



HERBERT  
SMITH  
FREEHILLS

May 28, 2020

**POST OFFICE LIMITED**  
and  
**FUJITSU SERVICES LIMITED**

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**LIMITATION AGREEMENT**

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**Herbert Smith Freehills LLP**



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This Agreement is made May 28, 2020 between:

(1) **POST OFFICE LIMITED**, a company registered in England and Wales under registration number 2154540, with its registered address at Finsbury Dials, 20 Finsbury Street, London EC2Y 9AQ ("**Post Office**")

and

(2) **FUJITSU SERVICES LIMITED**, a company registered in England and Wales under registration number 00096056, with its registered address at 22 Baker Street, London W1U 3BW ("**FSL**")

Post Office and FSL each a "**Party**" and together the "**Parties**"

**WHEREAS:**

(A) FSL and Post Office are parties to a contract first entered into on 24 May 1999 (and subsequently amended) regarding FSL’s development and subsequent/ongoing provision of services in respect of the electronic point of sale system used in Post Office branches known as Horizon (the "**Horizon Contract**" and the "**Horizon System**" respectively)

(B) In 2016, various subpostmasters brought proceedings against Post Office in the High Court of England and Wales under claim numbers HQ16X01238, HQ17X02637 and HQ17X04248 (the "**Group Litigation**"). The Group Litigation was concluded by way of settlement, pursuant to the terms of a confidential deed, dated 10 December 2019.

(C) Post Office wishes to preserve all rights it may have in respect of claims against FSL arising out of and including, but not limited to:

[REDACTED]



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[REDACTED]

(the "Post Office Potential Claim").

d. All of Post Office's rights against FSL in respect of the Post Office Potential Claim are fully reserved.

(D) FSL also wishes to preserve all rights that it may have in respect of claims against Post Office arising out of and including, but not limited to:

[REDACTED]

(the "FSL Potential Claim").

c. All of FSL's rights against Post Office in respect of the FSL Potential Claim are fully reserved.

(E) In order to avoid significant negative publicity, Post Office and FSL have a mutual interest in avoiding the immediate issuing of legal proceedings or other formal pre-action correspondence in respect of the Post Office Potential Claim and the FSL Potential Claim (together the "Potential Claims").

(F) The purpose of this Agreement is to stop any and all Limitation Periods (to the extent that they are running and have not expired as of the date that this Agreement is executed by both parties) until termination of this Agreement in accordance with Clause 3.

(together, the "Recitals")

IT IS HEREBY AGREED AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement, unless the context requires:

"Limitation Period" has the meaning given to it in Clause 2.1.2.

"Recipient Party" means a Party who has received a Termination Notice pursuant to Clause 3.1.1.



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**"Terminating Party"** means a Party who terminates the standstill provisions pursuant to Clause 3.1.1.

**"Termination Date"** shall have the meaning given to it in Clause 3.1.1.

**"Termination Notice"** shall have the meaning given to it in Clause 3.1.1.

- 1.2 Words in the singular shall include the plural and vice versa.
- 1.3 A reference to one gender shall include a reference to the other genders.
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to writing or written shall include, but is not limited to, faxes and email.
- 1.6 A reference to any Party shall include that Party's personal representatives or successors or permitted assigns.

## 2. **STANDSTILL PROVISIONS**

- 2.1 The Parties agree:
  - 2.1.1 that from the date of this Agreement, neither Party shall issue any legal proceedings or other formal pre-action correspondence against the other Party in connection with any Potential Claims, until the Termination Date;
  - 2.1.2 that to the extent that any statute of limitations or other notice or limitation period (or any other period of similar effect) under any applicable law (a "**Limitation Period**") in connection with any Potential Claims expires on or after the date of this Agreement, such Limitation Period shall be tolled such that it ceased to run on the date of this Agreement and shall not again begin to run until the Termination Date;
  - 2.1.3 that all time elapsing on or after the date of this Agreement and before the Termination Date shall not be counted in determining any Limitation Period in connection with any Potential Claims; and
  - 2.1.4 that neither Party may raise the expiration of any Limitation Period as a defence, estoppel, limitation or bar to any Potential Claims as against them unless:
    - (a) such Limitation Period had already expired prior to the date of this Agreement; or



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- (b) such Limitation Period starts to run again and expires after the Termination Date (but without having regard to the time period between the date of this Agreement and the Termination Date).

### 3. TERMINATION

3.1 For the purpose of this Agreement:

3.1.1 The Termination Date is the date three months after the service by either Party (the "**Terminating Party**") of a written notice on the other Party (the "**Recipient Party**") stating that the running of time is to recommence ("**Termination Notice**") (the "**Termination Date**") provided that:

- (a) in the case of a Termination Notice served on Post Office, it is sent by post to Post Office's registered office address and marked for the attention of the Group General Counsel, and a copy is also sent by email to Post Office [REDACTED] at [REDACTED]@postoffice.co.uk and [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] at [REDACTED]@postoffice.co.uk or such other address as shall be notified in writing by the Post Office legal team to FSL from time to time; and
- (b) in the case of a Termination Notice served on FSL, it is sent by post to FSL's registered office address and marked for the attention of [REDACTED] [REDACTED], and a copy is also sent by email to [REDACTED]@uk.fujitsu.com and [REDACTED]@fujitsu.com or such other address as shall be notified in writing by FSL to Post Office from time to time.

### 4. THE EFFECT OF TERMINATION

4.1 Where a Party to this Agreement serves a Termination Notice in accordance with Clause 3.1.1, following the Termination Date, all unexpired Limitation Periods in relation to Potential Claims of the:

4.1.1 Terminating Party against the Recipient Party; and

4.1.2 Recipient Party against the Terminating Party,

shall again begin to run.



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5. **CONFIDENTIALITY**

- 5.1 Each Party shall keep this Agreement (including its existence and terms) confidential and shall not disclose it to any third party without the prior written consent of the other Party.

6. **SEVERABILITY**

If any part of this Agreement should be held or deemed to be void, illegal, invalid or unenforceable under any applicable enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement and the validity, legality and enforceability of the remainder of this Agreement shall not in any way be affected or impaired and shall remain in full force and effect.

7. **VARIATION**

No variation of this Agreement shall be effective unless made in writing and signed by or on behalf of both of the Parties.

8. **EXECUTION**

This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by executing any such counterpart. Faxed signatures (or signatures scanned and sent by email) by the Parties' representatives shall be binding.

9. **ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and undertakings between them, whether written or oral, relating to its subject matter.

10. **WARRANTIES AND AUTHORITY**

Each Party warrants and represents to the other with respect to itself that it has the full right, power, and authority to execute, deliver and perform this Agreement.

11. **GOVERNING LAW AND DISPUTE RESOLUTION**

- 11.1 This Agreement and all disputes, claims or proceedings relating to this Agreement (including the validity of this Agreement) shall be governed by and construed solely in accordance with the law of England and Wales.
- 11.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales in relation to all disputes or claims howsoever arising out of or in connection with this Agreement or its subject matter.



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Executed by

**POST OFFICE LIMITED** acting by



**(Name of Authorised Representative)**



**(Signature of Authorised Representative)**

Executed by

**FUJITSU SERVICES LIMITED** acting by



**(Name of Authorised Representative)**



**(Signature of Authorised Representative)**