

**SCHEDULE 21**  
**ESCROW AGREEMENT**  
**Part A**

**[CM PROJECT ESCROW AGREEMENT]**

**THIS ESCROW AGREEMENT** is made on the [ ] day of [ ] 20[ ]

**BETWEEN:**

- (1) Genesys Telecommunications Limited, whose registered office is at Fluor Centre, Watchmoor Park, Riverside Way, Camberley, Surrey, GU15 3YL (CRN: 05295532) (the "**Owner**");
- (2) The Secretary of State for Transport (the "**Licensee**"); and
- (3) **NCC ESCROW INTERNATIONAL LIMITED** whose registered office is at Oxford House, Oxford Road, Manchester M1 7ED, England (CRN: 3081952) ("**NCC**").

**PRELIMINARY:**

- (A) The Licensee has been granted a licence to use a software package comprising computer programs.
- (B) Certain technical information and documentation describing the software package are the confidential property of the Owner and are required for understanding, maintaining and correcting the software package.
- (C) The Owner acknowledges that in certain circumstances the Licensee may require possession of the technical information and documentation held under this Agreement.
- (D) Each of the parties to this Agreement acknowledges that the consideration for their respective undertakings given under it is the undertakings given under it by each of the other parties.

**IT IS AGREED THAT:**

**1. DEFINITIONS**

In this Agreement the following terms shall have the following meanings:

- 1.1 "**Affiliates**" means [.]
- 1.2 "**Contractor Materials**" means [per definition in Principal Agreement];
- 1.3 "**Full Verification Service**" means those bespoke tests agreed between the Licensee and NCC for the verification of the Material;
- 1.4 "**Intellectual Property Rights**" means copyright, trade secrets, patents, and all other rights of a similar nature;
- 1.5 "**Licence Agreement**" means the licence granted by the Owner to the Licensee for the Package under the Principal Agreement;
- 1.6 "**Material**" means the source code of the Package comprising the latest technical information and documentation described in Schedules 1 and 2;

- 1.7 **"Package"** means any software comprised in Contractor Materials owned by the Owner, its Affiliates or Shareholders licensed to the Licensee under the Licence Agreement from time to time; and
- 1.8 **"The Principal Agreement"** means the agreement entered in to by the Owner and the Licensee on [Date];
- 1.9 **"Shareholders"** means [.]
- 1.10 **"Standard Verification Service"** means those tests detailed in the Standard Verification Service published by NCC from time to time.

## **2. OWNER'S DUTIES AND WARRANTIES**

### **2.1 The Owner shall:**

- 2.1.1 deliver a copy of the Material to NCC within 30 days of the date of this Agreement;
- 2.1.2 at all times ensure that the Material as delivered to NCC is capable of being used to generate the latest version of the Package issued to the Licensee and shall deliver further copies of the Material as and when necessary;
- 2.1.3 deliver to NCC a replacement copy of the Material within 6 months of the last delivery ;
- 2.1.4 deliver a replacement copy of the Material within 14 days of receipt of a notice served upon it by NCC under the provisions of Clause 4.1.5; and
- 2.1.5 deliver with each deposit of the Material the information detailed in Schedule 2.

### **2.2 The Owner warrants that:**

- 2.2.1 it owns the Intellectual Property Rights in the Material or in respect of any Source Code forming part of the Material that it does not own, it has been granted valid and ongoing rights under licence by the third party owner(s) thereof to deal with such Source Code in the manner anticipated under this Agreement and that the Owner has the express authority of such third party owner(s) to deposit the same under this Agreement as evidenced by signed letter(s) of authorisation in the form set out in Schedule 5 to be provided to NCC prior to or no later than at the time of such deposits;
- 2.2.2 the Material lodged under Clause 2.1 shall contain all information in human-readable form and on suitable media to enable a reasonably skilled programmer or analyst to understand, maintain and correct the Package without the assistance of any other person.

## **3. LICENSEE'S RESPONSIBILITIES**

It shall be the responsibility of the Licensee to notify NCC of any change to the Package that necessitates a replacement deposit of the Material.

**4. NCC'S DUTIES**

**4.1 NCC shall:**

- 4.1.1 hold the Material in a safe and secure environment;
- 4.1.2 inform the Owner and the Licensee of the receipt of any copy of the Material;
- 4.1.3 in accordance with the terms of Clause 9 (Provision of the Services) perform those tests that form part of its Standard Verification Service from time to time;
- 4.1.4 at all times retain a copy of the latest verified deposit of the Material; and
- 4.1.5 notify the Owner if it becomes aware at any time during the term of this Agreement that the copy of the Material held by it has been lost, damaged or destroyed.

