

DRAFT Contract

**For the Establishment and Operation of the
International Registry for International Interests
in Mobile Equipment (Railway Rolling Stock)**

**Made between
The Preparatory Commission established by Resolution No. 1 of the Diplomatic Conference to
adopt a Rail Protocol to the Convention on International Interests in Mobile Equipment
And**

[xxxx]

[Date]

COMMERCIAL IN CONFIDENCE

Table of Contents

Terms and Conditions

1. Introduction and Interpretation
2. Definitions
3. Scope of Contract
4. Assumptions/Assignment
5. Term of the Contract
6. Regulations
7. Ratification Strategy
8. Supervisory Authority Responsibilities
9. Establishment of the International Registry
10. Subcontractors
11. Provision of Ancillary Services
12. Fees and Charges
13. Title and Rights to Equipment
14. Portability
15. Domain Name
16. Law of the Contract
17. Change in Ownership and Control
18. Insolvency
19. Warranty and Service Levels
20. Indemnification and Liability
21. Encumbrances / Liens
22. Confidentiality
23. Intellectual Property Rights
24. Contractor's Responsibility for Employees
25. Insurance & Liability

COMMERCIAL IN CONFIDENCE

26. Documents and Language
27. Officials Not to Benefit
28. Workmen's Compensation Insurance
29. Source of Instructions
30. Assignment
31. Amendment
32. Direction of Contract
33. Regulatory Requirements
34. Licenses
35. Other Registries
36. *Force Majeure*
37. Termination
38. Effect of Termination or Expiry
39. Residual Assets
40. Handover Package
41. Dispute Settlement and Jurisdiction
42. Notices
43. Privileges and Immunities of the Supervisory Authority
44. Complete Nature of Agreement
45. Partial Invalidity
46. Disclaimer
47. Consultations
48. Export / Import
49. Exclusion of Third Party Rights
50. Survival
51. Process Relating to the End of the Term of the Contract
52. Performance Guarantee

COMMERCIAL IN CONFIDENCE

Attachment I – Service Level Agreement

Attachment II – System Design

Appendix 1 – High Level Design

Appendix 2 – Regulations for the International Registry

Attachment III – Costs

Attachment IV – Performance Bond

Attachment V – Model Licence Agreement

Attachment VI – Master Service Agreement

Attachment VII – Change Control

Attachment VIII – Project Implementation Plan

Attachment IX – Handover Package

COMMERCIAL IN CONFIDENCE

WHEREAS the Preparatory Commission acting in its capacity as Provisional Supervisory Authority for the future International Registry invited, through the *Request for Proposals for the International Registry* published in June 2010, proposals from appropriately qualified entities for the undertaking of the establishment and operation of the future International Registry pursuant to the Cape Town Convention and the Luxembourg Rail Protocol;

WHEREAS the Preparatory Commission acting in its capacity as Provisional Supervisory Authority has selected [*SITA Company*], a private limited liability company incorporated under the laws of Luxembourg with its registered office at [address] (the "Contractor") to provide such an international registry.

The Parties agree to the following:

1. INTRODUCTION AND INTERPRETATION

- 1.1 This Contract is signed on [] 2014 between the Preparatory Commission acting in its capacity as Provisional Supervisory Authority and the Contractor.
- 1.2 Neither the Contractor, its personnel, any agent nor sub-contractor of the Contractor shall be considered as an employee or an agent of the Preparatory Commission or the Supervisory Authority.
- 1.3 Unless otherwise expressly provided for in this Contract, neither the Preparatory Commission nor the Supervisory Authority, nor their respective chairpersons, officials, agents, servants, representatives or employees shall be liable for any claims of any kind arising in connection with the performance of this Contract.
- 1.4 Where used in this Contract, Supervisory Authority and Contractor are jointly referred to as "Parties" and singularly as a "Party".
- 1.5 The division of this Contract into clauses or sections and the insertion of headings are for convenience of reference only. The terms "this Contract", "hereof", "hereto", "herein", "hereunder" and similar expressions refer to this Contract.
- 1.6 Words importing the singular number only shall include the plural and vice versa, and words importing the use of any gender shall include all genders.

2. DEFINITIONS

- 2.1 **Acquired Rights Directive** means the European Council directive 2001/23/EC on the approximation of laws of European Union member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses and any national law implementing the same as modified from time to time.
- 2.2 **Affiliate** means, with respect to any person, any entity that directly or indirectly through one or more intermediaries Controls or is Controlled by such person or is under direct or indirect common Control with such person.
- 2.3 **Agile Methodology** is a process for building software in an iterative and incremental manner where requirements and solutions evolve through collaboration. It does not rely on a fully formed specification of the system to be available before software development commences.

COMMERCIAL IN CONFIDENCE

- 2.4 **Aircraft Protocol** means the Protocol to the Convention on International Interests on Mobile Equipment on Matters Specific to Aircraft Equipment.
- 2.5 **All Reasonable Efforts**, when used in respect of an obligation under this contract, means diligent attempts to carry out such obligation using the standard that a reasonable motivated person in the same circumstances and of the same nature as the acting party would take.
- 2.6 **Ancillary Service** means any service, that is not a Registrar Service, utilising the resources of the International Registry, as described in more detail in clause 11 (Provision of Ancillary Services) and authorized by the Supervisory Authority including but not limited to using the website, branding, personnel and data of the International Registry.
- 2.7 **Archives** or **Data Archives** means all Data Bases and other data permanently stored in the system of the International Registry for archiving purposes and all data mediums on which such data may be permanently stored, such as CD-Roms, disks, tapes etc. but excluding hardware installations, such as PCs, servers, hard disks etc.
- 2.8 **Attachments** means attachments to this Contract as attached hereto and as may be amended from time to time.
- 2.9 **Baseline Regulations** mean the Regulations in Attachment II Appendix 2.
- 2.10 **Change Control** means the processes and procedures, set out in Attachment VII for approving changes to this Contract or to the specifications for the International Registry.
- 2.11 **Claim** means any claim, demand or action for infringement, or alleged infringement, of any patents, copyright, trademarks, design rights or trade secrets made by a third party.
- 2.12 **Commencement Date** means the date of signature of the Contract as set out in clause 1.1 (Introduction and Interpretation).
- 2.13 **Confidential Information** means all information furnished or disclosed, in whatever form or medium, by the Discloser to the Recipient before, on or after the date of this Contract relating to the business, technology or other affairs of the Discloser or any of its Affiliates. Confidential Information includes all of the trade secrets, designs, technical specifications, business plans, marketing plans, know-how, data, contracts, documents, business concepts, customer lists, customer data, costs, financial information, profits, billings, referral sources, existing or future services, products, operations, management, pricing, financial status, goals, strategies, objectives and agreements of the Discloser and any of its Affiliates, all of which is deemed confidential and proprietary.
- 2.14 **Control** means, in respect of an entity, the ability (whether it is legally enforceable or not) to control, whether directly or indirectly, the composition of the board of directors (or other governing body) of that entity, the voting rights of the majority of voting securities of the entity, or the management of the affairs of that entity.
- 2.15 **Convention** means the Convention on International Interests in Mobile Equipment, opened for signature in Cape Town on 16 November 2001.
- 2.16 **Data Bases** means the data or data bases generated in the operation of the International Registry or collected in consequence of or in the course of the operation of the International Registry in each case in relation to Registrar Services.

COMMERCIAL IN CONFIDENCE

- 2.17 **Data Feed Service** means a service made available by the International Registry website that provides its data to another website or system operating on a commercial basis.
- 2.18 **Day** means a calendar day in Luxembourg, and includes Saturdays, Sundays, and official public holidays.
- 2.19 **Deed of Business Continuity** means the agreement of the same name between the Supervisory Authority, the Contractor and the Prime Subcontractor, dated on or about the date of this Contract, which allows for the Supervisory Authority to require the Prime Subcontractor to continue to provide support services that it had previously provided to the Contractor to any New Service Provider in the event of the termination of this Contract by the Supervisory Authority.
- 2.20 **Designated Entry Point** means an entry point designated pursuant to Article XIII of the Protocol.
- 2.21 **Discloser** means the party disclosing Confidential Information.
- 2.22 **Documentation** means all documents, manuals and other information, whether in printed, electronic or other form, which are necessary for the operation of the International Registry, including in respect of the use of Software.
- 2.23 **Employee Liability** means all claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation and any demands, actions, proceedings and any award, compensation, damages, fine, loss, order, penalty and costs and expenses reasonably incurred in connection with a claim or investigation and any legal costs and expenses.
- 2.24 **End Date** means the Expiry Date or the date of termination of the Contract, whichever is the earlier.
- 2.25 **Establishment Costs** of the International Registry means two hundred and thirty four thousand Euro. Thus, Change Control shall not apply with respect to Establishment Costs nor shall any financing charges on this amount be allowed.
- 2.26 **Expiry Date** means the date that falls at the end of the tenth (10th) Year calculated from the Go-Live Date.
- 2.27 **Fee Schedule** means the schedule of fees which forms part of the Regulations.
- 2.28 **Fee Threshold** means the amount of one million nine hundred thousand Euro (€1,900,000).
- 2.29 **Go-Live Date** means the date that the Protocol enters into force pursuant to Article XXIII(1) of the Protocol.
- 2.30 **Handover Package** means the information referred to in Attachment IX.
- 2.31 **Indemnified Parties** means the Supervisory Authority, Preparatory Commission, the Secretariat, as well as the officials, agents, servants, representatives, chairperson(s), employees and subsidiary bodies of the Supervisory Authority, Preparatory Commission, the Secretariat and an Indemnified Party means any one of them.
- 2.32 **Identifier Reservation Services** means a facility to reserve specific unique identifiers for railway rolling stock.

COMMERCIAL IN CONFIDENCE

- 2.33 **Intellectual Property Rights** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright (including rights in software and databases), database rights, designs, circuit layouts, trade marks, patents, inventions and discoveries, rights in Confidential Information, and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.
- 2.34 **International Registry** means the international registry for railway rolling stock as established by the Convention and the Protocol.
- 2.35 **International Aircraft Registry** means the international registry for aircraft assets as established by the Convention and the Aircraft Protocol.
- 2.36 **Invocation Notice** means a notice served on the Contractor and the Prime Subcontractor by the Supervisory Authority to ensure continued provision of support services for the International Registry by Prime Subcontractor to a New Service Provider.
- 2.37 **Licence Agreement** means the licence substantially in the form of the model form of licence as set out in Attachment V.
- 2.38 **Luxembourg Diplomatic Conference** means the diplomatic conference held in February 2007 to adopt a rail protocol to the Convention on International Interests in Mobile Equipment.
- 2.39 **Materials** means all trade secrets and know how in software which show, display, describe or contain information about other material (including without limitation graphical user interfaces, screen layouts, user command sets, functional structures, database structures, tables, stored procedures and business logic).
- 2.40 **New Service Provider** means any third party provider of the Registrar Services which replaces the Contractor.
- 2.41 **Notice** means a letter sent by one Party to the other at the address provided in clause 42 (Notices). Notice must contain a reference to this Contract, the clause under which Notice is provided and sufficient information to determine the type of Notice. A Party may change its address by Notice to the other Party. Notice is effective upon receipt. All Notices to the Contractor must be addressed to the Managing Director.
- 2.42 **Notification Date** means the date that the Ratification Task Force notifies the Supervisory Authority of the Target Date pursuant to clause 7.1 (Ratification Strategy).
- 2.43 **Operating Expenses** means the Contractor's costs in running the International Registry including but not limited to fees or charges payable to the Prime Subcontractor nor shall any financing charges on this amount be allowed without approval of Supervisory Authority
- 2.44 **OTIF** means the Intergovernmental Organization for International Carriage by Rail.
- 2.45 **Parent** means an entity which directly or indirectly owns or has Control of the Contractor and which definition, at the Commencement Date, includes SITA NV and SITA SC.
- 2.46 **Preparatory Commission** means the Preparatory Commission established pursuant to Resolution No. 1 of the Luxembourg Diplomatic Conference to act as Provisional Supervisory Authority until the Go-Live Date.

COMMERCIAL IN CONFIDENCE

- 2.47 **Prime Subcontractor** means SITA Information Networking Computing (Ireland) Limited, a subsidiary company of SITA NV, with a registered address of Building 1, Letterkenny Office Park, Windyhall, Letterkenny, Co. Donegal, Ireland.
- 2.48 **Professional User Account Services** means a facility for professional users to request authorisation to make registrations on behalf of other parties in the International Registry.
- 2.49 **Professional User Services** means certification and training, promotion, forums and reporting services to be provided to selected parties.
- 2.50 **Project Implementation Plan** means the detailed project plan in Attachment VIII.
- 2.51 **Protocol** means the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock, signed in Luxembourg on 23 February 2007.
- 2.52 **Rail Working Group** means the Swiss not-for-profit association that was set up to represent the rail industry in relation to the adoption and implementation of the Protocol, which is represented on the Preparatory Commission by virtue of Resolution No. 1 of the Luxembourg Diplomatic Conference.
- 2.53 **Ratifications Task Force** means the task force constituted under clause 7.1(e) (Ratification Strategy).
- 2.54 **Recipient** means the party receiving Confidential Information.
- 2.55 **Registrar** means the Registrar of the International Registry appointed pursuant to Article 17(2)(b) of the Convention and in accordance with Article XII(11) of the Protocol.
- 2.56 **Registrar Services** means the International Registry services described in clause 9 (Establishment of the International Registry) of this Contract.
- 2.57 **Regulations** means the regulations made or approved by the Supervisory Authority in accordance with Article 17(2)(d) of the Convention, as amended from time to time.
- 2.58 **Regulations Draft First Edition** means the version of the Regulations that will be issued by the Preparatory Commission prior to the Go-Live Date as the draft First Edition of the Regulations, and which will be based on the Baseline Regulations and modified, where appropriate, to incorporate by analogy the changes from the 5th edition to the edition of the regulations being, as at the Notification Date, the most latest approved by the Council of the International Civil Aviation Organisation (ICAO), in respect of the operation of the International Aircraft Registry (minimum the 6th edition).
- 2.59 **RFP** means the *Request for Proposals for the International Registry* issued by the Preparatory Commission on 30 June 2010.
- 2.60 **Secretariat** means the Secretariat to the Supervisory Authority referred to in Article XII(6) of the Protocol.
- 2.61 **Services** means the Registrar Services and/or the Ancillary Services, as the case may be.
- 2.62 **SITA SC** means Société Internationale de Télécommunications Aéronautiques SC with a registered address of Avenue des Olympiades 2, B-1140 Brussels, Belgium.

