

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is made the _____ day of October 2017

BETWEEN

- (1) **FUJITSU SERVICES LIMITED** (Company number 96056) of 22 Baker Street, London, W1U 3BW ("Fujitsu"); and
- (2) **IT GROUP LTD** (Company number [<INSERT NUMBER>]) of [<INSERT FULL ADDRESS>] ("IT Group Ltd").

WHEREAS

- A. In connection with the request by Freeths, solicitors, which is undertaking a group litigation claim (Claim Number HQ1601238) in the High Court, London, against Post Office Limited, Freeths has requested the inspection by Mr John Coyne [an employee of][independent contractor to] [delete appropriately] IT Group Ltd (herein ["Employee"] ["Independent Contractor"] [delete appropriately] of aspects of the Fujitsu proprietary technology utilised in the supply of the services supplied by FJ to Post Office under the Contract known as the "Known Error Log" ("KEL") and of any Peak entries referenced in the Known Error log (collectively "KEL") for the purpose of understanding the contents of the KEL by accessing visually the KEL (and which may involve taking physical notes of the information contained in the KEL) and to communicate solely and exclusively to Freeths his understanding of the KEL by utilising such notes to assist Freeths in its conduct of the Post Office Group Litigation and for no other purpose whatsoever (the foregoing activity being referred to as the "Purpose"). Fujitsu agrees to disclose to [the Employee][Independent Contractor] [delete appropriately] of IT Group Ltd and/or allow the [the Employee][Independent Contractor] [delete appropriately] of IT Group Ltd (whether directly or indirectly), access to Confidential Information (as defined below); and
- B. Fujitsu wishes to regulate how such Confidential Information is to be treated while in the possession or control of IT Group Ltd by virtue of the disclosure of the Confidential Information to the [Employee][Independent Contractor] [delete as appropriate] so as to protect the proper interests of Fujitsu.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. Definitions

The following words and phrases shall have the following meanings unless the context otherwise requires:

- 1.1 "Confidential Information" shall mean:-

- (a) the KEL and the Fujitsu proprietary information that is contained in the KEL;
and
- (c) any copy, note or record of any of the foregoing.

1.2 "Purpose" shall mean the purpose set out in recital A above.

2. Obligations of Confidentiality

2.1 In consideration of the provision of Confidential Information by Fujitsu to the [Employee][Independent Contractor] ~~[delete as appropriate]~~ and acquisition thereof by IT Group Ltd, IT Group Ltd hereby covenants, undertake and agrees that:-

2.1.1 it shall take all measures to ensure the strict confidentiality of all Confidential Information, including keeping it separate from information belonging to IT Group Ltd; and

2.1.2 it will ensure its [Employee][Independent Contractor] ~~[delete as appropriate]~~ uses such Confidential Information only for the Purpose and does not disclose the Confidential Information to any other employee or independent contractor; and

2.1.3 that the [Employee][Independent Contractor] ~~[delete as appropriate]~~ is bound to confidentiality by his employment agreement or otherwise, and inform such [Employee][Independent Contractor] ~~[delete as appropriate]~~ of the confidential nature of the Confidential Information and of the obligations on IT Group Ltd in respect thereof and procure that the [Employee][Independent Contractor] ~~[delete as appropriate]~~ shall in relation to any Confidential Information disclosed to him comply with this Agreement as if he was IT Group Ltd; and

2.1.4 make copies, reduce to writing or otherwise record the Confidential Information only to the extent that the same is strictly required for the Purpose; and

2.1.5 only transmit, reproduce, transform, or store the Confidential Information for the Purpose; and

2.1.6 not remove, obscure, amend and/or deface any confidentiality notice or notice of ownership or origin contained in or on the Confidential Information; and

2.1.7 treat all Confidential Information with the degree of care to avoid disclosure to any third party as is used with respect to IT Group's own information of like importance which is to be kept confidential; and

2.1.6 promptly return all Confidential Information to Fujitsu upon its written request or (at Fujitsu's option) destroy all such Confidential Information and provide to Fujitsu a certificate of such destruction signed by a duly authorised officer of IT Group Ltd.

2.2 Where any Confidential Information is the subject of any national or governmental security regulations IT Group Ltd shall, and hereby undertakes to, take such

measures as may be required by such regulations to protect the Confidential Information.

