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**CLAUSES****Version History**

<b>Version No.</b>	<b>Date</b>	<b>Comments</b>
1.0	31/08/06	Agreed version as at date of signature of CCN 1200
2.0	24/01/07	Baseline copy of v1.5
3.0	06/07/07	Baseline copy of v2.3
4.0	14/04/08	Baseline copy of v3.2
5.0	23/02/09	Baseline copy of 4.1
5.1	13/05/09	Applying changes as per CCN1258
5.2	19/05/09	RPI Increases for 2009
5.3	12/06/09	Applying changes as per CCN1252a
5.4		Moving contents page to front of Clauses section
6.0	07/07/09	Moving all schedules to v6.0 as agreed with Fujitsu
6.1	22/12/09	Applying changes as per CCN 1269
6.2	23/12/09	Applying changes as per CCN 1268
6.3	30/03/10	Applying Changes as per CCN 1276a
6.4	01/04/10	Applying changes as per CCN1270 and CCN1277
6.5	23/04/10	Applying RPI increase for 2010
7.0	10/05/10	Moving all schedules to V7.0 as agreed with Fujitsu
8.0	21/02/12	Applying changes as agreed in CCN1294d, CCN1295a, CCN1296, CCN1303 and CCN1302a
9.0	13/01/14	Applying changes as per CCN1349,CCN1317,CCN1322b,CCN1343 and CCN1400)
10.0	10/09/15	Applying changes as per CCN1405, CCN1415, CCN1421a, CCN1426 and as subsequently amended in this CCN1506 and moving all Schedules to V10.0 in accordance with CCN1506

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11.0	31/03/16	Applying changes as per CCN 1423c, CCN 1500a, CCN 1512c, CCN1600 and moving all Schedules to V11.0 in accordance with CCN1604
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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 148 Old Street, London EC1V 9HQ ("Post Office"); and
- (2) Fujitsu Services Limited whose registered office is at 22 Baker Street, London W1U 3BW ("Fujitsu Services").

**RECITALS**

**WHEREAS:**

- (A) By an agreement dated 24 May 1999 originally entered into between Post Office (then known as Post Office Counters Ltd) and ICL Pathway Limited and subsequently novated and amended (the "Codified Agreement"), Fujitsu Services provides certain services to Post Office;
- (B) The Codified Agreement came into effect on 28 July 1999;
- (C) On 31 December 2002 the Parties signed CCN1100 which incorporated agreed changes to and restated the Codified Agreement;
- (D) Various changes have been made to the Codified Agreement since 31 December 2002, pursuant to the Change Control Procedure contained therein;
- (E) The Parties have agreed to the extension of the term of, and the making of certain further changes to, the Codified Agreement with the aim of achieving, *inter alia*, the following joint objectives (the "Joint Objectives"):
  - (a) the introduction of immediate and sustained reductions in certain Post Office costs;
  - (b) subject to certain agreed exceptions, the continued provision to the Post Office of services equivalent in their business outcome to the services provided immediately prior to the introduction of the changes;
  - (c) fixed and variable pricing with variable elements based on the use of particular service components and numbers of Branches, Counter Positions and Transactions;
  - (d) continuous endeavour to make further cost savings and improve the quality of service provision and value for money ("Strive");
  - (e) improved joint working practices and the introduction of a new systems integration relationship involving the pursuit of opportunities for both

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Parties to share the benefits of any cost reduction initiatives through a new Systems Integration Partnership ;

(f) the maintenance and enhancement of the customer relationship between Fujitsu Services and the Post Office so that the Post Office remains as a key referenceable customer for Fujitsu Services; and

(g) the provision to Post Office of information relating to and/or access to new technology, concepts and techniques developed by the Fujitsu Services Group where such information or access would be relevant to and capable of application to the Services;

(F) On 31 August, 2006 the Parties signed CCN 1200 which extended the term of the Codified Agreement and introduced certain further changes; and

(G) This Agreement is the Codified Agreement as amended by CCN 1200, including the Schedules thereto, the CCDs and CRDs.

(H) On 26 September 2013 the Parties signed CCN 1400 which made certain changes to the Codified Agreement to reflect Post Office's intention to transition the Services to a new Towers Model. Under CCN 1400, the Codified Agreement was extended for a transitional period until 31 March 2017, with certain Services expiring on 31 March 2015 (unless otherwise extended), to enable Post Office sufficient time to complete the procurement process for transitioning to the Towers Model and to appoint suppliers for each of the Towers (including Replacement Services)."

(I) On 10 September 2015 the Parties signed CCN1500a which made certain changes to the Codified Agreement to reflect Post Office's need to extend the Agreement to enable transition of the Services to a new Towers Model. Under CCN1500a, the Codified Agreement was extended for a transitional period until 31<sup>st</sup> March 2018, with certain Services due to expire on 31<sup>st</sup> March 2016 and 31<sup>st</sup> March 2017 (unless otherwise extended through the Change Control Procedure), to enable Post Office sufficient time to transition to the Next Suppliers."

(J) On 22 February 2016 the Parties signed CCN1600 which made certain changes to the Codified Agreement and the expiration date for the Codified Agreement was extended to 31st March 2023 . The Expiring Services shall expire on 31st March 2016 and 31st March 2017 as set out in the Codified Agreement (unless otherwise extended), with all other Services (save where terminated early in accordance with the terms of this Agreement) continuing until 31st March 2023.

NOW THEREFORE IT IS HEREBY AGREED as follows:

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**PART A: RELATIONSHIP**

**1. Funding Condition**

- 1.1 Post Office may at any time prior to the Conditionality Expiry Date deliver to Fujitsu Services a Funding Notice.
- 1.2 During the Conditionality Period the provisions of Part A of Schedule A6 shall apply.
- 1.3 Where Post Office delivers a Funding Notice prior to the Conditionality Expiry Date, the provisions of Part B of Schedule A6 shall apply with effect from the date of receipt by Fujitsu Services of such Funding Notice.
- 1.4 Where Post Office does not deliver a Funding Notice prior to the Conditionality Expiry Date, the provisions of Part C of Schedule A6 shall apply with effect from the Conditionality Expiry Date.
- 1.5 Where Post Office notifies Fujitsu Services in writing prior to the Conditionality Expiry Date that it will not deliver a Funding Notice, the provisions of Part C of Schedule A6 shall apply with effect from the date on which Fujitsu Services receives that notice in writing.
- 1.6 Post Office shall ensure that during the Conditionality Period Fujitsu Services is provided with confirmations by way of issue of a purchase order or a series of purchase orders or otherwise in writing in respect of HNG-X Development to be carried out in accordance with the HNG-X Programme Plan against which Fujitsu Services may raise invoices for HNG-X Development Charges when entitled to do so in accordance with the provisions of Schedule D2 and to the extent such Charges fall within the estimated aggregate HNG-X T&M Budget in respect of a particular Planning Period (as set out in the budget report to be delivered in accordance with paragraph 11 of Schedule B6.2) ("Purchase Order Cover"). In the absence of such Purchase Order Cover and failure by Post Office to provide it within seven days of written notice from Fujitsu Services requesting that Post Office do so, the provisions of Part C of Schedule A6 shall apply upon expiry of such notice.
- 1.7 Post Office shall provide to Fujitsu Services, upon its reasonable request from time to time, information that Post Office is reasonably able to disclose, without breaching any confidentiality restrictions, for the purpose of updating Fujitsu Services on progress being made by the Post Office in securing funding such that Post Office may deliver a Funding Notice, and the steps being taken by Post Office to secure such funding.
- 1.8 In the event that, during the Conditionality Period, Project HNG-X is terminated by Post Office for Default pursuant to Clause 47.11.1 and Post Office does not deliver a Funding Notice to Fujitsu Services on or prior to the Conditionality Expiry Date, Post Office shall not be entitled to recover any loss or damage from Fujitsu Services on the basis that had this Agreement been duly performed according to its terms Post Office would have delivered a Funding Notice on or prior to the Conditionality Expiry Date.

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**2. Preferred Systems Integrator and Systems Integration Partnership**

- 2.1 It is Post Office's present intention to confer upon Fujitsu Services the role of Preferred Systems Integrator with a wider scope of operation than the Infrastructure and with the potential to include all Relevant IT Systems in that scope. The role of the Preferred Systems Integrator and the manner and timing of its appointment are set out in further detail in Schedule A1 to this Agreement.
- 2.2 In its role as Preferred Systems Integrator (if appointed) Fujitsu Services shall pursue in particular those Joint Objectives listed in Recitals (E)(d) and (E)(e).
- 2.3 The Parties shall, with effect from the Amendment Date, establish and operate the SIP in accordance with the terms of Schedule B1.2.

**3. Governance**

- 3.1 The Parties shall, throughout the term of this Agreement, govern their relationship:
  - 3.1.1 in accordance with the provisions of Schedule A2; and
  - 3.1.2 with a view to monitoring, and assisting with the aim of achieving, the Joint Objectives set out in Recitals E(d) to (g) (inclusive).
- 3.2 Any dispute arising between the Parties in relation to this Agreement shall be resolved in accordance with Schedule A2.

**4. Change Control**

Save as expressly provided otherwise in any provision of this Agreement, this Agreement may only be amended in accordance with the Change Control Procedure set out in Schedule A3.

**PART B: SERVICES**

**5. Development and documentation of HNG-X**

- 5.1 Post Office shall develop the Requirements Baseline for the HNG-X Service Infrastructure and the Business Capabilities and Support Facilities in accordance with the process for such development set out in Schedule B6.1. Fujitsu Services shall participate in that process in the manner described in that Schedule.
- 5.2 Fujitsu Services shall, subject to Clause 10.5, design and develop the HNG-X Service Infrastructure (other than the Associated Changes) and the Business Capabilities and Support Facilities:
  - 5.2.1 to comply with the Requirements Baseline (as may be amended pursuant to Schedule B6.1);

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- 5.2.2 in accordance with the HNG-X Assumptions and the Solution Architecture; and
- 5.2.3 in accordance with the provisions of Schedule B6.2 (as supplemented by the CCDs "Establishing and Assuring the HNG-X User Interface" (REQ/GEN/PRD/0001) and "Postal Services Business and Operational Context" (REQ/CUS/BRS/0001)),  
and shall use reasonable endeavours to do so in compliance with the HNG-X Programme Plan (as adjusted in accordance with the provisions of Schedule B6.2).
- 5.3 The Parties shall comply with their respective obligations set out in Schedule B6.3 in relation to the acceptance of the HNG-X Service Infrastructure and the Business Capabilities and Support Facilities.
- 5.4 As soon as reasonably practicable following HNG-X Final Acceptance, Schedules B3.2, B3.3 and B3.4 and all other documents in the Solution Baseline Documentation Set shall be amended under the Change Control Procedure, to the extent necessary, to be consistent with the Solution Baseline (together with any rectification plans and workarounds agreed pursuant to Schedule B6.3).
- 5.5 Until the date on which Schedules B3.2, B3.3 and B3.4 and all other documents in the Solution Baseline Documentation Set are amended pursuant to Clause 5.4, Fujitsu Services' obligations under this Agreement in relation to the HNG-X System shall be determined by reference to the Solution Baseline (and any subsequent changes to the HNG-X System agreed pursuant to the Change Control Procedure) rather than those Schedules and documents.
- 5.6 Save where the reference to XP is to it as the existing operating system, until such time as a CCN to introduce a replacement operating system for NT (as envisaged by paragraph 1.4 of Schedule C3) has been agreed by the Parties, any references to "XP" in any of the Schedules, CCDs or CRDs, or to "Microsoft", as the provider of XP, shall be construed generically to mean a new operating system intended to replace NT and the provider of that operating system respectively.

## 6. **Associated Changes**

- 6.1 Fujitsu Services shall perform the Associated Change Activities in accordance with the provisions of Schedule B5 and shall use reasonable endeavours to do so in compliance with the HNG-X Programme Plan (as adjusted in accordance with the provisions of Schedule B6.2).
- 6.2 Software developed by Fujitsu Services as a product of the Associated Change Activities shall be subject to the acceptance process in accordance with the principles set out in Schedule B6.3.

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**7. Migration and Implementation**

Fujitsu Services shall implement the HNG-X Service Infrastructure and the Business Capabilities and Support Facilities in accordance with the requirements of Schedule B5 and in compliance with the HNG-X Programme Plan (as adjusted in accordance with the provisions in Schedule B6.2).

**8. Performance of HNG-X Services prior to HNG-X Date and post HNG-X Date**

- 8.1 Prior to the HNG-X Date in respect of each Branch, Fujitsu Services shall perform in respect of that Branch each of the HNG-X Services (other than BCSF Services) over the Infrastructure and using the Horizon Applications.
- 8.2 On and after the HNG-X Date in respect of each Branch, Fujitsu Services shall perform in respect of that Branch each of the HNG-X Services as described in Schedule B3.1 over the Infrastructure.
- 8.3 Subject to Clauses 8.1 and 8.2 and save as expressly provided otherwise, the provisions of this Agreement relating to the provision of Services shall apply both to Services to be provided before the HNG-X Date and to Services to be provided after the HNG-X Date.

**9. Infrastructure prior to Trigger Point T5 and post Trigger Point T5**

- 9.1 Until Trigger Point T5 (Data Centre Ready For HNG-X), the Infrastructure over which the HNG-X Services shall be provided shall be the Horizon Service Infrastructure described in Schedule B4.3.
- 9.2 Following Trigger Point T5 (Data Centre Ready For HNG-X), the Infrastructure over which the HNG-X Services shall be provided shall be the HNG-X Service Infrastructure as described in Schedule B3.3 save to the extent of any variations applicable in accordance with Part 1 of Annex 2 of Schedule B5 (Transitional Infrastructure) that apply to Branches prior to their respective HNG-X Dates.

**10. Performance of Services - General**

- 10.1 Fujitsu Services shall:
  - 10.1.1 perform the Development Services in accordance with Schedule B1.1;
  - 10.1.2 perform the Transfer Services in accordance with Schedule E; and
  - 10.1.3 throughout the term of this Agreement, comply with the provisions of Schedule B2 (Business Continuity).
- 10.2 Subject to Clause 10.8, Fujitsu Services shall, throughout the term of this Agreement, provide all HNG-X Services (except any terminated in accordance with Clause 47.10 or which expire in accordance with Clause 46.3) in accordance with the terms of this

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Agreement. Subject to Clause 10.3 and provided the limit on the number of Counter Positions specified in Part 1 of Annex A to Schedule D1 is not exceeded, where an HNG-X Service is to be provided at a Counter Position, it shall be capable of being provided at such Counter Position.

- 10.3 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.
- 10.4 Each Party shall perform each of its obligations set out in the Schedules to this Agreement and those in the CCDs subject to and in accordance with the provisions of this Agreement, the Schedules to this Agreement and the CCDs.
- 10.5 Post Office may, by giving Fujitsu Services not less than six months' notice in writing, cease to use a POL Service Type. Upon expiry of that notice, the POL Service Type shall be disabled by Fujitsu Services. Where a notice is given under this Clause in respect of a POL Service Type listed in Annex 1 to Schedule B3.2 whose development has not been completed at the date of provision of such notice, all work being undertaken in respect of such development shall cease as soon as reasonably practicable following receipt of the notice and the Change Control Procedure shall be used to agree any consequential changes to this Agreement including, without limitation, the extent to which the HNG-X Project Price should be lowered to reflect cost savings resulting from the cessation of such work and the impact on the Requirements Baseline if such development is no longer to be completed.
- 10.6 The removal by Fujitsu Services of any application code and/or infrastructure relating to a POL Service Type disabled in accordance with Clause 10.5 shall be dealt with under the Work Ordering Procedure.
- 10.7 Once a POL Service Type has ceased operation in accordance with Clause 10.5, such POL Service Type may only be recommenced pursuant to the Change Control Procedure set out in Schedule A3.
- 10.8 On the proviso that the Superstock Service hasn't been early terminated in accordance with Clause 8 of Schedule D1, it shall cease on 31st March 2012. Post Office may, by giving Fujitsu Services not less than three months' written notice prior to that date, request that the provision of the Superstock Service be extended for a period specified by Post Office (ending no later than 31st March 2015) in which case:
  - 10.8.1 Fujitsu Services shall use all reasonable endeavours to extend the relevant supplier and/or Sub-contractor agreements for the period requested by Post Office on the best terms reasonably available;
  - 10.8.2 if Fujitsu Services is able to secure an extension from its suppliers and/or Sub-contractors, the provisions of this Agreement dealing with the Superstock Service (including, without limitation, the Charges) shall be amended under the

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Change Control Procedure to reflect that extension and the terms agreed by Fujitsu Services with its suppliers and/or Sub-contractors; and

10.8.3 Fujitsu Services shall provide information concerning the costs of such an extension on an Open Book basis.

10.9 It is the agreed intention of the both parties that during the term of this Agreement the Services and the underlying infrastructure from which they are provided shall evolve as Post Office's business requirements change and in line with new technology. The parties acknowledge and agree that this evolution should include standardisation, including but not limited to the interfaces and moving to a Fujitsu Services cloud based hosting capability, and that such standardisations should be capable of being benchmarked in accordance with Schedule D6. Fujitsu Services and Post Office will work together to jointly agree a technology roadmap and plan which will cover issues such as standardisation and changes to support by third party licensors (e.g. Oracle). The existing CCN and commercial terms processes shall be used to agree the technology roadmap and plan and any subsequent changes. The parties have a joint expectation that service will move to a Fujitsu Services cloud based shared infrastructure during the life of the contract, enabling lower run costs.

**11. Training**

11.1 Subject to the limits set out in Part 1 of Annex A to Schedule D1 not being exceeded, Fujitsu Services shall supply Post Office with the Old CTO Configurations and New CTO Configurations and install such configurations at locations agreed with Post Office. New CTO Configurations and the locations where installed shall be deemed to be Counter Positions and Branches respectively for the purposes of the Operational Charges and the limits set out in Part 1 of Annex A to Schedule D1.

11.2 Fujitsu Services shall supply Post Office, on terms to be agreed between the Parties under the Change Control Procedure, with such training systems and documents as Post Office may reasonably require for the purposes of training Post Office employees in the use of any Services provided under this Agreement.

**12. Changes to Services**

12.1 Subject to Clause 12.2, Fujitsu Services shall not introduce any product or service into the Infrastructure, or the Services, nor make any change to the Services or to the Infrastructure, without Post Office's prior written consent.

12.2 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 Infrastructure, the Horizon Applications and the Business Capabilities and Support Facilities.

12.3 For the purposes of this Clause 12.3, the network connections (being ISDN, PSTN, ADSL, GPRS or VSAT) to Branches procured by Fujitsu Services from a public carrier

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that form part of the Infrastructure from time to time are referred to as the "Branch Network Connections". For any reason including, without limitation, in order to achieve consolidation of Royal Mail Group telecommunication provision and/or to reduce overall costs, Post Office shall be entitled, in accordance with the provisions of Clauses 12.3.1 to 12.3.9 (inclusive) to put in place an alternative arrangement to that set out in this Agreement for the provision of any or all of the Branch Network Connections (an "Alternative Network Arrangement"):

- 12.3.1 Post Office shall give Fujitsu Services reasonable advance notice of its intention to put in place an Alternative Network Arrangement and shall engage with Fujitsu Services in relation to the matters set out in this paragraph below;
- 12.3.2 subject to Clause 12.3.8, Post Office may appoint, or may agree with Fujitsu Services to appoint, whether as a result of a tendering process or otherwise, any reputable organisation as a supplier of any or all of the Branch Network Connections (the "Branch Telecommunications Supplier") in substitution for the relevant public carrier used by Fujitsu Services under this Agreement;
- 12.3.3 the appointment by Post Office of the Branch Telecommunications Supplier shall be in accordance with terms agreed by Post Office with the Branch Telecommunications Supplier, taking into account (i) any notice periods applicable for the termination of the contractual arrangements with the public carrier then used by Fujitsu Services for the provision of the relevant Branch Network Connections and (ii) the matters to be agreed with Fujitsu Services in accordance with this Clause 12.3;
- 12.3.4 Fujitsu Services shall manage the Branch Telecommunications Supplier as part of its provision of the Third Party Management Services;
- 12.3.5 the costs or charges to be paid to such Branch Telecommunications Supplier and any termination charges due to be paid to the public carrier used by Fujitsu Services shall be met by or on behalf of Post Office or otherwise reimbursed to Fujitsu Services by Post Office (as applicable in the circumstances) when they arise;
- 12.3.6 Fujitsu Services shall be paid a margin in relation to such costs or charges (whether met by or on behalf of Post Office or reimbursed to Fujitsu Services), calculated by multiplying such costs or charges by 5 divided by 95;
- 12.3.7 the costs and expenses of undertaking the procurement and appointment of the Branch Telecommunications Supplier shall all be borne by Post Office and, to the extent that Fujitsu Services is involved or provides assistance with such procurement, all costs and expenses reasonably incurred by Fujitsu Services shall be reimbursed to Fujitsu Services by Post Office;
- 12.3.8 the Agreement shall be amended under the Change Control Procedure to give effect (as between Post Office and Fujitsu Services) to the appointment of the Branch Telecommunications Supplier by Post Office with the intention that

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Fujitsu Services should be no worse off (i) financially and (ii) in relation to risk or liability, under the revised Agreement than it is under the existing Agreement; and

12.3.9 the matters to be addressed under the Change Control Procedure to give effect to Clause 12.3.8 shall include, without limitation, amendments to the Third Party Management Services in connection with Clause 12.3.4, transition to the Alternative Network Arrangement, the charges for such transition (to be paid by Post Office), project management, billing management, changes to central data processing, security of the Alternative Network Arrangements and the impact of the Alternative Network Arrangements on the HNG-X Services.

**13. Documentation**

13.1 Fujitsu Services shall provide to Post Office one electronic copy of the Listed Documentation, Specially Written Documentation and Developed Documentation at no additional charge.

13.2 Fujitsu Services shall maintain and keep up to date the Core Document Set.

**14. Consumables**

14.1 Until 31<sup>st</sup> March 2015, Post Office shall have the option of obtaining from Fujitsu Services all or any of the Consumables in such quantities as may be reasonably required by Post Office by giving Fujitsu Services not less than 30 days prior written notice thereof.

14.2 When given notice to procure Consumables as described in clause 14.1, Fujitsu Services shall deliver or procure delivery of any 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).

14.3 Until 31<sup>st</sup> March 2015, Fujitsu Services shall maintain and make available a high level specification for each of the Consumables. In the event that a high level specification is unavailable in relation to a Consumable because it contains information confidential to the manufacturer, Fujitsu Services shall maintain, and make available to Post Office, a list of approved products, ordered by brand name where applicable.

14.4 Until 31<sup>st</sup> March 2015, Fujitsu Services warrants for use in Equipment installed in Branches:

14.4.1 the Consumables; and

14.4.2 any additional products contained in the list of approved products, by product identity, which comply with the high level specification for each Consumable which shall be maintained by Fujitsu Services.

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- 14.5 Notwithstanding Clauses 14.3 and 14.4, but subject to Clause 14.6, nothing shall prevent Post Office from using any product as alternatives to the Consumables in any part of the Infrastructure.
- 14.6 Until 31<sup>st</sup> March 2015, where Post Office uses any such product referred to in Clause 14.5 in the Infrastructure which either fails to comply with the high level specification or is not contained in the list of approved products referred to in Clause 14.3:
  - 14.6.1 Fujitsu Services will be entitled to recover from Post Office and Post Office shall pay any and all reasonable additional costs and expenses incurred by Fujitsu Services if and to the extent Fujitsu Services can demonstrate to Post Office (Post Office acting reasonably) that such costs and expenses have been incurred as a result of Post Office's use of such product; and
  - 14.6.2 Fujitsu Services shall be relieved of any contractual remedies which Post Office may have arising from a failure of any Equipment installed in Branches to the extent that such failure is directly associated with Post Office's use of such product.
- 14.7 Not Used.
- 14.8 Until 31<sup>st</sup> March 2015, Fujitsu Services shall use all reasonable endeavours to ensure that a supply of all the Consumables can be secured throughout the term of this Agreement (or, in relation to agreed Consumables, such shorter period as the Parties may agree).
- 14.9 Until 31<sup>st</sup> March 2015, in the event that a Consumable is unavailable, Fujitsu Services shall, at its own expense, source an alternative acceptable consumable.
- 14.10 Until 31<sup>st</sup> March 2015, in the event that a Consumable is unavailable and an alternative cannot be sourced, Fujitsu Services shall not be relieved of its obligations to provide Services under the terms of this Agreement.
- 14.11 Until 31<sup>st</sup> March 2015, the price of any Consumable, or alternative supplied under Clause 14.9, shall not exceed the cost to Fujitsu Services of supplying such Consumable, or alternative supplied under Clause 14.9, to Post Office.
- 14.12 Until 31<sup>st</sup> March 2015, the price charged pursuant to Clause 14.11 shall be subject to verification in accordance with Clause 24.

