Core System Release has not been achieved by the Final Deadline for Acceptance in respect of the Acceptance Phase then POCL shall be entitled to serve a notice upon Pathway under this paragraph, whereupon Pathway shall be deemed to have failed the Second Acceptance Test in respect of that Acceptance Phase in accordance with paragraph 3.2 of Schedule 6.
- 4. Consequences of Achieving Acceptance in Respect of Core System Release

Upon Acceptance of the Core System Release the Release authorisation Board shall decide whether or not to authorise national rollout of the Core System.

- 5. [Not used]
- 6. Appointment of Expert
- 6.1 The parties have agreed to appoint an expert (the "Expert") as soon as reasonably practicable to assist in resolving disputes relating to acceptance.
- 6.2 The Expert shall be Peter Copping of PA Consulting or, if he has a conflict of interest or is unavailable, such other partner of PA Consulting as shall be:
 - (i) qualified to resolve such disputes;
 - (ii) independent of both parties; and
 - (iii) approved by both parties, such approval not to be unreasonably withheld.

- 6.3 In the event that no other partners of PA Consulting shall be available and meet the criteria in paragraphs 6.2(i) and (ii) of Schedule 6, the Expert shall be appointed at the request of POCL or Pathway by the President for the time being of the Institute of Electrical Engineers so long as such appointee shall meet the criteria in paragraphs 6.2(i) and (ii) of Schedule 6.
- 6.4 The Expert shall act as an expert and not an arbitrator and his fees shall be borne by the parties in equal shares.

7. Acceptance Disputes

- 7.1 If paragraph 2.6 of Schedule 6 applies and/or POCL and Pathway do not agree on:
 - (i) the Acceptance Specifications for the Core System Release;
 - (ii) whether an event or occurrence is an Acceptance Incident; or
 - (iii) the assigned severity of an Acceptance Incident;

the parties will refer such dispute (the "Dispute") to the Expert to obtain initial guidance. The parties do not expect that the identification and notification of the Dispute, reference of the Dispute to the Expert and obtaining his initial guidance should take longer than seven days.

- 7.2 Once the Expert has given to the parties his initial guidance on the Dispute, the Managing Director of POCL and the Commercial Director of ICL shall meet and attempt to resolve the Dispute with the advice and guidance of the Expert.
- 7.3 If the Dispute is not resolved during the meeting pursuant to paragraph 7.2 of Schedule 6, then the Expert shall be required to make a decision (the "Decision") as to how the Dispute should be resolved.
- 7.4 Once the Decision has been made, the Managing Director of POCL and the Commercial Director of ICL shall meet to review and respond to the Decision.
- 7.5 The Decision shall be binding unless vetoed by POCL in accordance with paragraph 7.6 of Schedule 6.
- 7.6 POCL may veto the Decision if:
 - (a) POCL disagrees with the Decision and provides to Pathway written reasons for such disagreement; and
 - (b) asserts a Veto Ground (as defined in paragraph 7.8 of Schedule 6).

- 7.7 If POCL vetoes the Decision, the Managing Director of POCL and the Commercial Director of ICL shall meet and attempt to resolve the Dispute. If they fail to resolve the Dispute within three working days of either party requesting a meeting for that purpose then the Chief Executives of the Post Office and of ICL shall meet and attempt to resolve the Dispute. However, unless and until otherwise agreed, the veto will stand.
- 7.8 Each of the following shall be a Veto Ground, namely if the issue:-
 - materially affects POCL's ability to settle with clients in a timely and accurate way;
 - (ii) materially affects POCL's ability to transact with sub-postmasters in a timely and accurate way;
 - (iii) is likely to materially and adversely affect POCL customers in areas covered by service level agreements;
 - (iv) materially affects critical operational processes necessary for the running of POCL;
 - (v) materially compromises the integrity of Post Office accounting systems; or
 - (vi) is likely to lead to the qualification of Post Office Accounts or those of its subsidiary companies.
- 7.9 If POCL vetoes a Decision and that Decision was in favour of Pathway then subparagraph 3.1 of Schedule 6 shall apply save that the direct costs of and associated with such extra work as shall be required as a consequence of the exercise of the veto shall be dealt with in accordance with paragraph 7.10 of Schedule 6. If, but for POCL vetoing a Decision in favour of Pathway, acceptance would have been achieved, and the acceptance test in question was the Second Acceptance Test, it shall be deemed to have been the first.
- 7.10 The direct costs of and associated with the extra work referred to in paragraph 7.9 of Schedule 6 shall initially be borne by POCL. However, POCL shall be entitled to refer the Expert's decision in relation to the Dispute to an arbitrator in accordance with paragraphs 7.11 and 7.12 of Schedule 6. If the arbitrator rules in favour of POCL in respect of the Dispute then Pathway shall, within seven days of the arbitrator's decision, refund to POCL the amount so borne by POCL, together with interest thereon from the date when the Dispute was referred to the arbitrator until the date of payment thereof at a commercial rate determined by the arbitrator.
- 7.11 Any matter referred to arbitration by POCL pursuant to paragraph 7.9 of Schedule 6 shall be finally settled under the Rules of Arbitration of the International Chamber of