**4.2 NCC shall not be responsible for procuring the delivery of the Material in the event of failure by the Owner to do so.**

**5. PAYMENT**

NCC's fees are payable in accordance with Schedule 4.

**6. RELEASE EVENTS**

**6.1 Subject to the provisions of Clauses 6.2 and 6.3, NCC will release the Material to a duly authorised officer of the Licensee if any of the following events occur:**

- 6.1.1 the Owner enters into any company voluntary composition or individual voluntary arrangement with its creditors or (being a company) enters into liquidation whether compulsory or voluntary (other than for the purposes of solvent reconstruction or amalgamation) or has a receiver or administrative receiver appointed over all or any part of its assets or undertaking or a petition is presented for an Administration Order or (being an individual or partnership) becomes bankrupt, or an event occurs within the jurisdiction of the country in which the Owner is situated which has a similar effect to any of the above events in the United Kingdom;
- 6.1.2 the Owner ceases to carry on its business;
- 6.1.3 the Owner assigns its copyright (or licence of copyright) in the Material and the assignee fails within 60 days of such assignment to offer the Licensee substantially similar protection to that provided by this Agreement without significantly increasing the cost to the Licensee;
- 6.1.4 the Owner, without legal justification, has defaulted to a material degree in any obligation to provide maintenance or modification of the Package under the Licence Agreement or any maintenance agreement entered into in connection with the Package and has failed to remedy such default notified by the Licensee to the Owner in accordance with the Licence Agreement, or where no period specified therein, within a reasonable period; or

- 6.1.5 the Licensee exercises its right of step-in pursuant to Clause 33 of the Principal Agreement and it needs access to the Source Code as part of the Required Action (as defined in the Principal Agreement).
  - 6.2 The Licensee shall notify NCC of the event(s) specified in Clause 6.1 by delivering to NCC a statutory or notarised declaration (the "**Declaration**") made by an officer of the Licensee attesting that such event has occurred and that the Licence Agreement was still valid and effective up to the occurrence of such event and exhibiting:
    - 6.2.1 such documentation in support of the Declaration as NCC shall reasonably require;
    - 6.2.2 a copy of the Licence Agreement; and
    - 6.2.3 a signed confidentiality undertaking as detailed in Schedule 3
- then NCC will release the Material to the Licensee upon receipt of the release fee stated in Schedule 4.
- 6.3 Upon receipt of a Declaration from the Licensee claiming a release event under Clause 6.1 NCC shall send a copy of the Declaration to the Owner by registered post. Unless within 14 days after the date of delivery the Owner delivers to NCC a counter-notice signed by a duly authorised officer of the Owner stating that no such event has occurred or that any such event has been rectified, then NCC will release the Material to the Licensee upon receipt of the release fee stated in Schedule 4.
  - 6.4 Where there is any dispute as to the occurrence of any of the events set out in Clause 6.1 or the fulfilment of any obligations under this Clause 6, such dispute will be referred at the request of either the Owner or the Licensee to the Managing Director for the time being of NCC for the appointment of an expert who shall give a decision on the matter within 14 days of the date of referral or as soon as practicable thereafter. The expert's decision shall be final and binding as between the Owner and the Licensee except in the case of manifest error.

## 7. CONFIDENTIALITY

- 7.1 The Material shall remain the confidential property of the Owner and in the event that NCC provides a copy of the Material to the Licensee, the Licensee shall be permitted to use the Material only in accordance with a confidentiality undertaking in the form contained in Schedule 3.
- 7.2 NCC agrees to maintain all information and/or documentation coming into its possession or to its knowledge under this Agreement in strictest confidence and secrecy. NCC further agrees not to make use of such information and/or documentation other than for the purposes of this Agreement and will not disclose or release it other than in accordance with the terms of this Agreement.
- 7.3 Termination of this Agreement will not relieve NCC or its employees, or the Licensee or its employees, from the obligations of confidentiality contained in this Clause 7.

**8. INTELLECTUAL PROPERTY RIGHTS**

The release of the Material to the Licensee will not act as an assignment of any Intellectual Property Rights that the Owner, or any third party, possesses in the Material.

**9. VERIFICATION**

- 9.1 Subject to the provisions of Clauses 9.2 and 9.3, NCC 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 Material.
- 9.2 Upon the Material being lodged with NCC, NCC shall perform those tests in accordance with its Standard Verification Service and shall provide a copy of the test report to the parties to this Agreement.
- 9.3 The Licensee shall be entitled to require that NCC carries out a Full Verification Service. Any reasonable charges and expenses incurred by NCC in carrying out a Full Verification Service will be paid by the Licensee save that if in the opinion of the expert appointed by the Managing Director of NCC the Material is substantially defective in content any such reasonable charges and expenses will be paid by the Owner.