#### PART C: QUALITY OF SERVICE

##### **15. Service Standards**

- 15.1 Fujitsu Services undertakes that:

- 15.1.1 the Services, the HNG-X Development and the Associated Change Development shall comply with, and be provided in accordance with, the

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policies and standards specified in Schedule A4 and all components and equipment used in the course of the provision of the Services shall operate in accordance with their technical specifications;

15.1.2 neither the provision of the Services nor the operation of any testing and monitoring instruments used in connection with the Services shall cause electrical interference beyond the limits laid down in the relevant standard specified in Schedule A4, save to the extent that any such interference is caused by Rate Boards;

15.1.3 the Infrastructure, the Superstock Infrastructure, the Horizon Applications, the Business Capabilities and the Support Facilities shall be provided in accordance with and comply with all relevant applicable industry standards, as these standards are listed in Schedule A4.

15.1.4 the Services, the HNG-X Development and the Associated Change Development shall be supplied and rendered by appropriately experienced, qualified and trained personnel with all due skill, care and diligence;

15.1.5 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 15) in accordance with the best of its own established internal procedures;

15.1.6 the Services, the HNG-X Development and the Associated Change Development shall be performed in compliance with all applicable laws, enactments, orders, regulations, and other similar instruments;

15.1.7 the interfaces to all external systems connected to the Infrastructure and the Superstock Infrastructure shall operate in accordance with the applicable Application Interface Specification and Technical Interface Specification;

15.1.8 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;

15.1.9 all components of the 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 Service Level Target or an Additional Remedy Level; and

15.1.10 Until 31<sup>st</sup> March 2015, all Consumables shall be compatible with the Infrastructure.

15.2 Fujitsu Services warrants that in relation to the reliability, supportability, repair and/or replacement of Existing Equipment:

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- 15.2.1 Fujitsu Services has made all factual enquiries that it ought reasonably to have made, including taking into consideration the Transaction volumes set out in the CCD entitled "Horizon Capacity Management and Business Volumes" (PA/PER/033) and the effect of the Business Capabilities and Support Facilities on the use and expected use of the Existing Equipment, as known to Fujitsu Services at the Amendment Date; and
- 15.2.2 a fair and accurate summary of, or extracts from, all information relevant to the reliability, supportability, repair and/or replacement of Existing Equipment obtained by Fujitsu Services pursuant to such enquiries, together with the related analysis by Fujitsu Services based upon the factual enquiries referred to in Clause 15.2.1, have been fairly disclosed to Post Office.

**16. Security**

- 16.2 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.
- 16.3 Fujitsu Services shall use all reasonable endeavours to maintain the security of the Services, the HNG-X Development and the Associated Change Development and shall comply with the security requirements set out in Schedule A4.
- 16.4 Fujitsu Services shall offer all reasonable assistance to Post Office in preventing fraudulent use of the Services, the HNG-X Development, the Associated Change Development, the Horizon Service Infrastructure and the Superstock Infrastructure by Post Office's employees and Agents.
- 16.5 In the event that the provisions of this Clause 16 or any other provisions of this Agreement in relation to:
  - 16.5.1 the elimination of the potential for any fraud or unauthorised disclosure of data; or
  - 16.5.2 provision of significant barriers to attacks from internal conspiracy and collusion to defraud Post Office; or
  - 16.5.3 prevention of corruption or loss of data; or
  - 16.5.4 the security, accuracy, completeness, authenticity, validity or integrity of any data,

conflict or are inconsistent with the provisions of the CCD entitled "Security Constraints" (ARC/SEC/ARC/0001), the provisions of that CCD shall prevail.

- 16.6 Notwithstanding any other provision in this Agreement to the contrary:

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16.6.1 Fujitsu Services shall not be responsible for the accuracy, completeness, validity or integrity of any data (including, without limitation, and Personal Data) in relation to the POL FS Data or the POLSAP Data.

- (a) provided by or on behalf of Post Office for loading onto the POL FS System;
- (b) produced by the Infrastructure and held on the POL FS System; or
- (c) contained in any Transaction Correction Record delivered by Fujitsu Services to any Branch,

(together "POL FS Data");

16.6.2 Fujitsu Services shall not be responsible for extracting POL FS Data from the POL FS System or dealing with subject information requests under the Data Protection Act 1998 in relation to POL FS Data; or

16.6.3 Fujitsu Services shall not be responsible for manipulating or processing any POL FS Data,

save to the extent that:

16.6.4 in relation to 16.5.1, 16.5.2 or 16.5.3 Fujitsu Services provides and is responsible for the platforms on which POL FS Data is held as part of the POL FS Services or from the POLSAP R1 Go Live Date, on which POLSAP Data is held as part of the POLSAP Services such responsibilities including, without limitation, application of access controls; and

16.6.5 additionally in the case of Clause 16.5.1, the accuracy, completeness, validity and integrity of POL FS Data is adversely affected by the POL FS System itself or, from the POLSAP R1 Go Live Date, POLSAP Software itself.

16.7 Notwithstanding any other provision in this Agreement to the contrary, Fujitsu Services shall not be responsible for:

16.7.1 the accuracy, completeness, validity or integrity of any data (including, without limitation, any Personal Data):

- 16.6.1.1 provided by or on behalf of Post Office for loading onto the POL MI System; or

16.6.1.2 produced by the Infrastructure and held on the POL MI System,

(together "POL MI Data");

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- 16.6.2 extracting POL MI Data from the POL MI System or dealing with subject information requests under the Data Protection Act 1998 in relation to POL MI Data; or
- 16.6.3 manipulating or processing any POL MI Data,

save to the extent that:

- 16.6.4 Fujitsu Services provides and is responsible for the platforms on which POL MI Data is held as part of the POL MI Services such responsibilities including, without limitation, application of access controls; and
- 16.6.5 Additionally in the case of 16.6.1, the accuracy, completeness, validity and integrity of POL MI Data is adversely affected by the POL MI System itself.

**17. Service Levels**

The HNG-X Services provided by Fujitsu Services pursuant to this Agreement shall be provided so as to achieve the Service Levels referred to in Schedule C1.

**18. Service Level Remedies**

- 18.2 In the event that the Services fail to meet the Service Levels set out or referred to in Schedules C1 or B4.4, Fujitsu Services shall pay Post Office liquidated damages (such payment to be in the form of credit notes unless Post Office directs otherwise) calculated or determined in accordance with Schedule C1 or Schedule B4.4 (as applicable) and paid pursuant to Schedule D2.
- 18.3 Fujitsu Services shall pay Post Office the liquidated damages referred to in Clause 18.1 within 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 30 days of the Parties agreeing the amount of the same.
- 18.4 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.
- 18.5 Without prejudice to Clause 47.2, paragraph 7 of Schedule C1 and paragraph 7 of Schedule B4.4:
  - 18.5.1 liquidated damages and/or any other amounts specified in this Agreement payable by Fujitsu Services in respect of any LDT failure (save to the extent that LDT failure is also an ARL failure in which case and to such extent Clause 18.4.2 shall apply), 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

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18.5.2 Post Office Additional Costs, liquidated damages and/or any other amounts specified in this Agreement payable by Fujitsu Services in respect of any ARL failure shall be Post Office's exclusive remedy in respect of that failure.

**19. Health and Safety Hazards**

- 19.2 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 Fujitsu Services' performance of this Agreement.
- 19.3 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.
- 19.4 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.

**20. Policies and Standards**

Each of the Parties shall comply with the obligations imposed on it by Schedule A4.

**PART D: REWARD**

**21. Charges**

- 21.2 Post Office shall pay to Fujitsu Services the Charges set out in Schedules D1, D7 and D8 and any other charges provided for in this Agreement or agreed under a Work Order.
- 21.3 Post Office shall pay to Fujitsu Services the charges for the supply of any Consumables purchased by Post Office in accordance with Clause 14.
- 21.4 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.

**22. Payment**

- 22.2 Payment of Charges shall be made in accordance with the terms set out in Schedule D2.
- 22.3 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,

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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 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).

23. **Gain Share**

The provisions of Schedule D3 shall apply.

24. **Open Book**

The provisions of Schedule D4 shall apply.

24A Market Testing

The provisions of Schedule D6 shall apply save that with respect to the provisions of paragraph 3 of Schedule D6 it shall be limited to the right to benchmark:

- a) the on-shore and off-shore Rate Cards but Post Office shall only be entitled to benchmark these rate cards after 1st April 2020; and
- b) where the parties agree to a Gain Share project to transform an element of the Services and where it is agreed (both parties acting reasonably) that the transformed element of the Service is then delivered in a more industry standard way (for example via a Cloud IaaS mechanism), that standard element of the service shall be subject to the right to benchmark provided that such benchmark shall not apply until 18 months after the transformed element of the Services goes live.

25. **Audit**

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

25.3 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 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 of the Agreement, Partial Termination, expiry of the Agreement or expiry of an Expiring Service, 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 25.2 in relation to such Records.

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- 25.4 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 Clauses 25.1 and 25.2 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. To the extent any fraudulent activity or impropriety is found to be attributable to Post Office as a result of that investigation, Post Office shall take all reasonable measures to prevent recurrence of its acts or omissions that resulted in such fraudulent activity or impropriety.
- 25.5 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 14 days of such accounts having been lodged at Companies House or the relevant local equivalent to Companies House.
- 25.6 The Parties shall comply with the provisions of Schedule D5.
- 25.7 All information obtained by Post Office or Post Office's Agents pursuant to this Clause 25 and Schedule D5 shall be treated as Confidential Information.
- 25.8 Notwithstanding the provisions of this Clause 25 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 and shall be subject to the limits and Service Level Targets set out in the information retrieval and audit sections of the following CCDs, as applicable in accordance with the provisions of Schedule B3.1: "Service Description for the Security Management Service" (CS/SER/016) and "Security Management Service: Service Description" (SVM/SDM/SD/0017).
- 25.9 In addition to its obligations under Clauses 25.2 and 25.3, Fujitsu Services shall provide the Court Case Support Services to Post Office in relation to prosecutions and other disputes (whether civil or criminal) with any third party including but not limited to any fraud, theft, breach of contract or impropriety (the "Court Case Support Services"). The Court Case Support Services shall include any matters whether they relate to Horizon, HNG-X or any other system provided by or on behalf of Fujitsu Services to Post Office, its agents or its subcontractors (including Post Office Service Integrator and any Tower Contractor). Fujitsu Services shall provide the Court Case Support Services within the timeframes required by Post Office or the relevant court or other authority.
- 25.10 Without prejudice to Clause 25.3, the Court Case Support Services shall comprise:
  - 25.10.1 the provision of copy reports;
  - 25.10.2 the provision of data (including transaction data, event logs, helpdesk call logs, non-polled data and remuneration data) where such data is held by or in the control of Fujitsu Services;

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- 25.10.3 the compilation of data (including transaction data, event logs, helpdesk call logs, non-polled data and remuneration data);
- 25.10.4 the interpretation of data (including transaction data, event logs, helpdesk call logs, non-polled data and remuneration data);
- 25.10.5 the provision of technical reports regarding technical aspects of any system (whether Horizon, HNG-X or otherwise);
- 25.10.6 live witness evidence at Court if any of the information provided (including without limitation that provided pursuant to Clauses 25.9.1 to 25.9.5) is challenged to the extent to which Fujitsu Services provided said information; and
- 25.10.7 the right of access to Records, including but not limited to information, reports and data, held by or in the control of Fujitsu Services, and the assistance of Fujitsu Services' personnel with appropriate knowledge of the applicable Records (to the extent any such personnel remain employed or contracted to Fujitsu Services) for any independent experts and/or legal advisors instructed by Post Office and/or any other claimant(s) or defendant(s) and the Prosecution in any mediation, arbitration tribunal, court case or dispute in which Post Office is involved in relation to the Horizon and HNG-X or any other system provided by or on behalf of Fujitsu Services to Post Office.

- 25.11 The Parties agree that to the extent Fujitsu Services' costs for the Court Case Support Services are not recovered via the Charges relating to the Security Management Service (for example where additional resource is required), Fujitsu Services shall be entitled to charge (and Post Office shall pay) additional reasonable and demonstrable costs provided Fujitsu Services can evidence such costs to Post Office's reasonable satisfaction and wherever possible agree them in advance with Post Office.
- 25.12 For the avoidance of doubt, the Parties agree the provision of the Court Case Support Services may continue after expiry or termination of this Agreement. For the avoidance of doubt, where assistance is requested by the Post Office and/or Next Supplier of Fujitsu Services then such assistance shall continue to be chargeable after expiry/termination of the Agreement.
- 25.13 In addition to its obligations under clauses 25.8 and 25.9, Fujitsu Services may make suggestions and recommendations to Post Office and request other involvement which Post Office may (acting reasonably) permit in relation to any claim/ proceedings associated with the Horizon Application and/or HNG-X Application relating to a time when Fujitsu Services was supporting and/or providing Services associated with said application. Where Fujitsu Services elects to do this itself, such involvement shall be at no additional charge to the Post Office.

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**PART E: OWNERSHIP OF ASSETS AND INTELLECTUAL PROPERTY RIGHTS**

**26. Ownership of Assets**

**26.2 Infrastructure**

26.2.1 Subject to Clause 26.1.2, 26.2 and 48.1, ownership of the Infrastructure shall vest in Fujitsu Services, save to the extent the Parties agree otherwise in writing.

26.2.2 Title in each Paypole shall pass from Fujitsu Services to Post Office when Fujitsu Services receives all payments due in respect of each Paypole.

**26.3 Branch Hardware**

Unless the Parties agree otherwise, ownership of Branch Hardware shall vest in the Party that procures that hardware until such time as that hardware has been installed at the Branch and accepted by Fujitsu Services as part of the Infrastructure at which time such title shall transfer to Fujitsu Services. With effect from 1<sup>st</sup> April 2015 title to Branch Hardware previously owned by Fujitsu Services shall transfer to the Post Office on the date(s) stipulated in the Asset Transfer Agreement.

**26.4 Superstock**

26.4.1 Not Used

26.4.2 Subject to Clause 48.1, ownership in the Superstock Infrastructure shall remain vested in Fujitsu Services and/or its suppliers.

**26.5 Consumables**

Ownership of any Consumables supplied hereunder shall vest in Post Office following delivery thereof in accordance with Clause 14.2 and the acceptance of the Consumables by Post Office's designated delivery point in accordance with paragraph 6.5 of Schedule D2.

**26.6 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.

**26.7 No Lien**

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

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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.

**27. Intellectual Property Rights**

27.2 The ownership and, where applicable, licensing of the following Intellectual Property Rights and the Intellectual Property Rights in the following categories of documentation, software or other things are set out in Clauses 28 (IPRs owned by Fujitsu Services), 29 (IPRs owned by Post Office), 30 (IPRs licensed by Fujitsu Services or a third party to Post Office) and 31 (IPRs licensed by Post Office or a third party to Fujitsu Services):

- 27.2.1 Listed Documentation;
- 27.2.2 Fujitsu Services Software;
- 27.2.3 Specially Written Software;
- 27.2.4 Specially Written Documentation;
- 27.2.5 Developed Documentation;
- 27.2.6 Horizon Design Documentation;
- 27.2.7 Horizon Materials;
- 27.2.8 Internal Code;
- 27.2.9 Horizon Third Party Software;
- 27.2.10 Third Party Items;
- 27.2.11 Post Office Foreground IPR;
- 27.2.12 Licensed IPR;
- 27.2.13 Fujitsu Background IPR;
- 27.2.14 Post Office Background Materials; and
- 27.2.15 Deposited Software.

General

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

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- 27.4 Where Post Office Foreground IPR or Licensed IPR subsists in software within Fujitsu Services or its Sub-contractors' possession or control, Fujitsu Services shall, at the request of Post Office, provide Post Office with one up-to-date copy (and other copies as may reasonably be requested) of that software (in both Source Code and object code formats) and all related engineering, design and test data, configuration files and programming notes.
- 27.5 In the event that Fujitsu Services, a member of the Fujitsu Services Group or its HNG-X Sub-contractor, transfers or assigns any Licensed IPR or Fujitsu Background IPR used for the purposes of performing the Services to any third party, Fujitsu Services shall ensure that such assignment or transfer is subject to the licences granted hereunder and shall notify Post Office of such transfer or assignment as soon as reasonably practicable.
- 27.6 Each Party undertakes (at no additional charge) to do all such things and execute all such documents as may be reasonably required to give full effect to any assignment or licence made or granted hereunder of, in the case of Fujitsu Services, Post Office Foreground IPR, Licensed IPR or Fujitsu Background IPR and, in the case of Post Office, Intellectual Property Rights in Post Office Background Materials.
- 27.7 Fujitsu Services warrants and represents that:
  - 27.7.1 Fujitsu Services has full capacity and authority to grant the licences granted by it under Clauses 30, 48.8, 48.9 and 48.10; and
  - 27.7.2 Post Office's use of the Infrastructure, Superstock Infrastructure, Horizon Applications, the Business Capabilities and Support Facilities, and the receipt of the Services in accordance with the provisions of this Agreement shall not infringe any Intellectual Property Rights of any third party (other than any infringement that is subject to any indemnity given by Post Office pursuant to Clause 34.3); and
- 27.8 Post Office warrants and represents that Post Office has full capacity and authority to grant the licences granted by it under Clause 31.

**28. Intellectual Property Rights owned by Fujitsu Services**

- 28.2 Subject to express agreement to the contrary in any Work Order or CCN and subject also to the licences contained in this Agreement:
  - 28.2.1 the Intellectual Property Rights in Fujitsu Developed Documentation, Fujitsu Services Software, Internal Design Documentation, Listed Documentation and Internal Code;
  - 28.2.2 the Intellectual Property Rights in all other Horizon Materials (other than Specially Written Software, Specially Written Documentation and Post Office Developed Documentation);

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28.2.3 Fujitsu Background IPR; and

28.2.4 Licensed IPR,

shall, as between Post Office and Fujitsu Services, be vested on creation in Fujitsu Services, Fujitsu Services' licensors, HNG-X Sub-contractors or a member of the Fujitsu Services Group.

29. **Intellectual Property Rights owned by Post Office**

29.2 Subject to express agreement to the contrary in any Work Order or CCN and subject also to the licences contained in this Agreement the Intellectual Property Rights in:

29.2.1 Post Office Developed Documentation;

29.2.2 Specially Written Software; and

29.2.3 Specially Written Documentation,

shall be vested in Post Office upon acceptance of the Post Office Developed Documentation, Specially Written Software or Specially Written Documentation (as applicable).

29.3 Fujitsu Services hereby:

29.3.1 assigns all future copyright and database rights subsisting in; and

29.3.2 agrees to assign (and, in relation to any Post Office Developed Documentation, Specially Written Software or Specially Written Documentation created by another member of the Fujitsu Services Group or Sub-contractor, procure the assignment of) all other Intellectual Property Rights subsisting in,

Post Office Developed Documentation, Specially Written Software and Specially Written Documentation absolutely to Post Office for the full term during which the rights in such Intellectual Property Rights and any renewals and extensions shall subsist.

29.4 Any Intellectual Property Rights created by a Fujitsu Services SIP Team Member, solely or jointly with any other person in relation to the business or activities of Post Office or any member of the Royal Mail Group arising out of or in connection with, and during, their engagement as a member of the SIP Team and in the course of fulfilling their agreed role within the SIP, shall become the sole property of Post Office (or a member of the Royal Mail Group, as applicable) and Fujitsu Services shall procure that the Fujitsu Services SIP Team Member agrees that he has no right to compensation in respect of such Intellectual Property Rights. Fujitsu Services shall procure that the Fujitsu Services SIP Team Member shall execute all such documents and do all such things reasonably required to enable Post Office or any member of the Royal Mail Group (as the case may be) to obtain registration or other protection in respect of such

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Intellectual Property Rights or (if necessary) to vest ownership of such Intellectual Property Rights in Post Office or any member of the Royal Mail Group.

29.5 All Intellectual Property Rights created by Fujitsu Services, any member of the Fujitsu Services Group or any HNG-X Sub-contractor (or, in relation to any work referred to in Clause 29.4.2, any Sub-contractor of Fujitsu Services who carries out that work) in relation to:

- 29.5.1 all applications and other software developed for Project HNG-X to fulfil the Functional Requirements, System Capacity and Performance Requirements, User Interface Requirements, Training Requirements, Design and Architecture Requirements and Security Requirements (each as referred to in paragraph 4.1 of Schedule B6.1 as such may be developed or modified from time to time), together with the databases and any background documents and materials associated with or relating to such applications and software and, in each case, all subsequent developments and modifications thereto during the term of this Agreement;
- 29.5.2 all software, together with any databases, background documents and materials associated with or relating to such software (in each case, including all subsequent developments and modifications thereto), which are created to meet agreed requirements or specifications under a Work Order or CCN entered into after the Project HNG-X Commencement Date; and
- 29.5.3 such other software, documents or materials developed for Project HNG-X or any other work as the Parties may agree in writing from time to time.

(together, "Post Office Foreground IPR") shall vest in Post Office.

29.6 Fujitsu Services hereby:

- 29.6.1 assigns all future copyright and database rights comprised in the Post Office Foreground IPR; and
- 29.6.2 agrees to assign (and, in relation to any Post Office Foreground IPR created by another member of the Fujitsu Services Group or an HNG-X Sub-contractor, procure the assignment of) all other Post Office Foreground IPR,

absolutely to Post Office for the full term during which the rights and any renewals or extensions shall subsist.

29.7 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 in Post Office Developed Documentation, Specially Written Software, Specially Written Documentation and/or Post Office Foreground IPR granted under the Copyright Designs and Patents Act 1988 or equivalent or analogous rights under laws of other jurisdictions in relation to such property.

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29.8 Without prejudice to Clause 26.6 and the generality of Clause 27.2, Fujitsu Services acknowledges and agrees that Post Office or its licensors shall own all Intellectual Property Rights in Post Office Background Materials.

**30. Licences granted by Fujitsu Services or a Third Party to Post Office**

30.2 In consideration of the payment of the relevant Charges, Fujitsu Services hereby grants to Post Office or shall procure that Post Office is granted in respect of each category of IPR, documentation and software listed in Table 1 in Clause 30.3 a licence which has the characteristics, affords the rights and is subject to the restrictions designated with ticks in Table 1 in respect of that category (as such may be supplemented by the rights set out in Clauses 30.14 and 30.18). In addition, Clauses 48.7 to 48.13 shall apply in the event that a Terminable Service is terminated pursuant to Clause 47.10.1 or 47.10.2 or this Agreement expires or is terminated as provided herein (other than by Fujitsu Services pursuant to Clause 47.4).

30.3 For the purposes of Table 1:

30.3.1 "terminable by FS" means Fujitsu Services may at any time, notwithstanding any provision herein describing the licence as irrevocable, by notice in writing terminate the licence in question if Post Office is in Default of such licence and Post Office shall fail to remedy such Default within 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 or document which is the subject matter of such licence and shall either return or destroy all copies of such software and documentation, as directed by Fujitsu Services;

30.3.2 "FS Limitation One" means the rights granted under the licence in question may be exercised solely for the purposes of receiving the Services;

30.3.3 "FS Limitation Two" means the right to use granted under the licence in question may be exercised solely in connection with the Hardware of which the software forms an integral part;

30.3.4 "FS Limitation Three" means the licence in question shall be granted or procured by Fujitsu Services solely to the extent necessary for Post Office to receive:

- (a) the HNG-X Services over the HNG-X Service Infrastructure; or
- (b) the benefit of its other rights under this Agreement;

30.3.5 "during the term" means the licence in question is granted during the term of this Agreement only;

30.3.6 "Third Party Use" means:

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- (a) in the case of Internal Code, Fujitsu Services shall use all reasonable endeavours to enable a third party engaged by Post Office to use, and
- (b) in the case of Fujitsu Services Software, Post Office shall be entitled to engage a third party to Use,

the software or documentation which is the subject of the licence, 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;

30.3.7 "Archival Copies" means Post Office shall be entitled to copy the software which is the subject of the licence in order to create as many archival or back-up copies of the same as are necessary. When copying such 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] [the Third Party Software Owner]";

30.3.8 "Transferable" means the licence in question shall be fully transferable and fully sub-licensable; and

30.3.9 "Any Purpose" means the licence in question is for any purpose whatsoever.