Commerce ("ICC") by one arbitrator appointed in accordance with the said rules (or under such other arbitration procedure as the parties shall agree).

7.12 The place of arbitration shall be London, the governing law of the arbitration shall be English and the language of the arbitration shall be English.

SCHEDULE 7

Commercial Matters

- 1. Infrastructure programme in post offices
- 1.1 In respect of the cost of site preparations in and modifications to post offices Pathway and POCL have agreed (i) a budget and contributions thereto and (ii) the allocation of responsibility as to which party is to bear the cost of actual costs exceeding budget costs as set out in Annex 1 to this Schedule.
- 1.2 In addition Pathway will provide flat screens in all non-crown post offices for no additional charge.
- 1.3 The reasonable costs of maintaining power supply at National Lottery node post offices are to be borne by Pathway.
- 1.4 [Not used]
- 1.5 POCL shall use its reasonable endeavours to assign to Pathway its rights and obligations under the contract with BT in relation to ISDN lines.
- 2. Training
- 2.1 Pathway shall provide training for POCL staff and sub-postmasters in the use of the Core System in accordance with CCN 286(c), as modified to take account of the removal of the benefit payment card and to provide POCL with training to a value equivalent to the costs saved under CCN 286(c) as a result of the removal of the Benefit Payment Card.
- 2.2 [Not used]
- 3. Rollout delays
- 3.1 If Acceptance or Rollout of either the Core System or the Benefit Payment Service is changed or delayed from the agreed procedure and/or timetable:
 - 3.1.1 to the extent that such change or delay is caused by
 - (i) the Default of POCL;
 - (ii) [Not used]
 - (iii) [Not used]
 - (iv) [Not used]

Pathway will be entitled to a time and cost adjustment to compensate for such change or delay.

- 3.1.2 [Not used]
- 3.1.3 to the extent that compensation is not payable by POCL under paragraphs
 3.1.1 of Schedule 7 or liquidated damages are not payable by Pathway under paragraph 3.4 of Schedule 6, such costs will lie where they fall.
- 3.2 In the event of any such change or delay as referred to in paragraph 3.1 of Schedule 7 then for the purpose of determining and resolving to what extent each party is at fault (if at all) and the time and cost adjustment applicable the following procedure will apply:
 - 3.2.1 within seven days of a request by either of them, the Managing Director of POCL (or any equivalent executive) and the Commercial Director of ICL shall meet to resolve these issues. In the event that these issues are not resolved to the satisfaction of both parties in so meeting then;
 - 3.2.2 within seven days of a request by either of them, the Chief Executive of the Post Office and the Chief Executive Officer of ICL shall meet to resolve these issues. In the event that these issues are not resolved to the satisfaction of both parties in so meeting then;
 - 3.2.3 the Chief Executive of the Post Office and the Chief Executive Officer of ICL shall together decide how any remaining dispute should be resolved, whether by reference to binding expert determination, mediation, arbitration, or such other means as agreed upon by both parties.
- 4. In office data migration
- 4.1 POCL will be responsible for delivery of in office data migration and the parties shall work together in good faith and use all reasonable endeavours to complete by 30th June, 1999 the specification for such delivery (such specification to be based on the existing draft sub-contract) and service levels associated with such delivery. In return Pathway will grant to POCL an aggregate discount of £5 million from its fees, phased over time in proportion to the number of post offices in which the Core System is installed.

[Parties to consider issue relating to provision of laptops and training.]