**10. NCC'S LIABILITY**

- 10.1 NCC shall not be liable for any loss caused to the Owner or the Licensee either jointly or severally except for loss of or damage to the Material to the extent that such loss or damage is caused by the negligent acts or omissions of NCC, its employees, agents or sub-contractors and in such event NCC's total liability in respect of all claims arising under or by virtue of this Agreement shall not (except in the case of claims for personal injury or death) exceed the sum of £500,000.
- 10.2 NCC shall in no circumstances be liable to the Owner or the Licensee for indirect or consequential loss of any nature whatsoever.
- 10.3 NCC shall be protected in acting upon any written request, waiver, consent, receipt or other document furnished to it pursuant to this Agreement, not only in assuming its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information contained in it, which NCC in good faith believes to be genuine and what it purports to be.

**11. TERMINATION**

- 11.1 NCC may terminate this Agreement by notice in writing to the Owner and the Licensee after failure by the Owner or the Licensee to comply with a 30 day written notice from NCC to pay any outstanding fee. If the failure to pay is on the part of the Owner the Licensee shall be given the option of paying such fee itself. Such amount shall be recoverable by the Licensee direct from the Owner.
- 11.2 NCC may terminate this Agreement by giving 60 days written notice to the Owner and the Licensee. In that event the Owner and the Licensee shall appoint a mutually acceptable new custodian on terms similar to those contained in this Agreement.

- 11.3 If a new custodian is not appointed within 30 days of delivery of any notice issued by NCC in accordance with the provisions of Clause 11.2, the Owner or the Licensee shall be entitled to request the President for the time being of the British Computer Society to appoint a suitable new custodian upon such terms and conditions as he shall require. Such appointment shall be final and binding on all parties.
- 11.4 For software which Owner was or is not required to maintain under the Principal Agreement, if the Principal Agreement has expired or has been lawfully terminated, this Agreement shall automatically terminate on the same date. For software which Owner was or is required to maintain under the Principal Agreement, this Agreement shall automatically terminate two(2) years after the Principal Agreement has expired or has been lawfully terminated (or if earlier the date on which the Owner is no longer required to support the software under the Principal Agreement).
- 11.5 The Licensee may terminate this Agreement at any time by giving written notice to the Owner and NCC.
- 11.6 The Owner may only terminate this Agreement with the written consent of the Licensee.
- 11.7 This Agreement shall terminate upon release of the Material to the Licensee in accordance with Clause 6.
- 11.8 Upon termination under the provisions of Clauses 11.2, 11.4, 11.5 or 11.6 NCC will deliver the Material to the Owner unless NCC is notified in writing by both Owner and Licensee of agreement to release to the Licensee. If NCC is unable to trace the Owner using reasonable efforts and after a reasonable time, NCC will destroy the Material.
- 11.9 Upon termination under the provisions of Clause 11.1 the Material will be available for collection by the Owner from NCC for 30 days from the date of termination. After such 30-day period NCC will destroy the Material.
- 11.10 NCC may forthwith terminate this Agreement and destroy the Material if it is unable to trace the Owner having used all reasonable endeavours to do so.

## **12. GENERAL**

- 12.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 12.2 The Parties submit to the exclusive jurisdiction of the English Courts as regards any claim or matter arising in relation to this Agreement.
- 12.3 This Agreement represents the whole agreement relating to the escrow arrangements between the parties for the Package and supersedes all prior arrangements, negotiations and undertakings, except for the Principal Agreement the terms of which as between the Owner and the Licensee, take precedence over this Agreement to the extent to which there is any inconsistency.
- 12.4 All notices to be given to the parties under this Agreement shall be deemed to have been duly given or made when delivered personally or 7 days after posting or if sent by facsimile, 12 hours after despatch to the party to which such notice is required to

be given or made under this Agreement, addressed to the principal place of business, or for companies based in the UK, the registered office.

## **SCHEDULE 1**

### **The Material**

The source code of the Package known as [•].

## **SCHEDULE 2**

### **Material: Technical Information**

The Material shall be supplied with details of the following:

1. Details of the deposit; full name and version details, number of media items, media type and density, file or archive format, list or retrieval commands, archive hardware and operating system details.
2. Name and functionality of each module/application of the Material.
3. Names and versions of development tools etc.
4. Documentation describing the procedures for building/compiling/executing/using the software (technical notes, user guides).
5. Hardcopy directory listings of the contents of the media.
6. Name and contact details of employee(s) with knowledge of how to maintain and support the Material.