30.4 Table 1: Licences Granted by Fujitsu Services to Post Office

IPR, software or document category	Licence characteristics, rights and restrictions																	
	perpetual	during the term	irrevocable	terminable by FS	worldwide	royalty free	exclusive	non-exclusive	to use	to Use	to copy	to modify	FS Limitation One	FS Limitation Two	FS Limitation Three	Third Party Use	Archival Copies	Transferable
Listed Documentation	✓		✓	✓		✓		✓	✓		✓	✓	✓					
Fujitsu Services Software		✓		✓		✓		✓	✓		✓	✓	✓		✓	✓		
Fujitsu Developed Documentation	✓		✓			✓		✓	✓		✓							
Internal Code	✓		✓	✓		✓		✓	✓				✓		✓	✓	✓	
Licensed IPR	✓		✓		✓	✓		✓							✓	✓	✓	
Fujitsu Background IPR		✓	✓			✓		✓	✓				✓					

30.4 If and to the extent that any Fujitsu Services Software, Listed Documentation or Fujitsu Developed Documentation necessary for Post Office to receive the HNG-X Services over the HNG-X Service Infrastructure is included in the licence granted to Post Office pursuant to this Clause 30 of Fujitsu Background IPR, then no other licence under this Clause 30 in respect of that Fujitsu Services Software, Listed Documentation or Fujitsu Developed Documentation shall apply for Post Office to receive the HNG-X Services over the HNG-X Service Infrastructure.

IPR owned by Third Parties

30.5 Post Office acknowledges and agrees that all Intellectual Property Rights in Horizon Third Party Software and Third Party Items (excluding Intellectual Property Rights in Third Party Items required to be assigned to Post Office pursuant to Clause 29) shall remain vested in the relevant third party proprietor of those rights.

30.6 In consideration of the payment of the relevant Charges:

30.6.1 subject to Clauses 30.11 and 30.12, Fujitsu Services hereby grants or shall grant, as the case may be, to Post Office a perpetual (subject to Clause 30.6.3), royalty-free, irrevocable and non-exclusive sub-licence:

- (a) to Use Horizon Third Party Software and HNG-X Third Party Software; and
- (b) to use Third Party Items (other than HNG-X Third Party Software);

in each case where Fujitsu Services has procured the rights to grant such sub-licences; or

30.6.2 subject to Clause 30.11, if Fujitsu Services is unable to procure the right to grant the sub-licence referred to in Clause 30.6.1, having used all reasonable endeavours to procure such right, Fujitsu Services shall procure that the relevant third party grants to Post Office a royalty-free and non-exclusive licence:

- (a) to Use Horizon Third Party Software and HNG-X Third Party Software; and
- (b) to use Third Party Items (other than HNG-X Third Party Software),

and shall use all reasonable endeavours to ensure that such licence is perpetual (subject to Clause 30.6.3) and irrevocable.

30.6.3 Each of the sub-licences and/or licences granted or procured pursuant to this Clause 30.6 in respect of Horizon Third Party Software shall terminate upon the later of:

- (a) the occurrence of Trigger Point T6 (Counter Application Rollout Complete); and

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(b) the date when the Horizon Third Party Software is no longer used in the provision or receipt of the Existing Services in accordance with this Agreement or, in the case only of "Windows NT Workstation" (identified as Horizon Third Party Software in Schedule B4.1), the date when that software is no longer used in the provision or receipt of the HNG-X Services in accordance with this Agreement.

30.7 Each of Post Office's sub-licences and licences under Clauses 30.6.1 and 30.6.2 respectively shall be subject to any additional terms and conditions imposed by the licensor, provided that any terms of any such sub-licence or licence 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 B4.1 and that such terms satisfy the requirements of this Clause 30.7.

30.8 Fujitsu Services shall use all reasonable endeavours to enable a third party engaged by Post Office to use Horizon 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.

30.9 Post Office shall be entitled to copy Horizon Third Party Software and HNG-X Third Party Software in order to create as many archival or back-up copies of the same as are necessary. When copying such 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 [the Third Party Software Owner]."

30.10 In respect of any Non-standard Third Party Material to be (i) included in or used as part of the HNG-X Service Infrastructure or the Business Capabilities and Support Facilities, or (ii) used to provide or receive the HNG-X Services over the HNG-X Service Infrastructure, Fujitsu Services shall procure such rights for Post Office to use those materials as are set out in Clause 48.8, such rights only to be granted in accordance with the provisions of Clause 48.8 (in each case as if references to Fujitsu Background IPR were to the IPR in the Non-standard Third Party Material). Without prejudice to Post Office's rights and remedies under this Agreement, in the event that Fujitsu Services cannot procure such rights, it shall not procure the development or make use of that Non-standard Third Party Material in connection with this Agreement without the prior written consent of Post Office and shall, at Post Office's request and at no additional charge to Post Office:

30.10.1 provide Post Office with such information as it may reasonably request in order to understand and assess the reasons for, and the benefits of, the use of that Non-standard Third Party Material (including, without limitation, identifying any alternative software or materials which possess substantially equivalent functionality, performance and interoperability to that of the Non-standard Third Party Material and in relation to which the above rights can be obtained with minimum additional costs or restrictions); and

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30.10.2 either jointly approach the third party supplier with Post Office or provide reasonable assistance to Post Office in its negotiations with such third party, in each case with a view to obtaining the above rights.

30.11 Post Office acknowledges and agrees that Fujitsu Services may be unable and, if so, shall not be obliged to fulfil its obligations pursuant to Clauses 30.6.1, 30.6.2 or 30.17 (as the case may be) in respect of an item of Horizon Third Party Software or a Third Party Item in the event that an act or omission of Post Office gives rise to a right for the proprietor of the relevant item of Horizon Third Party Software or Third Party Item to:

- 30.11.1 terminate its licence to Fujitsu Services of the relevant item of Horizon Third Party Software or Third Party Item;
- 30.11.2 terminate its licence to Post Office of the relevant Horizon Third Party Software or Third Party Item; or
- 30.11.3 require Fujitsu Services to terminate its sub-licence to Post Office of the relevant Horizon Third Party Software or Third Party Item.

30.12 In the event that Post Office is in breach of a sub-licence of an item of Horizon Third Party Software or a Third Party Item granted pursuant to Clause 30.6.1 and Fujitsu Services reasonably believes that Post Office's breach will result in the termination of Fujitsu Services' right to use such Third Party Item:

- 30.12.1 Fujitsu Services shall give Post Office notice in writing specifying the breach and requiring Post Office to remedy that breach within 30 days of receipt of such notice; and
- 30.12.2 if Post Office fails to remedy the breach within 30 days of receipt of such notice, Fujitsu Services may by notice in writing terminate the relevant sub-licence.

30.13 In the event that a sub-licence is terminated pursuant to Clauses 30.11 or 30.12.2, Fujitsu Services shall not be liable for any failure or delay in providing any Service to the extent that the failure or delay is caused by the cessation of Post Office's right to use the material or thing the subject of that sub-licence, provided that Fujitsu Services has used its reasonable endeavours to continue providing the affected Service or Services to the extent possible and to mitigate the impact of the failure or delay. Fujitsu Services shall provide such assistance as Post Office may reasonably require in order for Post Office to assess, and procure the necessary rights to use, suitable replacement materials to those the subject of the terminated licence.

30.14 Subject to any necessary consents (which Fujitsu Services shall use all reasonable endeavours to obtain) in relation to Horizon Third Party Software, HNG-X Third Party Software or other materials or things in which the Intellectual Property Rights are owned by a third party, any licence or sub-licence granted by Fujitsu Services to Post Office hereunder:

- 30.14.1 shall be transferable in accordance with the provisions of Clause 58.3; and

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30.14.2 is hereby granted to and are fully exercisable by members of the Royal Mail Group, End Users and, in respect of HNG-X Third Party Software only, individuals under contract to the Post Office fulfilling a role ordinarily performed by employees of the Post Office.

**30.15 Use of Internal Design Documentation and Specially Commissioned Design Documentation**

30.15.1 Subject to Clause 30.15.2, Post Office and a third party engaged by Post Office including but not limited to any bona fide potential Next Suppliers (in particular during any tender, due diligence or implementation process) where reasonably required (i) to comply with the Public Contracts Regulations 2006 (in particular without limitation Regulation 4(3)) and (ii) by Post Office for a Design Purpose, shall be entitled to have access to and use Horizon Design Documentation.

30.15.2 Post Office agrees:

- (a) that (irrespective of ownership of the Intellectual Property Rights in Developed Documentation) it will not use or permit to be used any Horizon Design Documentation for any purpose other than a Design Purpose;
- (b) 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; and
- (c) access to and use of any Horizon Design Documentation in accordance with this Clause 30.15.2 shall not serve to transfer any Intellectual Property Rights in the documentation or information contained therein to the Post Office or any third party.

30.15.3 For the purposes of determining ownership of, and any licences granted in respect 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. Licences granted by Fujitsu Services under Clause 30.1 in respect such Specially Commissioned Design Documentation that is deemed to be Fujitsu Developed Documentation shall be subject to the additional restrictions imposed by Clause 30.15.2.

**Deposited Software**

30.16 Fujitsu Services shall place the Source Code of the Deposited Software in escrow with a reputable escrow company agreed upon by the Parties (if the Parties are unable to agree then the escrow company shall be NCC), on the basis of the appropriate standard agreement or on such other terms as Post Office, Fujitsu Services, the third party licensor (if applicable) and the escrow company shall agree (each such

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agreement, a "Source Code Escrow Agreement") such terms, unless the parties agree and record otherwise in their Source Code Escrow Agreement, to be consistent with Post Office's rights under Clauses 48.7 to 48.13.

30.17 Without prejudice to the generality of Clauses 48.7 to 48.13, Fujitsu Services hereby grants to Post Office a perpetual, royalty-free and non-exclusive licence (which shall (subject to Clause 30.11) be irrevocable) 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 30.16 and the licence shall be subject to any restrictions contained herein in respect of the object code version of the Deposited Software.

30.18 Miscellaneous Licence Provisions

30.18.1 On the sale or transfer of an item of Hardware of which Internal Code is an integral part, the 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.

30.18.2 The licence to use Listed Documentation granted under this Clause 30 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 61 or any other obligations of confidentiality which have been accepted by Post Office.

30.19 Licenses granted by Fujitsu Services

This Clause 30.19 has been agreed by both Parties on the basis that this Agreement has been extended such that it expires on 31st March 2023. In the event that the term of this Agreement is shortened following a declaration of ineffectiveness pursuant to Regulation 98(2) of the Public Contracts Regulations 2015 SI 2015/102, then this Clause 30.19 shall lapse and have no effect.

Upon expiry or termination of this Agreement for whatever reason (including but not limited to Post Office terminating this Agreement for cause under Clause 47.1) the following provisions shall apply:

30.19.1 Subject to Clause 30.19.4, upon expiry of this Agreement (on 31st March 2023) Post Office shall pay to Fujitsu £10,000,000 in accordance with Clause 30.19.5. Both Parties agree that if this Agreement is extended beyond 31st March 2023 that the fee payable on expiry of this Agreement shall be reduced based on the length of the extended term by reference to the equivalent time to value calculations used to calculate the Termination Licence Fee (in Clause 30.19.3) below.

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30.19.2 In the event that either Party terminates this Agreement, then Post Office shall pay to Fujitsu Services the sum calculated in accordance with Clause 30.19.3 (the "**Termination Licence Fee**") in accordance with Clause 30.19.5. For the avoidance of doubt, where Post Office terminates the Agreement and pays to Fujitsu Services the fee pursuant to this Clause 30.19.2, it shall not be required to make any further payment referred to in Clause 30.19.1 or 30.19.4.

30.19.3 Where Post Office terminates this Agreement, the obligation to pay the Termination Licence Fee will not arise until after the actual termination of this Agreement (the "**Agreement Termination Date**"), unless Post Office at any time after serving notice to terminate this Agreement gives notice to Fujitsu Services requiring Fujitsu Services to provide earlier access to the Horizon Software IPR and Horizon IPR Materials (i.e. prior to the termination date of this Agreement). Where Post Office gives notice requiring such earlier access, Fujitsu Services shall provide such access in accordance with the provisions of this Agreement, provided that:

- (a) Fujitsu Services shall not be obliged to provide such access earlier than a date that is 12 months prior the date of termination of this Agreement; and
- (b) the fee that would otherwise be payable by Post Office on termination of this Agreement will be modified in these circumstances to reflect the date when Post Office requires access to the Horizon IPR Materials (the "**Termination Early Release Date**").

The Termination Licence Fee payable pursuant to Clause 30.19.2 is calculated using the table below:

<u>Agreement Termination Date or (where applicable) Termination Early Release Date (whichever is the earlier)</u>	<u>Termination Licence Fee</u>
<u>Up to and including 31<sup>st</sup> March 2018</u>	<u>£25,000,000</u>
<u>From 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2019</u>	<u>£22,500,000</u>
<u>From 1<sup>st</sup> April 2019 to 31<sup>st</sup> March 2020</u>	<u>£20,000,000</u>
<u>From 1<sup>st</sup> April 2020 to 31<sup>st</sup> March 2021</u>	<u>£17,500,000</u>
<u>From 1<sup>st</sup> April 2021 to 31<sup>st</sup> March 2022</u>	<u>£15,000,000</u>
<u>From 1<sup>st</sup> April 2022 to 30<sup>th</sup> March 2023</u>	<u>£12,500,000</u>

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30.19.4 Without prejudice to Clause 30.19.2, in the event that Post Office requires earlier access to the Horizon Software IPR and Horizon IPR Materials (i.e. prior to expiry of this Agreement) as part of the re-procurement of the Services similar to the services provided under this Agreement, Post Office may give notice to Fujitsu Services requiring access up to one year prior to the expiry date of this Agreement provided that:

- (a) Post Office shall only require such access to the Horizon Software IPR and Horizon IPR Materials after down selection of the replacement contract to the Next Supplier;
- (b) the fee that would otherwise be payable by Post Office under Clause 30.19.1 to Fujitsu Services shall in these circumstances be increased to £12,500,000 to reflect the early access; and
- (c) Post Office pays Fujitsu Services the amount payable under Clause 30.19.4.(b) in accordance with Clause 30.19.5.

Where the conditions described above in this Clause 30.19.4 are met, Fujitsu Services shall provide such access in accordance with the provisions of this Agreement.

For the avoidance of doubt, where Post Office pays to Fujitsu Services the fee pursuant to this Clause 30.19.4, it shall not be required to make any additional payment referred to in Clause 30.19.1 or 30.19.2.

30.19.5 Post Office shall pay the sum due to Fujitsu Services pursuant to Clause 30.19.1, 30.19.2 or 30.19.4 (as applicable) within 30 days following receipt by Post Office of an invoice that shall be issued by Fujitsu Services no later than 10 working days following receipt of a valid purchase order by Fujitsu Services and subject to paragraph 10 of Schedule D2. All sums referred to above are exclusive of any applicable VAT, which where applicable shall be payable by Post Office in addition to any sum in respect of which it is calculated.

30.19.5.1 In consideration of the payment by Post Office of the Expiry Licence Fee or Termination Licence Fee (as applicable), Fujitsu Services hereby grants to Post Office (such licence being effective from and including the Licence Date) a non-exclusive, perpetual, irrevocable, fully paid-up, worldwide licence under the Horizon Software IPR, for the purpose of using, copying, modifying, adapting, advancing and developing the Horizon Software, in both object code and source code formats (and doing all other acts that would otherwise amount to an infringement of the Horizon Software IPR). Post Office shall be entitled to use, support, maintain, enhance, modify and develop the Horizon Software for Post Office's and Post Office's Affiliates' business purposes only (which shall include, for the avoidance of doubt but without limitation, the use of the Horizon Software by or on behalf of British Forces Post Office and use of the Horizon Software by or behalf of Post Office's franchisees and agents) (the "**Specified Purpose**"), provided always that, for the avoidance of doubt, Post Office and the Post Office Affiliates shall not otherwise under any circumstances sell or transfer the Horizon Software to third parties (other than to Post Office Affiliates) or otherwise market or commercially exploit the

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Horizon Software by permitting third parties (other than to Post Office Affiliates) to use the Horizon Software for their own business purposes.

30.19.5.2 Post Office shall be entitled to sub-license its rights in and to the Horizon Software through multiple tiers of sub-licensee without the prior written consent of Fujitsu Services, provided that:

- (a) the sub-licensees shall only be entitled to use the Horizon Software for the Specified Purpose (including the provision of services to Post Office and Post Office's Affiliates);
- (b) the provisions of the agreement under which Post Office sub-licenses its rights:
  - i. are consistent with the provisions of this Clause 30.19;
  - ii. contain restrictions equivalent to those set out in this Clause 30.19 in relation to the use of the Horizon Software;
  - iii. without prejudice to any liability Fujitsu Services may have to Post Office pursuant to this Clause 30.19 or as otherwise under this Agreement or at law, ensure that Fujitsu Services shall have no liability whatsoever to any sub-licensee save for that which cannot be excluded by law; and
  - iv. contain termination provisions allowing Post Office to terminate such agreement in the event the sub-licensee commits a material breach of the agreement by allowing any third party (other than Post Office or its Affiliates) to use the Horizon Software other than for the Specified Purpose, and fails to remedy such breach within a period of 30 days after being notified in writing to do so by Post Office.
- (c) Save as provided in Clause 30.19.5.2. Post Office shall not sub-license its rights under this Agreement without the prior written consent of Fujitsu Services.
- (d) Except as expressly set out in this Clause 30.19.5.2, and without prejudice to its right to sub-license, Post Office shall remain responsible for all acts and omissions of all sub-licensees in relation to their use of the Horizon Software as if such acts and/or omissions were Post Office's own.
- (e) Post Office shall notify Fujitsu Services annually of the execution of any such agreements under which Post Office sub-licenses its rights under the Horizon Software IPR, or otherwise on the request of Fujitsu Services (acting reasonably).

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30.19.6 Upon thirty (30) days' prior written notice from Fujitsu Services, Post Office shall permit an independent certified or chartered public accounting firm ("Accounting Firm") of nationally recognised standing selected by Fujitsu Services and acceptable to Post Office (acting reasonably), to examine, at Fujitsu Services' expense, the relevant books and records of Post Office as may be reasonably necessary to audit Post Office's use of the Horizon Software to ensure it is being used only for the Specified Purpose. An examination by Fujitsu Services under this Clause shall occur not more than once in any calendar year (except where Fujitsu Services has reasonable grounds to suspect that Post Office is not complying with the provisions of this Agreement of which grounds it provides evidence to Post Office's satisfaction (acting reasonably), in which case it may carry out an audit at any time) and shall be limited to the pertinent books and records for calendar years ending not more than thirty-six (36) months before the date of the request. The Accounting Firm shall be provided access to such books and records at such facility(ies) where such books and records are normally kept and such examination shall be conducted during normal business hours for such facility(ies). The Accounting Firm may be required to sign a standard non-disclosure agreement before providing the Accounting Firm access to such facilities or records. Upon completion of the audit, the Accounting Firm shall provide both Fujitsu Services and Post Office with a written report disclosing whether Post Office's use of the Horizon Software is only for the Specified Purpose, and, in each case, the specific details concerning any discrepancies. No other information shall be provided to Fujitsu Services.

30.19.7 Fujitsu Services shall deliver to Post Office, on a date or dates agreed between the Parties, but in any event (unless agreed otherwise by Post Office) within 30 Working Days following receipt of payment of the Expiry Licence Fee or Termination Licence Fee (as applicable) an electronic copy of:

- (a) the Horizon Software in use in the delivery of services to Post Office pursuant to this Agreement (in object and source code formats);
- (b) all legacy versions of the Horizon Software (in object and source code formats), to the extent such versions are in the possession or control of Fujitsu Services or its Affiliates (Post Office acknowledges that such legacy versions may not have been maintained by Fujitsu Services); and
- (c) any documents or other materials relating to the Horizon Software, which are necessary to enable Post Office to use (and make such other use as is permitted under this Agreement of) the Horizon Software and which are in existence at the date of the expiry or termination of this Agreement,

(together, the "Horizon IPR Materials").

30.19.8 Fujitsu Services represents and warrants on a continuing basis throughout the term of this Agreement that:

- 30.19.8.1 the Horizon Software, taken together with the Fujitsu Support Applications, the Specified Third Party Software and the software and databases the Intellectual Property Rights in which are licensed by Post Office to Fujitsu Services pursuant to this Agreement, comprises all the software and databases

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used by Fujitsu Services to provide the HNG-X Applications and to perform the associated Services in accordance with the terms of this Agreement; and

30.19.8.2 the use by Post Office of the Horizon Software as authorised under this Agreement, the doing of any other act licensed under this Clause 30.19 and the granting of any sub-licence of the Horizon Software IPR in accordance with the terms of this Agreement does not and shall not infringe or otherwise misappropriate the Intellectual Property Rights or database rights of any third party.

For the avoidance of doubt all other representations and warranties (other than as set out in Clause 27.6.1), including as to fitness for purpose and any indication that the Intellectual Property Rights and/or Horizon Software licensed under this Clause 30.19 will be sufficient to enable a third party to support the HNG-X Applications and/or to provide services equivalent to the Services (as such terms are defined in the Agreement), are expressly excluded by Fujitsu Services.

30.19.9 Fujitsu Services shall indemnify on demand, and keep indemnified, Post Office, its Affiliates and any sub-licensees from and against all damages, claims, losses, liabilities, costs and/or expenses (including, without limitation, properly incurred legal expenses and other advisers' fees) incurred by Post Office, its Affiliates or any sub-licensees arising out of and/or in connection with a claim made by a third party alleging that the use of the Horizon Software, and/or the documents or materials in which the Horizon Software IPR subsists as provided by Fujitsu Services under this Agreement, or the doing of any other act licensed under this Clause 30.19 in accordance with this Agreement, infringes or otherwise misappropriates the Intellectual Property Rights or database rights of a third party provided that Post Office promptly upon becoming aware of a claim which might give rise to any liability on Fujitsu Services to indemnify Post Office under this Clause 30.19.9 Post Office will:

30.19.9.1 give written notice of the claim to Fujitsu Services;

30.19.9.2 allow Fujitsu Services to assume the control and conduct of the defence and settlement of the claim;

30.19.9.3 at the expense of Fujitsu Services, give such reasonable assistance as may reasonably be required by Fujitsu Services in the defence, settlement or compromise of the claim; and

30.19.9.4 have the right to participate in (but not control) the defence of a claim and to retain its own counsel in connection with such claim at Post Office's own expense.

30.19.10 Fujitsu Services shall update Annex 1 of Schedule G and Annex 2 of Schedule G, detailing the Fujitsu Support Applications and Specified Third Party Software respectively, upon each major release of the Software.

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30.19.11 Notwithstanding any other provision of this Agreement no confidentiality obligation shall restrict Post Office's ability to disclose confidential information to the extent necessary or useful for it to exercise its rights under this Clause 30.19.

30.19.12 Fujitsu Services shall at the request of Post Office do or procure the doing of all such further acts and execute or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary in Post Office's opinion (acting reasonably) to give full effect to this Clause 30.19 and to vest in Post Office the full benefit of the rights and benefits to be provided to Post Office under this Clause 30.19.

30.19.13 Fujitsu Services shall, within twelve months following execution of CCN 1600 work with Post Office to provide reasonable written descriptions of the Fujitsu Support Applications and the Specified Third Party Software, including by reference to the specific elements of the Services that they relate to and in such detail to enable Post Office to understand the purpose of each of the elements of Fujitsu Support Applications and the Specified Third Party Software it being anticipated by both Parties that this shall comprise not more than a couple of sentences about each item which defines the spirit of its purpose (the "**Understanding Exercise**"). Where requested by Post Office, Fujitsu Services shall:

30.19.13.1 meet with a reasonably competent IT professional(s) of Post Office and discuss and document the descriptions of the Fujitsu Support Applications and the Specified Third Party Software;

30.19.13.2 answer any questions asked by a reasonably competent IT professional(s) of Post Office (acting reasonably) in relation to the Understanding Exercise and the outcomes thereof; and

30.19.13.3 make such amendments to the descriptions as reasonably requested by the reasonably competent IT professional(s) of Post Office, whether following discussions, answers to questions or otherwise.

Fujitsu Services shall every twelve months provide updated written descriptions that reflect any updates or changes to the Fujitsu Support Applications and the Specified Third Party Software (including additions thereto) since the last descriptions were provided to Post Office and, where requested by Post Office, the process in Clauses 30.19.13.1 to 30.19.13.3 (inclusive) shall be repeated in relation to such updates or changes. Each Party shall bear its own costs in relation to its obligations under this Clause 30.19.13.