- 4.2 [Not used]
- 5. [Not used]
- 6. [Not used]

29

7. [Not used]

ANNEX A TO SCHEDULE 7

Management of Site Preparation and Modification Costs

Pathway Responsibilities

Pathway will be responsible for all site preparation and modification costs (the "infrastructure programme") other than those covered by the POCL contributions pursuant to paragraph 2 of this Annex and for which POCL is to be responsible pursuant to paragraph 3 of this Annex.

In this Annex, "Modified Total Infrastructure Costs" means the total costs incurred under the infrastructure programme (excluding payments made or to be made by POCL pursuant to paragraph 3 of this Annex).

2. Contributions

- 2.1 Of the first £34 million of the Modified Total Infrastructure Costs, Pathway will pay £29 million and POCL will pay £5 million.
- 2.2 The £5 million which POCL is required to pay pursuant to paragraph 2.1 of this Annex is to be phased over time in proportion to the number of post offices made ready for installation. Pathway and POCL acknowledge that of this £5 million, £512,267 has been allocated to meeting the costs of aborts, suspends and revisits, relating to site preparation and surveys at any post office, and £39,147 has been allocated to meeting the costs of out of hours work for standard sub-post offices (excluding the 100 largest standard sub-post offices) relating to site preparation and modifications, together totalling £551,414.00.
- 2.3 If the agreed forecasts of the Modified Total Infrastructure Costs exceed £34 million, POCL will pay the next £4 million, such payment to be phased pro rata to the number of post offices installed.
- 2.4 If the Modified Total Infrastructure Costs exceed £38 million POCL and Pathway will determine the approximate number of weeks which will be required to complete the infrastructure programme, and POCL will pay a further £1 million on a weekly basis evenly over the period so determined for the forecast completion of the infrastructure programme.
- 2.5 If, on the CS Completion Date, the Modified Total Infrastructure Costs are:
 - 2.5.1 less than or equal to £34 million, Pathway will pay POCL by way of refund £4 million;

- 2.5.2 greater than £34 million but less than or equal to £38 million, Pathway will pay POCL by way of refund an amount equal to £38 million less the Modified Total Infrastructure Costs;
- 2.5.3 greater than £38 million but less than or equal to £39 million, Pathway will pay to POCL by way of refund an amount equal to £39 million less the Modified Total Infrastructure Costs; and
- 2.5.4 greater than £39 million, Pathway will not be obliged to make a payment to POCL by way of refund in respect of the Modified Total Infrastructure Costs.

Any payment to be made by Pathway to POCL pursuant to this paragraph shall be made within 30 days of the CS Completion Date.

3. POCL Excess Costs

Pathway shall keep and make available appropriate records to verify:

- (a) those costs of the infrastructure programme which are to be borne by POCL; and
- (b) Pathway's forecasts of the Modified Total Infrastructure Costs referred to in paragraph 2.3 of this Annex.

3.1 Electrical work

In accordance with Annex 4 to Schedule A06 of the Authorities Agreement, Pathway shall bear the costs of the electrical work for new distribution boards and earthing in post offices in the first 10,000 post offices in which there is a requirement for such distribution board or earthing work to be carried out. Thereafter POCL shall bear such costs. [Without prejudice to POCL's obligation to bear such costs, an estimated cost to POCL of £1.1 million for such work has been derived from an estimate that such work will be required in altogether 14,273 post offices and that such work in the final 4,273 of such post offices will cost on average £257 per post office.]

Also in accordance with Annex 4 to Schedule A06 of the Authorities Agreement, POCL shall be liable to reimburse Pathway any payments made to regional electricity boards to carry out final connections to the power supply at any post offices.

3.2 Cost thresholds

3.2.1 In respect of any post office to be modified, where the estimated cost of modification work (excluding site preparation work) does not exceed the threshold (the "Cost Threshold") for that post office set out below based on the number of counter positions in that post office:

- (i) one counter position £2,500 per counter;
- (ii) two counter positions £1,800 per counter; and
- (iii) three or more counter positions £1,200 per counter

then Pathway shall carry out the modification work in accordance with the timetable set out in Annex 3 to Schedule 4.