## **SCHEDULE 3**

### **Confidentiality Undertaking**

This undertaking is given on release of the Material pursuant to an Escrow Agreement dated [date] between:

- (1) Genesys Telecommunications Limited (the "**Owner**");
  - (2) The Secretary of State for Transport (the "**Licensee**"); and
  - (3) NCC ESCROW INTERNATIONAL LIMITED ("**NCC**");
1. Definitions contained in the Escrow Agreement will apply to this undertaking.
  2. In consideration of NCC delivering the Material to the Licensee, the Licensee undertakes with the Owner and NCC:
    - 2.1 to use the Material only for the purpose of understanding, maintaining and correcting the Package exclusively on behalf of the Licensee;
    - 2.2 not to use the Material for any other purpose nor disclose it to any person save such of its employees or contractors who need to know the same in order to understand,



maintain and correct the Package exclusively on behalf of the Licensee. In that event such contractors shall enter into a Confidentiality Undertaking direct with NCC in similar terms to this Undertaking;

- 2.3 to hold all media containing the Material in a safe and secure environment when not in use; and
- 2.4 forthwith to destroy the same should the Licensee cease to be entitled to use the Package.

#### **SCHEDULE 4**

##### **NCC's Fees (St£)**

	<b>DESCRIPTION</b>	<b>FEE</b>	<b>OWNER</b>	<b>LICENSEE</b>
1.	Initial Fee	£550	100%	NIL
2.	Annual Fee (payable on completion of this Agreement and on each anniversary thereafter)	£385	100%	NIL
3.	Update Fee (per update after the first 4 updates per annum)	£100	100%	NIL
4.	Storage Fee (an additional annual fee may be payable for deposits in excess of one cubic foot)	NIL	100%	NIL
5.	Liability Fee (£100 per £500,000 of liability exceeding £500,000, per annum)	NIL	100%	NIL
6.	Release Fee (plus NCC's reasonable expenses)	£500	100%	NIL

1. All fees are subject to VAT where applicable\*
  2. All fees are reviewed by NCC from time to time
- \* only applicable to countries within the EU.

#### **SCHEDULE 5**

##### **DRAFT LETTER OF AUTHORISATION**

(This document **MUST** be signed and returned to NCC Escrow on ["A"s] letterhead at the time of execution of the Escrow Agreement or no later than at time of deposit of the Source Code material owned by [A])

In consideration of £1.00 (one sterling pound) paid by ["B"] receipt of which is hereby acknowledged by ["A"]

The undersigned, [name of authorised signatory] of \_["A"]\_\_\_\_\_ hereby grants to, and confirms that \_\_\_\_["B"]\_\_\_\_\_ has the authority, with regard to [name of "A"s software] software which is software licensed to ["B"]\_\_\_\_\_ under [the Licence Agreement] entered into by and between ["A"] and ["B"] dated \_\_\_\_\_, to enter into the Escrow Agreement by and between/among \_\_\_\_["B"]\_\_\_\_\_, ["C"] \_\_\_\_ and NCC Escrow International Limited, a copy of which is attached to this letter and initialled by the undersigned authorised signatory of ["A"] set forth below for and on behalf of ["A"].

The undersigned confirms that \_\_\_\_["A"]\_\_\_\_\_ is the owner of the intellectual property rights which form part of the Material described in Schedule 1 of the Escrow Agreement.

I, the undersigned \_\_\_\_\_ [name of Authorised Signatory] have read the Escrow Agreement and confirm that I am fully aware of its terms and conditions, in particular but not limited to the release events which will enable ["C"] to have certain rights to the Source Code material of [A's software].

Signed for and on behalf of ["A"]\_\_\_\_\_ (Authorised Signatory)

Name : \_\_\_\_\_

Position : \_\_\_\_\_

Date : \_\_\_\_\_

Please note the following when completing this document:

- "A" = Intellectual Property Rights owner
- "B" = The party authorised by "A" to enter into the Escrow Agreement
- "C" = The Licensee under the Escrow Agreement
- The IPR owner "A" should initial the first page of the attached Agreement.

Signed on behalf of Genesys Telecommunications Limited

Name: ..... ..

Position: ..... (Authorised Signatory)

Signed on behalf of The Secretary of State for Transport

Name: ..... ..

Position: ..... (Authorised Signatory)

Signed on behalf of NCC ESCROW INTERNATIONAL LIMITED

Name: ..... ..

Position: ..... (Authorised Signatory)