### 31. **Licences granted by Post Office or a third party to Fujitsu Services**

31.4 Post Office hereby grants to Fujitsu Services or shall procure that Fujitsu Services is granted in respect of each category of IPR, documentation and software listed in Table 2 in Clause 31.3 a licence which has the characteristics, affords the rights and is subject to the restrictions designated in Table 2 with ticks in respect of that category.

31.5 For the purposes of Table 2:

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- 31.5.1 "during the term" means the licence in question is granted only during the term of this Agreement and for the purposes of the provision of the Transfer Services beyond such term;
- 31.5.2 "merge", in the case of software, means the right to merge with other computer programs and, in the case of documents means the right to merge with other documents;
- 31.5.3 "PO Limitation One" means the rights granted under the licence in question may be exercised solely for the purposes of providing the Services and/or HNG-X Development and/or Associated Change Development;
- 31.5.4 "Other Purposes" means the rights granted under the licence in question may be exercised for purposes other than those set out in PO Limitation One, subject to obtaining the prior written consent of Post Office, such consent not to be unreasonably withheld or delayed;
- 31.5.5 "Sub-licensable" means the rights granted under the licence in question include a right to grant sub-licences to sub-contractors of a member of the 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 61. 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 and/or HNG-X Development and/or Associated Change Development, 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;
- 31.5.6 "Extends to FSG" means the licence in question is for each member of the Fujitsu Services Group; and
- 31.5.7 "Copy/Incorporate" means Fujitsu Services shall be entitled to copy all material which is the subject of the licence provided any Post Office copyright markings and security markings are preserved and adhered to and, subject to Clause 56.4, 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.

31.6 Table 2: Licences granted by Post Office or third party to Fujitsu Services

IPR, software or document category	Licence characteristics, rights and restrictions														
	perpetual	during the term	irrevocable	royalty free	exclusive	non-exclusive	to use	to operate	to merge	to copy	to modify	PO Limitation One	Sub-licensable	Extends to FSG	Copy//Incorporate
Specially Written Software	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Specially Written Documentation	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Post Office Developed Documentation	✓		✓	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓
Post Office Foreground IPR		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Post Office Background Materials (other than the software referred to in paragraph 1.2 of Schedule B4.1 and/or paragraph 1.2 of Schedule C3 and/or the Third Party Data referred to in the tables in paragraph 1.3 of Schedule B4.1 and/or paragraph 1.3 of Schedule C3)		✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

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31.7 Upon the cessation of Fujitsu Services' need to use Post Office Foreground IPR or Post Office Background Material for the purposes of providing the Services (which, in the case of the Transfer Services, may be after termination or expiry of this Agreement), Fujitsu Services shall either return or destroy all copies of such material as directed by Post Office.

31.8 Post Office hereby grants to Fujitsu Services a non-exclusive sub-licence or right, as specified in the tables in paragraph 1.2 of Schedule B4.1 and/or paragraph 1.2 of Schedule C3, to use the software listed in those tables for the term of this Agreement solely for the purposes of performing the Services, HNG-X Development, Associated Change Development, operating the Infrastructure, running the Horizon Applications and/or providing the Business Capabilities and Support Facilities. Such sub-licence or right shall in respect of each item of software (other than in respect of the term of such sub-licence or right which shall be for the term of the Agreement unless agreed otherwise by the Parties in writing):

31.8.1 be on the terms;

31.8.2 subject to the restrictions; and

31.8.3 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 tables in paragraph 1.2 of Schedule B4.1 and/or paragraph 1.2 of Schedule C3 as being applicable to that software. References in this Clause 31.5 to the term of this Agreement shall, in the case of licences granted under this Clause for the purposes of performing the Transfer Services, include any period after termination or expiry of this Agreement during which the Transfer Services are provided.

31.9 Post Office hereby grants Fujitsu Services the rights, in respect of the Third Party Data, specified or referred to in the tables in paragraph 1.3 of Schedule B4.1 and/or paragraph 1.3 of Schedule C3, subject to the restrictions specified or referred to in that table.

31.10 Post Office shall, on the written request of Fujitsu Services and subject to the Parties agreeing fair commercial terms (any licence fee being by way of rebate or otherwise), grant Fujitsu Services a non-exclusive licence to use and modify the documents, software, materials, items or other things whatsoever in which the Post Office Foreground IPRs subsist for purposes other than performing the Services, HNG-X Development and Associated Change Development.

32. Riposte 32 and WebRiposte Software

32.4 Fujitsu Services has deposited a copy of the source code of the Riposte 32 and WebRiposte Software at Fujitsu Services' offices in Bracknell and shall retain such source code at those offices for so long as the Riposte 32 and WebRiposte Software are used by Fujitsu Services in the performance of the HNG-X Services.

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- 32.5 Fujitsu Services has provided to Post Office certificates signed by Fujitsu Services' Managing Director confirming that the source code of the Riposte 32 and WebRiposte Software has been deposited at Fujitsu Services' offices in Bracknell as required by Clause 32.1, 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.
- 32.6 Post Office agrees that upon the Riposte 32 and WebRiposte Software becoming Deposited Software and the relevant source code being deposited with a reputable escrow company agreed upon by the Parties in accordance with Clause 30.16, Fujitsu Services shall no longer be obliged to retain a copy of the source code at its offices in Bracknell and Fujitsu Services and each officer of Fujitsu Services shall be released from any liability arising from the certificates referred to in Clause 32.2.

33. **Data**

33.4 Post Office Data

- 33.4.1 Fujitsu Services shall not delete or remove any copyright notices contained within or relating to the Post Office Data.
- 33.4.2 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 such Post Office Data and shall comply with the validation procedures set out in the applicable CCDs (relating to the Horizon Applications or the Business Capabilities and Support Facilities) referred to in Schedules B4.2 or B3.2 (as the case may be) as such procedures may be updated and amended from time to time (save that where any Post Office Data received by Fujitsu Services is stored, transmitted or otherwise processed as part of the Superstock Solution, Fujitsu Services' applicable obligation in respect of that data shall be to use all reasonable endeavours to preserve the integrity and prevent loss or corruption of the data and, for the avoidance of doubt, none of the validation procedures set out in the CCDs (relating to the Horizon Applications or the Business Capabilities and Support Facilities) referred to in Schedules B4.2 or B3.2 (as the case may be) shall apply to the Superstock Solution). 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 Fujitsu Services received it, and Fujitsu Services has complied with the validation rules in relation to such Post Office Data.
- 33.4.3 In the event that the Post Office Data is altered, corrupted or lost in the course of performing the Services (in breach of Fujitsu Services' obligations under Clause 33.1.2) 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:

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- (a) Post Office may require Fujitsu Services at its own expense to restore or procure the restoration of the Post Office Data; or
- (b) 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.

33.4.4 For the purposes of Clauses 33.1.2 and 33.1.3, the term "Post Office Data" shall include the data of Post Office's clients.

33.4.5 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, HNG-X Development or Associated Change Development.

33.4.6 Not Used.

33.4.7 Notwithstanding any other provision in this Agreement to the contrary, Fujitsu Services shall not be responsible for the accuracy, completeness, validity or integrity of any data (including, without limitation, any Personal Data) provided by or on behalf of Post Office for use in the performance and/or operation of the Superstock Solution or any resulting data inaccuracy, incompleteness, invalidity or integrity problems.

### 33.5 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.

### 33.6 Databases

For the avoidance of doubt, Post Office shall have the right to use the Services, the 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 Schedules D2 and B1.1.

## 34. **Intellectual Property Rights Indemnities**

### Fujitsu Services Indemnity

34.4 Subject always to (i) Post Office's proper observance of its obligations as an Indemnified Party under this Clause 34 and (ii) Clauses 34.14 to 34.17 (inclusive) Fujitsu Services shall indemnify Post Office against all claims, demands or actions by a third party (other than any member of the Royal Mail Group) and all costs, expenses (including but not limited to legal costs and disbursements reasonably incurred 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

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such alleged infringement) in the United Kingdom of any Intellectual Property Right by the proper use or possession in accordance with this Agreement (i) by or on behalf of Post Office or a member of the Royal Mail Group, or (ii) in connection with the Services, of:

- 34.4.1 the Infrastructure, the Horizon Applications, and the Business Capabilities and Support Facilities;
- 34.4.2 the documents, software, materials, items or other things whatsoever in which Post Office Foreground IPRs or Licensed IPRs subsist;
- 34.4.3 the Listed Documentation and Horizon Design Documentation; and
- 34.4.4 the documents, software, materials, items or other things whatsoever supplied by or on behalf of Fujitsu Services for use by Post Office in receiving the Services,

provided that Fujitsu Services shall not be obliged to indemnify Post Office against any claim, demand, action, cost, expense, loss or damage to the extent that the indemnity in Clause 34.3 applies to that claim, demand, action, cost, expense, loss or damage.

#### Indemnities relating to confidential information

34.5 The indemnities set out at Clauses 34.1, 34.3.1 and 34.3.2 shall, subject to all limitations and conditions set out therein, extend to any unauthorised use of the confidential information of a third party (other than confidential information of any member of either the Royal Mail Group or the Fujitsu Services Group and excluding any Confidential Information of either Party) ("Third Party Confidential Information") and:

- 34.2.1 references in Clauses 34.1, 34.3.2 and 34.9 to 34.15 (inclusive) to "infringement" and "Intellectual Property Rights" shall be read as if they were references to "unauthorised use" and "Third Party Confidential Information" respectively; and
- 34.2.2 references in Clause 34.3.1 to "infringement" and "copyright, moral rights, database rights, design rights or trade marks" shall be read as if they were references to "unauthorised use" and "Third Party Confidential Information" respectively,

such indemnities to apply only to the extent that the unauthorised use of the Third Party Confidential Information occurred after the Project HNG-X Commencement Date.

#### Post Office Indemnity

34.6 Subject always to (i) Fujitsu Services' proper observance of its obligations as an Indemnified Party under this Clause 34 and (ii) Clauses 34.14 to 34.17 (inclusive) and without prejudice to any indemnities given by Post Office in favour of Fujitsu Services as set out in any CCD (but provided that to the extent that Fujitsu Services is entitled to bring a claim under any such indemnity, Fujitsu Services shall not be entitled to bring a

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claim under this Clause 34.3 in respect of the same event), Post Office shall indemnify Fujitsu Services against all claims, demands or actions by a third party (other than any member of the Fujitsu Services Group) and all costs, expenses (including but not limited to legal costs and disbursements reasonably incurred on a solicitor and client basis), losses and damages arising from or incurred by reason of:

34.6.1 any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of copyright, moral rights, database rights, design rights or trade marks resulting from:

- (a) the use or possession in accordance with this Agreement by or on behalf of Fujitsu Services or a member of the Fujitsu Services Group of a HNG-X Requirement for the HNG-X User Interface or Postal Services Business Capability specified by Post Office as part of the Requirements Baseline (as this may be amended from time to time in accordance with the provisions of Schedule B6.1) (together, "UI Development Requirements"); or
- (b) the development by or on behalf of Fujitsu Services, or the possession or use by or on behalf of Fujitsu Services, in each case in accordance with this Agreement, of the HNG-X User Interface or Postal Services Business Capability, but only to the extent that the infringement or alleged infringement relates to a part of the HNG-X User Interface or Postal Services Business Capability that could not reasonably have been developed in accordance with the UI Development Requirements without giving rise to that infringement or alleged infringement; or

34.6.2 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 resulting from the use or possession in accordance with this Agreement by or on behalf of Fujitsu Services or a member of the Fujitsu Services Group of:

- (a) Post Office Developed Documentation (but only to the extent that the infringement is due to the material referred to in the second limb of the definition of that term);
- (b) any documents, software, materials or items that Post Office has procured or licensed from third parties which the Parties have agreed in writing will be supplied by or on behalf of Post Office to Fujitsu Services for the purpose of providing the Services, HNG-X Development and/or Associated Change Development (including, without limitation, use as part of the HNG-X User Interface or Postal Services Business Capability) or any other more limited purpose agreed in writing by the Parties provided that (a) such use or possession by Fujitsu Services is for the purpose of providing the Services, HNG-X Development and/or Associated Change Development (or such other more limited purpose as may be agreed in writing by the Parties); and (b) the Post Office's only liability under this Clause 34.3.2(b) shall be to pass on to Fujitsu Services the benefit of any indemnity (the terms of which Post Office

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shall, unless unable to do so due to obligations of confidentiality owed to the relevant third party owner or licensor, notify to Fujitsu Services upon Fujitsu Services' request) in respect of the infringement or alleged infringement it receives from the relevant third party owner or licensor; and

(c) to the extent that Post Office has not procured or licensed it or them from any third parties, any software and related documentation, graphic designs, trade marks or Reference Data (and such other individual material as the Parties may agree in writing should be covered by this indemnity) supplied by or on behalf of the Post Office to Fujitsu Services for the purpose of providing the Services, HNG-X Development and/or Associated Change Development (including, without limitation, use as part of the HNG-X User Interface or Postal Services Business Capability) or any other more limited purpose agreed in writing by the Parties provided that such use or possession by Fujitsu Services is for the purpose of providing the Services, HNG-X Development and/or Associated Change Development (or such other more limited purpose as may be agreed in writing by the Parties),

excluding in each case the UI Development Requirements; or

34.6.3 any infringement or alleged infringement (including but not limited to the defence of such alleged infringement) in the United Kingdom of any Intellectual Property Rights resulting from the development by or on behalf of Fujitsu Services, or the possession or use by or on behalf of Fujitsu Services, in each case in accordance with this Agreement, of the HNG-X Service Infrastructure or the Business Capabilities and Support Facilities, but only to the extent that the infringement or alleged infringement results from any instruction given by Post Office to Fujitsu Services in accordance with the provisions of Clause 34.5.2 (b)(a) and Fujitsu Services had first notified Post Office of the risk of that infringement in accordance with the provisions of Clause 34.5.

34.7 Fujitsu Services shall use its reasonable endeavours to, and observe good industry practice in its efforts (including its monitoring and searching practices) to, be aware of any third party Intellectual Property Rights covering the areas of technology and business methods and processes to be developed by or on behalf of Fujitsu Services as part of the HNG-X Infrastructure and the Business Capabilities and Support Facilities (including, without limitation, the HNG-X User Interface or Postal Services Business Capability).

34.8 Without prejudice to Fujitsu Services' right to an indemnity under Clause 34.3.1 and/or 34.3.2, in the event that Fujitsu Services considers, at any time prior to Trigger Point T5 (Data Centre ready for HNG-X) (or within 30 days of the start of HNG-X Project Workstream X4 (HNG-X Application Roll Out) for any HNG-X Requirement provided to Fujitsu Services after Trigger Point T5 (Data Centre ready for HNG-X)), that a HNG-X Requirement that forms part of (or is intended to form part of) the Requirements Baseline (a "Queried Requirement") would, if implemented, result in a reasonable risk of infringement or alleged infringement of Intellectual Property Rights owned by a third party, then:

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34.8.1 it shall promptly on discovery notify Post Office in writing of its concern, such notice to be accompanied by:

- (a) a proposal for an alternative requirement that, if implemented, would fulfil the relevant Development Obligation; and
- (b) such relevant materials and information that it is reasonable for Fujitsu Services to provide in order for Post Office to understand and assess such risk and the alternative requirement proposed by Fujitsu Services under paragraph 34.5.1(a);

34.8.2 within 14 days of its receipt of such notice (or such other time as the Parties may agree), Post Office shall respond in writing to Fujitsu Services stating whether or not it:

- (a) agrees with Fujitsu Services' concerns; and/or
- (b) either (a) instructs Fujitsu Services to continue with the development cycle in respect of that Queried Requirement in any event, in which case Post Office shall indemnify Fujitsu Services under Clause 34.3.3, or (b) instructs Fujitsu Services to implement the alternative requirement proposed under Clause 34.5.1(a) in which case such alternative requirement shall form part of the Requirements Baseline;

34.8.3 in the event that Post Office instructs Fujitsu Services to implement the alternative requirement in accordance with Clause 34.5.2(b)(b), Fujitsu Services shall not be able to invoke the process set out in this Clause 34.5 in respect of that alternative requirement at any time after Post Office so instructs Fujitsu Services;

34.8.4 at all times during the process set out in this Clause 34.5, Fujitsu Services shall provide Post Office with such assistance as Post Office may reasonably require in order to understand and assess the risk notified to it and the alternative requirement proposed by Fujitsu Services, provided that the Parties hereby acknowledge that each Party shall be responsible for forming its own assessment of such risk and alternative requirement;

34.8.5 either Party may request, at any time prior to an instruction being given under Clause 34.5.2(b), that the Parties meet to discuss a risk notified, or an alternative requirement proposed, to Post Office by Fujitsu Services in accordance with this Clause and to agree in good faith a course of action which is mutually beneficial to the Parties. If the Parties are unable to agree on the relevant risk and either Post Office does not give Fujitsu Services an instruction under Clause 34.5.2(b) and/or the Parties are unable to agree the suitability of the alternative requirement proposed, then the matter shall be escalated in accordance with the DRP set out in Annex 2 of Schedule A2 (Governance), up to and including the stage set out at paragraph 3 of such Annex (Executive Review), provided that references in that Annex to "five Working Days" shall be read as "two Working Days" for the purposes of this Clause;

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34.8.6 if, following the earlier of (i) the escalation of the matter and completion of the process set out in Clause 34.5.5; or (ii) the date falling ten Working Days after the date upon which the matter was first escalated in accordance with Clause 34.5.5, the Parties are not able to agree on the risk or the suitability of the alternative requirement proposed and Post Office fails to instruct Fujitsu Services to continue with the development cycle in respect of that Queried Requirement, then Fujitsu Services shall:

- (a) be entitled to reject that Queried Requirement (such rejected Queried Requirement being a "Rejected Requirement"), provided that in the event that Fujitsu Services disagrees with any advice and guidance of a Facilitator obtained as part of the escalation process, it shall provide Post Office with a reasonably detailed statement of its reasons for doing so; and
- (b) achieve the relevant Development Obligation for such Rejected Requirement; and

34.8.7 in the event that Fujitsu Services rejects a Queried Requirement pursuant to this Clause 34.5 and Fujitsu Services would, if it had complied with Clause 34.4, have known about the risk relating to that Rejected Requirement earlier than the date on which it actually became aware of that risk and notified the Post Office pursuant to Clause 34.5.1, then Fujitsu Services shall refund to Post Office any Charges paid or payable by Post Office in respect of development work undertaken by or on behalf of Fujitsu Services in relation to that Rejected Requirement in that intervening period (but excluding any Charges in respect of development work which Fujitsu Services is able to demonstrate to the reasonable satisfaction of Post Office is of continued use and benefit to Post Office).

34.9 The indemnities set out at Clause 34.3.1 shall not apply to any UI Development Requirement to the extent that (a) Fujitsu Services or a member of the Fujitsu Services Group was engaged by Post Office for the purposes of the development of that UI Development Requirement and contributed to that UI Development Requirement and (b) such contribution resulted in the infringement or alleged infringement referred to in Clause 34.3.1.

34.10 In the event that, pursuant to Clause 34.5, Fujitsu Services rejects a Queried Requirement in respect of which (a) Fujitsu Services or a member of the Fujitsu Services Group was engaged by Post Office for the purposes of the development of such Queried Requirement and (b) contributed towards such Queried Requirement, then (without prejudice to any other rights or remedies available to Post Office) Fujitsu Services shall refund to Post Office the Charges paid or payable by Post Office in respect of that contribution.

Common Indemnity Provisions

34.11 Each Party shall promptly notify the other if any claim or demand is made or action brought against it to which this Clause 34 applies.

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34.12 The Party giving an indemnity under this Clause 34 (the "Indemnifying Party") shall, at its own expense, conduct any litigation arising therefrom and all negotiations in connection therewith and the Party receiving the indemnity (the "Indemnified Party") hereby agrees to grant to the Indemnifying Party exclusive control of any such litigation and such negotiations in relation to the indemnified infringement or alleged infringement. The Indemnifying Party shall consult with and pay due regard to the interests (including, where the Post Office is the Indemnified Party, the commercial interests of the Royal Mail Group and the public interest and where Fujitsu Services is the Indemnified Party the commercial interests of the Fujitsu Services Group) and views of the Indemnified Party in the conduct of any defence to any claim or demand hereunder, and shall, where it is reasonable to do so taking into account also the interests of the Indemnifying Party, comply with such interests and views.

34.13 The Indemnified Party shall, at the request of the Indemnifying Party, afford to the Indemnifying Party all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Indemnified Party to which the indemnity may apply or any claim or demand made or action brought against the Indemnifying Party to which the indemnity may apply. The Indemnifying Party shall reimburse the Indemnified Party for all reasonable costs and expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) incurred in so doing.

34.14 The Indemnified Party 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 brought against the Indemnified Party to which the indemnity may apply or any claim or demand made or action brought against the Indemnifying Party to which the indemnity may apply.

34.15 If a claim or demand is made or action brought to which the indemnity may apply or in the reasonable opinion of the Indemnifying Party is likely to be made or brought, the Indemnifying Party may at its own expense either:

34.15.1 modify any or all of the affected documents, software, materials, items or other things whatsoever without reducing the performance and functionality of the same, or substitute alternative items, products or services of equivalent performance and functionality for any or all of the documents, software, materials, items or other things whatsoever, 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 the Indemnified Party (whether by passing any form of acceptance testing or otherwise), such acceptance not to be unreasonably withheld or delayed, and shall reimburse the Indemnified Party all reasonable costs directly incurred by it; or

34.15.2 procure a licence to use the affected documents, software, materials, items or other things whatsoever on terms which afford to the Indemnified Party no more extensive rights than those originally applicable hereunder and which are acceptable to the Indemnified Party and shall reimburse the Indemnified Party all reasonable costs directly incurred by it.

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34.16 Notwithstanding anything to the contrary in this Clause 34:

34.16.1 to the extent that any actual or alleged infringement, to which this Clause 34 applies, relates to the development by Fujitsu Services under this Agreement of the HNG-X Service Infrastructure or the Business Capabilities and Support Facilities and does not result from (i) a breach by Fujitsu Services of the Clean Room Rules or paragraph 4.2 of Annex 2 to Schedule B6.2 (ii) a failure by Fujitsu Services to comply with Clause 15.1.5, or (iii) a breach by Fujitsu Services of Clause 34.4; and

34.16.2 provided that the HNG-X Development Completion has not occurred at the time of the claim, demand or action in respect of such infringement,

the costs of undertaking any modification or substitution or procuring a licence that may be made or obtained pursuant to Clause 34.12 shall be treated as a normal cost of development and Post Office shall pay Fujitsu Services:

- (a) for such modification work on a time cost basis, subject to and in accordance with the provisions of Schedule D8; and
- (b) in respect of any such substitution or licence, an amount equivalent to Fujitsu Services' cost of the product used as a substitute and/or of the necessary licence, multiplied by 95 and divided by 100.

34.17 The indemnities set out in this Clause 34 (other than where Clause 34.3.1(b) applies) shall not apply insofar as any such claim or demand or action is in respect of:

34.17.1 any use by or on behalf of the Indemnified Party of the affected documents, software, materials, items or other things whatsoever in combination with any item not supplied or approved (such approval not to be unreasonably withheld or delayed) by the Indemnifying Party where such combined use directly gives rise to the claim, demand or action; or

34.17.2 any modification carried out by or on behalf of the Indemnified Party to any item supplied by the Indemnifying Party under this Agreement if such modification is not authorised by the Indemnifying Party in writing; or

34.17.3 any use by the Indemnified Party of the affected documents, software, materials, items or other things whatsoever in a manner not reasonably to be inferred from their specification (if any) or the requirements of the Indemnified Party (including, without limitation, where Post Office is the Indemnified Party, the Requirements Baseline).

34.18 If the Indemnifying Party has availed itself of its rights to modify the affected documents, software, materials, items or other things whatsoever or to supply substitute products or services pursuant to Clause 34.12.1 or to procure a licence under Clause 34.12.2 and such exercise of the said rights has avoided any claim, demand or action for infringement or alleged infringement, or if the Indemnified Party has unreasonably withheld its acceptance of any items modified or substituted by the Indemnifying Party in accordance with Clause 34.12, then the Indemnifying Party shall

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have no further liability thereafter under this Clause 34 in respect of the said claim, demand or action.

