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**Version History**

Version No.	Date	Comments
13.0		Updating as per CCN1630 and moving all Schedules to v13.0

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## SCHEDULE H

### **Digital Intellectual Property Provisions**

1. Post Office will own all IP Rights in the Deliverables created and/or developed by or on behalf of Fujitsu Services solely or jointly with Post Office on or after the Digital Start Date, save for the Listed Rights and the rights referred to in paragraph 4 below (the “**Digital IPR**”).
2. Fujitsu Services now assigns to Post Office absolutely with full title guarantee free from any charge, lien, encumbrance or other right in favour of any third party all present and future right, title and interest in and to any and all Digital IPR. This assignment includes the right to bring, make, oppose, defend, appeal proceedings, claims or actions and obtain relief (and to retain any damages recovered) in respect of any infringement, or any other cause of action arising from ownership, of any of the Digital IPR whether occurring before, on, or after the date of this Agreement.
3. Without prejudice to paragraph 2, Fujitsu Services shall procure assignments from all Project Consultants to Fujitsu Services (on similar terms to those set out in paragraph 2) of any Digital IPR to be created by any Project Consultants prior to any engagement of any Project Consultant. Such assignments shall also include waivers of moral rights.
4. Nothing in this Schedule shall prevent Fujitsu Services or Post Office from using data-processing techniques, ideas and know-how gained during the performance of the Services in the furtherance of its normal business including by its customers in connection with the delivery and use of its services, (which shall for the avoidance of doubt entitle Post Office to use such data-processing techniques, ideas and know-how for the same scope of activities as referred to in paragraph 8) to the extent that this does not amount to a disclosure of Confidential Information or an infringement by Post Office or Fujitsu Services of any IP Rights.
5. The Digital IPR shall not include:
  - a. any IP Rights created by or on behalf of Fujitsu Services (or any of its Group Companies from time to time) prior to the Digital Start Date ;
  - b. any IP Rights created by or on behalf of Fujitsu Services (or any of its Group Companies from time to time) at any time which have arisen other than from Fujitsu Services’ provision of the Services;
  - c. the Horizon IPR (to which the ownership and licensing provisions under the Agreement shall continue to apply);
  - d. the K5 IPR (which is proprietary to and shall remain owned by Fujitsu Services) including any intellectual property rights in any developments to the Fujitsu K5 Platform whether or not created or developed on or after the Digital Start Date; and/or
  - e. any third party IP Rights (other than those assigned to Post Office pursuant to paragraph 2 of this Schedule),(collectively the “**Listed Rights**”).
6. Post Office now grants to Fujitsu Services a non-exclusive, fully paid-up, worldwide licence to use the Digital IPR solely in connection with the Services and to deliver any related services to Post Office.

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For the avoidance of doubt, the licences granted to Fujitsu Services by Post Office under Clause 31 of the Agreement shall continue to apply.

7. Fujitsu Services shall comply with the Agile Process put in place between the parties and the agreed design principles. The Agile Process shall include as a minimum, backlog, stories, tasks and test plans. Fujitsu Services shall ensure that all personnel working on the Services are aware of the design principles and brief all personnel working on the Services to designate for each Deliverable if it is to be designed, coded or supplied as a pre-existing component or algorithm using any Listed Rights. Post Office's Chief Technical Officer (or nominated representative) may agree (at Post Office's sole discretion) the use of any Listed Rights through the assurance and acceptance work flow in the Agile Process. Both of the parties shall comply with the Agile Process and shall operate the Agile Process to ensure that any Listed Rights in any Deliverable (or part) and any modifications and/or updates thereto are identified and that such information is and remains recorded and readily accessible to both parties in a format to be agreed by the parties acting reasonably.
8. To the extent that Fujitsu Services incorporates any FJ Digital Background IPR in any Deliverables, Fujitsu Services now grants to Post Office a non-exclusive, perpetual, irrevocable, fully paid-up, worldwide licence under such FJ Digital Background IPR as is incorporated in the Deliverables (but excluding any Horizon IPR and any K5 IPR which shall be dealt with in accordance with paragraph 11 below) to use, support, maintain, enhance, modify and develop the Deliverables 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 Deliverables by or on behalf of British Forces Post Office and use of the Deliverables by or on behalf of Post Office's franchisees and agents) with the right to grant sub-licences (strictly within the scope of Post Office's own licence) through multiple tiers, for the purpose of using, copying, modifying, adapting, advancing and developing the Deliverables, in both object code and source code formats solely for and on behalf of Post Office provided always that, for the avoidance of doubt, Post Office and the Post Office Affiliates shall not under any circumstances sell or transfer the Deliverables to third parties (other than to Post Office Affiliates) or otherwise market or commercially exploit the Deliverables by permitting third parties (other than Post Office Affiliates) to use the Deliverables for their own business and other purposes.
9. Nothing in paragraphs 7 and/or 8 above, including any failure by Fujitsu Services to comply with paragraphs 7 and/or 8, shall impact on Fujitsu Services (or Post Office's and/or any third party's) ownership of any of the Listed Rights.
10. To the extent that Fujitsu Services incorporates any Horizon IPR in the Deliverables in accordance with paragraph 7, the Horizon IPR owned by Fujitsu Services shall continue to be licensed to Post Office in accordance with the Agreement and shall not be included in the licence granted in accordance with paragraph 8 above. The parties agree that no K5 IPR shall be incorporated into the Deliverables. To the extent that any K5 IPR is created and/or developed, whether before, on or after the Digital Start Date, it shall be vested in and solely owned by Fujitsu Services and Post Office shall not be charged for such creation and/or development work.
11. The parties agree that if at any time Fujitsu Services has incorporated any Horizon IPR owned by Fujitsu Services into any Deliverables without the agreement of Post Office in accordance with paragraph 7 above (the "**Unapproved Horizon IPR**"), in relation to that Unapproved Horizon IPR, the licence granted to Post Office in respect of the Horizon Software IPR in accordance with the Agreement shall be extended to a licence to use the Unapproved Horizon IPR from the point of its incorporation into any Deliverables on terms essentially equivalent to those specified in Clauses 30.19.5.1 and 30.19.5.2 of the Agreement (subject to the limitations specified in this paragraph 11) and it is agreed that the early grant of such licence in respect of the Unapproved Horizon IPR shall not avoid any of the fees payable on expiry of the Agreement on 31 March 2023 in accordance with Clause 30.19.1 of the Agreement or on termination of the Agreement in accordance with Clauses 30.19.2, 30.19.3 and/or

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30.19.4. of the Agreement which shall remain fully due and payable but shall not be increased by the grant of the licence provided under this paragraph 11. Nothing in this paragraph 11 or elsewhere in this Schedule shall alter Post Office's obligations under the Agreement including without limitation its obligation to pay the Expiry Licence Fee or Termination Licence Fee as applicable.

12. To the extent that following agreement by Post Office in accordance with paragraph 7 above Fujitsu Services incorporates any third party IP Rights in the Deliverables, Fujitsu Services shall use reasonable endeavours to procure a licence to Post Office of such third party IP Rights substantially on the terms set out in paragraph 8 of this Schedule or on such other reasonable terms as may be agreed between Post Office and such third party. Provided Post Office's Chief Technical Officer (or nominated representative) has agreed to the incorporation of any such third party IP Rights in the Deliverables, any licence or other fees required to be paid to such third parties shall be paid by Post Office.
13. Fujitsu Services confirms that the Deliverables shall not include any third party IP Rights save as agreed in accordance with paragraph 7 above.
14. Subject to paragraphs 16 and 17 below, Fujitsu Services shall indemnify and keep indemnified Post Office from and against all claims, damages, losses, liabilities, costs and/or expenses (including, without limitation, properly incurred legal expenses) incurred by or awarded against the Post Office arising out of and/or in connection with a claim made by a third party alleging that the use of the Deliverables or the Services as provided by Fujitsu Services, infringes or otherwise misappropriates the IP Rights of a third party (an "IPR Claim") PROVIDED THAT Post Office will:
  - a. promptly on becoming aware of an IPR Claim give written notice of the IPR Claim to Fujitsu Services specifying the nature of the IPR Claim in reasonable detail;
  - b. not make any admission of liability, agreement or compromise in relation to the IPR Claim without Fujitsu Services' prior written consent;
  - c. allow Fujitsu Services to assume the control and conduct of the defence and settlement of the IPR Claim (save that Fujitsu Services shall not make any admission of liability or fault on the part of Post Office without Post Office's prior written consent);
  - d. at the expense of Fujitsu Services, give such reasonable assistance and take such action as may reasonably be required by Fujitsu Services in the defence, settlement or compromise of the IPR Claim.

Any claims, damages, losses, liabilities, costs and/or expenses (including, without limitation, properly incurred legal expenses) incurred by or awarded against Post Office's Affiliates or sub-licensees shall be deemed those of Post Office and accordingly shall be recoverable pursuant to this clause 14, but only to the extent that such Affiliates and sub-licensees have made use of the Deliverables and Services in relation to Post Office products and services.
15. Without prejudice to paragraph 14, in the event of an IPR Claim, Fujitsu Services may at its sole election and at its cost:
  - a. modify the element of the Deliverables and/or Services provided by Fujitsu Services as necessary to avoid such a claim, provided the element of the Deliverables and/or Services (as amended) function in substantially the same way as those Deliverables and/or Services before modification; or
  - b. procure for the Post Office, its Affiliates and any sub-licensees a licence from the relevant third party to continue using the Deliverables and/or Services provided by Fujitsu Services 'as is'; or

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- c. replace the element of the Deliverables and/or Services with non-infringing elements.

Where Fujitsu Services reasonably believes that an IPR Claim has a reasonable chance of success, Fujitsu Services shall promptly undertake one of the options set out at 15(a), (b) or (c), with the decision as to which option is undertaken being at Fujitsu's sole election and cost.

16. The parties acknowledge and agree that:

- a. Fujitsu Services shall not be liable under paragraph 14 to the extent an IPR Claim results from any enhancements, modifications and/or developments made by or on behalf of Post Office or by or on behalf of its Affiliates and /or sub-licensees and/or other users of the Deliverables and/or Services to the Deliverables without Fujitsu's prior written approval or to the extent any such IPR Claim results from any failure by Post Office, Post Office Affiliates, Post Office sub-licensees and/or other users of the Deliverables and/or Services to comply with any reasonable instructions or system requirements relating to use of the relevant Deliverables that are communicated to Post Office in writing prior to the date of delivery of the relevant Deliverables to Post Office, in each case provided that such infringement would have been avoided by the use of the Deliverables not so enhanced, modified or developed or otherwise by using the Deliverables in accordance with such reasonable instructions or system requirements;
- b. to the extent that an IPR Claim is made by a third party alleging that the use of any element of the Deliverables in which Horizon IPR subsists, infringes or otherwise misappropriates the IP Rights of a third party and such Horizon IPR is capable of separate identification, the indemnities set out in the Agreement including at Clauses 30.19.9 and 34.1 shall apply to such extent;
- c. Fujitsu Services shall not be liable under Clause 14 to the extent an IPR Claim is attributable to possession or use of the Deliverables (or any part thereof) by Post Office other than in accordance with the terms of CT225a, use of the Deliverables in combination with any hardware or software not supplied or specified by Fujitsu Services, or otherwise agreed in writing between the parties, if the infringement would have been avoided by the use of the Deliverables not so combined;
- d. the intention of the parties is, and has been, that any Digital IPR is not considered to be Post Office Foreground IPR for the purposes of paragraphs 14 to 16;
- e. Post Office shall use reasonable endeavours to mitigate its internal costs and expenses relating to any IPR Claim;
- f. no person or entity other than Post Office shall be entitled to claim under the indemnity set out above; and
- g. paragraphs 14 – 16 constitute Post Office's exclusive remedy and Fujitsu Services' only liability in respect of IPR Claims.