- 3.2.2 In respect of any post office to be modified, where the estimated cost of modification work (excluding site preparation, survey and re-survey work) exceeds the Cost Threshold for that post office then:
 - (a) Pathway shall promptly notify in writing to POCL of the Financial Accounting Division ("FAD") code, the name and the location of that post office, the number of counter positions at that post office and the estimated cost of modification work and a scope of the proposed works; and
 - (b) Pathway shall not carry out any modification work for that post office without the prior written consent of POCL pursuant to paragraph 3.2.3 of this Annex and on receipt of such consent shall carry out the type of modification specified by POCL.
- 3.2.3 Following receipt by POCL of a written notice from Pathway pursuant to paragraph 3.2.2(a) of this Annex, POCL shall, in respect of a post office with:
 - (a) four or more counter positions, determine whether or not to modify that post office, and what modifications are to be carried out within the scope of modifications to which the estimated costs relate;
 - (b) exactly three counter positions, determine whether that post office is
 - be relocated to new premises which or refurbished by POCL or its sub-contractors so that such refurbished premises, shall require no modifications and not more than standard site preparation;
 - (ii) have its number of counter positions reduced to two; or
 - (iii) be modified as is; and

- (c) exactly one or two counter positions, determine whether that post office is to be:
 - (i) closed;
 - (ii) relocated to new premises or refurbished by POCL or its subcontractors so that such refurbished premises, shall require no modification and not more than standard site preparation; or
 - (iii) modified as is

and notify Pathway of such decision in accordance with paragraph 3.2.4 of this Annex.

- 3.2.4 In the case of a post office which POCL wishes to be dealt with in accordance with:
 - (a) paragraphs 3.2.3(a), 3.2.3(b)(ii), 3.2.3(b)(iii) or 3.2.3(c)(iii) of this Annex, POCL shall use its reasonable endeavours to notify Pathway of such decision within four working days of the date of receipt by POCL of the notice relating to that post office from Pathway pursuant to paragraph 3.2.2(a) of this Annex. If POCL does not notify Pathway within such notice period, POCL shall be liable to Pathway for the additional costs which Pathway shall have incurred solely as a result of modification work at that post office being done later than had been originally scheduled but excluding all costs arising out of Pathway failing to notify promptly POCL pursuant to paragraph 3.2.2(a) of this Annex; and
 - (b) paragraphs 3.2.3(b)(i), 3.2.3(c)(i) or 3.2.3(c)(ii) of this Annex, POCL shall provide Pathway with [sufficient notice as is consistent with the operational requirements of the infrastructure programme].
- 3.2.5 In respect of post offices to which paragraph 3.2.2 of this Annex applies, the parties have assumed that:
 - (a) all four counter position post offices will be modified;
 - (b) the numbers of three counter position post offices modified pursuant to each sub-paragraph of paragraph 3.2.3(b) of this Annex shall be equal; and
 - (c) the numbers of one or two counter position post offices modified pursuant to each sub-paragraph of paragraph 3.2.3(c) of this Annex shall be equal.

3.2.6 POCL shall bear those reasonable costs in respect of the post offices to be modified which exceed the Cost Threshold. POCL shall also bear those reasonable costs that may arise and shall benefit from any savings that may arise as a result of any of the assumptions in paragraph 3.2.4 of this Annex being incorrect. Any such benefit shall be credited to POCL in the invoice for the calendar month in which the POCL decision giving rise to that benefit shall have been made.

3.3 Aborts, Suspends and Revisits and Out of Hours Work at Standard Sub-Post Offices

- 3.3.1 Of the costs of site preparation aborts, suspends and revisits at any post office, and the costs of out-of-hours work at standard (i.e. non-franchise) sub-post offices (excluding the 100 largest standard sub-post offices), which exceed £551,414 as referred to in paragraph 2.2 POCL shall bear such of those costs as are specified in paragraph 3.3.2 of this Annex.
- 3.3.2 The costs referred to in paragraph 3.3.1 of this Annex which are to be borne by POCL are:
 - (a) the costs of aborts, suspends or revisits which are caused by POCL or its sub-postmasters or franchisees and are recorded as such on the implementation programme database;
 - (b) that proportion of the cost of aborts, suspends or revisits based on the extent of responsibility of POCL to the overall responsibility as agreed by POCL and Pathway, or failing such agreement as agreed by the Programme directors of POCL and Pathway, or failing such agreement POCL and Pathway will bear such costs equally. POCL will not be responsible for the costs of the suspension of offices that are classified as no fixed counters ("NFC"); and
 - (c) the cost of out-of-hours work due to any standard sub-post office (other than the 100 largest standard sub-post offices) not permitting continuous access between 8.00 a.m. and 6.00 p.m. on weekdays (excluding bank holidays) or does not permit work to be done in accordance with the document "Mitigating Disruption in Post Offices During Preparation Activities", ref IM/STR/057 version 1.0 dated 19.04.99.

