

DATED 16 SEPTEMBER 2005

(1) THE SECRETARY OF STATE FOR TRANSPORT

(2) THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND

AND

(3) ALCATEL TELECOM LIMITED

LENDERS' DIRECT AGREEMENT

Herbert Smith LLP
Exchange House
Primrose Street
London EC2A 2HS

Tel: 020-7374-8000
Fax: 020-7374-0888
Ref: 2837/6037/30841206

TABLE OF CONTENTS

CLAUSE	HEADINGS	PAGE
<u>1.</u>	<u>INTERPRETATION</u>	1
<u>2.</u>	<u>CONSENT TO SECURITY AND PAYMENTS</u>	3
<u>3.</u>	<u>PRIORITIES</u>	3
<u>4.</u>	<u>NOTICE OF TERMINATION AND EXISTING LIABILITIES</u>	5
<u>5.</u>	<u>REPRESENTATIVE</u>	5
<u>6.</u>	<u>STEP-IN PERIOD</u>	7
<u>7.</u>	<u>STEP-OUT</u>	8
<u>8.</u>	<u>NOVATION</u>	8
<u>9.</u>	<u>INSURANCE PROCEEDS</u>	9
<u>10.</u>	<u>MISCELLANEOUS</u>	9
<u>11.</u>	<u>ASSIGNMENT</u>	10
<u>12.</u>	<u>DISPUTE RESOLUTION</u>	10
<u>13.</u>	<u>NOTICES</u>	11
<u>14.</u>	<u>THIRD PARTY RIGHTS</u>	12
<u>15.</u>	<u>AMENDMENTS</u>	12
<u>16.</u>	<u>SEVERABILITY</u>	12
<u>17.</u>	<u>COUNTERPARTS</u>	13
<u>18.</u>	<u>GOVERNING LAW</u>	13

THIS AGREEMENT is made on 16 September, 2005

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, (the "**Authority**");
- (2) **THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND** (the "**Agent**" for the Senior Lenders); and
- (3) **GENESYS TELECOMMUNICATIONS LIMITED** a company incorporated under the laws of England and Wales with company registered number 05295532 whose registered office is situated at Fluor Centre, Watchmoor Park, Riverside Way, Camberley, Surrey GU15 3YL (the "**Contractor**").

IT IS AGREED AS FOLLOWS:

1. INTERPRETATION

- (a) In this Agreement, unless the context otherwise requires:

"**Appointed Representative**" means a Representative that has assumed the Contractor's rights under the Contract under Clause 5(a) of this Agreement.

"**Authority's Counterparties**" means the parties to the Authority's Direct Agreements (other than the Authority and the Contractor).

"**Authority's Direct Agreements**" means the direct agreement between the Authority, the Contractor and the Principal Sub-contractor and the direct agreement between the Authority, the Principal Sub-contractor and the Main Sub-contractor and any other agreements of a similar nature for the time being in force between such parties.

"**Contract**" means the Project Agreement made between the Secretary of State for Transport and the Contractor and entered into on or about the date of this Agreement and includes any other documents for the time being in force in connection with the Project to which the Authority and the Contractor are parties.

"**Discharged Obligations**" has the meaning given to it in Clause 8(d)(i).

"**Discharged Rights**" has the meaning given to it in Clause 8(d)(iii).

"**Event of Default**" has the meaning given to it in the Facilities Agreement.

"**Event of Default Notice**" means a notice in writing given by the Agent to the Authority stating that an Event of Default has occurred and that the Agent requests the details referred to in Clause 4(b).

"**Facilities Agreement**" means the NRTS facility agreement made on or about the date of this Agreement between the Contractor, the Agent and various Senior Lenders and financial institutions.

"**Priority Termination Date**" has the meaning given in Clause 3(a).

"**Proceeds Account**" has the meaning given in the Facilities Agreement;

"**Representative**" means

- (i) the Agent, any Senior Lender and/or any of their Affiliates;

- (ii) an administrative receiver, receiver or receiver and manager of the Contractor appointed under the Security Documents;
- (iii) an administrator of the Contractor;
- (iv) a person directly or indirectly owned or controlled by the Agent and/or any Senior Lender(s); or
- (v) any other person approved by the Authority (such approval not to be unreasonably withheld or delayed).

"Required Period" means, subject to Clause 5(g) the period starting on the date of a Termination Notice and:

- (i) prior to the Base Service Charge Date ending 120 days later; and
- (ii) after the Base Service Charge Date ending 90 days later.

"Revenue Account" has the meaning given in the Senior Financing Agreements.

"Security Documents" has the meaning given to it in the Facilities Agreement.

"Step-In Date" means the date on which the Agent takes any action under Clause 5(a).

"Step-in Period" means the period from the Step-In Date up to and including the earlier of:

- (i) the Step-Out Date;
- (ii) the date of any transfer under Clause 8 (Novation);
- (iii) the date of any termination for breach under Clause 6 (Step-In Period); and
- (iv) the date of expiry of the Contract.

"Step-Out Date" means the date falling 20 days after the date of the notice given under Clause 7 (Step-Out).

"Sub-contractor" includes any sub-contractor of any tier for the time being of the Contractor.

"Suitable Substitute Contractor" means a person approved by the Authority (such approval not to be unreasonably withheld or delayed) as:

- (i) having the legal capacity, power and authority to become a party to and perform the obligations of the Contractor under the Contract; and
- (ii) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Contractor under the Contract.

"Termination Notice" means a notice given by the Authority to the Agent under Clause 4(a).

"Transfer Date" means the date on which any transfer pursuant to Clause 8 (Novation) becomes effective.

- (b) Save to the extent that the context or the express provisions of this Agreement otherwise require:
 - (i) headings and sub-headings are for ease of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement;
 - (ii) all references to Clauses and Schedules are references to clauses of and schedules to this Agreement;

- (iii) all references to agreements, documents or other instruments include (without prejudice to all relevant requirements for approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time save that amendments to clause 51.2.4 of the Contract need the approval of the Lenders;
 - (iv) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
 - (v) words importing the singular include the plural and vice versa;
 - (vi) words importing a particular gender include all genders;
 - (vii) **"person"** includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association and a reference to a person includes a reference to that person's successors and assigns;
 - (viii) references to **"Party"** means a party to this Agreement;
 - (ix) references to the word **"includes"** or **"including"** are to be construed without limitation; and
 - (x) any reference in this Agreement to a Party providing its consent shall be deemed to be a reference to prior written consent.
- (c) Capitalised terms defined in the Contract have the same meaning in this Agreement unless expressly stated otherwise in this Agreement.

2. **CONSENT TO SECURITY AND PAYMENTS**

- (a) The Authority acknowledges notice of, and consents to, the security interest granted over the Contractor's rights under the Contract and in relation to the insurances referred to in schedule 23 of the Contract effected by the Contractor in favour of the Senior Lenders under the Security Documents.
- (b) The Authority confirms that it has not received notice of any other security interest granted over the Contractor's rights under the Contract and in relation to the insurances.
- (c) Subject to Clause 2(d) below, all payments by the Authority to the Contractor pursuant to the Contract shall be paid to the credit of the Proceeds Account or to such other account as is designated by the Agent in writing to the Authority.
- (d) All payments by the Authority to the Contractor either (a) by way of compensation on termination of the Contract or (b) following an Event of Default shall be paid to such account held by or on behalf of the Contractor as the Agent notifies to the Authority.
- (e) The Contractor acknowledges and confirms that payment by the Authority pursuant to this Clause 2 shall constitute good and valid discharge of the Authority's obligations to the Contractor as if payment had been made to it direct.
- (f) The Authority acknowledges notice of, and consents to, the security interest granted by HoldCo in favour of Senior Lenders over the whole of the issued share capital of the Contractor.

3. **PRIORITIES**

- (a) Notwithstanding the provisions of any Authority's Direct Agreement, the Authority agrees that it will not do, and will procure that no successor or assign of the Authority shall do, any of the following acts or things arising out of or in connection with the Project:

- (i) exercise any rights it may have under or arising out of any of the Authority's Direct Agreements save as contemplated by Clause 3(c); or
- (ii) recover, retain or receive (or seek to recover, retain or receive) any amount from any Sub-contractor or Authority's Counterparty or any of their respective guarantors or sureties; or
- (iii) compete with the Contractor's rights against any of the persons referred to in (ii) above in any liquidation or insolvency of any of such persons or claim to be subrogated to any rights of the Agent or any of the Senior Lenders; or
- (iv) petition for or otherwise be a party to any proceedings for the winding-up or administration of any of the persons referred to in (ii) above or any other insolvency proceedings in respect of any such persons,

until the date (the "**Priority Termination Date**") on which:

- (i) all sums due contingent or actual to the Senior Lenders under the Senior Financing Agreements have been irrevocably paid and discharged in full; or
 - (ii) the Agent has given its written consent to such exercise; or
 - (iii) each of the following conditions has been satisfied:
 - (1) the Contract has been terminated in accordance with its terms and as permitted by this Agreement;
 - (2) the release of the Appointed Representative (if any) pursuant to Clauses 7(a) and/or 8(d) has taken effect; and
 - (3) the Senior Lenders and the Contractor have exhausted (or irrevocably notified the Authority that they do not wish to pursue) all their direct and indirect legal rights and remedies against the Sub-contractors, the Authorities' Counterparties and their respective guarantors and sureties.
- (b) If the Authority receives any amount in contravention of the provisions of this Clause it shall promptly turn the same over to the Agent for the account of the Senior Lenders and, pending such payment, hold the same on trust for the Senior Lenders, provided that such trust shall not create any registrable security over such amount.
- (c)
- (i) Following termination of the Contract in compliance with this Agreement, the Authority shall from the Termination Date be entitled to exercise its rights under the Authority's Direct Agreements to step in to and/or novate the agreements which are the subject of the Authority's Direct Agreements in accordance with the Authority's Direct Agreements.
 - (ii) Until the Priority Termination Date, but following the Termination Date, the Authority shall not do anything to prejudice the benefits and rights referred to in (iii) below.
 - (iii) Notwithstanding the terms of the Authority's Direct Agreements and any other provisions of this Clause 3(c), the Sub-contractors (and any guarantors and sureties thereof) shall remain responsible, and be liable, to the Contractor in respect of all costs, claims, damages, losses and liabilities which shall have arisen out of or in connection with the agreements which are the subject of the Authority's Direct Agreements in respect of the period prior to the Termination Date in relation to which the Agent acting on behalf of the Contractor or the Senior Lenders shall

retain the benefit of all and any rights to all such costs, claims, damage, losses and liabilities.

- (d) The Authority shall notify the Agent if it wishes to exercise any of its rights under the Authority's Direct Agreements.

4. NOTICE OF TERMINATION AND EXISTING LIABILITIES

- (a) The Authority shall not terminate or give notice terminating the Contract pursuant to clause 51 of the Contract without giving to the Agent:
 - (i) at least the Required Period of prior written notice stating:
 - (1) the proposed Termination Date; and
 - (2) the grounds for termination in reasonable detail, and
 - (ii) not later than the date falling 30 days after the date of the Termination Notice a notice containing details of any amount owed by the Contractor to the Authority, and any other existing liabilities or unperformed obligations of which the Authority is aware (having made reasonable enquiry);
 - (1) at the time of the Termination Notice and
 - (2) which will fall due on or prior to the end of the Required Period under the Contract.
- (b) Not later than the date falling 30 days after the date of any Event of Default Notice, the Authority shall give to the Agent a notice containing details of any amount owed by the Contractor to the Authority, and any other existing liabilities or unperformed obligations of the Contractor of which the Authority is aware at the time of the Event of Default Notice.
- (c) Following the issue of a Termination Notice or an Event of Default Notice, subject to the terms of the Contract, the Authority shall grant the Agent and its representatives, on reasonable notice and at reasonable times, access to the Assets and any information maintained by the Authority pursuant to the Contract and, to the extent that the Authority is reasonably able to procure the same, to persons engaged in the Project.
- (d) The Authority shall, during the period following the issue of a Termination Notice or an Event of Default Notice and during any Step-In Period, provide either the Agent or, as the case may be, the Appointed Representative with such additional information as is reasonably requested from time to time in relation to the Authority, the Project, the Contract and the transactions contemplated therein, provided such information is in the Authority's possession or control.
- (e) The Authority shall notify the Agent as soon as reasonably practicable of:
 - (i) any change in the amount, liabilities or obligations referred to in Clauses 4 (a)(ii) and (b) above; and
 - (ii) any further such amounts, liabilities or obligations falling due and payable but unpaid or suffered by the Authority or falling due for performance or discharge and unperformed or undischarged (as the case may be),in each case, of which the Authority becomes aware before the Step-In Date or, if no Step-In Date has then occurred, the Transfer Date.

5. REPRESENTATIVE

- (a) Without prejudice to the Agent's rights under the Security Documents, at any time:

- (i) during which an Event of Default is subsisting (whether or not a Termination Notice has been served); or
- (ii) during the Required Period

the Agent may procure that a Representative assumes, jointly and severally with the Contractor, all of the Contractor's rights under the Contract.

- (b) The Agent shall give the Authority 5 days prior notice of any action to be taken by it referred to in this Clause 5.
- (c) After the issue of a Termination Notice or (if earlier) an Event of Default Notice, the Authority and the Agent shall, if so requested by either Party, seek to agree a programme of action (the "**Remedial Programme**") to be taken by the Contractor and/or the Appointed Representative in respect of unperformed obligations notified by the Authority pursuant to Clauses 4 (a), (b) or (e), to remedy any breach by the Contractor of such unperformed obligations (where remediable) or to place the Authority in substantially the same position as if such breach had not occurred (where irremediable) and of any consequential effect such breach will have on the continued performance of the obligations of the Contractor under the Contract. The Remedial Programme shall specify the time, which shall not be longer than 12 months after the date on which the Remedial Programme is agreed or determined, within which each such breach must be rectified, the action to be taken, any such consequential effect and any period within which each such affected obligation must be performed after the Step-In Date or, as the case may be, the Transfer Date. The Remedial Programme shall provide for reasonable grace periods which shall, in any event, be no shorter than those in respect of the relevant obligation (if any) in the Contract.
- (d) If at any time prior to the Step-In Date or, if no Step-In Date has then occurred, the Transfer Date any further information is provided in respect of any unperformed obligations pursuant to Clause 4(d) or (e), the Authority and the Agent shall negotiate in good faith to seek to agree any consequential amendments (where required) to any previously agreed Remedial Programme.
- (e) The parties are not obliged to agree any element of or amendment to the Remedial Programme.
- (f) If the Authority exercises or continues to exercise its rights under Clause 33 (Step-In Rights) of the Contract between:
 - (i) the date of any Termination Notice or the date of any Event of Default Notice; and
 - (ii) the Step-Out Date or, if the Agent has not exercised its rights under Clause 5(a) or Clause 8(a) during the Required Period, the last day of the Required Period,
 it shall, without prejudice to its rights and obligations under Clause 33 of the Contract, liaise with the Agent and the Appointed Representative with regard to the exercise of such rights.
- (g) If, but for this Clause 5(g), the Required Period would expire before the procedures contemplated by the other provisions of this Clause 5 have been carried out (a "**Premature Expiry**"), then to the extent that such Premature Expiry would arise as a result of the need of the Agent, the Appointed Representative and the Senior Lenders to evaluate further information provided to the Agent pursuant to Clause 4(d) and (e), the Required Period shall be extended by such period as is reasonable in all the circumstances, having regard to the duration of the Required Period to date and the time reasonably required for such evaluation.

- (h) The Contract shall be deemed to be amended by the incorporation therein of the terms of the Remedial Programme with effect from, and subject to the earlier of the occurrence of a Step-In Date or a Transfer Date, but such amendment shall be cancelled and cease to have effect on the occurrence of a Step-Out Date to the extent the Remedial Programme has not been complied with.