3. Ownership of Confidential Information

- 3.1 Any Confidential Information imparted disclosed or acquired hereunder shall remain the property of Fujitsu or the originator of such Confidential Information.
- 3.2 No licence under any trademark, copyright, patent, design rights or any other intellectual property right is granted, whether expressly or by implication, to IT Group Ltd, to Freeths or to any other third party by the disclosure or acquisition of such Confidential Information.
- 3.3 The disclosure of such Confidential Information shall not constitute any representation or warranty, express or implied, with respect to the non-infringement of trademarks, patents, copyright, design rights or any other intellectual property rights belonging to third parties.
- 3.4 The parties acknowledge that any Confidential Information provided or received under this Agreement may be subject to government export control laws and regulations and each of the parties agrees that it will strictly comply with all applicable requirements under such laws and regulations. As such, IT Group Ltd warrants and undertakes that it will not export or transfer by any means, electronic or otherwise, any Confidential Information without complying in all respects with the applicable export control legislation, codes of conduct, the relevant export license(s), guidelines, notices and/or instructions in relation to any such export or transfer of Confidential Information.
- 3.5 Fujitsu makes no express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information. Fujitsu shall have no liability to IT Group Ltd, Freeths, and /or to any other third party for any claim by IT Group Ltd, Freeths, and /or any other third party arising out of IT Group Ltd, Freeths, and /or any other third party's use of such Confidential Information and shall have no liability to indemnify IT Group Ltd, Freeths, and /or any other third party in respect of any claim made against IT Group Ltd, Freeths and/or other third party by any third party arising out of use of the Confidential Information.

4. Term and Termination

- 4.1 The obligations of IT Group Ltd set out in this Agreement,, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, shall continue for a period of ten (10) years from the date of this Agreement or until the conclusion of the Post Office Group Litigation howsoever occurring whichever shall be the later.
- 4.2 Termination of this Agreement shall not affect any accrued rights or remedies to which Fujitsu is entitled.

5. Waiver

- 5.1 The failure or neglect by Fujitsu to enforce at any time any of the provisions hereof shall not be construed and shall not be deemed to be a waiver of Fujitsu's rights hereunder nor shall it in any way affect the validity of the whole or any part of this Agreement nor prejudice Fujitsu's rights to take subsequent action. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other term, covenant, representation or warranty. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions hereof shall not be affected thereby and the parties shall use reasonable endeavours to negotiate, in good faith, with a view to substituting for the provision in question a valid, legal and enforceable provision as similar as possible to the provision in question.
- 5.2 The provisions of this Agreement shall not be modified, amended or waived except by a written instrument duly executed by the parties. The requirement of written form can only be waived in writing.

6. Notices

Any notice required to be given hereunder by either party to the other shall be in writing and shall be deemed to have been sufficiently given if delivered by hand or sent by pre-paid first class post or recorded delivery to the address of the party as stated herein. Any notice so given shall be deemed to have been duly given if delivered by hand, at 10 a.m. local time in the place of receipt on the first working day after being left at the address of the party as stated herein; and, if sent by pre-paid first class post or recorded delivery, at 10.00 am on the second working day after posting it.

Fujitsu address is:-

Fujitsu Services Limited
22 Baker Street
London W1U 3BW

FAO: Head of Legal UK & Ireland

IT Group Ltd address is:-

FAO:

7. No poaching

For twelve months from the date hereof IT Group Ltd shall not, and shall procure that its subsidiaries shall not, solicit to hire or hire any employee of Fujitsu with whom IT Group Ltd first had contact or learned of during the activities connected with the Purpose, without the prior written consent of Fujitsu provided, however, that nothing in this Agreement shall restrict or preclude the rights of IT Group Ltd or its subsidiaries to make general solicitations for employees by way of advertisements in the media (including, without limitation, trade media) or by engaging search firms

to engage in solicitations that are not targeted or focused on the employees of Fujitsu and to hire any employees responding to such solicitations.

8. Damages not a sufficient remedy

In the event that the terms and conditions of this Agreement are breached by IT Group Ltd, Fujitsu may, at its option, elect to institute proceedings in court to obtain damages, to enforce specific performance thereof, or to otherwise enjoin the disclosure or unauthorised use of its Confidential Information.

9. No assignment

Neither party shall assign this Agreement or any part thereof without the prior written consent of the other.

10. No Partnership

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

11. Entire Agreement

11.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.

11.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement and that it does not rely on any such representations or warranties. Each party agrees that its only liability in respect of those representations and warranties that are set out in this Agreement (whether made innocently or negligently) shall be for breach of contract.

12. Governing Law

12.1 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.

12.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims) save that Fujitsu reserves the right to institute legal proceedings or take any other actions in any jurisdiction as Fujitsu believes is necessary to protect its Confidential Information and other intellectual property rights and trade secrets.

IN WITNESS WHEREOF THIS AGREEMENT WAS DULY EXECUTED THE DAY AND YEAR WRITTEN BELOW

SIGNED FOR AND ON BEHALF OF

SIGNED FOR AND ON BEHALF OF [IT

FUJITSU SERVICES LIMITED

GROUP LTD]

.....

.....

NAME:

NAME:

TITLE

TITLE

DATE:

DATE: