

10d

File - Acceptance

TX/RX NO. 1297 02/09 99 16:30

03 SEP 1999  
- 1061

## SLAUGHTER AND MAY

35 Basinghall Street, London EC2V 5DB • Telephone +44 (0)171 600 1200 • Fax +44 (0)171 600 0289  
Telex 883486 and 888926 • LDE and CDE Box No.11

THIS FACSIMILE IS CONFIDENTIAL AND MAY CONTAIN LEGALLY PRIVILEGED INFORMATION. IF YOU ARE NOT NAMED BELOW AS AN ADDRESSEE IT MAY BE UNLAWFUL FOR YOU TO READ, COPY, DISTRIBUTE, DISCLOSE OR OTHERWISE USE THE INFORMATION IN THIS FACSIMILE. IF YOU ARE NOT THE INTENDED RECIPIENT OF THIS FACSIMILE PLEASE TELEPHONE OR FAX US IMMEDIATELY.

## FAX TRANSMISSION

Date	2nd September, 1999	Total pages (inc. this)	7
Our reference	JRT	Writer's telephone	GRO
From	Jeff Triggs	23082 SEP -2 17:24	
To	Keith Baines, POCL, London	Receiving fax number	GRO
Copy to	Dave Miller, POCL, London		GRO

## Acceptance

As promised I have been giving some thought to the terms upon which POCL might agree to treat Acceptance as having occurred later this month where it is not contractually bound to do so.

I attach for your views a discussion draft of a possible agreement which:-

- (a) records outstanding category (a) and (b) faults, categorising them into three categories, as follows:-
  - (i) category (a) faults;
  - (ii) category (b) faults where a rectification plan/timetable is required upon acceptance; and
  - (iii) category (b) Substantive New Faults where a rectification plan/timetable is to be agreed by 15th November, under section 3.4 of the First Supplemental Agreement;
- (b) agrees that Acceptance and Rollout Authorisation have happened;
- (c) obliges Pathway to meet detailed rectification plans/timetable(s) by reference to a schedule (which I have not sought to provide at this stage);
- (d) indemnifies POCL against the costs of remedying the faults, the consequences of any failure to meet the agreed timetable(s) for rectification and any other liabilities arising from any category (a) fault.

A list of the partners and their professional qualifications is available for inspection at the above address.  
The partners are either solicitors or registered foreign lawyers.

IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE TELEPHONE +44 (0)171 710 4002

Document number CA992450.134

20d

TX/RX NO. 1297 02/09 99 16:30

SLAUGHTER AND MAY

CA992450.134

2

2nd September, 1999

The draft also raises the questions as to whether all or part of the £68 million should be retained while the category (a) fault is remedied, and whether logically we should also reserve the right to demand liquidated damages by reference to remedy of the outstanding category (a) faults, rather than Acceptance, by 30th September.

Clearly the precise nature of any such deal will depend on what is outstanding by the time we are asked to grant Acceptance (if indeed we are). For example one or more of the categories of Acceptance Incident may not exist.

I look forward to your comments.

Regards

**GRO**

J R Triggs

Slaughter and May 03/09/99 10:00

DRAFT (JRT)

THIS SECOND SUPPLEMENTAL AGREEMENT, being Change Control Note (CCN) [No. ] is made the [ ] day of September, 1999

BETWEEN:

- (1) POST OFFICE COUNTERS LTD., whose registered office is at Gavrelle House, 2-14 Bunhill Row, London EC1Y 8HQ ("POCL"); and
- (2) ICL PATHWAY LIMITED, whose registered office is at 26 Finsbury Square, London EC2A 1DS (the "Contractor").