6. STEP-IN PERIOD

- (a) Without prejudice to Clause 4 (Notice of Termination and Existing Liabilities), but subject to Clause 6(b) below, the Authority shall not terminate the Contract during the Step-In Period on grounds:
 - (i) that the Agent has taken any action referred to in Clause 5 (Representative) or enforced any Security Document(s); or
 - (ii) arising prior to the Step-In Date of which the Authority is aware (having made reasonable enquiry and whether or not continuing at the Step-In Date); or
 - (iii) arising solely in relation to the Contractor,
 unless, in the case of Clause 6(a)(ii) above:
 - (A) the grounds arose within the first two years of the Effective Date, and all the Services are not Taken On on or before the date falling 12 months after the date on which the Authority could have been entitled to terminate the Contract under Clause 51.1.10 of the Contract other than where the Appointed Representative and the Contractor are using all reasonable endeavours to implement the Remedial Programme; or
 - (B) the grounds arose after the date falling two years after the Effective Date, and neither the Appointed Representative nor the Contractor is using all reasonable endeavours (including implementation of the Remedial Programme) to remedy any breach of the Contract that:
 - (1) arose prior to the Step-In Date; and
 - (2) is continuing (and capable of remedy); and
 - (3) would have entitled the Authority to terminate the Contract,
 and for the avoidance of doubt the Appointed Representative and the Contractor shall, by implementing the Remedial Programme, be deemed to be using all reasonable endeavours to remedy the breach in question.
- (b) During the Step-In Period the Authority shall be entitled to terminate the Contract by written notice to the Contractor and the Appointed Representative:
 - (i) if any amount referred to in Clause 4(a)(ii)(1) or 4(b) above has not been paid to the Authority on or before the Step-In Date;
 - (ii) if any amount referred to in Clause 4(a)(ii)(2) has not been paid on or before the last day of the Required Period;
 - (iii) if amounts, of which the Authority was not aware (having made reasonable enquiry) at the time of the Termination Notice or the Event of Default Notice, subsequently become payable and are not discharged on or before the date falling 30 days after the date on which the liability for these amounts is notified to the Agent; or
 - (iv) on grounds arising after the Step-In Date in accordance with the terms of the Contract provided that for the purposes of termination under the Contract, Service

Credits that arose prior to the Step-In Date shall not be taken into account during the Step-In Period but shall be taken into account after the Step-Out Date (to the extent not then waived, expired or expunged through effluxion of time in accordance with the Contract),

and the Authority shall not otherwise be entitled to terminate the Contract during the Step-In Period.

- (c) The Authority shall deal with the Appointed Representative and not the Contractor during the Step-In Period. With effect from the Step-In Date, the Appointed Representative shall, during the Step-In Period have the benefit of, and shall be entitled to enforce against the Authority, any and all of the Authority's obligations to the Contractor under the Contract.

7. STEP-OUT

- (a) The Appointed Representative will, on 20 days' prior written notice from the Agent or the Appointed Representative to the Authority, be released from all of its obligations and liabilities to the Authority under the Contract arising prior to the Step-Out Date and rights of the Appointed Representative against the Authority will be cancelled.
- (b) The Contractor shall continue to be bound by the terms of the Contract, notwithstanding the occurrence of the Step-Out Date.

8. NOVATION

- (a) Subject to Clause 8(b) below, at any time:
 - (i) during which an Event of Default is subsisting; or
 - (ii) during the Step-In Period

the Agent may, on 20 days' prior written notice to the Authority and any Appointed Representative, procure the transfer of the Contractor's rights and liabilities under the Contract (as modified to reflect the terms of the current Remedial Programme) to a Suitable Substitute Contractor.
- (b) The Authority shall notify the Agent as to whether any person to whom the Agent proposes to transfer the Contractor's rights and liabilities under the Contract is a Suitable Substitute Contractor, on or before the date falling 30 days after the date of receipt of all information reasonably required by the Authority to decide whether the proposed transferee is a Suitable Substitute Contractor.
- (c) The Authority shall not unreasonably withhold or delay its decision on whether the proposed transferee is a Suitable Substitute Contractor.
- (d) On any transfer referred to in Clause 8(a) becoming effective :
 - (i) the Contractor, the Appointed Representative and the Authority shall be released from any obligations arising under or in connection with the Contract from that date (the "**Discharged Obligations**");
 - (ii) the new Contractor and the Authority will assume obligations towards each other which differ from the Discharged Obligations only insofar as they are owed to or assumed by the new Contractor instead of the Contractor;
 - (iii) the rights of the Contractor against the Authority under the Contract and vice versa (the "**Discharged Rights**") will be cancelled;
 - (iv) the new Contractor and the Authority will acquire rights against each other which differ from the Discharged Rights only insofar as they are exercisable by or against the new Contractor instead of the Contractor;

- (v) any then subsisting ground for termination of the Contract by the Authority shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked;
- (vi) the Authority shall enter into a direct agreement with the new Contractor and a representative of Senior Lenders lending to the new Contractor on substantially the same terms as this Agreement; and
- (vii) for the purposes of termination of the Contract any accrued Service Credits shall be cancelled.