COMMERCIAL IN CONFIDENCE

- 2.63 **SITA NV** means a company in the SITA SC group of companies with a registered address of Heathrowstraat 10, 1043 CH Amsterdam (Sloterdijk) The Netherlands.
- 2.64 **Software** means the version of the software used for the operation of the International Registry on or after the Go-Live Date.
- 2.65 **Software Negotiated Value** means the agreed value of the software as negotiated between Supervisory Authority and the Contractor.
- 2.66 **Software Security Agreement** means the agreement of the same name between the Supervisory Authority, the Contractor and Prime Subcontractor, dated on or about the date of this Contract, which allows for the Supervisory Authority to require Prime Subcontractor to (i) put the Software into escrow and (ii) provide the Software to the New Service Provider in the event of the termination or expiry of this Contract by the Supervisory Authority.
- 2.67 **Subcontract** means a contract between the Contractor and a Subcontractor approved pursuant to clause 10 (Subcontractors).
- 2.68 **Subcontractor** means any person, including a company, that has any direct contractual arrangement with the Contractor for the provision of goods or services that, in whole or in part, are provided in relation to the operation of the International Registry, including the Prime Subcontractor.
- 2.69 **Substantial Change in Control** in relation to an entity, means any change in Control of the entity that results in some or all of the Control of the entity being obtained by another entity that was not, immediately prior to the change, a directly or indirectly wholly-owned subsidiary of SITA SC or SITA NV.
- 2.70 **Supervisory Authority** means:
- (a) from the Commencement Date to the Go-Live Date – the Preparatory Commission acting in its capacity as Provisional Supervisory Authority for the future Supervisory Authority;
 - (b) from the Go-Live Date – The Supervisory Authority established in accordance with Article XII(1) of the Protocol.
- 2.71 **Supplemental Charge** means an amount equal to sixty percentage points (60%) of gross revenues from fees received by the Contractor for Identifier Reservation Services, Professional User Account Services and other services as may be agreed between the Parties from time to time increasing to ninety two percentage points (92%) once the Fee Threshold has been met.
- 2.72 **Target Date** means the date as determined in accordance with clause 7.1 (Ratification Strategy).
- 2.73 **Term** means the term of the Contract pursuant to clause 5 (Term of the Contract) herein.
- 2.74 **Termination Event** means an event under this Contract pursuant to which a Party is entitled to terminate the Contract.
- 2.75 **Transfer** shall have the meaning as set out in clause 24.4.
- 2.76 **Transition Services** means the activities below:
- any activity the Contractor is required to carry out at the request of the Supervisory Authority to move the operation of the International Registry to the New Service Provider;
 - any training for the New Service Provider to support and develop the Software; and

COMMERCIAL IN CONFIDENCE

- project management services for the migration of the International Registry to the New Service Provider.

Transition Services do not include any activities that the Contractor is obligated to undertake or that the Supervisory Authority can require the Contractor to take pursuant to any provision of this Contract.

- 2.77 **Transition Period** means the period up to twelve (12) months as the Supervisory Authority may elect for which the Supervisory Authority requests and during which the Contractor shall supply the Transition Services.
- 2.78 **UNIDROIT** means the International Institute for the Unification of Private Law.
- 2.79 **User Manual** means the user manual similar to the International Aircraft Registry User Manual but specifically amended for the International Registry.
- 2.80 **Year** means a period of twelve (12) months starting on the Go-Live Date or the anniversary thereof.

3. SCOPE OF THE CONTRACT

- 3.1 The Supervisory Authority hereby appoints the Contractor as the exclusive contractor to establish the International Registry and to operate the International Registry for the period of ten (10) Years subject to the terms of this Contract.
- 3.2 The Contract covers all Registrar Services, hardware and Software for the operation of the International Registry as specified in this Contract and makes provision for Ancillary Services.

4. ASSUMPTIONS/ASSIGNMENT

- 4.1 In accordance with Resolution 1 of the Luxembourg Diplomatic Conference, on and from the Go-Live Date, and upon the establishment of the Supervisory Authority on that date in accordance with Article XII(1) of the Protocol, the mandate of the Preparatory Commission acting in its capacity as Provisional Supervisory Authority will cease.
- 4.2 The Supervisory Authority will meet as soon as practicable after its establishment to confirm its obligations under this Contract.

5. TERM OF THE CONTRACT

- 5.1 This Contract commences on the Commencement Date and shall terminate on the Expiry Date, unless it is validly terminated on an earlier date in accordance with the provisions of this Contract. Ancillary Services may be offered from three (3) months prior to the Go-Live Date.
- 5.2 The Contractor may undertake the following activities up to three (3) months prior to the Go-Live Date:
- (a) Registrar Services to the extent required for the Contractor to be in a position to fulfil its obligations under clause 9.1 (Establishment of the International Registry); and
 - (b) Ancillary Services.

COMMERCIAL IN CONFIDENCE

- 5.3 Where the Contractor wishes to perform Registrar Services which fall outside those permitted by clause 5.2(a) it shall request and obtain written approval of the Supervisory Authority prior to the commencement of such service.

6. REGULATIONS

- 6.1 The rights and obligations of the Contractor under this Contract shall be subject to the Regulations.

