

## AGREEMENT TO APPOINT AN EXPERT

THIS AGREEMENT is made on *28<sup>th</sup> April* 2014  
BETWEEN

- (1) **Post Office Limited** (company number 02154540) whose registered office is at 148 Old Street, London EC1V 9HQ (**POL**) and
- (2) **I C Consultants Limited** (company number 02478877) whose registered office is at Sherfield Building, Exhibition Road, London, SW7 2AZ (the **Expert**)

IT IS AGREED AS FOLLOWS:

### 1 Interpretation

1.1 In this Agreement the following terms have the following meanings:-

Confidential  
Information

the POL Information, the Purpose, this Agreement and any other information which has been, is now or is at any time after the date of this Agreement disclosed or made available by POL, its Representatives or by a third party (including without limitation Fujitsu) to the Expert, its Representatives or to any other person at the request of the Expert but shall not include information which:-

- (a) is accessible from public sources or is or becomes generally available to third parties other than as a result of disclosure in breach of this Agreement by the Expert or its Representatives; or
- (b) was available to the Expert free of any restriction as to its use or disclosure prior to it being so disclosed or made available or in the Expert's possession; or
- (c) becomes available to the Expert from a source other than POL or Fujitsu (or either of their Representatives), free of any obligation of confidentiality;
- (d) to have been developed by or for the Expert at any time independently of the information disclosed to it by POL; or
- (e) which the Expert is advised by its information officer that it is required to disclose under the Freedom of Information Act 2000; or
- (f) to the extent it is required to disclose by Law.

Data Controller

shall have the meaning set out in the Data Protection Act 1998

Data Processor

shall have the meaning set out in the Data Protection Act 1998

Data Subject

shall have the meaning set out in the Data Protection Act 1998

Horizon

the software and hardware known as Horizon which is used by POL;

Instructing Solicitors	Cartwright King solicitors or other such firm of solicitors that POL may nominate in writing from time to time;
Personal Data	shall mean any POL Information that falls within the definition of person data in the Data Protection Act 1998
POL Information	all data and information belonging or licensed to POL and other proprietary or confidential information relating to, Horizon and all other proprietary or confidential information relating to POL's business, operations, technology and processes which is owned by, licensed to or in the possession of POL (including without limitation accounts, business plans, financial projection, data, technical information, know-how, formulae, processes, intellectual property rights, client lists, actual or prospective sales contacts, photographs, drawings, specifications, software programs and samples);
Processing	shall have the meaning set out in the Data Protection Act 1998
Purpose	As per clause 2; and
Representative	Any representative of a party to this Agreement or any authorised person acting on behalf of such party or anyone to whom such party has disclosed any Confidential Information including without limitation any professional adviser, legal adviser, director, officer, permanent employee, contractor or consultant.
Scheme	The Initial Complaint Review and Mediation Scheme
Services	The services to be provided by the Expert as Clause 3 to this Agreement.

## 2 Purpose

- 2.1 Horizon has been developed by Fujitsu for and on behalf of POL and is used to conduct and record transactions in POL's branch network. It is relied upon to ensure that all transactions, monies and stock are accounted for. Records from Horizon are also used as evidence in a criminal proceedings and/or civil recoveries.
- 2.2 In light of concerns raised by Subpostmasters regarding the integrity and quality of Horizon, POL requires the Expert to scope and undertake a review of Horizon with a view to the Expert producing reports and/or giving evidence in future Court proceedings in respect of Horizon's functionality and accuracy as further set out under Clause 3 below.
- 2.3 POL has appointed the Instructing Solicitors to instruct the Expert in respect of the Services the Expert carries out for the Purpose and the Expert shall only accept instructions in respect of the Services from the Instructing Solicitors. POL shall be responsible for paying the Expert's costs for the Services in accordance with this Agreement.