9. INSURANCE PROCEEDS

Notwithstanding the other provisions of this Agreement and the terms and conditions of the Senior Financing Agreements, the Agent shall only permit amounts to be released from the Joint Insurance Account in accordance with the requirements of Clause 47.18 (Reinstatement) of the Contract and shall not exercise any rights under the Senior Financing Agreements or take any other steps to prevent amounts being released from the Joint Insurance Account in accordance with Clause 47.18 (Reinstatement) of the Contract.

10. MISCELLANEOUS

- (a) The Authority shall at the Contractor's expense, take whatever action the Agent, an Appointed Representative or a Representative taking a transfer in accordance with Clause 8(a) may require for perfecting any assumption of the Contractor's rights, transfer or release under Clauses 5 (Representative), 7 (Step-Out) and 8 (Novation) including the execution of any transfer or assignment, and the giving of any notice, order or direction and the making of any registration which, in each case, the Agent, Appointed Representative or Representative reasonably requires.
- (b) The Authority shall not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Contractor.
- (c) This Agreement shall remain in effect until the date on which all amounts which may be or become owing by the Authority to the Contractor as a result of early termination of the Contract in accordance with clause 46 (Force Majeure) or any of the clauses 48 (Types of Termination), 49 (Voluntary and Non-Default Termination), 50 (Termination for Authority Default), 51 (Termination for Contractor Default), 52 (Termination for Corrupt Gifts and Fraud) and 53 (Termination of Breach of the Refinancing Provisions) of the Contract have been irrevocably paid in full, and upon such payment the Agent agrees on behalf of itself and the Senior Lenders to release any security granted in their favour over the Assets which has not previously been assigned to the Authority.
- (d) The Agent in respect of Clauses 10(d)(i), (ii), (iii), (v) and (vi) and the Contractor in respect of Clause 10(d)(iv), shall promptly notify the Authority of:
 - (i) any decisions to accelerate the maturity of any amounts owing by the Contractor to the Senior Lenders under the Facilities Agreement and/or demand repayment;
 - (ii) the date referred to in Clause 10(c) above on or before the date falling 30 days after its occurrence;
 - (iii) the details and amount of any proposed Additional Permitted Borrowing, including:
 - (a) the circumstances giving rise to it and reasons for it; and
 - (b) the terms on which it will be borrowed;

- (iv) on the first Business Day of each calendar month during which any Additional Permitted Borrowing is, or may be, subsisting, the amount outstanding under the Senior Financing Agreement, and, to the extent it is aware (having made reasonable and proper enquiry);
 - (a) the amount of any Distribution made by the Contractor; and
 - (b) the amount of any credit balance on any account of the Contractor;
- (v) the occurrence of an Event of Default; and
- (vi) the Priority Termination Date and the other date referred to in Clause 10(c) above on or before the date falling 30 days after its respective occurrence.
- (e) The Contractor joins in this Agreement to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Agreement.
- (f) For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Agreement and the Contract, the provisions of this Agreement shall prevail.
- (g) If applicable, the perpetuity period under the rule against perpetuities shall be 80 years from the date of this Agreement.

11. ASSIGNMENT

- (a) No party to this Agreement may assign or transfer any part of its rights or obligations under this Agreement, save that:
 - (i) the Agent may assign or transfer its rights and obligations under this Agreement to a successor Agent in accordance with the Senior Financing Agreements without the consent of the Authority;
 - (ii) any Senior Lender may assign or transfer its rights under the Senior Financing Agreements in accordance with the terms of the Senior Financing Agreements; and
 - (iii) the Authority may assign, novate, or otherwise transfer its rights and/or obligations under this Agreement to any person that the Authority assigns, novates or otherwise transfer its rights and/or obligations under the Contract in accordance with clause 63 of the Contract.
- (b) If Clause 11(a)(i) applies then the Authority shall enter into a direct agreement with the new Agent on substantially the same terms as this Agreement.

12. DISPUTE RESOLUTION

In relation to any dispute between the parties or any failure to agree between them on any matter under or in respect of this Agreement the issue shall be determined by reference to clause 68 (Dispute Resolution Procedure) of the Contract which shall apply, mutatis mutandis, as if the same were incorporated in this Agreement save that where the dispute or difference is between the Authority and the Agent:

- (a) reference to the parties shall be deemed to be references to the Authority and the Agent and each of them;
- (b) references to the Contractor shall be deemed to be references to the Agent; and
- (c) clauses 68.1.2 and 68.1.3 of the Contract shall not apply.