34.19 If a modification or substitution in accordance with Clause 34.12.1 is not possible so as to avoid the infringement and the Indemnifying Party has been unable to procure a licence in accordance with Clause 34.12.2, then Clause 34.1 or Clause 34.3 (as the case may be) shall apply.

34.20 This Clause states the entire liability of:

34.20.1 Fujitsu Services with regard to the infringement of any Intellectual Property Right by the use or possession of the things listed in Clause 34.1 by or on behalf of Post Office or in connection with the Services;

34.20.2 Post Office with regard to the infringement of any Intellectual Property Right by the use or possession of the things listed in Clause 34.3 by or on behalf of Fujitsu Services; and

34.17.3 each Party with regard to the unauthorised use of any Third Party Confidential Information by or on behalf of the other Party after the Project HNG-X Commencement Date.

35. **Use Of Services and Infrastructure**

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

35.5 Except as contemplated by this Agreement and subject to Clause 35.3, the 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.

35.6 Post Office acknowledges and agrees that the HNG-X Services will be performed by Fujitsu Services using certain facilities and/or elements of the Infrastructure, as described in the Solution Architecture and/or the Solution Baseline and listed from time to time in the Asset Register, that will be shared with customers of Fujitsu Services other than the Post Office.

#### **PART F: LIABILITY**

36. **Damage to Physical Property**

36.4 Except where any of paragraphs 5.2, 6.3.2 and 6.3.3 of Schedule B1.3 apply, each Party will be responsible for loss or damage caused by its own negligence or wilful acts or omissions to the physical property of the other.

36.5 Hardware

Subject to Clauses 36.3 and 36.5:

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36.5.1 risk in the Infrastructure shall vest in Fujitsu Services, save to extent that any elements of the Infrastructure are transferred to Post Office or the Next Supplier pursuant to Clause 48.1 in which case risk in such elements shall pass to Post Office or the Next Supplier when title passes; and

36.5.2 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 36.1) at its own cost, save to the extent that any hardware is transferred to Post Office pursuant to Clause 48.1 in which case risk and the responsibility to repair and replace in such elements shall pass to Post Office when title passes as provided for in Clause 26.2.

36.6 Paypoles and PIN Pads

36.6.1 The risk of loss of or damage to each Paypole shall pass from Fujitsu Services to Post Office upon delivery of that Paypole to Post Office.

36.6.2 Post Office shall be liable for the costs (including, without limitation, service call costs) of any damage to, loss or theft of PIN Pads to the extent caused by or contributed to by Post Office's employees, contractors, agents (including, without limitation, its Agents) and, where the damage, loss or theft occurs at any site where PIN Pads are installed, by the public.

36.6.3 Post Office shall be liable for the costs of :

- (a) damage to PIN Pads;
- (b) damage to any hardware elements of the Infrastructure at sites where PIN Pads are installed (not including Software wherever located); and
- (c) remedying any defective PIN Pad or Paypole installations,

as a result of the negligence or wilful acts or omissions during the Paypole installation process of Post Office's installation contractors, employees or agents.

36.7 Branch Hardware

Unless the Parties agree otherwise, risk in Branch Hardware shall vest with the Party that procures that hardware until such time as that hardware has been installed at the Branch and accepted by Fujitsu Services as part of the Infrastructure at which time such risk shall transfer to Fujitsu Services. For the avoidance of doubt, after the transfer of Branch Hardware to the Post Office on 1<sup>st</sup> April 2015, Fujitsu Services shall have no risk in respect of that Branch Hardware save that Fujitsu Services will exercise reasonable controls over any Branch Hardware that is being utilised or stored by Fujitsu Services in provision of the Services.

36.8 Superstock

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36.8.1 Risk in the Superstock Infrastructure shall remain vested in Fujitsu Services and/or its suppliers.

36.8.2 Not Used

36.8.3 Not Used

36.8.4 Not Used

36.8.5 Not Used

**37. Damage to Plant, Tackle and Tools**

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

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

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

**38. Access to Post Office Premises**

38.4 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.

38.5 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 to Fujitsu Services upon request copies of its written security procedures and shall afford to Fujitsu Services upon request an opportunity to inspect its physical security arrangements.

**39. Post Office Responsibilities**

39.4 Subject to paragraph 2.3 of Schedule A5, Post Office undertakes (at its own cost and expense save where otherwise provided in or pursuant to this Agreement) to perform the Post Office Responsibilities. Post Office shall use all reasonable endeavours to perform such Post Office Responsibilities in a timely fashion or, where specified, in accordance with the HNG-X Programme Plan or any other agreed timetable specified in this Agreement.

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- 39.5 Without limitation to Clause 39.1, 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 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.
- 39.6 Without prejudice to the provisions of paragraph 13 of Schedule B6.2 or Schedule A5, Fujitsu Services shall not be liable to Post Office for any failure to perform or delay in performing its obligations under this Agreement where Fujitsu Services proves that such failure or delay has been directly caused by the failure of Post Office to perform any of the Post Office Responsibilities.

This Clause 39.3 shall not apply in the circumstances to which Clause 43.6 applies, which shall be governed by the specific rule stated in Clause 43.6.

- 39.7 In addition to the provisions of 39.3, in the event that the Post Office fails to perform or delays performing its obligations regarding the processing of reference data for the introduction of new, or updates to existing, APOP applications as described in the CCD entitled " " (CS/PRD/058) then in so far as such non-performance results in costs being incurred by Fujitsu Services in rectification activities then such costs shall be reimbursable by the Post Office to Fujitsu Services.
- 39.8 Post Office Obligations inserted by CCN 1400 shall be applicable to provisions relating to the Towers Model only including but not limited to Clauses 39A, 39B and 39C and Schedule F. Provisions relating to Post Office Responsibilities shall continue to apply in the same manner as they applied prior to CCN 1400 and shall be unaffected by Post Office Obligations.

#### **39A Effect on Service Levels of Post Office Cause or Tower Contractor Cause**

- 39A.1 This Clause 39A is without prejudice to the obligations of Fujitsu Services to provide the Services in accordance with the Agreement.
- 39A.2 If Fujitsu Services has failed to provide the Services in accordance with the Service Levels as a direct result of a Post Office Cause, or a Tower Contractor Cause, Fujitsu Services shall continue to provide the Services to the extent it is able in accordance with the Service Levels but may apply for relief as set out in Clause 39A.3.
- 39A.3 To the extent that Fujitsu Services reasonably believes that Fujitsu Services would have provided the Services in accordance with the Service Levels but has failed to do so as a direct result of a Post Office Cause, or a Tower Contractor Cause, Fujitsu Services may make a written submission to Post Office within 3 months of the commencement of the Post Office Cause or the Tower Contractor Cause. Fujitsu Services shall not be entitled to any relief, to the extent that Fujitsu Services cannot demonstrate to Post Office's reasonable satisfaction that:

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- 39A.3.1 Fujitsu Services' failure to provide the Services in accordance with the Service Levels is a direct result of a Post Office Cause, or a Tower Contractor Cause (identifying the specific Post Office Obligation or Tower Contractor Responsibility that has not been met);
- 39A.3.2 Fujitsu Services made all reasonable efforts to mitigate the consequences of the relevant Post Office Cause or Tower Contractor Cause, and to continue to provide the Services in accordance with the Service Levels; and
- 39A.3.3 Fujitsu Services' failure to provide the Services in accordance with the Service Levels arose from a cause beyond Fujitsu Services' reasonable control.

39A.4 Post Office will consider any submission under Clause 39A.3 and advise Fujitsu Services of its proposal in respect of a submission promptly and in any event within 15 Working Days of receipt. If Fujitsu Services does not accept Post Office's submission, the Parties shall meet within 5 Working Days of Fujitsu Services' receipt of Post Office's proposal and shall use reasonable endeavours to agree the rights and reliefs applicable to Fujitsu Services in line with Clause 39A.5. Either Party may invite other interested Tower Contractors to the meeting and in that event shall inform the other Party.

39A.5 Where the Parties agree that Fujitsu Services would have provided the Services in accordance with the Service Levels but has failed to do so as a direct result of a Post Office Cause or a Tower Contractor Cause and has demonstrated compliance with Clauses 39A.3.1 to 39A.3.3 inclusive then:

- 39A.5.1 the period in which the relevant Service was affected by the Post Office Cause or Tower Contractor Cause will not be included in measuring the performance of any affected Service;
- 39A.5.2 Fujitsu Services will not be treated as being in breach of this Agreement to the extent that non-performance or breach is due to the Post Office Cause or Tower Contractor Cause; and
- 39A.5.3 Fujitsu Services will be entitled to the Charges for the relevant Services affected by Post Office Cause or Tower Contractor Cause as if it had not occurred provided that Fujitsu Services mitigates those Charges to the extent that it is able and passes on any reduction in the Charges to Post Office.

39A.6 In order to claim the rights and reliefs in Clause 39A.5, Fujitsu Services' submission pursuant to Clause 39A.3 will be provided within 15 Working Days after it has notified Post Office of a claim that Clause 39A.2 applies and that Fujitsu Services is applying for the rights and relief set out in Clause 39A.5.

39A.7 In the event of a dispute, either Party may refer the matter for resolution in accordance with schedule A2 and, failing resolution through governance within 15 Working Days, such Party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties will continue to resolve the causes of, and mitigate the effects of such failure.

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**39B. Costs incurred due to Post Office Cause or Tower Contractor Cause**

39B.1 In this Clause 39B, claims for reimbursement of additional costs and expenses may be claimed insofar as the Parties have not agreed to recompense Fujitsu Services elsewhere in this Agreement. Where the Parties have agreed to recompense Fujitsu Services elsewhere in this Agreement, Fujitsu Services may not make any claim under this Clause 39B.

39B.2 If Fujitsu Services reasonably believes that it has incurred additional costs and expenses as a direct result of steps taken by Fujitsu Services in carrying out any additional work or services to remedy or mitigate an issue caused by a Post Office Cause or Tower Contractor Cause, then Fujitsu Services shall claim for reimbursement of those additional costs and in accordance with the claim process set out in Clause 39B.3.

39B.3 To the extent that Fujitsu Services reasonably believes that Clause 39B.2 applies, Fujitsu Services may make a written submission to Post Office within 3 months of the commencement of the Post Office Cause or Tower Contractor Cause seeking reimbursement of additional costs and expenses necessarily and reasonably incurred as a direct result of steps taken by Fujitsu Services in carrying out any additional work or services to remedy or mitigate an issue caused by a Post Office Cause or Tower Contractor Cause. Fujitsu Services shall not be entitled to any additional costs and expenses, unless Fujitsu Services can demonstrate to Post Office's reasonable satisfaction that:

39B.3.1 Fujitsu Services could not have avoided the effect on the provision of the Services and/or on its ability to perform its obligations under the Agreement by using all reasonable endeavours to eliminate or mitigate the consequences of the delay in accordance with Good Industry Practice and having regard to the scope of the Services for which Fujitsu Services is responsible; and

39B.3.2 costs incurred were reasonable, demonstrable, necessarily and reasonably incurred and that Fujitsu Services used all reasonable endeavours to minimise such costs,

and Fujitsu Services will provide any additional information that Post Office may reasonably require in order to assess the validity of Fujitsu Services' claim.

39B.4 Post Office will consider any submission under Clause 39B.3 and advise Fujitsu Services of its proposal in respect of a submission promptly and in any event within 15 Working Days of receipt. If Fujitsu Services does not accept Post Office's submission, the Parties shall meet within 5 Working Days of Fujitsu Services' receipt of Post Office's proposal and shall use reasonable endeavours to agree the amount of compensation applicable to Fujitsu Services. Either Party may invite other interested Tower Contractors to the meeting and in that event shall inform the other Party.

39B.5 The agreed costs will be shown as an additional amount on the next Operational Charges invoice due to be issued under this Agreement. If no Operational Charges invoice is due to be issued then Fujitsu Services will issue an invoice.

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39B.6 In the event of a dispute, either Party may refer the matter for resolution in accordance with schedule A2 and, failing resolution through governance within 15 Working Days, such Party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties will continue to resolve the causes of, and mitigate the effects of such failure.

39B.7 Fujitsu Services acknowledges that in respect of a Post Office Cause or a Tower Contractor Cause, a materiality threshold applies in respect of costs claimed for reimbursement pursuant to Clause 39B.3 and that Fujitsu Services will not be entitled to claim for reimbursement of costs pursuant to that Clause unless and until additional costs and expenses incurred by Fujitsu Services in consequence of the circumstances listed in Clause 39B.2 in respect of each individual Post Office Cause or of each individual Tower Contractor Cause exceed £5,000.

### **39C Effects of a Fujitsu Dependency Failure**

39C.1 For the avoidance of doubt, prior to the earlier of notification to Fujitsu Services of the appointment of the Post Office Service Integrator by Post Office or the termination of any Terminable Service and the contracting of a replacement for said service by Post Office with a Tower Contractor under its Towers Model, there shall be no Fujitsu Dependencies.

39C.2 Upon agreement of any Fujitsu Dependencies, Fujitsu Services undertakes to notify Post Office as soon as reasonably practicable after becoming aware that it has not, will not, or is unlikely to fulfil any Fujitsu Services Dependency or will be delayed from doing so (a "**Fujitsu Dependency Failure**"). In the event that Post Office has not been notified by Fujitsu Services in accordance with this Clause 39C.2 but Post Office is aware or becomes aware of a Fujitsu Dependency Failure, then Post Office shall notify Fujitsu Services of such Fujitsu Dependency Failure.

39C.3 Notwithstanding actions to be taken under any Incident management process to resolve a Fujitsu Dependency Failure, within 5 Working Days after providing notice or receiving notice under Clause 39C.2, Fujitsu Services shall submit a report relating to the Fujitsu Dependency Failure (the "**Fujitsu Dependency Failure Report**") to Post Office setting out full details of the reasons for, the issues arising out of and the steps which Fujitsu Services is taking to minimise the impact of the Fujitsu Dependency Failure on Post Office and/or the Tower Contractors to the extent to which the potential impact of a particular Fujitsu Dependency Failure was agreed as part of the agreement of the particular Fujitsu Dependency. In addition, it shall notify Post Office of the actions it intends to take to prevent the recurrence of the Fujitsu Dependency Failure in the future.

39C.4 Fujitsu Services shall take reasonable steps to perform its obligations under the Agreement and use its reasonable endeavours to take precautions which it ought reasonably to have taken in accordance with Good Professional Practice in order to avoid or mitigate the potential impacts of the Fujitsu Dependency Failure on Post Office, and/or the relevant Tower Contractors.

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39C.5 Fujitsu Services shall co-operate and work with Post Office, the Tower Contractors and/or any third parties (as reasonably directed by Post Office) to mitigate the Fujitsu Dependency Failure.

39C.6 In the event of a Post Office Cause or Tower Contractor Cause, Fujitsu Services shall co-operate, support, collaborate and work with Post Office, other Tower Contractors and/or any third parties (as reasonably directed by Post Office) so that Post Office and/or relevant Tower Contractors are able to mitigate the effect of the Post Office Cause or Tower Contractor Cause.

39C.7 Once a Fujitsu Dependency Failure has been resolved and in any event no later than 30 days (or such period as may be agreed by the Parties) after the occurrence of the Fujitsu Dependency Failure, the Subject Leads for the Relationship best qualified to deal with the Fujitsu Dependency Failure, taking into account its nature and the responsibilities of each Subject Lead, shall convene an occasional meeting of the relevant Relationship in accordance with paragraph 3.3 of Schedule A2 to agree responsibility for the Fujitsu Dependency Failure (including where appropriate the preparation of a root cause analysis).

39C.8 Post Office may make a written request to Fujitsu Services seeking reimbursement of demonstrable additional costs and expenses necessarily and reasonably incurred as a direct result of steps taken by Post Office and/or a Tower Contractor in carrying out any additional work or services to remedy or mitigate an issue caused by a Fujitsu Dependency Failure (the "**Compensation Amount**"). Post Office shall make any claim for a Compensation Amount within 3 months of commencement of the Fujitsu Dependency Failure. Post Office shall not be entitled to any Compensation Amount for itself or any Tower Contractor unless Post Office can demonstrate to Fujitsu Services' reasonable satisfaction that:

39C.8.1 Post Office and/or the Tower Contractor could not have avoided the effect on the provision or receipt of the relevant services and/or on its ability to perform its obligations under its agreement(s) by using all reasonable endeavours to eliminate or mitigate the consequences of the delay in accordance with Good Industry Practice; and

39C.8.2 costs incurred were reasonable, demonstrable, necessarily and reasonably incurred and that Post Office and/or the Tower Contractor used all reasonable endeavours to minimise such costs,

and Post Office will provide any additional information that Fujitsu Services may reasonably require in order to assess the validity of Post Office's request.

39C.9 Fujitsu Services will consider any request under Clause 39C.8 and advise Post Office of its proposal in respect of the Compensation Amount promptly and in any event within 15 Working Days of receipt. If Post Office does not accept Fujitsu Services' proposal, the Parties shall meet within 5 Working Days of Post Office's receipt of Fujitsu Services' proposal and shall use reasonable endeavours to agree the Compensation Amount applicable. Either Party may invite other interested Tower Contractors to the meeting and in that event shall inform the other Party.

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39C.10 The agreed Compensation Amount will be shown as a credit on the next Operational Charges invoice due to be issued under this Agreement. If no Operational Charges invoice is due to be issued then Post Office will issue a credit note.

39C.11 In the event of a dispute under this Clause 39C, either Party may refer the matter for resolution in accordance with Schedule A2 and, failing resolution through governance within 15 Working Days, such Party may refer the dispute for resolution in accordance with the Dispute Resolution Procedure. Pending the resolution of the Dispute both Parties will continue to resolve the causes of, and mitigate the effects of such failure.

39C.12 Post Office acknowledges that in respect of a Fujitsu Dependency Failure, a materiality threshold applies in respect of costs claimed for reimbursement pursuant to Clause 39C.8 and that Post Office and/or any other Tower Contractor will not be entitled to claim for reimbursement of costs pursuant to that Clause unless and until additional costs and expenses incurred by Post Office and/or any other Tower Contractor in consequence of the circumstances listed in Clause 39C.8 in respect of each individual Fujitsu Dependency Failure exceed £5,000.

**40. Fujitsu Services' Personnel**

- 40.4 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 Royal Mail Group (which expression shall in this Clause 40 include all persons employed or engaged by the Royal Mail Group and all persons other than Fujitsu Services and its sub-contractors providing services to the Royal Mail Group), or to any Branch any person employed or engaged by Fujitsu Services, or by a sub-contractor, whose admission would be, in the reasonable opinion of Post Office, undesirable.
- 40.5 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 Royal Mail 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.
- 40.6 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.
- 40.7 Fujitsu Services' representatives, engaged within the boundaries of a Royal Mail 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.

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40.8 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 Royal Mail Group or to a Branch shall be final and conclusive.

**41. Fujitsu Services' Key Personnel**

41.4 The Parties acknowledge that the Key Personnel are essential to the fulfilment of Fujitsu Services' obligations hereunder.

41.5 Notwithstanding anything to the contrary in Clause 61, Post Office shall keep the CCD entitled "Fujitsu Services Key Personnel" (HR/CON/001) (including any proposed or agreed amendments to it) and the information contained in it ("Personnel Information") confidential. Except as provided for in this Clause 41.2, Post Office shall not copy, reproduce or disclose Personnel Information to any third party.

41.5.1 Post Office may reproduce, copy and disclose Personnel Information:

- (a) to Post Office's Subject Leads for (i) the Systems Integration Partnership and Executive Relationship and (ii) the Commercial Relationship;
- (b) to its professional advisers provided such reproduction, copying and disclosure is necessary for the purposes of this Agreement; or
- (c) as required by law,

provided that Post Office shall procure that the persons referred to in paragraphs (a) and (b) above shall not themselves disclose Personnel Information (except amongst themselves) without the express written consent of Fujitsu Services.

41.5.2 Post Office may discuss Personnel Information with and disclose Personnel Information to FS Listed Personnel.

41.6 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 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.

41.7 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. The Parties shall identify and agree any such additional key personnel (together with any activities which are relevant to them).

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**42. Injury to Persons; Loss of Property**

42.4 Subject always to Post Office's proper observance of its obligations under this Clause 42 and except where paragraphs 5.2 or 6.3.3 of Schedule B1.3 apply, 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.

42.5 In the event of any claim or demand being made or action brought to which Clause 42.1 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 and views of Post Office (including the commercial interests of the Royal Mail Group and the public interest) 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.

42.6 Notwithstanding Clause 42.2, 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.

**43. Liability**

43.4 Subject to the remaining sub-clauses of this Clause 43, 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 43 only as "Losses"), as a result of:

43.4.1 any unauthorised third party access to the Infrastructure;

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

43.4.3 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); or

43.4.4 any other form of fraud.

**43.5 In the event of termination of Project HNG-X:**

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43.2.1 for convenience pursuant to Clause 47.11.2, the provisions of Clause 43.1 shall continue to apply. In such circumstances, prior to the later of the date of such termination of Project HNG-X or 1 April 2010, Fujitsu Services shall implement the upgrade of the Horizon Service Infrastructure in accordance with the provisions of the CCD entitled "Horizon Security in the Absence of HNG-X" (ARC/SEC/ARC/0002) and Post Office shall pay for such upgrade in accordance with paragraphs 10.4 to 10.8 (inclusive) of Schedule D1 (the details of which in respect of such upgrade shall be incorporated in a Work Order); and

43.2.2 for Default pursuant to Clause 47.11.1, the provisions of Clause 43.1 shall continue to apply. In such circumstances, prior to the later of the date of such termination of Project HNG-X or 1 April 2010, Fujitsu Services shall implement the upgrade of the Horizon Service Infrastructure in accordance with the provisions of the CCD entitled "Horizon Security in the Absence of HNG-X" (ARC/SEC/ARC/0002) at its own cost.

43.6 In the event of Partial Termination for any reason of the Data Centre Operations Service and the Central Network Service (as a single Terminable Service) or the Systems Management Service, Third Line Software Support Service or Application Support Service (Fourth Line), with effect from the date of termination of the first such Service to be Partially Terminated, the provisions of Clause 43.1 shall not apply unless Post Office proves that any of the matters referred to in sub-clauses 43.1.1 to 43.1.4 (inclusive) have been caused by Fujitsu Services' Default in respect of any of its obligations or responsibilities under this Agreement.

43.7 In the event of Partial Termination for any reason of any of the Terminable Services referred to in Clause 43.3 Fujitsu Services shall promptly provide to Post Office all correspondence, audit trails, documentation and other information (in whatever media) as Post Office may reasonably require in order to establish the cause of any of the matters referred to in sub-clauses 43.1.1 to 43.1.4 (inclusive).

43.8 In the event of Partial Termination for any reason of any Terminable Service the provisions of Clause 43.1 shall continue to apply subject to Clause 43.3 and any exceptions or qualifications agreed by the Parties pursuant to paragraph 2.2.6 of Schedule E.

43.9 If and to the extent that Fujitsu Services proves that any of the matters referred to in Clause 43.1 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 43.1 shall not apply.

43.10 In the event that:

43.10.1 Post Office agrees pursuant to paragraph 2.2.4 of Schedule E to perform any security related obligations or responsibilities; or

43.10.2 the Post Office responsibility set out in paragraph 2.4.3 of Schedule E applies, in connection with any Partial Termination, Post Office shall promptly provide to Fujitsu Services all correspondence, audit trails, documentation and other information (in

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whatever media) as Fujitsu Services may reasonably require in order to establish the cause of any of the matters referred to in Clause 43.1.

43.11 Where an act of fraud relates to the Superstock Solution, Clause 43.1.4 shall not apply unless the fraud in question was perpetrated by a:

43.3.1 person who was at the time in question an employee, agent or sub-contractor of Fujitsu Services (or an employee or agent of its sub-contractors);

43.3.2 third party whose fraudulent actions resulted from or were made possible by Fujitsu Services' failure to comply with its obligations under this Agreement.

43.12 In the case of the Banking Functions or in relation to the operation of the Banking Functions, Clause 43.1.4 shall not apply unless the fraud in question was perpetrated by a person who was at the time in question:

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

43.12.2 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 Banking Participants") and who satisfies the Information Condition;

43.12.3 an employee, agent or sub-contractor of the Current Banking Participants who satisfies the Information Condition;

43.12.4 a former employee, agent or sub-contractor of a Current Banking Participant who was an employee, agent or sub contractor (as the case may be) of that Current Banking Participant at any time on or after 14 April 2001 and who satisfies the Information Condition; or

43.12.5 a former employee, agent or sub-contractor of a Former Banking Participant who was an employee, agent or sub-contractor (as the case may be) of such Former Banking Participant while that Former Banking Participant was a Current Banking Participant and who satisfies the Information Condition.