7. RATIFICATION STRATEGY

- 7.1 The Supervisory Authority and the Contractor shall, as from the Commencement Date, make all reasonable efforts to develop a program to promote ratification of, or accession to, the Protocol. Without limiting the scope of the program, the program shall include the following components:
- (a) a commitment by the Supervisory Authority and the Contractor to work with the Rail Working Group, UNIDROIT and OTIF, so to encourage the preparation of documents that may assist States in their consideration of, ratification of, or accession to, the Protocol, such as model instruments of ratification/accession, and model declarations;
 - (b) a coordination of efforts by the Supervisory Authority, the Contractor and the Rail Working Group to approach export credit agencies and any other relevant organization to encourage the provision of economic incentives for transactions to which the Protocol applies;
 - (c) arrangements for ongoing liaison with the government of the host State of the International Registry;
 - (d) identification of appropriate opportunities to promote the Protocol (e.g. conferences and seminars); and
 - (e) the creation of a Ratifications Task Force, comprising the co-chairs of the Supervisory Authority, and representatives of UNIDROIT, OTIF, the Rail Working Group, the Contractor, and others nominated by the Supervisory Authority to oversee and coordinate efforts to promote ratification/accession and to recommend the setting of a date for the entry into force of the Protocol (the "Target Date").
- 7.2 The Ratifications Task Force, shall, subject to clause 7.3, recommend to the Secretariat the Target Date as the date from which going forward, utilizing projections submitted by the Contractor, it can reasonably be expected that (i) the fee income of the International Registry during the Term will be sufficient to cover the aggregate of the estimated Operating Expenses and Establishment Costs over the Term and (ii) the average monthly fee income of the International Registry during the period of the first nine (9) months from the Go-Live Date will be not less than seventy-five (75%) per cent of the Operating Expenses.
- 7.3 The recommendation in clause 7.2 shall only be given following the Supervisory Authority stating that it is satisfied that the Contractor has adequate financial resources available to be able to bear any negative cash flows from the establishment or operation of the Registry. The Contractor shall provide such financial information as the Supervisory Authority shall reasonably require in order to make such statement.

8. SUPERVISORY AUTHORITY RESPONSIBILITIES

- 8.1 The Supervisory Authority shall be responsible for:

COMMERCIAL IN CONFIDENCE

- (a) setting up an advisory group to support the activities of the Supervisory Authority;
- (b) responding within forty five (45) Days to formal issues raised by the Contractor such as for guidance and clarifications; however, in emergency situations, the Supervisory Authority will make best efforts to respond within fourteen (14) Days;
- (c) deciding, within one month of receipt of a request, whether to make emergency Regulations and/or Procedure changes, recommended by the Contractor, in situations such as where liability problems are identified;
- (d) calling and hosting meetings as needed to consider amendments to the Regulations if suitable proposals for changes are put forward for consideration;
- (e) providing ratification support as described in clause 7 (Ratification Strategy) above; and
- (f) helping facilitate with the Luxembourg Government conferences and academic links in Luxembourg.

8.2 Both Parties acknowledge that the availability of resources for expenditure by the Supervisory Authority to carry out the functions under this Contract is fully dependent on financial support provided to it by member States of the Supervisory Authority to the Protocol.

9. ESTABLISHMENT OF THE INTERNATIONAL REGISTRY

- 9.1 The Contractor shall establish the International Registry in accordance with the Project Implementation Plan to enable it to commence full operations and provide all Registrar Services by the Go-Live Date, and shall operate the International Registry from the Go-Live Date. The Contractor shall provide all equipment, transportation, personnel, insurance coverage and other resources for the delivery, installation, commissioning, and all necessary acceptance procedures for the provision of the Registrar Services together with product support. Until such time as the Target Date has been set, there shall be no obligation on the Contractor or its Subcontractors to expend significant resources on the development or establishment of the International Registry.
- 9.2 The Contractor shall be solely responsible for the adequate design and coordinated functioning of all equipment, material and services provided under this Contract. To the best of its knowledge and belief, the Contractor warrants that all design requirements which have been established in the system design and any updates thereto shall at all times conform to the best practices in current use in the field of electronic registry design and operation, including those relating to back-up and security systems and networking.
- 9.3 The Registrar Services referred to in clause 9 are all of the services that must be provided for the functioning of the International Registry as set out in the Convention, the Protocol and the Regulations or which are otherwise to be provided by the Contractor pursuant to the approval of the Supervisory Authority.
- 9.4 The Parties agree that Registrar Services include:
- (a) Provision of a secure electronic registry to enable the registration of the interests, transactions and notices referred to in Article 16(1) of the Convention;
 - (b) Operation of a system for the registration of users of the International Registry which maximises the integrity of transactions conducted on the International Registry;
 - (c) Operation of a system for making searches of the International Registry and for issuing search certificates;
 - (d) Ensuring that registrations are entered into the International Registry data base and made searchable in chronological order of receipt, with the file recording the date and time of receipt;
 - (e) Ensuring that the International Registry enables the registration of interests through a Designated Entry Point as provided for in the Convention, the Protocol and the Regulations;
 - (f) Ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration;
 - (g) Operation of the system of unique identifiers for railway rolling stock which provides for the creation and allocation of such identifiers and their use for the purpose of registrations on the International Registry, in conformity with Article XIV(1) of the Protocol;
 - (h) Provision of Identifier Reservation Services;
 - (i) Provision of Professional User Account Services to users of the International Registry; and
 - (j) Provision of live help-desk services from 09:00 until 17:00 local time each local business day as further specified in the Regulations or agreed pursuant thereto, subject to review and Change Control by the Supervisory Authority in consultation with the Contractor as transaction volumes increase.