## 3 Expert's Services

- 3.1 The Expert shall:
- 3.1.1 carry out work as set out in any instructions from the Instructing Solicitors and such work may include the Expert making preliminary enquiries of POL and its Representatives and undertaking preliminary investigations into Horizon in order to scope the work and costs involved in the Expert producing more detailed reports (the **Initial Review**);

- 3.1.2 if instructed to do so by the Instructing Solicitors, provide to the Instructing Solicitors a written proposal (which shall include a scope of work and a cost for that work) in respect of the Expert producing further reports (the **Proposal**);
  - 3.1.3 work in good faith with the Instructing Solicitors to refine and agree the Expert's Initial Review and/or Proposal.
- 3.2 If the above reports are commissioned by the Instructing Solicitors, the final scope of work and costs thereof shall be set out in a written set of instructions from the Instructing Solicitors (which may be amended from time to time by agreement between the Expert and the Instructing Solicitors).
- 3.3 For the avoidance of doubt, the Instructing Solicitors (on behalf of POL) are not obliged to commission any work in addition to the Initial Review.
- 3.4 If commissioned to prepare the reports, the Expert shall produce all work in accordance with the instructions it receives from the Instructing Solicitors.
- 3.5 The Expert shall obtain POL's prior written approval before engaging or instructing any Representative in carrying out any of the Services in relation to this Agreement.
- 3.6 In relation to the Services to be provided by the Expert in connection with this Agreement, the Expert shall:
  - 3.6.1 conduct the Services using the skill and care expected of experts in the field of information technology systems like Horizon and in accordance with best practice for conducting such work; and
  - 3.6.2 act in accordance with any reasonable instructions given by the Instructing Solicitors; and
  - 3.6.3 not solicit or accept instructions from POL.

#### **4 POL's obligations**

- 4.1 The Expert shall notify the Instructing Solicitors as soon as reasonably practicable if it requires access to any personnel, documentation, information and/or Horizon in order to produce the Initial Review, the Proposal or any further reports.
- 4.2 POL shall provide the Expert with reasonable access to any personnel, documentation, information and/or Horizon as is requested by the Expert pursuant to clause 4.1.

#### **5 Payment and timings**

- 5.1 POL shall pay the Expert £15,000 plus VAT for the Initial Review.
- 5.2 The Expert shall use its reasonable endeavours to complete the Initial Review by the date agreed with the Instructing Solicitors.
- 5.3 POL shall pay to the Expert any other payment that is set out in any scope of work that has been agreed under clause 3.2.
- 5.4 The Expert shall use its reasonable endeavours to complete any agreed scope of work under clause 3.2 in accordance with any agreed timings set out therein.
- 5.5 All payments by POL to the Expert shall be made within 45 days of the completion of the relevant Services (which in the absence of any other agreement, shall be deemed to be on production of the Initial Review, the Proposal or any other report as the case may be).

- 5.6 The Expert shall provide POL with invoices for any payments due to the Expert and comply with any other reasonable administrative requirements of POL.

## **6 Undertakings of the Expert**

- 6.1 The Expert shall, and will procure that its Representatives shall:-

- 6.1.1 not make any announcement or publicise the Purpose (unless prior written consent is given by POL, such consent being in POL's absolute discretion);
- 6.1.2 keep secret and maintain confidential the Confidential Information (unless prior written consent is given by POL, such consent being in POL's absolute discretion);
- 6.1.3 use the Confidential Information only for the Purpose and in particular not use any of the Confidential Information for any investigation, research, development, manufacture, marketing, sale or licensing other than so far as any activity is essential for the Purpose and not to obtain a commercial, trading or any other advantage;
- 6.1.4 not copy, adapt or otherwise reproduce the Confidential Information except as strictly necessary for the purposes of the Purpose or permitted by law;
- 6.1.5 upon demand by the Instructing Solicitors:-
  - (a) procure the return to POL of all documents and material which incorporate any Confidential Information (including copies);
  - (b) permanently expunge all Confidential Information from any computer, word processor or other similar device and any electronic storage media or other storage media into which it was programmed; and
  - (c) destroy all notes, analyses or memoranda containing or referring to Confidential Information; and
- 6.1.6 not transfer any Confidential Information outside the UK (unless prior written consent is given by POL, such consent being in POL's absolute discretion).

- 6.2 The Expert shall continue to adhere to the obligations for Confidential Information as set out above for a period of five (5) years from the date of Termination of this Agreement.