43.13 Fujitsu Services shall not be liable for or indemnify Post Office in respect of any Losses:

43.13.1 where the Losses incurred by Post Office relate solely to the Banking Function or the operation of Banking Function;

43.13.2 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 Banking Functions) 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);

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43.13.3 where the unauthorised access, hacking or fraud was perpetrated through or by any employee, agent, contractor or sub-contractor of, any Bank or through or by any element of the Infrastructure at any Bank premises other than by the persons referred to in Clause 43.9;

43.13.4 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 Transaction types using the AP-ADC Facility, or the APOP 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:

- (a) defects in Fujitsu Services' design or implementation of the AP-ADC Facility or the APOP Facility;
- (b) a failure by Fujitsu Services to maintain the AP-ADC Facility or the APOP Facility or to process such new Transactions, in accordance with its obligations set out in this Agreement; or
- (c) a defect in such design, development, introduction or use resulting from an error in the CCD entitled "AP-ADC Reference Manual" (DES/GEN/MAN/0002) or the CCD entitled " APOP Authorisation Service Reference Manual" (AP/MAN/004); the presence of which is solely or mainly attributable to a breach by Fujitsu Services of its obligations set out in Clauses 15.1.4 and 15.1.5 when it assisted Post Office to produce that CCD under Work Order;

43.13.5 where the unauthorised access, hacking or fraud was perpetrated through or by use of the communications links between the Data Centres and CAPO or LINK (as described in Schedule B3.3 or B4.3, as applicable) other than by persons referred to in Clause 43.9, unless the root cause of such unauthorised access, hacking or fraud was a failure by Fujitsu Services to comply with its obligations set out in paragraphs 1.3.4(f)(i)(1) and 1.3.4(f)(i)(2) of Schedule B3.3 or paragraphs 3.4.1 and 3.4.2 of Schedule B4.3, as applicable;

43.13.6 where the Losses incurred by the Post Office relate solely to the Superstock Solution or the operation of the Superstock Solution;

43.13.7 where such Losses were incurred as a result of any unauthorised access or hacking, as referred to in Clause 43.1, into, through or by use of an element or elements of the Superstock Infrastructure used to provide the Superstock Services; or

43.13.8 where such Losses were occurred as a result of any unauthorised, hacking or fraud perpetrated through or by use of communications links into the POL MI System which are not the responsibility of Fujitsu Services.

43.14 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 password/passphrase shared between the Merchant Acquirer and the Data Centres

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or the subsequent use of 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.

43.15 In this Clause 43, the "Information Condition" means that the person concerned either:

43.15.1 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

43.15.2 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:

- (a) used such information obtained as a result of their relationship with Fujitsu Services in perpetrating the fraud in question; and
- (b) Fujitsu Services fails to show that it had taken all reasonable steps and precautions to prevent that information being obtained.

43.16 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:

43.16.1 fraud in connection with or unauthorised disclosure of;

43.16.2 loss or corruption of; or

43.16.3 hacking in connection with,

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

43.17 In the case of Banking Functions, 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:

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

43.17.2 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

43.17.3 fraudulent use of token supported by the Banking Functions, Debit Card or ETU 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.

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43.18 If Post Office:

43.18.1 accepted a Design Proposal (as that term was defined and used in this Agreement in its form prior to CCN1200); or

43.18.2 accepts in a specification or other document agreed by the Parties pursuant to the Work Ordering Procedure or Change Control Procedure,

which included or 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 43.1, be liable for or indemnify Post Office against any Losses incurred by Post Office resulting from unauthorised access to the 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.

43.19 For the purposes, but without prejudice to the generality, of Clause 43.15:

43.19.1 Configured POL MI shall be deemed to be a third party application;

43.19.2 the interfaces between the Infrastructure and CAPO and LINK used to connect the Data Centres to CAPO and LINK shall be deemed to be third party interfaces; and

43.19.3 Configured POL FS and the SAP Loading Applications shall be deemed to be third party applications until the POLSAP R1 Go Live Date.

not selected by Fujitsu Services and included in a Design Proposal accepted by Post Office.

43.20 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.

43.21 Fujitsu Services shall not be liable for any failure to perform or delay in performing its obligations and Post Office shall have no right of action against Fujitsu Services in respect of any costs, expenses, losses or damages arising as a result of:

43.21.1 any fault or problem with, or the unavailability of, the communications links between the Data Centres and CAPO or LINK (as described in Schedule B3.3 or B4.3, as applicable), subject to Fujitsu Services complying with its obligations set out in paragraphs 1.3.4(f)(i)(1) and 1.3.4(f)(i)(2) of Schedule B3.3 or paragraphs 3.4.1 and 3.4.2 of Schedule B4.3, as applicable; or

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43.21.2 any unauthorised access, hacking or fraud of the kind described in Clause 43.10.5;

43.21.3 any fault or problem with Configured POL FS, or the SAP Loading Applications arising prior to the POLSAP R1 Go Live Date related to their configuration by Post Office or a third party on behalf of Post Office (other than Fujitsu Services or its subcontractors);

43.21.4 or subsequent to the POLSAP R1 Go Live Date, any fault or problem with the POLSAP Software related to its configuration by Post Office or a third party on behalf of Post Office (other than Fujitsu Services or its subcontractors).

43.18.5 the unavailability of Configured POL FS, or the SAP Loading Applications, or from the POLSAP R1 Go Live Date, POLSAP Software due to any maintenance or support work being required in respect of Configured POL FS, or the SAP Loading Applications, or from the POLSAP R1 Go Live Date, POLSAP Software that Fujitsu Services is not obliged to perform;

43.18.6 any failure by any Branch to complete any Branch Trading Statement prior to the expiry of the 42 day period during which Fujitsu Services retains data for the period covered by that Branch Trading Statement; or

43.18.7 any failure by any Branch to accept or implement any Transaction Correction Record,

save to the extent that a failure by Fujitsu Services to perform any of its obligations (such failure not itself arising as a result of the matters referred to in Clauses 43.18.1 to 43.18.6 inclusive) directly caused such costs, expenses, losses or damages.

43.22 Fujitsu Services shall provide to Post Office copies of or access to all relevant records produced by Fujitsu Services in the course of performing the HNG-X Services (such records to include, where produced by Fujitsu Services, operational change proposals, help desk records, release notes, change logs, firewall logs, event records, error logs and audit records) that Post Office reasonably requires in order to establish the cause of any failure to perform or delay in performing Fujitsu Services' obligations, where Fujitsu Services asserts that Clauses 43.18.1 or 43.18.2 are applicable in respect of such failure or delay. All information obtained by Post Office pursuant to this Clause 43.19 shall be treated as Confidential Information.

43.23 Not Used

43.24 In the case of the Superstock Solution Fujitsu Services shall not be liable for any failure to perform or delay in performing its obligations and Post Office shall have no right of action against Fujitsu Services in respect of any costs, expenses, losses or damages arising as a result of:

43.24.1 Not Used

43.24.2 any unauthorised access, hacking or fraud of the kind described in Clause 43.10.7.

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43.25 Fujitsu Services shall not be liable for any failure to perform or delay in performing its obligations and Post Office shall have no right of action against Fujitsu Services in respect of any costs, expenses, losses or damages arising as a result of:

43.22.1 any fault or problem with, or the unavailability of, any communications links into the POL MI System which are not the responsibility of Fujitsu Services; or

43.22.2 any unauthorised access, hacking or fraud of the kind described in Clause 43.10.8;

43.22.3 any fault or problem with Configured POL MI related to its configuration by Post Office or a third party on behalf of Post Office; or

43.22.2 the unavailability of Configured POL MI due to any maintenance or support work being required in respect of Configured POL MI that Fujitsu Services is not obliged to perform,

Save to the extent that a failure by Fujitsu Services to perform any of its obligations (such failure not itself arising as a result of the matters referred to in Clauses 43.22.1 to 43.22.4 inclusive) directly causes such costs, expenses, losses or damages.

43.26 Fujitsu Services shall provide to Post Office copies of or access to all relevant records produced by Fujitsu Services in the course of performing the Operational Services (such records to include, where produced by Fujitsu Services, operational change proposals, help desk records, release notes, change logs, firewall logs, event records, error logs and audit records) that Post Office reasonably requires in order to establish the cause of any failure to perform or delay in performing Fujitsu Services' obligations, where Fujitsu Services asserts that Clauses 43.22.1 or 43.22.2 are applicable in respect of such failure or delay. All information obtained by Post Office pursuant to this Clause 43.23 shall be treated as Confidential Information.

#### 44. **Limitation of Liability**

44.4 Neither Party hereto excludes or limits its liability to the other Party:

44.4.1 for death or personal injury; or

44.4.2 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; or

44.4.3 for its fraudulent misrepresentation; or

44.4.4 for its fraud or for fraud for which it is responsible, save (in the case of Fujitsu Services) where the liability in question would not have arisen but for the provisions of Clauses 16 or 43.

44.5 Subject always to Clause 44.1, 44.3, 44.4, 44.4A and 44.4B, the liability of each Party for Defaults shall be subject to the financial limits set out in this Clause 44.2.

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44.5.1 The aggregate liability in relation to all Defaults 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:

- (a) £1,500,000 per Financial Year in the case of a liability of Post Office; and
- (b) £10,000,000 per Financial Year in the case of Fujitsu Services.

44.5.2 Subject to Clause 44.2.2A, the aggregate liability of Post Office for all Defaults and any liability arising from a Post Office Cause:

- (a) (other than a Default governed by Clause 44.2.1) arising during the period 15 May 2002 to 31 March 2003 (inclusive) or in any Financial Year thereafter shall in no event exceed £5,870,689 per Financial Year; and
- (b) (including a Default governed by Clause 44.2.1) arising at any time after the end of the last Financial Year shall in no event exceed £10,436,783.

44.2.2A With respect to any liability of Post Office for any liability arising from a Tower Contractor Cause, Post Office's liability in any Financial Year shall in no event exceed the higher of:

- (a) the aggregate liability set out in Clause 44.2.2; or
- (b) the amount Post Office is able to recover under its contract with the relevant Tower Contractor for the default that gave rise to the Tower Contractor Cause.

44.5.3 The aggregate liability under this Agreement of Fujitsu Services for all Defaults and any Compensation Amount payable as a result of a Fujitsu Dependency Failure::

- (a) (other than a Default governed by Clauses 44.2.1, 44.2.4 or 44.2.5) arising during:
  - (1) the period from 1 January 2003 to 31 March 2003 (inclusive) shall not exceed £1,729,000;
  - (2) the Financial Year ending on 31 March 2004 shall not exceed £7,139,000; and
  - (3) Financial Year NN shall not exceed £15,000,000; and

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(c) (including a Default governed by Clause 44.2.1 but other than a Default governed by Clauses 44.2.4 or 44.2.5) arising at any time after the end of the last Financial Year shall not exceed £15,000,000.

For the purposes of sub-clause 44.2.3(a)(3), "Financial Year NN" means, in relation to a Default by Fujitsu Services liability for which arose after 31 March 2004, the Financial Year in which that liability arose.

44.5.4 Subject to Clause 44.2.5 the aggregate liability of Fujitsu Services for all Defaults (other than a Default governed by Clause 44.2.1) relating to a particular Work Order shall not exceed 100% of the Charges payable pursuant to that Work Order.

44.5.5 Where Fujitsu Services is engaged under a series of related Work Orders covering two or more of the following Development Lifecycle Stages:

- (b) Solution Specification Stage;
- (c) Solution Build and Test Stage; and
- (d) Implementation Stage,

the aggregate liability of Fujitsu Services for all Defaults (other than a Default governed by Clause 44.2.1) 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 44.2.4.

44.5.6 The aggregate liability of Fujitsu Services for all Defaults (other than a Default governed by Clause 44.2.1) relating to NBS prior to NBS Acceptance shall not exceed 100% of the Network Banking Implementation Charges.

44.5.7 Subject to Clause 44.1, 44.2.4 and 44.2.5 but notwithstanding any other provision in this Clause 44 (save for Clause 44.2.8 as noted), the aggregate liability of Fujitsu Services for all Defaults (other than a Default governed by Clause 44.2.8) relating to the Superstock Solution in any Financial Year shall in no event exceed 10% of the estimated Superstock Charges for the Financial Year commencing 1st April 2010 or £25,000 whichever is the greater. Any such liability shall count as part of Fujitsu Services' aggregate liability under Clause 44.2.3.

44.5.8 Subject to Clause 44.1, 44.2.4 and 44.2.5 but notwithstanding any other provision in this Clause 44, the aggregate liability of Fujitsu Services for all Defaults relating to the Superstock Solution which result in direct loss or damage to the Property of the Post Office shall in no event exceed £1 million. Any such liability shall count as part of Fujitsu Services' aggregate liability under Clause 44.2.1.

44.6 Subject to Clause 44.1 and to the extent permitted at law, the aggregate liability of Fujitsu Services under Clauses 16 and 43 of this Agreement for the fraud or other

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criminal activities of its employees or subcontractors shall be limited to £21,896,142 per Fraud Event.

44.7 Subject to Clauses 44.4A, 44.4B and 44.5, the financial limits specified in Clause 44.2.2 and 44.2.3 shall apply to, and limit the Parties' respective liability for, the aggregate of all claims for monetary relief arising in the period in question which either Party may have against the other either under this Agreement, in tort (including negligence), breach of statutory duty or otherwise in relation to the subject matter of this Agreement, including, without limitation, all claims arising for Defaults, all claims for liquidated damages and Post Office Additional Cost pursuant to Clause 18, Schedule B4.4, Schedule C1 and/or the provisions of the Service Descriptions, all claims to be indemnified pursuant to Clauses 34, 42 or 43 and all other claims or costs which are compensatable in money or money's worth as though all such claims for monetary relief represented liability for Defaults occurring in the period in question.

44.4A For the purposes of Clauses 44.2 and 44.4,

a liability or claim for monetary relief arises when the act, omission, event or circumstance giving rise to that liability or claim occurs; and

44.4B Notwithstanding that Clause 44.2 is stated to be subject to Clause 44.4, Clause 44.4 shall not limit:

44.4B.1 liability of the type referred to in Clauses 44.1;

44.4B.2 liability for Defaults governed by 44.2.1, 44.2.4 or 44.2.5; or

44.4B.3 liability governed by Clause 44.3.

44.8 The financial limits on the liability of Post Office under Clause 44.2 shall be exclusive of and additional to any liability of Post Office to pay any Charges, other amounts, the Transfer Payment, the Termination Charge, any Partial Termination Charge or the HNG-X Termination Charge 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.

44.9 Subject always to Clause 44.1, in no event shall either Party be liable to the other Party for indirect or consequential loss or damage. However:

(a) Fujitsu Services acknowledges and agrees that it shall not be entitled to claim that a loss incurred by a Tower Contractor is an indirect loss solely because it was not incurred by the Post Office. As such, any loss incurred by a Tower Contractor that would have been a direct loss if it had been incurred by the Post Office shall, for the purposes of determining a Compensation Amount, be deemed to be a direct loss; and

(b) Post Office acknowledges and agrees that all claims that Fujitsu Services may make for relief under Clause 39A.3 or Clause 39A.5.3 and for compensation under Clause 39B.3 including for any payments

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under Clause 39B.5 shall be made to Post Office and not any of the Tower Contractors and that all payments of such relief or compensation shall be by Post Office and not any Tower Contractor.

44.10 The provisions of Clause 44.6 shall not be taken as limiting the right of Post Office to claim from Fujitsu Services for:

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

44.10.2 expenditure or charges rendered unnecessary as a result of any Default by Fujitsu Services; and/or

44.10.3 any compensation arising out of a Fujitsu Dependency Failure due to Post Office, Post Office Service Integrator or a Tower Contractor.

44.11 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.

44.12 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.

44.13 Subject to Clause 44.1, the aggregate liability of Fujitsu Services under the SAP RTU (including, without limitation, under any indemnity therein) arising in any Financial Year shall not exceed £1,956,896. Fujitsu Services' liabilities (if any) under the SAP RTU, as limited by this Clause 44.10, shall count as part of Fujitsu Services' aggregate liability under Clause 44.2.3.

44.14 The liability of Fujitsu Services in connection with the SAP RTU is as set out in Clause 44.10 and paragraph 22 of the SAP RTU. In the event and only to the extent of any conflict between: (i) Clauses 44.10 and paragraph 22 of the SAP RTU; and (ii) any other Clause, then Clause 44.10 and paragraph 22 of the SAP RTU shall prevail.

44.15 Each of the sums referred to in Clauses 44.2.2, 44.2.3(a)(3), 44.3 and 44.10 shall be increased at the end of the Financial Year ending on or around 31 March, 2007 and at the end of each subsequent Financial Year by an amount equal to the difference (expressed as a percentage) between the level of the Retail Price Index most recently published in respect of December of the Financial Year in question and the level of the Retail Price Index in December of the preceding Financial Year.

45. **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

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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 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 30 days after, alteration or cancellation of such insurance.

#### **PART G: TERMINATION AND EXIT**

##### **46. Term**

46.4 The term of this Agreement shall, unless terminated earlier in accordance with the provisions of Clause 47 or extended in accordance with the provisions of Clause 46.2, be for a period commencing on the 28 July 1999 and ending on 31 March 2023.

46.2 If Post Office wishes to extend the term of this Agreement, it shall notify Fujitsu Services in writing at least 18 months before the expiry of this Agreement, and the Parties shall meet within 20 Working Days of receipt of such notice and shall use their reasonable endeavours to agree an extension to the term of this Agreement.

46.3 Each Expiring Service shall, unless terminated earlier in accordance with the provisions of Clause 47 or extended in accordance with the provisions of paragraph 10 of Schedule E (where applicable or otherwise extended through the Change Control Procedure), be provided for the period up to the relevant date specified in Table A of Schedule B3.1 on which date such Expiring Service shall expire. For the avoidance of doubt, no Partial Termination Charge or Termination Charge shall be payable by Post Office in relation to an Expiring Service on the expiry of such Expiring Service on 31<sup>st</sup> March 2017 or the Salesforce Service and Credence/MDM Service which shall both expire on 31st March 2016. Liquidated damages shall continue to apply during any extension in accordance with Clause 18 save in the case of a mini extension of the Engineering Service where the Actual Engineering Visits in any one month exceeds the related Excepted Engineering Volume by 10%. In such instances, the calculation for liquidated damages in respect of the Counter Availability SLT shall be based on the average downtime for each of the hardware components over the previous three months (not including the month in question), instead of the actual downtime in the month for each of those components. This shall be calculated using the reported downtime for each problem type prefaced "HD" in the Local Failure section of the SLT report produced in accordance with Annex A to the CCD Branch Network Service Description (SVM/SDM/SD/0011). For the avoidance of doubt, all other provisions of the Agreement shall continue to apply during any extension period.

46.4 Notwithstanding Clause 46.3, some of the Expiring Services have been extended and as such the Expiring Services as at signature of CCN1600 shall be:

46.4.1 the Operational Business Change (Branch Change) Service, Branch Network Service and Branch Network Resilience Service and CMT Service, due to expire on 31<sup>st</sup> March 2017; and.

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46.4.2 the POLSAP Hosting Service, POLSAP Applications Support Service and support for the Credence/MDM Service and the Salesforce Support Service, due to expire on 31<sup>st</sup> March 2016.

The Expiring Services shall, unless terminated earlier in accordance with the provisions of Clause 47, or extended in accordance with either the provisions of paragraph 10 of Schedule E or using the Change Control Procedure, be provided for the period up to the dates specified in Clause 46.4.1 and 46.4.2 above. For the avoidance of doubt, no Partial Termination Charge or Termination Charge shall be payable in relation to these Expiring Services if they expire on the dates set out above.

Both Parties acknowledge that Post Office may request further extensions to the Expiring Services. Both Parties agree to act reasonably in the event of any such request and any associated negotiation of terms. In particular, Fujitsu Services agrees to mitigate its costs of supply and stranded costs with respect to any further extension of the Expiring Services to the extent that it is reasonably possible to do so having regard to, amongst other things, the timing of any request relative to the expiry date of the Expiring Services.

47. **Termination**

Termination of whole Agreement

47.4 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:

47.4.1 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

47.4.2 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 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

47.4.3 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

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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

- 47.4.4 any provision hereof other than Clause 47 expressly entitles Post Office to terminate this Agreement; or
- 47.4.5 the circumstances in Clause 60.5 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 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.

47.5 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 (other than a Default that gives the Post Office a right under Clause 47.11 to terminate Project HNG-X only) and:

- 47.5.1 such Default is capable of remedy and Fujitsu Services shall have failed to remedy the Default within 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
- 47.5.2 such Default is not capable of remedy (and for the purposes of this Clause 47.2, failure to comply with a timescale shall not of itself be considered a Default not capable of remedy).

47.6 In the event that Project HNG-X is lawfully terminated by Post Office pursuant to Clause 47.11.1, Post Office may at any time following such termination serve a notice in writing on Fujitsu Services, following which Post Office shall have the right to terminate this Agreement on at least six months' notice, provided that in exercising such right Post Office will not be able to terminate this Agreement prior to 1 April 2010.

47.7 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 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.

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47.8 In the event of any termination of this Agreement pursuant to Clause 47.1, Clause 47.2, Clause 47.4, Clause 47.7 or termination of a Terminable Service pursuant to Clause 47.10 or expiry of an Expiring Service, Post Office shall return the Infrastructure or any part thereof (other than any part (a) in relation to which it has exercised the option to acquire under Clause 48 and (b) (in the event of Partial Termination of a Terminable Service or expiry of an Expiring Service) that is required for continuing Services or for a Next Supplier), in which case Fujitsu Services shall at no additional cost to Post Office, remove such parts of the Infrastructure as soon as reasonably practicable and shall make good any damage to the Post Office Premises occasioned by such removal.

47.9 Post Office shall only be permitted to exercise its rights pursuant to Clause 47.1.1 for three 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 month after such change of control taking place.

47.10 Post Office may terminate this Agreement for convenience on or after 1 April 2021 by giving Fujitsu Services not less than twelve months' notice. For the avoidance of doubt, such notice may be given before 1 April 2021, but the Agreement may not terminate under this Clause 47.7 before 1 April 2021. 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 E.

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

47.12 The provisions of Clauses 10.1.2, 25, 27, 30.19, 31 (to the extent applicable in respect of the Transfer Services), 33.2, 34, 39.3, 43, 44, 47, 48, 50, 53, 56, 57, 59, 61, 62, 65, 67, 68, 69, 70, 71, 72, 75, the provisions of Schedules 1, D1, D5 and E, paragraphs 2.2.3.4 and 2.4 of Schedule B4.1 and paragraph 3.4 of Schedule D3 shall survive the termination of this Agreement by Post Office or Fujitsu Services or the expiry of this Agreement.

#### Partial Termination

47.13 Post Office may in the manner and in the circumstances set out in this Clause 47.10 terminate the provision of one or more Terminable Services.

##### 47.13.1 Market Testing

If entitled to terminate a Terminable Service under paragraph 4.3.3(b)(ii) of Schedule D6, Post Office may, by giving Fujitsu Services not less than six months' notice in writing, terminate that Terminable Service.

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47.13.2 Convenience

- (b) Post Office may terminate the provision of any Terminable Service on or after the earliest date for termination or occurrence of the event required for termination of that Service specified in Annex 1 to Schedule E by giving Fujitsu Services not less than
  - (i) 3 months' notice in writing (or 6 months' notice in writing in the event of termination of the Service Desk Service and 1 month's notice in writing for CMT Services) provided such notice is deemed duly given in accordance with Clause 57.2 on or prior to 31<sup>st</sup> March 2017; or
  - (ii) 6 months' notice in writing where such notice is deemed duly given in accordance with Clause 57.2 on or after 1<sup>st</sup> April 2017.

In the event such notice is given a Partial Termination Charge shall be paid by Post Office to Fujitsu Services upon such Partial Termination. For the avoidance of doubt, it is noted that during the 6 months' notice period for the Service Desk Service, Post Office retains the option to "ramp down" the services, noting that it must take account of Post Office's and the Next Supplier's obligations (where relevant) to consult with any staff potentially subject to transfer under the TUPE Regulations.

- (c) Post Office may terminate the provision of the CMT Service by giving Fujitsu Services not less than:
  - (i) one month's notice in writing provided such notice is deemed duly given in accordance with Clause 57.2 on or prior to 31<sup>st</sup> March 2017; or
  - (ii) 6 months' notice in writing where such notice is deemed duly given in accordance with Clause 57.2 on or after 1<sup>st</sup> April 2017.