COMMERCIAL IN CONFIDENCE

- 9.5 Unless otherwise specified, the Registrar Services shall be made available twenty four (24) hours per day, seven (7) days per week, subject to downtime to take account of maintenance, power outages, hardware problems and similar events provided that maintenance of the International Registry which would involve International Registry services being unavailable to users must not be performed during peak periods as determined by statistical data on the usage of the International Registry.
- 9.6 The Software shall be developed using an Agile Methodology in accordance with the Project Implementation Plan and the Regulations Draft First Edition. The Project Implementation Plan shall include periodic functionality review meetings, the frequency of which will be no more than once every six (6) weeks, such meetings to be held between the Supervisory Authority and the Contractor either on-line, telephonically or in person. At each functionality review meeting the Supervisory Authority shall provide feedback and instructions to the Contractor regarding the functionality of the International Registry website, in line with the Regulations and this Contract. The purpose of the functionality review meetings is to provide early feedback on changes which are necessary to the Software so that these changes have minimum impact on project timelines and cost. At the last functionality review meeting the Contractor will inform the Supervisory Authority of the date for the Parties to conduct the acceptance tests in accordance with clause 9.11.
- 9.7 As part of the Software development under clause 9.6 above, the Contractor shall provide the Supervisory Authority, not less than ninety (90) days before the Go-Live Date, with a draft User Manual which specifies, in respect of the Registrar Services, the modalities for using those services by users of the International Registry. The Supervisory Authority shall advise the Contractor within forty five (45) days of its receipt whether the User Manual is accepted by the Supervisory Authority, whether it is accepted subject to specific amendments, or whether it is rejected with the reasons for such rejection. If it is accepted subject to specific amendments, then the Contractor must resubmit the User Manual incorporating such amendments, within thirty (30) days of notification by the Supervisory Authority. If it is rejected, then the Contractor must resubmit an amended User Manual taking into account the reasons for rejection, within thirty (30) days of the response from the Supervisory Authority.
- 9.8 The Supervisory Authority and the Contractor hereby acknowledge that as at the Commencement Date they anticipate that the volume of transactions on the International Registry in its initial period of operation is likely to be lower than at subsequent periods and, in light of this and with a view to ensuring that the Establishment Costs and the Operating Expenses are minimised, the Supervisory Authority and the Contractor agree that the Software specifications for the establishment and initial operation of the International Registry shall be as specified in Attachment II. Any changes in Software functionality required as a result of changes to the Regulations Draft First Edition will be agreed through Change Control.
- 9.9 The Registrar Services shall be provided in the English language, provided that the FAQ help information is also provided in Arabic, Chinese, French, Russian, Portuguese and Spanish. No later than the end of the fifth (5th) Year, the Contractor and the Supervisory Authority shall give consideration to the viability of Registrar Services being provided in an additional Latin-alphabet language.
- 9.10 The Contractor and the Supervisory Authority agree that in relation to the Contractor's obligations pursuant to this clause:
- (a) the initial hosting environment will scale up having regard to growth in, and anticipated growth in, registrations and other International Registry activity, as agreed with the Supervisory Authority from time to time and subject to Change Control; and

COMMERCIAL IN CONFIDENCE

- (b) subject to users of the International Registry adopting the security requirements as stated in the relevant certification practice statement, soft token digital certificates, capable of being used by the registered user associated with the certificate on more than one device, will be offered to registered users of the International Registry and provided that there is end user demand the intention of the Contractor and the Supervisory Authority is to introduce the option of a hardware token digital certificate for registered users of the International Registry which would be made available to registered users at a fee to be agreed with the Supervisory Authority and such fee not to be less than the reasonable costs incurred by the Contractor.

Acceptance

- 9.11 The Parties agree that the Supervisory Authority shall be entitled to observe all processes undertaken for the testing, verification and acceptance of Software, Registrar Services and relevant services provided by Subcontractors. The Contractor shall consult with the Supervisory Authority prior to agreeing to the criteria and procedures for any provisional or final testing of Software, Registrar Services and relevant services provided by Subcontractors. The Contractor shall advise the Supervisory Authority of the details and schedule for such testing, verification and acceptance.

Technology Refresh

- 9.12 No later than sixty (60) days after the end of the sixth (6th) Year, the Contractor shall submit to the Supervisory Authority a report identifying the emergence of new and evolving relevant technologies and processes which could improve the delivery of the Registrar Services and, if relevant, proposals for the incorporation of such technologies and processes into the International Registry. The Supervisory Authority and the Contractor shall consult in relation to the proposals, and the Supervisory Authority may require the Contractor to implement proposals in accordance with Change Control.

10. SUBCONTRACTORS

- 10.1 The Contractor shall obtain the prior written approval of the Supervisory Authority to enter into any Subcontract or to terminate any Subcontract and in each case the approval will not be unreasonably withheld or delayed.
- 10.2 In order for the Supervisory Authority to consider a proposal by the Contractor for approval for such a contract, the Contractor shall provide to the Supervisory Authority the details of the proposal, including the name of the proposed Subcontractor, the services that the Subcontractor would be providing, the proposed contract between the Contractor and the Subcontractor, and such other information as the Supervisory Authority might require.
- 10.3 Any approval by the Supervisory Authority shall not relieve the Contractor of any of its obligations under this Contract (including in respect of its liability hereunder or to third parties), and the terms of any Subcontract shall be subject to and be in conformity with the provisions of this Contract (including in respect of confidentiality and data protection) unless otherwise approved in writing by the Supervisory Authority.
- 10.4 Where the Contractor enters into a Subcontract with a Subcontractor it shall ensure that such Subcontractor has the legal capacity, power and authority to become a party to and to perform the obligations of the relevant Subcontract and employs persons having the appropriate qualifications, experience and technical competence and having the resources available to it which are sufficient to enable it to perform the obligations of the Subcontractor under the relevant Subcontract.

COMMERCIAL IN CONFIDENCE

- 10.5 The Contractor shall make all reasonable efforts to ensure the professional and technical competence of its Subcontractors and will select reliable Subcontractors who will perform effectively the relevant Subcontract as it relates to the implementation of this Contract, respect the local customs and conform to a high standard for moral and ethical conduct and all Subcontracts shall contain provisions analogous to the confidentiality obligations set out in clause 22 (Confidentiality).
- 10.6 Where requested by the Supervisory Authority, the Contractor shall procure that the Subcontracts shall contain suitable assignment provisions, where reasonably commercially available, which allow such Subcontracts to be assigned to the entity appointed by the Supervisory Authority to be the New Service Provider so that the operations of the International Registry are able to continue without interruption. The New Service Provider shall assume the liabilities of the Contractor to the Subcontractor only insofar as this is provided for in the assignment provisions.
- 10.7 Pursuant to clause 10.1 above, the Supervisory Authority hereby grants written approval to the Contractor for the Subcontract with the Prime Subcontractor for the provision of the following services to the Contractor:
- (a) Hosting environment – The complete design, establishment and operation of the hosting environment, including equipment refresh after five years;
 - (b) Software – The complete design, development and operation of the International Registry application, including 3rd level support;
 - (c) Helpdesk – Registry Official 1st Level support for end users;
 - (d) Operations management –management of the complete International Registry system and operations model, including managing the technical certification of the system; and
 - (e) Any other activities necessary to support the Contractor in its duties under this Contract to provide Registrar Services.
- 10.8 The Contractor shall, subject to the terms of the confidentiality provisions of this Contract (clause 22) provide a copy of this Contract to the Prime Subcontractor for informational purposes only.

11. PROVISION OF ANCILLARY SERVICES

- 11.1 Subject to, and in accordance with, the prior written approval of the Supervisory Authority, the Contractor may permit the Prime Subcontractor to provide Ancillary Services. The Supervisory Authority will not provide its approval to any other person or entity to provide Ancillary Services. If the Supervisory Authority considers that a proposed service is not incompatible with the International Registry functions and is not an inappropriate use of the resources of the International Registry, the Supervisory Authority may consider this a positive factor in its overall evaluation of that ancillary service. Without limiting the Supervisory Authority's discretion, a service is 'not incompatible with the International Registry functions' where it relates to the (1) purchase and sale or financing and leasing of rail objects, or (2) the provision or exchange of information relating to the rail industry or rail related services provided that such service does not create any legal liability for the Contractor and that it is not a Registrar Service.
- 11.2 Ancillary Services means services offered by the Prime Subcontractor using the resources of the International Registry, including but not limited to using the website, branding, and Data Archives of the International Registry.
- 11.3 The Supervisory Authority shall commence consideration of a request by the Contractor for written approval for the provision of an Ancillary Service once the Supervisory Authority is satisfied that it has received all of the following information in relation to the request:

COMMERCIAL IN CONFIDENCE

- (a) a detailed description of the Ancillary Service that is intended to be provided;
 - (b) a detailed description of the resources that will or may be used in order to provide the Ancillary Service;
 - (c) details of the fees proposed to be charged for the Ancillary Service and auditing provisions for such fees;
 - (d) details of the extent to which the Ancillary Service will be provided using the resources of the Prime Subcontractor, and of any proposed contracts with the Prime Subcontractor; and
 - (e) details of the potential risks in relation to the provision of the Ancillary Service and how the Contractor or the Indemnified Parties will be protected against such risks.
- 11.4 Following receipt of the first piece of information under clause 11.3, the Supervisory Authority shall maintain a dialogue with the Contractor to advise whether further information is required. Once all relevant information which is identified by the Supervisory Authority is provided by the Contractor, the Supervisory Authority shall provide a response within sixty (60) days of receipt of the last piece of such information.
- 11.5 The rights granted to the Contractor in this clause are exclusive for the Term and services offered utilising these rights shall be considered as Ancillary Services.
- 11.6 The Contractor agrees that it will not, nor will it permit the Prime Subcontractor to, provide any Ancillary Service that it is entitled to provide under this Contract, after the termination of this Contract, unless otherwise agreed by the Supervisory Authority.
- 11.7 The Contractor shall require that, in respect of the period during which the Prime Subcontractor is permitted to provide the Ancillary Services, the Prime Subcontractor shall procure and maintain insurance, with insurers of recognised reputation and having at least an AM Best rating of "A" or better, covering potential liability of the Prime Subcontractor in the provision of the Ancillary Services to end users in accordance with industry standard terms and conditions.
- 11.8 As part of the approval process of an Ancillary Service as set out in clauses 11.3 and 11.4, the Supervisory Authority may require the indemnification of the Indemnified Parties by the Contractor, and have the Contractor require the Prime Subcontractor to also indemnify those entities all in the manner determined by the Supervisory Authority.

12. FEES AND CHARGES

- 12.1 Fees for Registrar Services provided by the International Registry shall be as set out in, or pursuant to, the Regulations.
- 12.2 Fee revenues shall be applied to cover the reasonable costs of establishing, implementing and operating the International Registry as detailed in Attachment III hereto and staff redundancy and closure costs, and the reasonable costs of the Secretariat associated with the performance of its functions.
- 12.3 The Supervisory Authority may require verification and/or audits with respect to any Establishment Costs, Operating Expenses or other implementation costs of the Contractor, or the Contractor's management of resources provided to it by Subcontractors or, in respect of any items introduced by Change Control, with its Subcontractors. Such verification and/or audit procedures may be used to determine whether the costs for services being provided by the Subcontractor are commensurate with

COMMERCIAL IN CONFIDENCE

prevailing market rates at the time the commitments in respect of such costs are made and at “most favoured nation” rates in the SITA SC group of companies. Additional Change Control may be applied by the Supervisory Authority if warranted by the results of such verification or audit. The Contractor will also provide the Supervisory Authority with a copy of its audited accounts on an annual basis within thirty (30) days of board approval thereof.

12.4 For the purposes of clause 12.2,

- (a) the Parties agree that the Contractor shall be responsible for reimbursement of the reasonable out of pocket expenses of the Secretariat associated with the performance of its functions as from the Commencement Date until the end of the Term;
- (b) the functions of the Secretariat shall comprise:
 - 1. hosting meetings of the Supervisory Authority and any subsidiary bodies it may create, and the customary work associated with such meetings, including the issuance of notices of meetings, agendas, and the preparation and dissemination of documents for, and resulting from, such meetings;
 - 2. serving as the point of contact, vis-à-vis third parties, for the Supervisory Authority; and
 - 3. participating in the Ratification Task Force.
- (c) the Secretariat’s expenses of carrying out the functions set out in (b) above are not expected to exceed, at least for the first five years of the Registry’s operation, fifteen thousand (15,000) euro per year. In any event, the Secretariat shall advise the Supervisory Authority and the Contractor in advance if it expects such expenses to exceed such amount in any year. In such case, the Supervisory Authority and the Contractor shall be entitled to consult with the Secretariat with a view to determining whether such excess expenditures are necessary.
- (d) the Supervisory Authority, the Contractor and the Secretariat may jointly decide that the Secretariat will carry out additional functions for the Supervisory Authority. In such case, the Contractor will be responsible for reimbursing the Secretariat for its reasonable out of pocket expenses in carrying out such additional functions.
- (e) the Secretariat shall be entitled to claim costs pursuant to (b) and (d) above from the Commencement Date which shall be payable in arrears and be subject (1) to the Secretariat providing an invoice to the Contractor for the relevant amount, and (2) review and approval by the Supervisory Authority.

12.6 For the purposes of clause 12.2 above, the fee revenues will be net of the Supplemental Charge, which will be payable to the Prime Subcontractor, and do not include Fees for Ancillary Services, except to the following extent:

- (a) In the period between the Commencement Date and the date that the accumulated fee revenues in clause 12.2 have not yet equalled the Fee Threshold, the Contractor will ensure that the Prime Subcontractor providing Ancillary Services will credit the Contractor with an amount that is equal to 40% of gross revenues from fees for Ancillary Services; and
- (b) Once the accumulated fee revenues in clause 12.2 have exceeded the Fee Threshold, the Contractor will ensure that the Prime Subcontractor for the duration that it is providing the Ancillary Services will credit the Contractor an amount that is equal to 8% of gross fee revenues from fees for the Ancillary Services, provided that in no case shall the amount required to be credited by the Prime Subcontractor to the Contractor exceed an amount greater than 25% of the gross amount of the total payments due by the Contractor to the Prime Subcontractor under the relevant Subcontract for that year.

COMMERCIAL IN CONFIDENCE

- 12.7 In relation to the operation of the International Registry, the Contractor shall submit to the Supervisory Authority, no later than three (3) months before the beginning of each calendar year of operation (in respect of the first Year, three (3) months before the commencement of the operation), a draft budget for the year detailing anticipated expenditures and revenues. The Supervisory Authority shall advise the Contractor within forty five (45) days of receipt of the draft budget whether it has agreed to the draft budget, or agreed to the draft budget subject to changes, or non- approval with reasons for non- approval provided.
- 12.8 Where the Supervisory Authority has advised the Contractor that it has agreed to the draft budget subject to changes, the Contractor shall submit a revised budget incorporating those changes within ten (10) days for approval by the Supervisory Authority.
- 12.9 For the purpose of clause 12.2, the Parties acknowledge that the cost recovery principle is based on the ten (10) Year operation of the International Registry, and that it is possible that there may be yearly periods of operation of the International Registry in which costs exceed revenues or revenues exceed costs.
- 12.10 In the event that at any time during the Term the Parties agree that, having regard to the operation of the International Registry, projected levels of transactions on the International Registry, the existing level of fees and the projected levels of revenue and expenditure, the cost recovery principle is likely not to be satisfied, the Parties shall enter into consultations with a view to considering what measures might enable the cost recovery principle to be satisfied, which measures may include fee increases, modifications to (including possible reductions of) the Registrar Services, or such other measure as the Parties may consider to be effective. The consultations may include joint discussions with Subcontractors including any and all aspects of this Contract and Subcontracts.
- 12.11 Subject to clause 12.2, the Parties agree to establish a process for the management of requests by the Contractor to amend the International Registry Fee Schedule so that such requests can be considered by the Supervisory Authority within four (4) months of receipt by the Supervisory Authority of the request and of all information and documentation it deems required in order for it to consider the request.
- 12.12 Where, after a period of four (4) years after the Go-Live Date, the annual fee revenues for Registry Services exceed the annual Operating Expenses, the Contractor shall establish and maintain a reserve fund during the remainder of the Term for an amount to be agreed between the parties at the time to cover volatility issues, contingency amounts and insurance deductibles. This amount may be further modified by the Supervisory Authority in consultation with the Contractor, and its use shall be subject to the prior written approval of the Supervisory Authority. The Contractor shall be entitled to treat any allocation of income into the reserve fund as a reasonable Operating Expense of the International Registry in accordance with Article 17(2)(h) of the Convention and Article XVI(2) of the Protocol. The Contractor agrees to transfer the above mentioned amount to the Supervisory Authority or on the instructions of the Supervisory Authority to the Secretariat in the event that the Supervisory Authority chooses, after consultation with the Contractor, for the Supervisory Authority or the Secretariat (as the case may be) to be the party maintaining the reserve fund, in accordance with the guidelines to be agreed between the Parties.

13. TITLE AND RIGHTS TO EQUIPMENT

- 13.1 Unless otherwise provided in this Contract, the title in and to, and risk of loss and damage to, any equipment of the International Registry (computer equipment, servers etc.) and Software shall remain with the Contractor or Subcontractors as the case may be, provided that title in and to all Intellectual Property Rights in the Data Archives shall be vested in the Supervisory Authority in accordance with

COMMERCIAL IN CONFIDENCE

Article 17(4) of the Convention and as detailed in clause 23 (Intellectual Property Rights) of this Contract. The Contractor expressly recognises that such title and property rights in the Data Archives shall be held at all times by the Supervisory Authority and agrees that all Subcontracts will acknowledge this.

- 13.2 The Contractor shall firmly affix information plates, stickers, labels or any other form of easily visible signage to any physical device, including, inter alia, the International Registry infrastructure hardware installations and servers at the primary and back-up (disaster recovery) sites and to any other physical device storing Data Archives, specifying that the device and any information stored therein are inviolable and immune from seizure, and that title to the information stored therein belongs to the Supervisory Authority.
- 13.3 The Contractor shall make the Data Archives accessible upon request by the Supervisory Authority during the term of this Contract, and the Supervisory Authority shall have access to the premises of the Contractor and to any equipment necessary in order to take possession of the Data Archives and to ensure that the obligations of the Contractor have been carried out. The Contractor shall safeguard the Data Archives upon termination or non-renewal of this Contract for subsequent transfer to the Supervisory Authority or the person/entity designated by the Supervisory Authority.
- 13.4 The Supervisory Authority hereby grants the Contractor an irrevocable license to use the Data Archives from the Go-Live Date until the termination of the Contract, and for the sole purpose of operating the International Registry and complying with its obligations under this Contract. The Contractor may not sublicense the licence granted by this clause unless it has the express, specific written authority of the Supervisory Authority to do so.

14. PORTABILITY

- 14.1 The Contractor shall ensure the portability, without undue delay, of all Software and Documentation used for the purposes of the operation of the International Registry but excluding any Software developed exclusively in relation to the provision of Ancillary Services.
- 14.2 For Software and Documentation that is subject to portability as described in clause 14.1 and which is used under licence, the Contractor shall use All Reasonable Efforts to ensure portability of the licences under the relevant licence agreements to the fullest extent possible under applicable law and software vendor practice. Unless otherwise agreed by the Supervisory Authority, such portability should be at the same fee subject to any third party licence fees. The Contractor shall furnish evidence of portability of the licences to the Supervisory Authority upon demand.
- 14.3 The Contractor and the Supervisory Authority agree to enter into the Software Security Agreement with the Prime Subcontractor on or about the date hereof providing for securing of the Software in the event of the expiry or termination of this Contract, as more specifically set out therein, and shall enter into an agreement in analogous terms with any other Subcontractors providing Software to the Contractor.
- 14.4 For Software, and associated Documentation, individually developed by the Contractor or its Subcontractors other than Software developed exclusively in relation to the provision of Ancillary Services, the Contractor shall ensure portability subject to Software being made available pursuant to a Licence Agreement.

COMMERCIAL IN CONFIDENCE

- 14.5 In procuring a New Service Provider, the Supervisory Authority shall make such New Service Provider aware of the provisions of clause 38.18 and the requirement for the New Service Provider to agree to a compensation payment schedule with the Prime Subcontractor.
- 14.6 Upon receipt of a notice of termination or a notice of non-renewal of this Contract, the Contractor shall maintain a copy of all updated Software, source code(s) and Documentation and the updated system design used for the purposes of the operation of the International Registry, until their subsequent transfer to the New Service Provider or a person or entity designated by the Supervisory Authority, in accordance with clause 14.4 of this Contract.

15. DOMAIN NAME

- 15.1 The International Registry shall be operated from the domain name specified by the Supervisory Authority pursuant to the Regulations. The Supervisory Authority shall be responsible for administering the domain name system, domain and records. The Supervisory Authority hereby grants to the Contractor an irrevocable license to use the International Registry domain name during the Term for the sole purpose of operating the International Registry.
- 15.2 Clause 15.1 shall apply, *mutatis mutandis*, to any other business or social media or application used by the International Registry for carrying out its functions under the Convention and Protocol.

16. LAW OF THE CONTRACT

- 16.1 This Contract shall be governed by English law.
- 16.2 The contractual relationship between users of the International Registry and the Contractor in its capacity as Registrar in relation to Registrar Services shall be governed by the laws of Luxembourg subject to the terms of the Convention and the Protocol.