3.4 Other excess site preparation costs

POCL shall bear those costs of out of hours work and revised (at POCL's request) processes as compared with what is stated in the document "Mitigating Disruption in Post Offices During Preparation Activities", ref IM/STR/057 version 1.0 dated 19.04.99 [copy to be initialled for

identification]) for site preparation for the 100 largest standard sub-post offices, all branch offices and franchise offices, which exceed £715,876.

SCHEDULE 8 Termination and Related Matters

1. [Not used]

1.

- 2. [Not used]
- 3. [Not used]
- 4. [Not used]
- 5. [Untitled]

"CS Completion Date" means the date by which Roll Out of the Core System has been completed to at least 99% of post offices in number and at least 99% of forecast transaction volumes as set out in Annex 4 to Schedule 4.

"Project Assets" means:

- (i) the hardware which POCL has the option to purchase under Clause 904.1.1 of the POCL Agreement; the non-exclusive licence which POCL has the right to acquire under Clause 904.1.2 of the POCL Agreement; the rights in respect of non-employment agreements which POCL is entitled to exercise under Clause 904.1.3 of the POCL Agreement; and the rights in respect of software and other items which POCL is entitled to exercise under Clause 904.1.4 of the POCL Agreement; and
- (ii) the equivalent hardware, licence and rights which DSS has the option to purchase, acquire or exercise under the equivalent terms of the DSS Agreement

in each case, to the extent that the same apply to, and are required for the operation of, the Core System.

- 6. [Not used]
- 7. [Not used]
- 8. [Not used]

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SCHEDULE 9

[INTENTIONALLY LEFT BLANK.]

[This schedule has been deleted but not blacklined.]

SCHEDULE 10

Form of Fujitsu Guarantee

THIS DEED OF GUARANTEE AND INDEMNITY is made on 1999

BETWEEN

1. FUJITSU LIMITED of [] (registered in Japan no. []) (the "Guarantor")

AND

 POST OFFICE COUNTERS LTD of King Edward Building, King Edward Street, London EC1A 1AA (registered in England no. 2154540) ("POCL", which expression includes POCL's successors and assigns).

WHEREAS

- By various agreements dated 15 May 1996 made between ICL Pathway Limited ("Pathway") POCL and the Secretary of State for Social Security ("DSS") Pathway agreed to provide certain services for the DSS and POCL ("the Project")
- Disputes arose between Pathway, the DSS and POCL in relation to the Project.
- 3. By a letter agreement (the "Agreement") dated 24 May 1999 the parties have agreed to resolve their disputes and continue with the Project on condition that Pathway procured a guarantee from the Guarantor in the terms of this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS

- The Guarantor unconditionally and irrevocably guarantees to POCL the due and punctual performance by Pathway of the Agreement and undertakes that upon demand by POCL it shall indemnify and keep POCL indemnified against all losses, damages, costs and expenses (including court costs and legal fees) which may be incurred by POCL arising out of all and any breach of the Agreement and provided always that the liability of the Guarantor shall be no greater than the liability of Pathway under the Agreement, without prejudice to Clause 10.
- 1.2 On the date of execution of the Codified Agreement, the Guarantor shall execute a guarantee in the same form as this Deed, mutatis mutandis, relating to the obligations of Pathway and shall deliver the same to POCL on that date together with a legal opinion of a Japanese law firm in a form reasonably acceptable to POCL confirming that such guarantee has been duly authorised and validly executed and that the Guarantor has the capacity to enter into an agreement governed by English law.