No termination or compensation charge shall be payable to Fujitsu Services in the event of such termination and the provisions of Schedules D6 and E shall not apply in respect of the CMT Service.

- (d) Post Office may terminate the provision of the Superstock Service by giving Fujitsu Services not less than twelve months' notice in writing. No termination or compensation charge shall be payable to Fujitsu Services in the event of such termination and the provisions of Schedules D6 and E shall not apply in respect of the Superstock Service.
- (e) Unless the Parties agree otherwise in the relevant CCN:
  - (i) Post Office may terminate the provision of any Service Integration Service or Third Party Management Service introduced under the Change Control Procedure after the date of signature of CCN1200 by giving not less than twelve months' notice in writing; and

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- (ii) no termination or compensation charge shall be payable to Fujitsu Services in the event of such termination and the provisions of Schedules D6 and E shall not apply in respect of any such Service Integration Service or Third Party Management Service.

Termination of Project HNG-X

47.14 Subject to Clause 47.11.3 at any time prior to HNG-X Initial Acceptance, Post Office may terminate Project HNG-X:

47.14.1 by notice in writing, with effect from seven days after service of such notice or such later date as may be specified therein, if Fujitsu Services is in material Default of any obligation under this Agreement in relation to Project HNG-X (and for the purposes of this Clause 47.11.1 only, "material Default" includes any persistent Default which by reason of its persistence has become material) and:

- (b) such Default is capable of remedy and Fujitsu Services shall have failed to remedy the Default within 30 days of written notice to Fujitsu Services (i) specifying that it is given pursuant to this Clause 47.11.1(a), (ii) giving details of the Default and why it is considered to be material and (iii) 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
- (c) such Default is not capable of remedy (and for the purposes of this Clause 47.11.1, failure to comply with a timescale shall not of itself be considered a Default not capable of remedy) and Post Office shall have given written notice to Fujitsu Services (i) specifying that it is given pursuant to this Clause 47.11.1(b) and (ii) giving details of the Default and why it is considered to be material;

47.14.2 by notice in writing, specifying that it is given under this Clause 47.11.2, with effect from 30 days from the service of such notice. In the event of notice being given in accordance with this Clause 47.11.2, Post Office shall pay to Fujitsu Services upon termination of Project HNG-X the HNG-X Termination Charge.

47.11.3 Post Office shall not be entitled to exercise its right of termination of the HNG-X Project under Clause 47.11.2 of the Agreement prior to 30th April 2010. If HNG-X Initial Acceptance has not occurred by 30th April (which allows for a period of 4 weeks following the planned initial Acceptance Date of 2nd April 2010) then Post Office may exercise its right of termination of the HNG-X Project under clause 47.11.2 at any time after 30th April 2010.

47.15 Notwithstanding the termination of Project HNG-X in accordance with Clause 47.11:

47.15.1 the Services shall continue to be provided using the Infrastructure until such time that this Agreement expires in accordance with Clause 46 unless the

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Agreement is terminated earlier in accordance with the other provisions of this Clause 47; and

47.15.2 the Associated Change Activities shall be implemented in accordance with Clause 6 and any remaining Associated Change Development and hardware and software procurement required for such implementation specified in Schedule B5 shall be paid for by Post Office in accordance with Schedules D7 and D8 (as applicable).

47.16 If Project HNG-X is terminated under:

47.16.1 Clause 47.11.1 or Clause 47.15 (but only as a consequence of the Agreement terminating pursuant to Clauses 47.1 or 47.2), then Fujitsu Services shall at its own cost reinstate the Horizon Applications to those Branches in which the Business Capabilities and Support Facilities have been rolled out; or

47.16.2 Clause 47.11.2 or Clause 47.15 (but only as a consequence of the Agreement terminating pursuant to Clauses 47.4 or 47.7), then Fujitsu Services shall reinstate the Horizon Applications to those Branches in which the Business Capabilities and Support Facilities have been rolled out. Fujitsu Services' charges for such reinstatement shall be paid by Post Office and shall be an amount equal to Fujitsu Services' costs multiplied by 100 and divided by 78, provided that such costs are subject to verification under the Open Book procedure.

47.17 If at the date upon which Project HNG-X is terminated in accordance with Clause 47.11, the move of Data Centres to Fujitsu Services' premises has been completed, such move will not be reversed following termination in order that the Services may continue to be provided using the Data Centres located at Fujitsu Services' premises. To the extent that prior to termination of Project HNG-X Data Centre equipment has been put in place and which relate only to the HNG-X Service Infrastructure, such equipment shall be decommissioned following termination and the costs of such decommissioning shall be borne by either Party in accordance with Clause 47.13.

47.18 If, for any reason, Post Office or Fujitsu Services gives notice to terminate this Agreement prior to HNG-X Initial Acceptance, Project HNG-X shall terminate, subject to Clause 47.16, two weeks after the date of service of such notice, unless the Parties agree otherwise in accordance with the Change Control Procedure. Any notice purporting to terminate Project HNG-X given after notice to terminate the Agreement has been given shall be deemed to be invalid and of no effect. If notices to terminate the Agreement and Project HNG-X are given on the same day, the notice to terminate Project HNG-X shall be deemed to have been given first.

47.19 If Project HNG-X is terminated in accordance with Clause 47.15, Fujitsu Services shall, where the Business Capabilities and Support Facilities have been rolled out in Branches, continue to provide the HNG-X Services using the Business Capabilities and Support Facilities in those Branches until the Horizon Applications have been reinstated in accordance with Clause 47.13.

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**48. Rights on termination and expiry of this Agreement, Partial Termination, expiry of an Expiring Service and termination of Project HNG-X**

48.4 In the event of termination or expiry of this Agreement, or termination of Project HNG-X or, any Terminable Service for any reason whatsoever, or the expiry of any Expiring Service, 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 or (if applicable) expiry, have the option (subject to Clause 48.2.3), exercisable in the applicable period referred to in the General Exit Plan or HNG-X Exit Plan (as applicable), 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:

48.4.1 any or all of the hardware that is comprised within the Infrastructure and/or that:

- (b) is being used; or
- (c) 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 either (i) not owned by Fujitsu Services or any of its subsidiary companies or (ii) those shared elements of the Infrastructure referred to in Clause 35.3); and

48.4.2 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 agreements (other than employment agreements and agreements in relation to Third Party Software, Third Party Items or Non-standard Third Party Materials) entered into by Fujitsu Services which are necessary to the performance of the Services as Post Office may designate,

provided that, if termination is in respect of Project HNG-X or a Terminable Service rather than the entire Agreement, the above provisions shall apply only to those Project Assets (or, in the case of agreements, that part thereof) that are not reasonably required by Fujitsu Services for the provision of any continuing Services under this Agreement.

48.5 Notwithstanding the generality of Clause 48.1 Post Office agrees:

48.5.1 only to exercise its rights under such Clause to the extent that the relevant Project Assets apply to, and are required for the provision or receipt of the Services or Terminable Services that are the subject of the termination or expiry or are otherwise to be provided pursuant to Schedule E (including, for the avoidance of doubt, the Exit Plan);

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48.5.2 the rights provided for in Clauses 48.1 shall not apply to the Superstock Solution; and

48.5.3 in the case of Partial Termination of the Engineering Service, that it shall acquire or shall ensure that the Next Supplier acquires from Fujitsu Services all of the Project Assets referred to in Clause 48.1.1 that relate to the Engineering Service comprising the Counter Equipment used in Branches up to the network connection sockets in each Branch, as well as spare Counter Equipment held by Fujitsu Services intended for such use.

48.6 In the event that Post Office exercises any of the options in Clause 48.1 or Clause 48.2.3 applies, Post Office shall pay to Fujitsu Services on completion of such option or, in the case of Clause 48.2.3, such acquisition, a sum equal to the Transfer Payment. If Post Office exercises the option in Clause 48.1 in respect of any Partial Termination or in respect of termination of Project HNG-X or in respect of the expiry of an Expiring Service or Clause 48.2.3 applies, the Project Assets acquired by it shall cease to form part of the Infrastructure and this Agreement shall be amended accordingly as provided in Schedule E.

48.7 In the event that this Agreement expires or is terminated, an Expiring Service expires or a Terminable Service is terminated as provided for herein:

48.7.1 Fujitsu Services shall return to Post Office all Property of the Royal Mail Group in the possession of Fujitsu Services that is not required for the provision of any continuing Services under this Agreement.

48.7.2 Fujitsu Services shall, after being given notice of termination, or on the expiry of the Agreement or expiry of an Expiring Service 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 set out at paragraph 12 of Schedule D1.

48.7.3 Upon termination or expiry, Post Office shall be entitled to offer employment (or an agreement for services with Post Office) to any employee or subcontractor (being an individual) ("Worker") of Fujitsu Services who has during the six months prior to such offer been involved for at least 75 percent. of his contracted working time in performing Fujitsu Services' obligations under this Agreement which are the subject of the termination or expiry. Fujitsu Services agrees that if that Worker accepts such offer Fujitsu Services shall release that Worker 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.

48.8 All the assets to be acquired pursuant to the exercise by Post Office of its option under Clause 48 shall be acquired and any software, documents materials or other things provided by Fujitsu Services pursuant to the licences granted under Clauses 48.8 to 48.13 shall be provided "as is", but (apart from such licences) free from encumbrances

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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.

48.9 The Parties have agreed to populate the CCD entitled "Transfer Asset Register" (COM/MGT/REP/0001) with details of all Software data, tools, utilities, documentation and other items necessary to perform the Services and run the Applications (and to indicate those that relate exclusively to a Terminable Service or Expiring Service and those that are shared between one Terminable Service or Expiring Service and another Service or Services), 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 Clause 48.13 which shall be deemed superseded by such CCD when agreed by the Parties.

48.10 In the event that:

48.10.1 a Terminable Service is terminated pursuant to Clause 47.10.1 or 47.10.2; or

48.10.2 this Agreement expires or is terminated as provided for herein (other than by Fujitsu Services pursuant to Clause 47.4), or

48.10.3 an Expiring Service expires pursuant to Clause 46.3 and 46.4,

the provisions of Clauses 48.8 to 48.13 (inclusive) shall apply, provided that where termination is in respect of a Terminable Service or expiry is in respect of an Expiring Service rather than the entire Agreement, those Clauses shall apply only to that Service and any software, documents and materials that were used in the provision or receipt of that Service.

48.11 Subject to:

48.11.1 the payment of the Termination Charge in the case of termination of the Agreement by Post Office pursuant to Clause 47.7;

48.11.2 the payment of the Partial Termination Charge in the case of Partial Termination by Post Office pursuant to Clause 47.10.2; and

48.11.3 in all cases, Clause 48.9,

Fujitsu Services shall grant to Post Office a non-exclusive, perpetual, irrevocable licence to use, modify, adapt, enhance and develop all documents, software or other materials or things in which Fujitsu Background IPRs vest that:

48.11.4 exist at the date of termination or expiry;

48.11.5 Post Office has the right to use at the date of termination or expiry in the receipt of the Relevant Services; and

48.11.6 are reasonably necessary for the purposes ("Background IPR Purposes") of Post Office making use of the Project Assets transferred to it under Clause

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48.1 and the rights granted to it under Clauses 29 and 30 in respect of Post Office Foreground IPR and Licensed IPR (including, without limitation, any Fujitsu Background IPRs relating to (i) the configuration of the Project Assets, Post Office Foreground IPR or Licensed IPR or (ii) the configuration of the Project Assets, Post Office Foreground IPR or Licensed IPR with any other assets used by Fujitsu Services at the date of termination or expiry in the provision of the Relevant Services).

Post Office shall not use, modify, adapt, enhance or develop any document, software or other material or thing licensed to it under this Clause 48.8 for any purpose other than the Background IPR Purposes. Post Office shall be entitled to grant sub-licences of its rights under this Clause to third parties, other than those whose use of Fujitsu Background IPR is not for the purposes of providing services to Post Office for Post Office's business, provided that such third parties shall have entered into an Agreed Form NDA.

48.12 In the event that Fujitsu Services is able to demonstrate to the reasonable satisfaction of Post Office, that a document, piece of software or other material which would be (but for this Clause) the subject of the licence granted under Clause 48.8 is made generally available by a member of the Fujitsu Services Group and licensed by that member on commercial terms to at least two other third parties, then Fujitsu Services shall grant a licence or procure that a licence is granted to Post Office of that document, software or material on terms (including the amount of any royalty or fee) which are no less favourable to Post Office than the commercial terms in place with any such third parties. In all other respects the licence granted pursuant to Clause 48.8 shall be royalty-free.

48.13 Subject to:

48.13.1 the payment of the Termination Charge in the case of termination of the Agreement by Post Office pursuant to Clause 47.7;

48.13.2 the payment of the Partial Termination Charge in the case of Partial Termination by Post Office pursuant to Clause 47.10.2; and

48.13.3 in all cases, Clauses 48.11 and 48.12,

Fujitsu Services shall:

48.13.4 to the extent that any software, documents or other materials in which the Intellectual Property Rights are owned by a third party (other than Third Party Items and Horizon Third Party Software) are used by the Parties (or which the Parties have the right to use) at the date of termination or expiry to provide or receive the Relevant Services over the Horizon Service Infrastructure using the Horizon Applications, use reasonable endeavours to procure that Post Office is granted the rights to use such software, documents or materials on normal fair and commercial terms; and

48.13.5 in respect of the HNG-X Service Infrastructure and Business Capabilities and Support Facilities, in the event that Post Office consented to the use of Non-

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standard Third Party Material which is used by the Parties (or which the Parties have the right to use) at the date of termination or expiry to provide or receive the Relevant Services and the Parties could not obtain the rights referred to in Clause 30.10 at the time intended by that Clause, use reasonable endeavours to procure that Post Office is granted the rights to use such Non-standard Third Party Material.

48.14 In the case of both Clause 48.10.4 and Clause 48.10.5:

48.14.1 the use of reasonable endeavours by Fujitsu Services shall include without limitation, jointly approaching the relevant third party with Post Office or providing reasonable assistance to Post Office in its negotiations with such third party;

48.14.2 Fujitsu Services shall not be obliged to pay any licence fees or incur any other external costs or expenses in relation to such assistance or negotiations; and

48.14.3 Fujitsu Services shall use reasonable endeavours to obtain rights of use which are non-exclusive and on such terms which do not detract from Post Office's or the Next Supplier's ability to provide Replacement Services.

48.15 Where this Agreement terminates prior to the occurrence of Trigger Point T6 (Counter Application Rollout Complete), the applicable provisions of paragraph 2 of Schedule B4.1 shall apply in respect of the Escher Upgrade Software.

48.16 Without limiting the generality of Clause 48.8, the licences granted pursuant to that Clause shall permit use by all members of the Royal Mail Group and End Users and, subject to Clause 48.6, shall pertain to the versions of all software, tools, utilities, documentation and other materials that are then in use by Fujitsu Services in the provision of the Relevant Services and Fujitsu Services shall deliver one copy of each of such to Post Office promptly following the date of termination (including an up-to-date copy of archive and back-up versions of any software), 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.

#### Interface Costs

48.17 Fujitsu Services shall bear or Post Office shall pay to Fujitsu Services the Interface Costs arising in connection with any Partial Termination in accordance with the provisions of Schedule E.

#### Termination Charge Credit

48.18 The provisions of CCN 1246 relating to credits due to Post Office upon termination or expiry of the Agreement shall apply upon termination or expiry of this Agreement.

48.19 The provisions of CCN 1268 relating to: unspent sums under, or the failure by the Parties to enter into, the new business (as stated at paragraph 10.10 of Schedule D1 as introduced by CCN 1268); and release of Fujitsu Services from further liability in

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relation to the credits (as stated at paragraph 6.7 of Schedule D1 as introduced by CCN 1268), in each case as at termination or expiry of the Agreement and/or Project HNG-X, shall apply upon termination or expiry of this Agreement or (as the case may be) Project HNG-X.

#### **PART H: GENERAL**

##### **49. 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.

##### **50. 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.

##### **51. 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.

##### **52. 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 or CCN 1200 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.

##### **53. 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.

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**54. 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.

**55. Relationship of Parties**

55.4 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.

55.5 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:

55.5.1 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;

55.5.2 contractual relationships with Agents;

55.5.3 contractual relationships with its clients;

55.5.4 policy control of its network;

55.5.5 its reconciliation, settlement and key infrastructure support processes;

55.5.6 its relationship with its suppliers; and

55.5.7 its product and service design.

55.6 Fujitsu Services' and its subcontractors' contacts with Agents shall be arranged only via Post Office.

**56. Publicity**

56.4 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.

56.5 Each Party shall take all reasonable steps to ensure the observance of the provisions of Clause 56.1 by all its employees, agents, consultants and sub-contractors.

56.6 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

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to use the brand or logo of any part of Post Office without Post Office's prior written consent.

56.7 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.

56.8 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 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.

**57. Communications & Notices**

57.4 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	Finsbury Dials, 1st Floor, 20, Finsbury Street, London, EC2Y 9AQ		
<u>For the attention of:</u>			
Contract Manager (FS)			
			
Fujitsu Services Limited	Lovelace Road, Bracknell, Berkshire, RG12 8SN		
<u>For the attention of:</u>			
Director of Delivery			
Post Office Account Fujitsu Services 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.

57.5 Any notice given under this Agreement in accordance with Clause 57.1 shall, in the absence of earlier receipt, be deemed to have been duly given as follows:

57.5.1 if delivered personally, on delivery;

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

57.5.3 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 Working 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.

#### 58. **Transfer and Sub-Contracting**

58.4 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.

58.5 Subject to Clause 58.5 Post Office hereby consents to Fujitsu Services having subcontracted its obligations specified in Schedule C2 to the respective sub-contractors specified therein. Additional or substitute sub-contractors may be approved from time to time in accordance with Clause 58.1 after the date hereof, in which case Schedule C2 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 Fujitsu Services' obligations on Fujitsu Services' behalf as though such acts or omissions were its own.

58.6 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 or obtain consent to the transfer of the sub-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.

58.7 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.

58.8 The consent referred to in Clause 58.2 and any approval which may be granted in respect of additional or substitute sub-contractors pursuant to Clause 58.2 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-contracted and the duration of the relevant sub-contracts (such information to be recorded in Schedule C2) and shall consult with Post Office prior to amending or supplementing such arrangements or commitments and shall take account of all

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reasonable requests and comments that Post Office shall make in connection therewith.

**59. Non-Solicitation**

59.4 Subject to Clause 48.4.3, 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 then or shall have been in the previous three months either:

- 59.4.1 an employee of the Previous Employer; or
- 59.4.2 engaged by the Previous Employer as a contractor performing the services of such an employee.

59.5 In the event that such Key Individual is employed or engaged by the other Party with the agreement of the other Party (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.

59.6 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.

59.7 Nothing in this Clause 59 is intended to prevent or frustrate the right of any individual to seek employment as he thinks fit.

**60. Force Majeure**

60.4 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 60.7), (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 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 43.1 constitute a Force Majeure event.

60.5 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

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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 any such failure or delay on the part 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.

- 60.6 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 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 Working Day and shall inform Fujitsu Services of the period which it is estimated that such failure or delay shall continue.
- 60.7 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.
- 60.8 If any Force Majeure event prevents any Party from performing its obligations hereunder for a period in excess of 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 47.1.5.
- 60.9 Extension of Time

If the performance of this Agreement by either Party is delayed by reason of any Force Majeure event (as defined in Clause 60.1), 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 Working Day of becoming aware of the Force Majeure event.

- 60.10 Political Risk

Notwithstanding the provisions of Clauses 60.1 to 60.5, a change of, or new, Governmental Regulation:

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60.10.1 shall not entitle Post Office to terminate this Agreement under Clause 60.5, and any such purported termination shall be treated as a termination for convenience in accordance with Clause 47.7; and

60.10.2 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.

**61. Confidentiality**

61.4 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.

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

Notwithstanding the above, any Party may disclose Confidential Information:

61.5.1 if and to the extent required by law;

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

61.5.3 to its professional advisers;

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

61.5.5 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);

61.5.6 to Royal Mail Group;

61.5.7 to Fujitsu Services Holdings Plc, Fujitsu Services Limited or its Parent Companies;

61.5.8 to Fujitsu Services' approved sub contractors as listed in Schedule C2;

61.5.9 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;

61.5.10 which is in the possession of the receiving Party without restriction in relation to disclosure before the date of receipt from the disclosing Party;

61.5.11 which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

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61.5.12 which is independently developed without access to the Confidential Information;

61.5.13 as may be required or permitted by paragraph 2.9 of Schedule A4;

61.5.14 if and to the extent permitted under paragraphs 5.5 or 6.5 of Schedule D6 (as applicable), to any bona fide potential sub-contractor or replacement provider (as applicable) for the purposes of Competitive Tendering;

61.5.15 to a person listed in a CCD if and to the extent that person is an approval authority for or otherwise permitted access under the relevant CCD to the relevant Confidential Information; or

61.5.16 subject to, and in accordance with, paragraph 10 of Schedule B1.2, to any member of the SIP.

61.6 From the date of signature of CCN 1400, notwithstanding any other provision of this Agreement, Post Office shall be entitled to use Confidential Information and disclose Confidential Information to:

- (i) bona fide potential Next Suppliers to the extent that such disclosure is reasonably required to comply with the Public Contracts Regulations 2006 (in particular without limitation Regulation 4(3) of the Public Contracts Regulations 2006) to enable any bona fide potential Next Suppliers to prepare a reasonably detailed tender proposal to Post Office and carry out due diligence; and/or
- (ii) Next Suppliers to the extent such disclosure is reasonably required to effect transition and implementation,

61.7 Post Office shall ensure that prior to any Confidential Information being disclosed to any such bona fide potential Next Suppliers and/or Next Suppliers, such potential bona fide potential Next Suppliers and/or Next Suppliers shall enter into an Agreed Form NDA and shall immediately inform Fujitsu Services if it has reason to believe that the bona fide potential Next Suppliers and/or Next Suppliers is in breach of the undertakings contained in that confidentiality agreement. The Parties hereby agree that (other than as required by law):

- 61.7.1 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;
- 61.7.2 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 confidentiality undertaking on substantially the same terms as are contained in this Clause; and
- 61.7.3 without prejudice to the generality of the foregoing:

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- (b) neither Fujitsu Services nor any person engaged by Fujitsu Services (whether as an employee, 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
- (c) Post Office may discharge the obligation imposed on it by Clause 61.4.2 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.

61.8 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*.

61.9 Nothing in this Clause 61 shall restrict the Post Office from using, or disclosing to a third party for use on its behalf, documents or materials (including, without limitation, project plans and documentation, architecture and design documents, requirements statements, specifications and other preparatory materials) in which it owns, or has the right to grant a licence to a third party of, any Intellectual Property Rights pursuant to this Agreement, provided that:

- 61.9.1 it shall not disclose to a third party any parts of such documents that contain the prices, pricing methodologies or trade secrets of Fujitsu Services; and
- 61.9.2 it shall not disclose any Listed Documentation, Fujitsu Developed Documentation, Fujitsu Background IPR or Third Party Items (excluding any Third Party Items, the Intellectual Property Rights in which are required to be assigned to Post Office pursuant to Clause 29) to any third party unless it has entered into a confidentiality agreement with that third party which:
  - (b) is enforceable against that third party by Fujitsu Services;
  - (c) provides Fujitsu Services with no less favourable protections than this Clause 61; and

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(d) restricts the use and (if applicable) modification of that Listed Documentation, Fujitsu Developed Documentation, Fujitsu Background IPR or Third Party Item by that third party to that contemplated by Clause 30.

This Clause 61.6 shall not apply in respect of Horizon Design Documentation, the permitted use and disclosure of which shall be governed by Clause 30.15.

61.10 Nothing in this Clause 61 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.

**62. 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 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.

**63. Discrimination**

63.4 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.

63.5 Fujitsu Services shall take all reasonable steps to ensure the observance of the provisions of Clause 63.1 by all employees, agents and consultants of Fujitsu Services and all sub-contractors.

**64. 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.

**65. 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).

**66. Guarantee**

66.4 Fujitsu Services undertakes that its obligations hereunder are and will continue to be effectively guaranteed by the Fujitsu Guarantees until 31st March 2015. For the period

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from 1st April 2015 to 31st March 2023, Fujitsu Services undertakes that its obligations hereunder will continue to be effectively guaranteed by Fujitsu Services Holdings plc under the Fujitsu Services Holdings plc guarantee dated 31 December 2002 (as amended). The guarantee given by Fujitsu Limited shall lapse on 31st March 2015. The guarantee given by Fujitsu Services Holdings plc shall lapse on 31st March 2031.