13. NOTICES

- (a) A notice, approval, consent or other communication given under or in connection with this Agreement (in this Clause known as a "**Notice**");

- (i) must be in writing;
- (ii) for the avoidance of doubt must not be sent by electronic mail; and
- (iii) must be left at the address of the addressee or sent by pre-paid first class post (airmail if posted from a place outside the United Kingdom) to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause, and marked for the attention of the person so specified, or to such other address in the United Kingdom or facsimile number and/or marked for the attention of such other person as the relevant party may from time to time specify by Notice given in accordance with this Clause.

The relevant details of each party at the date of this Agreement are:

Authority

Highways Agency
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6HA

Fax: 0117 372 8838

Attention: Names Redacted under Sec 40 of the FOIA Exemptions 'Personal Information'

Agent

The Governor and Company of the Bank of Scotland
Risk and Asset Management
Infrastructure Finance
3rd Floor
New Uberior House
11 Earl Grey Street
Edinburgh
EH3 9BN

Fax: 0161 209 5200

Attention: Escrow Administrator

Contractor

GeneSYS Telecommunications Limited
Hanover House
73/74 High Holborn
London
WC1V 6LR

Fax: 020 7419 5831

Attention: The Managing Director

- (b) In the absence of evidence of earlier receipt, a Notice shall take effect from the time that it is deemed to be received in accordance with (c) below.
- (c) Subject to (d) below, a Notice is deemed to be received:

- (i) in the case of a notice left at the address of the addressee, upon delivery at that address;
 - (ii) in the case of a posted letter, on the third day after posting or, if posted from a place outside the United Kingdom, the seventh day after posting; and
 - (iii) in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient provided that a confirmatory copy of such facsimile shall have been sent by post in accordance with (a) above within 24 hours of such transmission.
- (d) A Notice received or deemed to be received in accordance with (c) above on a day which is not a Business Day or after 5 p.m. on any Business Day shall be deemed to be received on the next following Business Day.
- (e) For the purposes of this clause, "**Business Day**" shall mean a day not being a Saturday on which trading banks are generally open for business in the City of London.
- (f) Each party undertakes to notify all of the other parties by Notice served in accordance with this Clause if the address specified herein is no longer the appropriate address for the service of Notice.

14. THIRD PARTY RIGHTS

- (a) With the exception of the right of any Appointed Representative or any Suitable Substitute Contractor to which a transfer is made in accordance with Clause 8 (Novation) and their lawful successors and permitted assigns to enforce the terms of this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- (b) The parties to this Agreement may by agreement rescind or vary any term of this Agreement without the consent of any person or third party not a party to this Agreement.

15. AMENDMENTS

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorised representatives of all the parties.

16. SEVERABILITY

Each Clause, term, condition or provision set out in this Agreement shall be construed as separate and severable and in the event of any such Clause, term, condition or provision being determined as being unenforceable in whole or in part for any reason, such unenforceability shall not affect or impair the enforceability of the other Clauses, terms, conditions or provisions or, in the case of Clauses, terms, conditions or provisions unenforceable only in part shall not affect or impair the remainder of the Clauses, terms, conditions or provisions and such other Clauses, terms, conditions or provisions or parts thereof, as appropriate, shall continue to bind the parties.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

18. GOVERNING LAW

This Agreement is governed by, and construed in accordance with the laws of England and Wales.

IN WITNESS WHEREOF this Agreement has been executed as a deed by the parties hereto and is intended to be and is hereby delivered as a deed on the date first above written.

EXECUTED as a **DEED** by)
GENESYS TELECOMMUNICATIONS)
LIMITED acting by the following officers:)

Director: Names Redacted under Sec 40 of the FOIA Exemptions 'Personal Information'

Director: Names Redacted under Sec 40 of the FOIA Exemptions 'Personal Information'

EXECUTED as a **DEED** by)
THE GOVERNOR AND COMPANY OF)
THE BANK OF SCOTLAND)
Acting by the following officers:)

Director: Names Redacted under Sec 40 of the FOIA Exemptions 'Personal Information'

Director: Names Redacted under Sec 40 of the FOIA Exemptions 'Personal Information'

The corporate seal of **THE**)
SECRETARY OF STATE FOR)
TRANSPORT is affixed and is)
authenticated by:)

Names Redacted under Sec 40 of the FOIA Exemptions 'Personal Information'

Authorised by the Secretary of State.