

DATED 16 SEPTEMBER 2005

(1) THE SECRETARY OF STATE FOR TRANSPORT

(2) GENESYS TELECOMMUNICATIONS LIMITED

(3) NCC ESCROW INTERNATIONAL LIMITED

- and -

**(4) THE GOVERNOR AND COMPANY OF THE BANK OF
SCOTLAND (AS SECURITY TRUSTEE)**

**AGREEMENT FOR CUSTODY OF THE
FINANCIAL MODEL AND COST MODEL**

Herbert Smith LLP
Exchange House
Primrose Street
London EC2A 2HS
Tel: 020 7374 8000
Fax: 020 7374 0888
Ref: 2837/30841206

THIS AGREEMENT FOR THE CUSTODY OF THE FINANCIAL MODEL is made as a deed on 16 September 2005

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** (the "**Authority**");
 - (2) **GENESYS TELECOMMUNICATIONS LIMITED** a company incorporated under the laws of England and Wales with registered number 05295532 whose registered office is at Fluor Centre, Watchmoor Park, Riverside Way, Camberley, Surrey GU15 3YL, (the "**Contractor**");
 - (3) **NCC ESCROW INTERNATIONAL LIMITED** a company incorporated under the laws of England and Wales with registered number 03081952 whose registered office is at Manchester Technology Centre, Oxford Road, Manchester M1 7EF (the "**Custodian**"); and
 - (4) **THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND** (the "**Security Trustee**"),
- each one a "**Party**" and together the "**Parties**".

WHEREAS:

- (A) By an agreement (the "**Project Agreement**") made on or about the date of this Agreement between the Authority and the Contractor, the Contractor has agreed to provide certain telecommunications services and a consultancy service and manage such services and associated matters in accordance with the Government's Private Finance Initiative (the "**NRTS Project**") .
- (B) The Authority and the Contractor require a copy of the Financial Model and Cost Model (together, the "**Custody Items**") for the purposes of determining the financial consequences of certain events under the Project Agreement and, therefore, the Parties wish to provide for the safe custody and storage of the Custody Items upon the terms and conditions set out herein.

IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions

In this Agreement, the following terms shall, unless the context otherwise requires, have the following meanings:

"Business Day" means any day other than:

- (a) a Saturday or Sunday; or
- (b) a day which is a bank or public holiday in the City of London;

"Cost Model" has the meaning given in the Project Agreement;

"Custody Costs" has the meaning given in Clause 9.1;

"Financial Model" has the meaning given in the Project Agreement;

"Funders' Representative" has the meaning given in Clause 10.1.3;

"Intellectual Property Rights" has the meaning given in the Project Agreement;

"Instructions" has the meaning given in Clause 3;

"Security Trustee" means the Governor and Company of the Bank of Scotland, or such other person who from time to time performs such function in relation to the financing of the NRTS Project; and

"Step-Out Date" has the meaning given in Clause 10.3.1.

1.2 Construction

Save to the extent that the context or the express provisions of this Agreement otherwise require:

- 1.2.1 headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses and Schedules are references to clauses of and schedules to this Agreement;
- 1.2.3 all references to agreements, document or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.4 references to "Party" means a party to this Agreement; and
- 1.2.5 references to the "Authority", the "Contractor", "Party" or the "Parties" shall, unless the context otherwise requires, be construed so as to include their respective successors and assigns.

2. DELIVERY AND CUSTODY OF THE CUSTODY ITEMS

- 2.1 The Authority and the Contractor shall verify the identity of two copies of the Custody Items which the Contractor shall deliver or cause to be delivered to the Custodian within 10 Business Days of the date of this Agreement.
- 2.2 The Contractor shall deliver a copy of the revised Custody Items to the Authority within 10 Business Days of the approval or determination of any amendment of the Custody Items. Following verification of the same by the Authority, the Contractor shall deliver or cause to be delivered to the Custodian two copies of the revised Custody Items. Any such revised Custody Items shall be identified by reference to the date on which the relevant amendments are agreed or determined.
- 2.3 The Custodian shall for the duration of this Agreement hold in safe custody the copies of the Custody Items referred to in Clauses 2.1 and 2.2 as joint agent and custodian for the Authority and the Contractor and shall in particular ensure that at all times each copy is stored in a separate vault or safe.
- 2.4 Upon the Custody Items being deposited with the Custodian pursuant to Clauses 2.1 or 2.2, the Custodian shall, as soon as practicable thereafter, apply its integrity testing processes to the copies of the Custody Items deposited, details of which are set out in Schedule 1. An integrity testing report shall then be sent to the Contractor and the Authority.

3. RELEASE OF THE CUSTODY ITEMS

The Custodian shall comply with the joint instruction and signatures (together, the **"Instructions"**) of:

- 3.1 the Authority's contract manager (or such substitute as the Authority may appoint and notify to the Custodian and the Contractor in writing) for and on behalf of the Authority; and
- 3.2 the Contractor's contract manager (or such substitute as the Contractor may appoint and notify to the Custodian and the Authority in writing) for and on behalf of the Contractor,

and shall upon receiving duly signed Instructions from the Authority and the Contractor (but only upon receiving such Instructions) release a copy of the Custody Items to the persons named (one being a representative of the Authority and the other being a representative of the Contractor) at the time and place specified in such Instructions.

4. TERMINATION

- 4.1 The Custodian may terminate this Agreement on giving 30 days written notice to the Authority and the Contractor after the failure by the Contractor to pay any outstanding fee. Prior to any such termination, the Authority shall be given 29 days to pay such outstanding fee following notification of said failure and the Custodian shall accept such payment in satisfaction of the Contractor's obligation to pay the same. Any sum paid by the Authority to the Custodian in accordance with this Clause 4.1 shall be reimbursed by the Contractor to the Authority within 5 Business Days of the Authority's demand for the same and shall bear interest from the due date for payment until paid to the Authority at the rate of 1% above the base rate from time to time of Barclays Bank PLC.
- 4.2 Without prejudice to Clause 4.1, this Agreement shall continue in force until terminated by the Authority and the Contractor giving at least 90 days' prior written notice to the Custodian, or immediate notice by the Authority and/or the Contractor if the Custodian becomes insolvent. The Custodian agrees that it shall promptly notify the Contractor and the Authority in writing if it believes (acting reasonably) that it is likely to become insolvent.
- 4.3 The Custodian may terminate this Agreement by giving 60 days written notice to the Contractor and the Authority.
- 4.4 Unless expressly stated otherwise in the Instructions, this Agreement shall not terminate upon the release of the Custody Items in accordance with Clause 3.
- 4.5 Termination of this Agreement shall be without prejudice to any accrued rights and obligations hereunder as at the date of termination and shall not affect the obligations of the Parties under Clauses 4, 5, 6 and 8 (which shall survive termination).
- 4.6 If this Agreement is terminated in accordance with the provisions of Clauses 4.1, 4.2 or 4.3, the Authority and the Contractor shall appoint a mutually acceptable new custodian on terms as nearly identical to those contained herein as possible, subject to such modifications as the new custodian shall deem necessary and which shall be acceptable to the Authority and the Contractor (acting reasonably), provided that if the Authority and the Contractor fail to agree the identity of a new custodian within 10 days of termination, they shall request the President for the time being of the British Computer Society to appoint a suitable new custodian upon similar terms and conditions to this appointment. Such appointment shall be final and binding upon the Authority and the Contractor. The Authority and/or the Contractor shall promptly notify the Custodian of the identity and address of the new custodian. In the event that the President for the time being of the British Computer Society fails to appoint a new custodian upon such terms then the Contractor shall use reasonable endeavours to procure that the Security Trustee is appointed as custodian upon such terms as the Contractor and the Authority may agree (acting reasonably) until the appointment of a new custodian which is upon terms which are mutually acceptable to the Contractor and the Authority.
- 4.7 Without prejudice to Clause 4.8, as soon as reasonably practicable following the date of notification of the identity and address of the new custodian pursuant to Clause 4.6, the Custodian shall deliver the Custody Items to the new custodian appointed pursuant to Clause 4.6.

- 4.8 If this Agreement is terminated in accordance with Clauses 4.1, 4.2 or 4.3 and a new custodian has not been appointed within the applicable notice period set out therein, the Custodian shall make the Custody Items available for collection by the Contractor and Authority jointly and if the Contractor and Authority fail to do so by the expiry date of the applicable notice period, the Custodian shall destroy the Custody Items.
- 4.9 Termination of this Agreement shall not relieve the Custodian or its employees, officers, sub-contractors and agents from the obligations under Clause 4.8 or its obligations of confidentiality contained in Clause 8.

5. LIMIT OF LIABILITY

Nothing in this Clause 5 excludes or limits the liability of the Custodian for fraudulent misrepresentation or for death or personal injury caused by any negligent acts or omissions or any wilful default of or a breach of any contractual duty by the Custodian, its officers, employees, agents or sub-contractors. Save as aforesaid, the following provisions set out the entire financial liability of the Custodian to the other parties:

- 5.1 The Custodian shall not be liable for any loss or damage caused to either the Contractor, the Authority or the Security Trustee either jointly or severally except to the extent that such loss or damage is caused by any negligent acts or omissions or any wilful default of or a breach of any contractual duty by the Custodian, its employees, officers, agents or sub-contractors and in such event the Custodian's total liability in respect of all claims arising under or by virtue of this Agreement or in connection with the performance of this Agreement shall not exceed the sum of £1,000,000 (one million UK pounds).
- 5.2 The Custodian shall not be liable to the Contractor, the Authority and/or the Security Trustee for any indirect or consequential loss of any nature whatsoever whether for loss of profit, loss of business, depletion of goodwill or otherwise which arises out of or in connection with this Agreement.
- 5.3 The Custodian shall bear no obligation or responsibility to any person, firm, company or entity whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Custody Items. The Custodian shall have no responsibility to determine that whatever is deposited or accepted by it for deposit are or are not the Custody Items.

6. INDEMNITY

- 6.1 Subject to Clauses 6.2 and 15 and save for any claim falling within the provisions of Clause 5, the Contractor and the Authority jointly and severally agree at all times to indemnify and hold harmless the Custodian in respect of all of its reasonable legal and related costs incurred directly as a result of being brought into or otherwise becoming involved in any form of dispute resolution proceedings or any litigation of any kind between the Contractor and the Authority in relation to this Agreement except to the extent that such dispute is attributable to the negligence or wilful default of, or breach of trust or contractual duty by, the Custodian or any of its officers, agents, employees or sub-contractors.
- 6.2 If any dispute referred to in Clause 6.1 is finally determined by litigation and if in connection with or as a result of such final determination any Court makes any judgment, order or other disposition in respect of costs then this Clause 6.2 shall apply. If this Clause 6.2 applies then if as a result of the said judgment, order or disposition in respect of costs:
- 6.2.1 the Contractor is obliged to pay sums relating to costs to the Authority which sums are greater than any sums relating to costs which the Authority is obliged

to pay to the Contractor as a result of the said judgment, order or disposition, then and in that case the Parties all agree that the Authority shall not be liable to indemnify the Custodian in accordance with Clause 6.1 and the Contractor shall be solely liable to indemnify the Custodian in accordance with Clause 6.1; and

6.2.2 the Authority is obliged to pay sums relating to costs to the Contractor which sums are greater than any sums relating to costs which the Contractor is obliged to pay to the Authority as a result of the said judgment, order or disposition, then and in that case the Parties all agree that the Contractor shall not be liable to indemnify the Custodian in accordance with Clause 6.1 and the Authority shall be solely liable to indemnify the Custodian in accordance with Clause 6.1.

6.3 The Contractor shall assume all liability and shall at all times indemnify and hold harmless the Custodian and its officers, agents, sub-contractors and employees from and against any and all liability, loss, damages, costs, legal costs, professional and other expenses and any other liabilities of whatever nature, awarded against or agreed to be paid or otherwise suffered, incurred or sustained by the Custodian, whether direct, indirect or consequential as a result of or in connection with any claim by any third party(s) for alleged or actual infringement of Intellectual Property Rights arising out of or in connection with all and any dealings of the Custodian in respect of the Financial Model as contemplated under this Agreement.

7. WARRANTY

7.1 The Contractor warrants that, in respect of the Custody Items deposited with the Custodian under this Agreement:

7.1.1 the Contractor has full right and authority to deposit the same; and

7.1.2 in so doing, the Contractor is not in breach of any of its obligations to any third party.

8. CONFIDENTIALITY

The Custodian agrees on its own behalf and on behalf of its officers, employees, sub-contractors and agents to maintain all information and/or documentation coming into its possession or to its knowledge under this Agreement in strictest confidence and secrecy, not to make use thereof other than for the purposes of this Agreement and not to disclose or release it other than in accordance with the terms hereof.

9. FEES

9.1 The Contractor shall pay to the Custodian the Custodian's fees in accordance with the tariff referred to below (as the same may be varied from time to time by the Custodian serving written notice of its revised rates on the Authority and the Contractor) and the Custodian's reasonable expenses (in each case together with any applicable VAT thereon) (together, the "**Custody Costs**") within 30 days of the receipt by the Contractor of the Custodian's invoice in respect of the same.

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| Once only initial fee | £860 |
|-----------------------|------|

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| Annual fee (payable in advance on each anniversary of the date of this Agreement) | £880 |
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| | |
|----------------------------------|------|
| Scheduled update fee (second and | £120 |
|----------------------------------|------|

subsequent scheduled deposits in any one year, payable on completion of this Agreement and on each anniversary thereafter)

Unscheduled update fee (per unscheduled deposit) £175

Release fee £100 per release plus reasonable expenses

- 9.2 The Authority shall reimburse the Contractor for fifty per cent of the Custody Costs paid by the Contractor under Clause 9.1.

10. STEP-IN

10.1 Commencement

The Custodian shall, from time to time:

- 10.1.1 permit the Authority to perform or discharge any obligation of the Contractor under this Agreement, where the Contractor is in breach of the same;
- 10.1.2 permit the Contractor to perform or discharge any obligation of the Authority under this Agreement, where the Authority is in breach of the same; and
- 10.1.3 following notification by the Authority, permit the Security Trustee or another person specified in such notice (the "**Funders' Representative**") with effect from the date specified in the same to perform or discharge all the obligations of the Contractor under this Agreement, provided that the Funders' Representative shall have the benefit of and be entitled to enforce against the Custodian any and all of the Custodian's obligations to the Contractor under this Agreement and the Custodian undertakes to perform such obligations in favour of the Funders' Representative.

10.2 Consent

- 10.2.1 The Contractor consents to the performance or discharge of its obligations by the Authority pursuant to Clause 10.1.1.
- 10.2.2 The Authority consents to the performance or discharge of its obligations by the Contractor pursuant to Clause 10.1.2.
- 10.2.3 The Authority consents to the performance or discharge of the Contractor's obligations by the Funders' Representative pursuant to Clause 10.1.3.

10.3 Termination

- 10.3.1 The Authority and the Security Trustee or the Funders' Representative shall be entitled to terminate the Funders' Representative's obligations pursuant to Clause 10.1.3 on giving the Custodian prior notice of at least 5 Business Days. On and from the date of expiry of such notice (the "**Step-Out Date**"), the Funders' Representative shall be automatically released from all obligations pursuant to this Agreement, except for any which have fallen due for performance or discharge on or before the Step-Out Date and which have not been fully and unconditionally performed or discharged.
- 10.3.2 The occurrence of the Step-Out Date shall not affect the continuation of the Contractor's obligations towards the Custodian under this Agreement.

10.4 The Security Trustee

The Security Trustee is a party to this Agreement solely for the purposes of taking the benefit of its rights under this Clause 10 and shall have no obligation or liability hereunder except pursuant to the operation of this Clause 10.

11. NOTICES

- 11.1 Except as otherwise stated, all notices or other communications required in connection with this Agreement shall be in writing and sent by hand, by first class prepaid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as a Party may notify to the others in writing by not less than 5 Business Days' prior notice.

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'

Contractor

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

Fax: 020 7419 5831

Attention: The Managing Director

Custodian

NCC Escrow International Limited
Manchester Technology Centre
Oxford Road
Manchester
M1 7EF

Fax: 0161 209 5200

Attention: Escrow Administrator

Security Trustee

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

Fax: 0131 659 0591

Attention: The Director

- 11.2 Subject to Clauses 11.3 and 11.4, a letter delivered by hand shall be effective when it is delivered to the addressee. Subject to Clause 11.4, a letter sent by first class prepaid post shall be deemed received on the second Business Day after it is put in the post. Subject to Clauses 11.3 and 11.4, a facsimile transmission shall be effective upon completion of transmission.
- 11.3 A notice or other communication received 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 Business Day.
- 11.4 All notices and other communications required to be served on the Authority shall only be deemed to be sufficiently served if they are addressed to or marked for the attention of the individual referred to in Clause 11.1 (as the same may be changed pursuant to Clause 11.1).

12. ASSIGNMENT

- 12.1 The Contractor and the Authority shall not assign the benefit of or transfer the obligations under the whole or part of this Agreement save to any person to whom benefits under the Project Agreement are assigned or the obligations are transferred (in accordance with clause 63 of the Project Agreement) to the same transferee at the same time and shall notify the Custodian in writing of any such transfer within 30 days of the same.
- 12.2 The Custodian shall be entitled to transfer or assign this Agreement upon giving reasonable notice to both the Contractor and the Authority.

13. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

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.

14. COUNTERPARTS

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

15. MITIGATION

Notwithstanding the provisions of Clauses 6.1 and 6.3, the Custodian shall at all times take all measures to mitigate any loss which has or may occur for which it is entitled to bring a claim and the indemnity provisions set out herein shall not apply to the extent that such losses could have been reduced or avoided by the Custodian complying with the provisions of this Clause 15.

16. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English Law.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as a deed on the date first written above.

SCHEDULE 1

INTEGRITY TESTING

The Custodian shall, where it is possible to do so, carry out the following checks on the Custody Items:

Checks for viruses.

Checks to ensure that compressed files can be decompressed.

Checks to ensure that if the Custody Items are password protected, the password allows access to the Custody Items.

Delivered as a deed on the date of this document.

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.

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

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

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

EXECUTED as a **DEED** by)
NCC ESCROW INTERNATIONAL)
LIMITED acting by the following officers:)

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

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

EXECUTED as a **DEED** by)
)
)
THE GOVERNOR AND COMPANY OF)
THE BANK OF SCOTLAND)

Acting by the following officers:

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

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