66.5 Breach of Clause 66.1 shall constitute a Default not capable of remedy.

67. **Interpretation**

67.4 As used in this Agreement:

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

67.4.2 the masculine includes the feminine and the neuter;

67.4.3 the singular includes the plural and *vice versa*; and

67.4.4 unless stated otherwise or the context requires otherwise, any reference within any Schedule, CCD or CRD to an Annex, Attachment, Section or Paragraph is to the relevant annex, attachment, section or paragraph of that Schedule, CCD or CRD.

67.5 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 60.7 and any rights Fujitsu Services may have under Schedule A4 to charge Post Office for the cost of compliance with any such subsequent statute, enactment, order, regulation or instrument or subsequent re-enactment thereof.

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

67.7 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.

67.8 Subject to Clauses 67.6 and 67.7, 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:

67.8.1 in the period between the Amendment Date and HNG-X Final Acceptance:

(b) the Clauses and Schedule 1;

(c) all other Schedules other than Schedules B3.2 and B3.3;

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- (d) the Requirements Baseline (as may be amended pursuant to Schedule B6.1) and the HNG-X Assumptions;
- (e) the Solution Baseline Documentation Set (other than Schedules B3.2, B3.3 and B3.4);
- (f) Schedules B3.2 and B3.3;
- (g) CCDs not included in paragraphs (a) to (e) (inclusive) above; and
- (h) Work Orders and CRDs; and

67.8.2 in the period between HNG-X Final Acceptance and the date that revised versions of Schedules B3.2, B3.3 and B3.4 and all other documents in the Solution Baseline Documentation Set are agreed under the Change Control Procedure pursuant to Clause 5.4:

- (b) the Clauses and Schedule 1;
- (c) all other Schedules other than Schedules B3.2, B3.3, B6.1, B6.2 and B6.3;
- (d) the Solution Baseline Documentation Set (other than Schedules B3.2, B3.3 and B3.4);
- (e) the Requirements Baseline (as may be amended pursuant to Schedule B6.1) and the HNG-X Assumptions;
- (f) Schedules B3.2, B3.3, B6.1, B6.2 and B6.3;
- (g) CCDs not included in paragraphs (a) to (e) (inclusive) above; and
- (h) Work Orders and CRDs; and

67.8.3 thereafter (or in the event that Project HNG-X is terminated for any reason pursuant to Clause 47.11):

- (b) the Clauses and Schedule 1;
- (c) all other Schedules (other than Schedules B6.1, B6.2 and B6.3) and the Solution Architecture;
- (d) CCDs (other than the Solution Architecture);
- (e) Work Orders and CRDs; and
- (f) Schedules B6.1, B6.2 and B6.3.

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67.9 Notwithstanding any reference in this Agreement to either Party complying with Working Documents, Working Documents shall not affect or introduce any contractual obligations between the Parties.

67.10 To the extent that:

67.7.1 a Work Order purports:

- (b) 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; or
- (c) purports to make other amendments to the terms of this Agreement it shall have the precedence priority stated in Clause 67.5, or

67.7.2 a CCN purports to describe terms on which changes to this Agreement specified in that CCN will be made, or terms ancillary to those changes, it shall govern the terms on which those changes will be made and shall take precedence over any provision of this Agreement in conflict with those terms.

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

67.12 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.

**68. 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 shall only be amended in accordance with the Change Control Procedure.

**69. 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.

**70. Dispute Resolution Procedure**

Any dispute arising out of or in connection with this Agreement shall be resolved in accordance with the procedure set out in Annex 2 to Schedule A2.

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**71. Law and Jurisdiction**

- 71.4 Without prejudice to Clause 70, this Agreement shall be governed by and shall be interpreted in accordance with English Law and the Parties submit to the exclusive jurisdiction of the English Courts.
- 71.5 This Agreement is binding on Post Office and its successors and permitted assignees and on Fujitsu Services and its successors and permitted assignees.

**72. Entire Agreement**

- 72.4 This Agreement constitutes the entire agreement and understanding between the Parties relating to the subject matter of this Agreement.
- 72.5 Each of the Parties acknowledges and agrees that:
  - 72.5.1 in entering into this Agreement and CCN1200 it has not relied on and shall have no remedy (except in the case of fraud) in respect of any statement, representation, warranty, promise or assurance, whether or not in writing, and whether or not negligent, given or made by any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or in CCN1200; and
  - 72.5.2 the only remedy available to it for breach of any of the provisions of this Agreement or CCN1200 shall be for breach of contract under the terms of this Agreement and CCN1200.

**73. Revising the Agreement to reflect matters agreed in CCNs**

The Parties agree that:

- 73.4.1 the CCNs listed in section 3.1/Part A of the CCN List are no longer relevant to this Agreement and have no effect;
- 73.4.2 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 section 3.2/Part B of the CCN List those amendments have been made. Such CCNs have accordingly been superseded by this Agreement to that extent but this shall be without prejudice to the application of such CCNs to matters other than the Clauses and Schedules of this Agreement (including, without limitation, their application to, or the introduction of, CCDs or CRDs and/or to any charges or credits specified in such CCNs which are due or which shall become due to be paid or allowed); and
- 73.4.3 the provisions of the CCNs listed in section 3.3/Part C of CCN List (including any provisions set out in any attachments to those CCNs) have not been reflected by amendment to this Agreement and accordingly shall remain in effect insofar as applicable.

**74. NBS CCNs**

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Without prejudice to the application or otherwise of any other provisions, the provisions relating to the Network Banking CCNs in paragraph 4 of schedule 24 to this Agreement in its form under CCN1100 shall remain in effect notwithstanding the omission of such provisions from this Agreement in its form under CCN1200.

**75. TUPE**

75.4 In the event that it is anticipated that the Transfer Regulations will apply on the commencement of the POLSAP Services so that employees of Post Office, its agents or contractors shall transfer to Fujitsu Services or its sub-contractors, either directly from Post Office or from one of its agents or contractors, clauses 75.2 - 75.5 will apply.

75.5 No later than three months prior to the intended transfer, Post Office shall, or shall use reasonable endeavours to procure that its agents or contractors shall, at the request of Fujitsu Services provide Fujitsu Services a list providing details of the terms of employment of all personnel who are then employed wholly or mainly (at least 51 per cent. of their working time or as otherwise agreed by the parties) in the performance of the relevant services as reasonably required by Fujitsu Services, save that nothing in this Clause 75.2 shall have the effect of requiring Post Office to produce information in breach of the Data Protection Act 1998 or in breach of any express duty of confidentiality which Post Office or its agents or contractors may owe to their respective personnel. In such circumstances, Post Office shall use its reasonable endeavours to obtain appropriate consent for the release of such information.

75.6 Post Office shall fully indemnify Fujitsu Services (on its own behalf and on behalf of any sub-contractor) from and against:

75.6.1 any and all liabilities which Fujitsu Services or any sub-contractor incurs in connection with or as a result of any claim or demand whatsoever by any employee or former employee of Post Office or its agents or contractors in respect of his employment with Post Office or such agent or contractor and/or its termination save to the extent such claim or demand:

(A) both (i) is made by an employee identified within the relevant employment details referred to in Clause 75.2 as transferring pursuant to the Transfer Regulations and (ii) relates to employer's liabilities arising in relation to that employee's service after the said transfer of employment which are disclosed in writing to Fujitsu Services and/or any of its sub-contractors prior to the said transfer or relates to the employee's termination after the said transfer; or

(B) is made by an employee who is not identified within the relevant employment details referred to in clause 75.2 and such termination occurs after the period set out in clause 75.5; and

75.6.2 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any failure by Post Office or any of its agents or contractors to comply with its or their obligations under Regulation 13 of the Transfer Regulations save to the extent such failure

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is attributable to the failure of Fujitsu Services to comply with its obligations under the same Regulation.

75.7 In the event that the Transfer Regulations apply on the commencement of the POLSAP Services, Fujitsu Services shall indemnify Post Office (on its own behalf and on behalf of its agents and contractors) against:

75.7.1 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any failure by Fujitsu Services or its sub-contractors to comply with its obligations under Regulation 13 of the Transfer Regulations;

75.7.2 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any change in the terms and conditions of employment of the employees identified within the relevant employment details referred to in Clause 75.2 made by Fujitsu Services or its sub-contractors on or after the transfer date or any change in the terms and conditions of the employment of the employees identified within the relevant employment details referred to in Clause 75.2 proposed by Fujitsu Services or its sub-contractors and whether before, on or after the transfer date but only to the extent in each case such change or proposed change in the terms and conditions of employment constitutes a repudiatory breach of the relevant employee's contract of employment or involves a substantial change in his working conditions to his material detriment; and

75.7.3 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any act or omission of Fujitsu Services or its sub-contractors in respect of the employment or termination of employment of the employees identified within the relevant employment details referred to in Clause 75.2 on or after the date of transfer of the relevant employee's employment.

75.8 If the contract of employment of any individual who is not a listed transferring employee under Clause 75.2 shall have effect on and after the transfer date as if originally made between Fujitsu Services or any of its sub-contractors and the individual concerned as a result of the provisions of the Transfer Regulations and/or any judicial decision interpreting the same:

75.8.1 the Party first informed of it shall notify the other within ten (10) business days after becoming aware of the same;

75.8.2 if Fujitsu Services, upon becoming aware or being notified of the same, decides that it does not wish to employ such an individual, Fujitsu Services shall, within ten (10) business days of such date, notify Post Office of this in writing;

75.8.3 if Fujitsu Services so notifies Post Office under Clause 75.5.2, Post Office shall be entitled to make an offer of re-employment or re-engagement to any such individual within ten (10) business days of the date of receipt of such notification;

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75.8.4 Post Office shall notify Fujitsu Services in writing of any offer of re-employment or re-engagement which is made and any such offer which is accepted by any such individual; and

75.8.5 if any such offer of re-employment or re-engagement by Post Office is either not made to such individual in accordance with Clause 75.5.3 or is not accepted by such individual within fifteen (15) business days of the date of notification under Clause 75.5.2, Fujitsu Services may terminate his contract of employment at any time not later than twenty (20) business days after the date of notification under Clause 75.5.2.

75.9 As soon as possible following any notice of termination being given, or any termination without notice, of all or part of the relevant services under this Agreement and no later than six months prior to the expiry of an Expiring Service pursuant to Clause 46.3 and 46.4 or to the expiry of this Agreement at the end of the term set out in Clause 46.1, Fujitsu Services shall at the request of Post Office provide to Post Office (or to Post Office and the Next Supplier nominated by Post Office) a list providing details of the terms of employment of all Fujitsu Personnel who are then employed wholly or mainly (at least 51 per cent. of their working time or as otherwise agreed by the parties) in the performance of the relevant services under this Agreement as reasonably required by Post Office, save that nothing in this Clause 75.6 shall have the effect of requiring Fujitsu Services to produce information in breach of the Data Protection Act 1998 or in breach of any express duty of confidentiality which Fujitsu Services or its sub-contractors may owe to the Fujitsu Personnel. In such circumstances, Fujitsu Services shall use its reasonable endeavours to obtain appropriate consent for the release of such information.

75.10 Fujitsu Services shall fully indemnify Post Office (on its own behalf and on behalf of any Next Supplier) from and against:

75.10.1 any and all liabilities which Post Office or any Next Supplier incurs 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' sub-contractors or agents in respect of his employment with Fujitsu Services or such sub-contractor or agent and/or its termination save to the extent such claim or demand:

(A) both (i) is made by an employee identified within the relevant employment details referred to in Clause 75.6 as transferring pursuant to the Transfer Regulations and (ii) relates to employer's liabilities arising in relation to that employee's service after the said transfer of employment which are disclosed in writing to Post Office and/or the Next Supplier prior to the said transfer or relates to the employee's termination after the said transfer; or

(B) is made by an employee who is not identified within the relevant employment details referred to in Clause 75.6 and such termination occurs after the period set out in clause 75.9.

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75.10.2 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any failure by Fujitsu Services or any of its sub-contractors or agents to comply with its or their obligations under Regulation 13 of the Transfer Regulations save to the extent such failure is attributable to the failure of Post Office or a Next Supplier to comply with its obligations under the same Regulation.

75.11 In the event that the Transfer Regulations apply on any termination (with or without notice) or expiry of all or part of the relevant services under this Agreement, Post Office shall indemnify Fujitsu Services (on its own behalf and on behalf of its sub-contractors and agents) against:

75.11.1 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any failure by Post Office or any Next Supplier to comply with its obligations under Regulation 13 of the Transfer Regulations;

75.11.2 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any change in the terms and conditions of employment of the employees identified within the relevant employment details referred to in Clause 75.6 made by Post Office or a Next Supplier on or after the transfer date or any change in the terms and conditions of the employment of the employees identified within the relevant employment details referred to in Clause 75.6 proposed by the Post Office or a Next Supplier and whether before, on or after the transfer date but only to the extent in each case such change or proposed change in the terms and conditions of employment constitutes a repudiatory breach of the relevant employee's contract of employment or involves a substantial change in his working conditions to his material detriment; and

75.11.3 any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of or in connection with any act or omission of Post Office or any Next Supplier in respect of the employment or termination of employment of the employees identified within the relevant employment details referred to in Clause 75.6 on or after the date of transfer of the relevant employee's employment. The indemnity referred to in this Clause 75.8.3 shall not apply in relation to any Worker who makes or brings a claim, demand or action referred to in this Clause 75.8.3 to the extent that Fujitsu Services has failed to comply with its obligation under Clause 48.4.3 in respect of such Worker.

75.12 If the contract of employment of any individual who is not a listed transferring employee under Clause 75.6 shall have effect on and after the transfer date as if originally made between Post Office or any Next Supplier and the individual concerned as a result of the provisions of the Transfer Regulations and/or any judicial decision interpreting the same:

75.12.1 the Party first informed of it shall notify the other within ten (10) business days after becoming aware of the same;

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75.12.2 if Post Office, upon becoming aware or being notified of the same, decides that it does not wish to employ such an individual, Post Office shall, within ten (10) business days of such date, notify Fujitsu Services of this in writing;

75.12.3 if Post Office so notifies Fujitsu Services under Clause 75.9.2, Fujitsu Services shall be entitled to make an offer of re-employment or re-engagement to any such individual within ten (10) business days of the date of such notification;

75.12.4 Fujitsu Services shall notify Post Office in writing of any offer of re-employment or re-engagement which is made and any such offer which is accepted by any such individual; and

75.12.5 if any such offer of re-employment or re-engagement by Fujitsu Services is either not made to such individual in accordance with Clause 75.9.3 or is not accepted by such individual within fifteen (15) business days of the date of notification under Clause 75.9.2, Post Office may terminate his contract of employment at any time not later than twenty (20) business days after the date of notification under Clause 75.9.2.

75.13 Fujitsu Services agrees that it shall promptly provide to Post Office and/or such other person(s) as Post Office may nominate upon request at any time (though in any event no more than twice in any 12 month period) an up-to-date list of all Fujitsu Personnel who are then employed in the performance of the relevant services under this Agreement at least 33 per cent. of their working time. Where information is provided in advance of a likely transfer of employment in accordance with Clause 75.6, Fujitsu Services agrees that it shall promptly provide to Post Office and/or such other person(s) as Post Office may nominate updated information in the event of a change in the data set out therein between the date on which the information was provided under Clause 75.6 and the transfer date.

75.14 Fujitsu Services further warrants and undertakes that during the six months prior to the transfer date or during any period of notice to terminate this Agreement or the provision of part or all of the relevant services under this Agreement given by either Party or any period during which Fujitsu Services contemplates or anticipates giving such notice or terminating part or all of this Agreement or the Service provision (whether lawfully or otherwise), Fujitsu Services shall not, and shall procure that its employees and workers and sub-contractors (as applicable) shall not, other than with Post Office's prior written consent or in the ordinary course of Fujitsu Services' business:

- (A) increase or amend any salary, emolument, fee or contractual benefit or entitlement provided to or afforded to any Fujitsu Personnel;
- (B) vary the terms and conditions of employment of any Fujitsu Personnel;
- (C) increase the proportion of working time spent on the relevant services under this Agreement by any employees or Fujitsu Personnel;
- (D) employ any person or assign any other existing employees or workers to the provision of all or part of the relevant services under this Agreement so that they become Fujitsu Personnel; or

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(E) replace or remove or terminate or give notice to terminate the employment of any Fujitsu Personnel.

75.15 For the avoidance of doubt, Fujitsu Services shall indemnify Post Office (on its own behalf and on behalf of any Next Supplier) from and against all and any costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising from any employees employed in the normal course of their employment, wholly or principally outside the UK in the provision of all or part of the relevant services under this Agreement (the "Overseas Personnel") transferring or alleging that they have or will transfer to the employment of (or any liabilities in respect of them will transfer to) Post Office and/or any Next Supplier on any termination or partial termination, expiry or partial expiry of the relevant services provided under this Agreement and all and any related claims including, without limitation, any failure to inform and consult in connection with such a transfer and/or any termination of employment of such Overseas Personnel.

75.16 In the event of any claim or demand being made or action brought to which Clauses 75.3, 75.4, 75.7, 75.8 apply, the indemnified Party shall promptly notify the indemnifying Party of such claim, demand or action. The indemnifying Party shall at its own expense conduct all negotiations for settlement of the same and any legal proceedings that may arise therefrom. The indemnified Party shall, and shall use reasonable endeavours to procure that its suppliers, contractors, sub-contractors, agents and employees (as the case may be) shall, at the request of the indemnifying Party, afford all reasonable assistance for the purpose of contesting any such claim, demand or action. The indemnifying Party shall promptly reimburse any reasonable expense incurred by the indemnified Party in so doing. The indemnified Party shall not make any admissions which may be prejudicial to the defence of any such claim, demand or action.

75.17 Notwithstanding any provision in this Agreement, in the event that it is found that a contract of employment of those Fujitsu Personnel employed wholly or mainly in the provision of the Operational Business Change (Branch Change) Service whose details are set out in the table at the end of this clause 75.14 (the "Operational Business Change (Branch Change) Service Transferring Employees") does not (for any reason) transfer to the Post Office or the Next Supplier on the termination or expiry of the Operational Business Change (Branch Change) Service pursuant to the Transfer Regulations, then

- (a) Fujitsu Services shall be entitled to terminate the contract of employment of such OBCS Transferring Employees within 60 business days of the termination or expiry of the Operational Business Change (Branch Change) Service; and
- (b) Post Office shall indemnify and keep indemnified Fujitsu Services against all costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) arising out of the employment by Fujitsu Services of such OBCS Transferring Employees following the termination or expiry of the Operational Business Change (Branch Change) Service and the termination of employment of such OBCS Transferring Employees.

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**Table: Operational Business Change (Branch Change) Service Transferring Employees:**

Roles	1 x Supervisor; 4 x Service Control Officers
Location	Fujitsu Crewe Office
Notice	between 9 - 16 weeks maximum
Holidays	between 25-30 days maximum
Sick pay	39 weeks at full pay increasing to 52 weeks depending on service
Employer Pension Contribution	10%
Employer Supplementary Cash Allowance	9.3% of salary applicable to 3 employees

75.15 This Clause 75.15 shall only apply to those Services (excluding any Expiring Services) which continue to be provided by Fujitsu Services after 1st April 2017. Notwithstanding any other provision in this Agreement, in the event that a contract of employment of any Fujitsu Personnel wholly or mainly assigned (other than on a temporary basis) at the date of expiry or termination of the relevant service in the provision of the Services (excluding any Expiring Services) ("In-Scope Employees") does not transfer to Post Office or the Next Supplier on the termination or expiry of any element of the Services (excluding any Expiring Services) as a result of the provisions of the Transfer Regulations and/or any judicial decision interpreting the same (a "Non-Transferring In-Scope Employee") then:

75.15.1 the Party first aware of it shall notify the other within ten (10) business days after becoming aware of the same;

75.15.2 if Fujitsu Services, upon becoming aware or being notified of the same, decides that it does not wish to employ such an individual, Fujitsu Services shall, within ten (10) business days of such date, notify Post Office of this in writing;

75.15.3 if Fujitsu Services so notifies Post Office under Clause 75.15.2, Post Office shall be entitled to, or use reasonable endeavours to procure that a Next Supplier shall, make an offer of employment or engagement to any such individual within ten (10) business days of the date of such notification;

75.15.4 Post Office shall notify Fujitsu Services in writing of any offer of employment or engagement which is made and any such offer which is refused or accepted by any such individual;

75.15.5 if any such offer of employment or engagement by Post Office or a Next Supplier is either not made to such individual in accordance with Clause 75.15.3 or is not accepted by such individual within fifteen (15) business days of the date of notification under Clause 75.15.2, Fujitsu Services may give notice to terminate his contract of employment at any time not later than thirty (30) business days after the date of notification under Clause 75.15.2; and

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75.15.6 provided that Fujitsu Services acts in accordance with this Clause 75.15 or in such other way as may be agreed between Fujitsu Services and Post Office, Post Office shall indemnify and keep indemnified Fujitsu Services against all costs, liabilities, awards, decisions, losses and expenses (including reasonable legal fees) reasonably incurred arising out of the termination of employment of such Non-Transferring In-Scope Employees, including payment in lieu of notice, following the termination or expiry of any element of the Services (excluding any Expiring Services) provided that Fujitsu Services takes reasonable steps to mitigate such exposure.

For the avoidance of doubt, any employee who objects to the transfer of their employment in accordance with regulation 4(7) of the Transfer Regulations shall not be a Non-Transferring In-Scope Employee.

The total payments made under the indemnity in Clause 75.15.6 shall be capped at £3,000,000 (three million pounds) and shall exclude any costs of employing the Non-Transferring In-Scope Employees during the period in which Fujitsu Services has the benefit of their services.

## 76 Fujitsu Global Cloud

76.1 Where the Fujitsu Global Cloud Service is used in the provision of services then it shall be subject to:

76.1.1 The "Fujitsu Cloud Service Agreement Global Cloud Platform" special terms;

76.1.2. The "Service Specification Schedule for Fujitsu Cloud Platform"; and

76.1.3. .(in respect of Microsoft software used in the cloud) the "Microsoft Software End User License Agreement which is available at:

<http://globalcloud.uk.fujitsu.com/sopdocs/pub/files/End%20User%20License%20Agreements%20Schedule.pdf>

as updated from time to time in accordance with their terms, which together shall be the "Cloud Terms" and which are available at: <http://globalcloud.uk.fujitsu.com/portal/ctrl/aboutSopTermsE> or <http://globalcloud.uk.fujitsu.com> under "Contract Documents".

76.2 Fujitsu Services shall use reasonable endeavours to notify Post Office Ltd in writing within 30 days of any change to the Cloud Terms

76.3 In the event of any conflict the Cloud Terms shall take priority over the Clauses (and the relevant Schedules) but only in relation to the Fujitsu Global Cloud Service, and any event or consequence directly arising from it.

76.4 The Salesforce Support Service Hosting is a Fujitsu Global Cloud Service and for the avoidance of doubt the following clauses of the Agreement shall not apply to the Salesforce Support Service Hosting:

•Clause 23 Gainshare and Schedule D3

•Clause 24 Open Book and Schedule D4

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- Clause 25 Audit and Schedule D5
- Clause 27 to 32 inclusive
- Clause 34 Intellectual Property Rights Indemnities
- Clause 58 Transfer and Subcontracting
- Schedule A2 Governance
- Schedule A3 Change Control
- Schedule D6 Market Testing

77 **Belfast Datacentres**

It is noted by both Parties that it has not been possible to conclude the extension to the leases to the Belfast datacentres prior to 16th February 2016. To this end, there remains a risk that the lease extensions will not be concluded and that Fujitsu Services will be required to transition the hosted equipment to a replacement datacentre or alternative service solution agreed by both Parties. In the unlikely event that this risk crystallises such that Fujitsu Services has to exit a datacentre, Fujitsu Services shall not be entitled to charge Post Office its own costs of moving and re-installing the equipment (nor any moving and installing costs relating to Fujitsu Service's Sub-contractors or suppliers). However, Post Office shall (and shall procure its third party suppliers, clients and customers shall) facilitate such a transition (at no additional cost to Fujitsu Services) by:

- 76.1 arranging and procuring Post Office's third party suppliers, clients and customers shall install and parallel run network connections needed to the existing and new datacentres; and
- 76.2 participating (and procuring participation by its third party suppliers, clients and customers shall participate) in the planning and implementation for the connection migrations in line with an agreed project plan,

and a let on any relevant Service Levels to enable the movements and/or replacement of the relevant hardware/infrastructure.

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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