- 2. The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between Pathway and/or POCL without the assent of the Guarantor or by any amendment to or termination of the Agreement or by any forbearance, waiver or indulgence whether as to payment, time, performance or otherwise granted by POCL in relation thereto and the Guarantor hereby expressly consents to any and all such arrangements, amendments, terminations, forbearances or indulgences.
- 3. The indemnity set out in Clause 1 of this Deed of Guarantee is irrevocable and absolute and shall be a continuing security and accordingly it shall:
 - not be discharged by any partial performance (except to the extent of such partial performance) by Pathway of its obligations under the
 Agreement; and
 - 3.2 extend to cover the unperformed part of the obligations of Pathway from time to time under the Agreement.
- 4. The obligations of the Guarantor under this Deed of Guarantee are those of primary obligor and such obligations exist irrespective of any invalidity, illegality or unenforceability of any provision of the Agreement. POCL shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against Pathway or the Guarantor or any third party in any Court, or to make or file any claim in a bankruptcy or liquidation of Pathway or any third party, or to take any action whatsoever against Pathway or the Guarantor or any third party.
- 5. The Guarantor warrants that it is a body corporate duly organised and validly existing under the laws of Japan, with limited liability and has all power and authority to enter into and perform the obligations contemplated by this Deed of Guarantee to be performed by it and that this Deed of Guarantee constitutes its legal, valid and binding obligations.
- 6. All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising. The parties agree that payment in accordance with this Clause 6 shall not constitute a waiver of any rights or remedies that the Guarantor may have as against POCL.
- None of the liabilities or obligations of the Guarantor under this Deed of Guarantee shall be impaired or discharged by:
 - 7.1 the insolvency, administration, receivership, dissolution, winding-up, amalgamation, reconstruction or reorganisation of the Guarantor, Pathway or any other person (or the commencement of any of the foregoing), or any equivalent or analogous proceedings in whatever jurisdiction;

- 7.2 any change in the constitution of Pathway or the Guarantor; or
- 7.3 any other matter which but for this provision might operate to discharge or exonerate the Guarantor.
- 8.1 If any payment or other benefit received by POCL in relation to the obligations of Pathway pursuant to the Agreement are avoided, reduced or invalidated by virtue of any applicable law then pro tanto the Guarantor's obligations shall not be released or affected.
- 8.2 Until the obligations of Pathway pursuant to the Agreement have been fully performed:
 - (a) the Guarantor shall not without the consent of POCL be subrogated to any rights of POCL arising under the Agreement or seek to enforce repayment from Pathway by way of indemnity, or otherwise; and
 - (b) the Guarantor shall not prove or claim a dividend in the insolvency of Pathway without the consent of POCL but shall do so if directed by POCL and will hold any benefit in trust for POCL.
- 9. If any provision of this Deed of Guarantee is invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.
- 10. The Guarantor shall reimburse to POCL all costs and expenses incurred by POCL in connection with the enforcement and administration, (excluding, for the avoidance of doubt, any enforcement and administration costs incurred by POCL in enforcing or administering the Agreement as between Pathway and POCL), of all or any part of the obligations described herein, including without limitation all legal costs and disbursements and court costs.
- 11. [If the Agreement lapses in accordance with paragraph 3.2 or 14.4 thereof then this Deed of Guarantee shall also lapse, save that:
 - 11.1 this Deed of Guarantee shall not lapse in respect of any breach of the Agreement occurring on or prior to the date of lapse of the Agreement, provided that no demand may be made under this Guarantee unless notice of the proposed demand is given to the Guarantor within six months following the date of lapse; and
 - 11.2 'if the parties to the Agreement agree that, notwithstanding the provisions of paragraph 3.2 or 14.4 of the Agreement, the Agreement shall not lapse but shall continue, then the Guarantor agrees that this Guarantee shall also continue and not lapse.]

- 12. Except as otherwise expressly provided herein, any notice or other communication affecting this Deed of Guarantee from one party to the other shall be made in writing and signed by or on behalf of the other party making the notice or communication.
- Any notice or other communication which either party is required or authorised 13: by this Deed of Guarantee to give or make to the other shall be given or made by leaving it at, or by posting by ordinary prepaid first class post (airmail if overseas) or by facsimile transmission to the address of the other party in the manner referred to in the following provisions of this Clause 13. Such notice or communication shall be deemed for the purposes of this Deed of Guarantee to have been given or made on the fifth Business Day after the date of posting (for a letter), or on the Business Day following the date of transmission (for a facsimile). For the purposes of this Clause, "Business Day" shall mean any day (excluding Saturdays and Sundays) when clearing banks in the City of London are open for normal banking business.
- The Guarantor irrevocably appoints ICL plc of 26 Finsbury Square, London, EC2A 1DS to be its agent for the receipt of service of process in England. It agrees that any document may be effectively served on it in connection with proceedings in England and Wales by service on its agent, and clause 13 applies with respect to such service.
- For the purposes of Clause 13 above the address of each party shall be:-