WHEREAS:

- (A) This Second Supplemental Agreement is supplemental to the Codified Agreement between the parties dated 28th July, 1999 (the "Codified Agreement") and constitutes CCN [No. ] of that Codified Agreement.
- (B) The Contractor and POCL have been carrying out the Operational Trial and the other Acceptance Procedures in accordance with the Codified Agreement.
- (C) By a Supplemental Agreement dated 20th August, 1999 (the "First Supplemental Agreement") the parties agreed that CSR Acceptance had not been achieved at the end of the CSR Operational Trial Review Period.
- (D) By the First Supplemental Agreement the parties agreed, inter alia, a programme of work with a view to achieving Acceptance and Release Authorisation by 24th September, 1999, and also agreed that only certain elements of the Core System Release were required to be re-submitted for testing in the Second CSR Acceptance Test and that only certain faults could be raised as Acceptance Incidents in relation to the Second CSR Acceptance Test.
- (E) As at the date of this Second Supplemental Agreement the following Acceptance Incidents (in addition to those categorised as category (c) faults) remain (in the opinion of at least one party) outstanding:-
  - (i) Category (a) Faults  
[to follow]
  - (ii) Category (b) Faults which are Substantive New Faults reported to the Contractor after 3rd September, 1999 in respect of which no timetable for resolution has been agreed  
[to follow]

207738/10582 CA992450.029 JRT 020999:1644

(iii) Category (b) Faults not falling within recital (E)(ii) above

[to follow]

It is Agreed as follows

1. Interpretation

- 1.1 Words and expressions defined in the Codified Agreement or the First Supplemental Agreement shall bear the same meanings when used in this Agreement.
- 1.2 References in this Agreement to Recitals are to Recitals to this Agreement.

2. CSR Acceptance

- 2.1 The parties agree that CSR Acceptance shall be deemed to have been obtained as at the date of this Agreement.
- 2.2 POCL acknowledges that the Release Authorisation Board has, in reliance on the terms of this Agreement, authorised national rollout of the Core System with effect from execution of this Agreement.

3. Remedy of Outstanding Faults

- 3.1 The Contractor undertakes to remedy each of the outstanding Acceptance Incidents referred to in Recitals (E)(i) and (E)(iii) in accordance with the rectification plan and timetable [for that Acceptance Incident] contained in the Schedule hereto.
- 3.2 The provisions of clause 3.4 of the First Supplemental Agreement shall apply in relation to Acceptance Incidents referred to in Recital (B)(ii).
- 3.3 All work carried out (by either party) in remedying any of the Acceptance Incidents referred to in Recital (E) shall be at the sole risk and expense of the Contractor.

4. Indemnity

The Contractor shall indemnify and keep indemnified POCL (on an after tax basis) against all costs, claims, charges, demands, expenses and liabilities which it may suffer or incur, directly or indirectly:-

- 4.1 in connection with any work carried out for the purpose of remedying or testing any of the Acceptance Incidents referred to in Recital (E); or

207738/10582 CA992450.029 JRT 020999:1644

- 4.2 which it would not have incurred but for any failure to resolve an Acceptance Incident referred to in Recital (E)(i) or (iii) in accordance with the plan and timetable [in relation thereto] set out in the Schedule hereto; or
- 4.3 which it would not have incurred but for any failure to resolve an Acceptance Incident referred to in Recital (E)(ii) in accordance with any timetable and plan established in relation thereto under clause 3.4 of the First Supplemental Agreement; or
- 4.4 otherwise in connection with the Acceptance Incidents referred to in Recital (E)(i).

5. Retention

*[Retention of all or part of the £68 million until category (a) incidents resolved?]*

*[Liquidated damages to apply if category (a) incidents not resolved by 30th September, 1999?]*

6. First Supplemental Agreement

- 6.1 Clauses 3.5, 3.6, 4.1 to 4.4 (inclusive), 5 and 7 of the First Supplemental Agreement shall be superseded by this Agreement and shall cease to apply with effect from the date hereof.
- 6.2 For the avoidance of doubt, clauses 3.4, 4.6 and 6 of the First Supplemental Agreement shall continue to apply.

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

**SCHEDULE**

**Rectification Plans and Timetable for Remedying  
Category (b) Faults**

207738/10582 CA992450.029 JRT 020999:1644

Signed by )  
for and on behalf of )  
POST OFFICE COUNTERS LTD. )  
in the presence of:- )

Signed by )  
for and on behalf of )  
ICL PATHWAY LIMITED )  
in the presence of:- )

207738/10582 CA992450.029 JRT 020999:1644