## **7 Security Arrangements**

- 7.1 To secure the confidentiality attaching to the Confidential Information, the Expert shall:-

- 7.1.1 keep separate all the Confidential Information and all information generated by the Expert based on the Confidential Information from all documents and other records of the Expert;
- 7.1.2 keep all the Confidential Information and any copies of it at the Expert's premises in secure storage and/or in locked premises;
- 7.1.3 not use, copy, photocopy, reproduce, transform or store any of the Confidential Information in an externally accessible computer or electronic retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business; and
- 7.1.4 not allow access to or disclose the Confidential Information by or to any person except to such Representatives as have a need to know but only insofar and to the extent absolutely necessary or required or in order to fulfil the Purpose and shall inform each of such Representatives of the confidential nature of the Confidential Information and of the obligations of the Expert in this respect.



## **8 Remedies**

8.1 Without prejudice to any other rights and remedies POL may have, the Expert agrees that:-

8.1.1 the Confidential Information is valuable and that damages may not be an adequate remedy for any breach by the Expert of this Agreement; and

8.1.2 the Expert agrees that POL shall be entitled without proof of special damage to the remedies of an injunction or other equitable relief for any actual or threatened breach by the Expert of this Agreement.

## **9 Insurance**

9.1 The Expert shall take out and maintain all insurances required by any law, regulation or guideline and shall take out and maintain public liability insurance cover with a minimum cover of at least fifty million (£50,000,000) and professional indemnity insurance with a minimum cover of at least ten million (£10,000,000). The Expert shall produce to POL at any time on its request, a copy of any insurance policy.

## **10 Intellectual Property Rights**

10.1 The Expert acknowledges and confirms that POL retains all intellectual property rights in the Confidential Information (including copyright or any other intellectual property right in materials produced by the Expert relating to Confidential Information or in accordance with this Agreement) and nothing in this Agreement shall:-

10.1.1 be construed as granting to or conferring on the Expert or their Representatives any licence or other right, title or interest in the Confidential Information or under any intellectual property now or subsequently owned, licensed to or controlled by POL except as expressly stated in this Agreement; and

10.1.2 oblige the parties to enter into any further agreement or relationship.

## **11 Data Protection**

11.1 POL is the Data Controller of any Personal Data in the POL Information or on Horizon.

11.2 The Expert and its Representatives are Data Processors of any Personal Data in the POL Information or on Horizon.

11.3 The Expert shall

11.3.2 at all times comply with obligations equivalent to the obligations of a Data Controller under the provisions of the Seventh Data Protection Principle in the Data Protection Act 1998 and shall take appropriate technical and organisational measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data.

11.3.3 at all times process the Personal Data solely in accordance with the Purpose or POL's written instructions from time to time;

11.3.4 ensure the reliability of its Representatives by vetting its staff appropriately who have access to the Personal Data;

11.3.5 not transfer the Personal Data outside the UK without POL's prior written consent;

11.3.6 immediately inform POL of any breach of this clause and take such steps as POL may reasonably request to remedy such a breach.

11.3.7 immediately notify POL if any Data Subject or regulator of Personal Data makes a complaint or access request and take such steps as POL may reasonably request in response to such a complaint or access request.

**12 No partnership/agency**

12.1 Nothing in this Agreement will make any party the agent or employee of the other nor will it create a partnership, joint venture or employment relationship between the parties. Neither shall one party use the name, crest, logo or registered image of the other party nor the name of any Representative of the other party for any purpose without the express, prior written permission of the other party.

**13 Contracts (Rights of Third Parties) Act 1999**

13.1 No other person who is not a party to this Agreement shall have any rights, whether under the Contract (Rights of Third Parties) Act 1999 or otherwise, to enforce any terms of this Agreement.

**14 Governing law**

14.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

14.2 The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim (including any non-contractual dispute or claim) which may arise between the parties to this Agreement in respect of its subject matter, construction, validity or performance or as to the rights and liabilities of the parties hereunder.

Signed by

For and on behalf of Post Office Limited



GRO

Signed by

For and on behalf of I C Consultants Limited



GRO