17. Except as expressly stated in clause 18:

- a. Fujitsu Services shall not in any circumstances have any liability for any losses or damages which may be suffered by Post Office for an IPR Claim, whether the same are suffered indirectly or are consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
  - (i) loss of profits;
  - (ii) loss of anticipated savings;
  - (iii) loss of business opportunity; and
  - (iv) loss of goodwill.

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provided that this Clause 17(a) shall not prevent claims for loss of or damage to the Post Office's tangible property that fall within the terms of Clause 17(b) or any other claims for direct financial loss that are not excluded by any of categories (i) to (iv) inclusive of this Clause 17(a); and

- b. the total aggregate liability of Fujitsu Services, whether in contract, tort (including negligence) or otherwise for all IPR Claims, shall in no circumstances exceed £15,000,000 in any financial year.
18. The exclusions in paragraph 17 shall apply to the fullest extent permissible at law, but Fujitsu Services does not exclude liability for:
- a. death or personal injury caused by its negligence, its officers, employees, contractors or agents negligence;
  - b. fraud or fraudulent misrepresentation;
  - c. breach of the 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
  - d. any other liability which may not be excluded by law.
19. All references to Fujitsu Services in paragraphs 17 and 18 shall be treated as including all employees, subcontractors and suppliers of Fujitsu Services and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause.
20. Post Office and Fujitsu Services accept and agree that this Schedule is intended solely to address the ownership and use of the IP Rights and does not and is not intended to amend the provisions of the Agreement other than as expressly stated in this Schedule.
21. The K5 IPR shall be owned by and remain owned by Fujitsu Services. Nothing contained in the K5 Terms or the Fujitsu Global Cloud Service Terms shall supersede or vary the ownership of IP Rights as contained in this Schedule.
22. In this Schedule, terms defined in the Agreement shall have the meaning set out in the Agreement, and additional terms shall have the meaning set out in the body of this Agreement or as set out below:

**"Agile Process"** means for the purposes of this Schedule, Post Office's implementation of the agile dynamic systems development method further details of which are at: <https://www.agilebusiness.org/resources/dsdm-handbooks/the-dsdm-agile-project-framework-2014-onwards>;

**"Deliverables"** means any materials created and/or developed solely by or on behalf of Fujitsu Services or jointly with Post Office for the purposes of the Services including without limitation computer software, technical documentation, user manuals, and other related documentation;

**"Digital Start Date"** means:

- (i) in respect of any Digital IPR that relates to Project Mercury (formerly known as Project Chameleon), 1 August 2017; and
- (ii) in respect of all other Digital IPR, 1 October 2017;

**"Project Consultants"** means any third parties which are engaged by or on behalf of Fujitsu Services to undertake any work in relation to the Services;

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**"Fujitsu K5 Platform"** means Fujitsu Services cloud platform known as K5;

**"FJ Digital Background IPR"** means the categories of IP Rights set out in paragraphs 5(i) and (ii) of this Schedule only not including those in paragraphs 5(iii) to (v);

**"Horizon IPR"** means all the Intellectual Property Rights referred to in Clause 27 of the Agreement, together with the database rights in the same;

**"IP Rights"** means patents, copyright, trade marks and service marks, business names and domain names, goodwill and the right to sue for passing off, rights in designs, database rights, know-how, trade secrets and all other intellectual property and/or similar rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"K5 IPR"** means all intellectual property rights in the Fujitsu K5 Platform on which the ongoing Services will be developed but, for the avoidance of doubt, excluding any IP Rights in any interfaces to the Fujitsu K5 Platform developed or created in connection with the Services;

**"K5 Terms"** means the Fujitsu Cloud Service K5: Terms Of Use and/or other ancillary documentation relating to the Fujitsu Services' K5 cloud services; and

**"Listed Rights"** has the meaning set out in paragraph 5 of this Schedule.