For the GUARANTOR:

Address: [•]

Attention: [•]

Fax: [**•**]

For POCL:

King Edward Building, King Edward Street, London EC1A 1AA Address:

Attention: [•]

[•] Fax:

- Either party may change its address for service, or the person nominated to 16. receive any such notices or communication, by notice given in accordance with Clause 12 above.
- The single or partial exercise by POCL of any right, power or remedy provided 17. by law or under this Deed of Guarantee shall not preclude any other or further exercise thereof or the exercise of any other right, power or remedy.
- This Deed of Guarantee shall be governed by and construed in all respects in 18. accordance with the laws of England. Any dispute which may arise between the parties concerning this Deed of Guarantee shall be determined by the courts

of England and the parties hereby submit to the non-exclusive jurisdiction of the courts of England for such purposes.

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IN MITMESS WHEDEOF the Guarantor h	as executed this document as a deed by the
day and year first before written.	
uay and year mot belove with	
Executed as a deed)
By FUJITSU LIMITED) [Authorised signatory]
acting by [authorised signatory(ies)	
under its authority]	
	[Authorised signatory]
The common seal of	
POST OFFICE COUNTERS LTD	
was affixed in the presence of:-	
Director	
Director/Secretary	

SCHEDULE 11

Form of Legal Opinion

[On headed paper of foreign legal advisers]

To: Post Office Counters Ltd,
King Edward Building,
King Edward Street,
London EC1A 1AA

[Date]

Dear Sirs,

Introduction

- We refer to the deed of guarantee (the "Guarantee") dated [●], 1999 and made between Fujitsu Limited (the "Guarantor") and Post Office Counters Ltd ("POCL"). Under the Guarantee the Guarantor has agreed to guarantee the obligations of ICL Pathway Limited under certain agreements between ICL Pathway Limited and POCL.
- 2. Terms and expressions defined in the Guarantee have the same meanings when used in this letter.
- 3. We have acted as Japanese legal advisers to [the Guarantor/POCL] in connection with the Guarantee.
- 4. This letter sets out our opinion on certain matters of Japanese law as at today's date. We have not made any investigation of, and do not express any opinion on, any other law.
- 5. For the purposes of this letter, we have examined:
 - (A) a signed copy of the Guarantee;
 - (B) a copy of the [constitutional documents] of the Guarantor, certified as true, complete and up-to-date by [an authorised representative of the Guarantor] [name of certifying officer];
 - (C) a copy of the minutes of a meeting of the [Board of Directors] of the Guarantor held on [], 1999 certified to be a true copy and

- as being in full force and effect by [an authorised representative of the Guarantor] [name of certifying officer];
- (D) the [commercial register], including the [commercial register] files, relating to the Guarantor maintained by [court or administrative agency located at the place of legal domicile or incorporation of the Guarantor for maintaining the commercial register and the commercial files for the Guarantor] for the Guarantor; and
- [([E]) any government or other public authority clearances, consents, licences, registrations or authorisations required under the relevant foreign law which are being delivered as conditions precedent documents.]

Assumptions

- 6. For the purposes of this letter, we have assumed each of the following:
 - (A) POCL has the capacity and power:
 - (i) to sign and deliver the Guarantee; and
 - (ii) to exercise its rights and perform its obligations under the Guarantee.
 - (B) POCL has taken all necessary corporate action to authorise:
 - (i) signing and delivery of the Guarantee; and
 - (ii) the exercise of its rights and performance of its obligations under the Guarantee.
 - (C) The Guarantee has been duly signed by POCL.
 - (D) The Guarantee has been signed on behalf of the Guarantor by [name of signatory] [and [name of second signatory]].
 - (E) The Guarantee has been unconditionally delivered by each party to it.
 - (F) All signatures are genuine.
 - (G) The copy documents referred to in sub-paragraphs (B) and (C) of paragraph 5 are complete and accurate as at today's date and conform to the originals.

- (H) The information disclosed by the extract from the [commercial register] referred to in sub-paragraph (D) of paragraph 5 was, when obtained, accurate and has not since then been altered or added to.
- (I) (i) The minutes referred to in sub-paragraph (C) of paragraph 5 truly record the proceedings of a duly convened, constituted and conducted meeting of the [Board of Directors] of the Guarantor.
 - (ii) The resolutions passed and authorisations given at that meeting have not subsequently been amended, revoked or superseded.
- (J) The obligations of the Guarantor under the Guarantee are valid and binding under English law (by which they are expressed to be governed).

Opinion

- 7. We are of the opinion that:
 - (A) The Guarantor is a [description of entity, e.g. limited liability company] which has been duly incorporated and is validly existing [for an unlimited duration].
 - (B) The Guarantor has the capacity and power to:
 - (i) sign and deliver the Guarantee; and
 - (ii) exercise its rights and perform its obligations under the Guarantee.
 - (C) The signature and delivery of the Guarantee by the Guarantor and the exercise of the Guarantor's rights and the performance of its obligations under the Guarantee have been authorised by all necessary corporate action on the part of the Guarantor.
 - (D) The Guarantee has been duly signed by the Guarantor.
 - (E) The signature and delivery of the Guarantee by the Guarantor and the exercise of the Guarantor's rights and the performance of its obligations under the Guarantee:
 - (i) are not prohibited by law, regulation or order or by the [constitutional documents] of the Guarantor; and

- (ii) [save for [any clearances, consents, licences, registrations or authorisations referred to in sub-paragraph ([E]) of paragraph 5] which have been obtained on an unrestricted and unconditional basis,] do not require any governmental or other consent or authorisation, approval, filing, registration or exemption.
- (F) The obligations of the Guarantor under the Guarantee rank at least equally with all its other present and future unsecured and unsubordinated obligations [other than [here insert reference to any obligations which will be preferred by virtue of mandatory provisions of statute]].
- (G) No procedure has been commenced in Japan with a view to the winding up or reorganisation of the Guarantor, or with a view to the appointment of an administrator, receiver, administrative receiver, trustee in bankruptcy or similar officer in relation to the Guarantor or any of its assets or revenues.
- (H) No stamp, registration or similar tax is payable, and no filing or registration is required, in connection with the execution, performance or enforcement of the Guarantee. The reference to enforcement includes the enforcement of an English judgment against the Guarantor.
- (I) The irrevocable submission by the Guarantor under the Guarantee to the jurisdiction of the courts of England and the appointment of the agent for the service of process contained in the Guarantee are valid and binding on the Guarantor under Japanese law.
- (J) A final and conclusive judgment entered against the Guarantor by an English court in any suit, action or proceedings arising out of or in connection with the Guarantee would be enforced by the Japanese courts without re-examination or re-litigation of the matters adjudicated upon.
- (K) The courts of Japan would accept jurisdiction in any suit, action or proceedings against the Guarantor arising out of or in connection with the Guarantee.
- (L) The courts of Japan would accept and give effect to the choice of law provisions of the Guarantee. Japanese law would not prevent any provisions of the Guarantee from being a valid and binding obligation of the Guarantor.
- (M) A judgment against the Guarantor in the Japanese courts, including a judgment on the enforcement of an English judgment, in respect of a sum due under the Guarantee would be expressed in the currency in which the obligation under the Guarantee is payable.

- (N) Payments to POCL under the Guarantee will not be subject to withholding tax in Japan or any deduction or withholding for or on account of any taxes or duties of whatever nature imposed or levied by or on behalf of Japan or any authority of or in Japan having power to tax.
- (O) Under the laws of Japan POCL will not be deemed to be resident, domiciled, carrying on business or subject to taxation in Japan by reason only of the execution, delivery, performance or enforcement of the Guarantee or any other document referred to in the Guarantee.

Reservations

- 8. Our opinion is qualified by the following reservation[s] and any matter of fact not disclosed to us:
 - (A) Laws relating to [here insert description of laws e.g. "liquidation", "liquidation or administration" or "insolvency"] or other laws or procedures affecting generally the enforcement of creditors' rights may affect the remedies available.
 - (B) [Any other reservations particular to Japan].

Yours faithfully,