17. CHANGE IN OWNERSHIP AND CONTROL

- 17.1 Any Substantial Change in Control of the Contractor or a Parent of the Contractor which occurs without the prior written approval of the Supervisory Authority shall, subject to clause 17.3, constitute a breach by the Contractor of its obligations under this Contract and, in addition to any other remedy that might be available to the Supervisory Authority, shall entitle the Supervisory Authority to terminate this Contract for reason of default of the Contractor pursuant to clause 37.2 (Termination). Such a breach shall be deemed to have occurred at the time that the Substantial Change in Control occurred.
- 17.2 The Contractor shall inform the Supervisory Authority as soon as possible upon becoming aware of the likelihood of a Substantial Change in Control as referred to in clause 17.1 above. A failure by the Contractor to inform the Supervisory Authority pursuant to this clause shall, subject to clause 17.3, constitute a breach by the Contractor of its obligations under this Contract.
- 17.3 Notwithstanding clauses 17.1 and 17.2 if, regarding a Substantial Change in Control relating to a Parent, the Contractor is unaware of the Substantial Change in Control due to legal restrictions on a Parent, then as soon as possible after the restriction is lifted and the Contractor becomes aware of the Substantial Change in Control (and in any event no later than sixty (60) days after such Substantial Change in Control) the Contractor shall present to the Supervisory Authority information on how the

COMMERCIAL IN CONFIDENCE

Substantial Change in Control may impact the Contractor and the operation of the International Registry. The Supervisory Authority will review this information and notify the Contractor without undue delay whether it agrees to the change. If the Supervisory Authority notifies the Contractor that the Substantial Change in Control is not acceptable, a breach as referred to in clause 17.1 shall occur on the date of notification of non-acceptance.

18. INSOLVENCY

18.1 The Supervisory Authority may, without prejudice to any other right or remedy it may have under the terms of this Contract, terminate this Contract forthwith by giving the Contractor Notice of such termination in the event that the Contractor:

- (a) admits in writing its inability to pay, or fails to pay, debts generally as they become due;
- (b) files a petition in bankruptcy or a petition to take advantage of any insolvency act or file an answer admitting or failing to deny the material allegations of such petition;
- (c) makes an assignment for the benefit of its creditors;
- (d) consents to the appointment of, or possession by, a custodian for itself or for the whole or substantially all of its property;
- (e) on a petition in bankruptcy filed against it, is adjudicated, or has an order for relief granted as, a bankrupt;
- (f) files a petition or answer seeking reorganization or arrangement or other aid or relief under any bankruptcy or insolvency laws or any other law for the relief of debtors or files an answer admitting, or fail to deny, the material allegations of a petition filed against it for any such relief;
- (g) is, or is deemed for the purposes of the applicable law to be, unable to pay its debts as they fall due;
- (h) enters into any insolvency type situation such as (but not limited to) provisional liquidation, liquidation, receivership, examinership, or an arrangement, assignment or composition with creditors;
- (i) becomes subject to an order, judgement or decree of a court of competent jurisdiction appointing a custodian or administrator or liquidator for the Contractor or of the whole or substantially all of its property; or
- (j) becomes subject to an order, judgement or decree of a court of competent jurisdiction approving a petition filed against the Contractor seeking reorganization or arrangement of the Contractor under any bankruptcy or insolvency laws or any other law for the relief of debtors.

18.2 The Contractor shall advise the Supervisory Authority within twenty four (24) hours of it becoming aware of the occurrence of any event described in clause 18.1.

19. WARRANTY AND SERVICE LEVELS

19.1 The Contractor represents, warrants and covenants that at the Commencement Date, as at the Go-Live Date and, in relation to clause 19.1(a) during the Term:

- (a) it is a corporation duly organised, validly existing and in good standing under the laws of its incorporation or formation and is duly qualified to do business wherever necessary to carry on its present operations;

COMMERCIAL IN CONFIDENCE

- (b) the Contract constitutes its valid and binding agreement thereto enforceable in accordance with its terms, that it has the power and authority to enter into the Contract and the transactions contemplated hereby and has been duly authorized by all necessary action of its board of directors;
- (c) as far as the Contractor is aware, the transactions contemplated hereby and the execution, delivery and performance of the Contract by the Contractor do not and will not violate any applicable law, or any order, writ, injunction, decree, rule or regulation of any court, administrative agency or any other governmental authority or any provision in any existing agreement binding on the Contractor;
- (d) no consent of any affiliate or holder of any indebtedness of the Contractor is or will be required as a condition to the validity of this Contract, or, if required, all such consents have been or will be duly obtained;
- (e) there is no action, suit or proceeding pending or threatened against the Contractor before any court, administrative agency or other governmental authority which brings into question the validity of, or might in any way impair, the execution, delivery or performance by Contractor of the Contract or the transactions contemplated hereunder; and
- (f) it is the owner or rightful unrestricted licensee of the Intellectual Property Rights relating to Software required to run the International Registry and to deliver the Registrar Services.

19.2 The Contractor warrants and covenants that:

- (a) it will provide the Registrar Services with reasonable care and skill that can be expected from a competent communications and information technology services provider operating in the information technology industry;
- (b) the Registrar Services (including any Software or equipment provided by the Contractor) will, after installation and acceptance by the Contractor, provide to a substantial degree the facilities and functionalities set out in the relevant technical specifications;
- (c) it will not incur any material debts nor enter into agreements with third parties other than in the ordinary course of its business or where authorised hereunder, nor make any distributions in each case without the prior written consent of the Supervisory Authority, such consent not to be unreasonably withheld or delayed;
- (d) it will, during the Term operate and be in good standing under, and generally comply with, the laws of its incorporation or formation and other applicable laws and be qualified to do business wherever necessary to carry on its obligations hereunder; and
- (e) during the Term, its directors and officers will be fit and proper consistent with its standing as a company operating a public registry.

19.3 In this Contract, the foregoing warranties are in lieu of any other warranty, term or condition of any kind, express or implied, including, without limitation, any warranty against latent defects or warranty as to fitness for a particular purpose and all such other express and implied warranties, terms and conditions are hereby excluded from this Contract to the extent permitted by law.

19.4 The Supervisory Authority acknowledges that software in general is not error free and agrees that the existence of minor errors shall not constitute a breach of this Contract.

19.5 The Contractor shall arrange for preventive maintenance assistance from its Subcontractors for the duration of the Term. The assistance shall consist of maintenance support in the systems and of direct advice to the personnel in charge of maintenance.

20. INDEMNIFICATION AND LIABILITY

- 20.1 Subject to clause 20.3, the Contractor shall indemnify, hold and save harmless, and defend, at its own expense, the Indemnified Parties from and against all suits, claims, demands and liability of any nature or kind, including their costs and expenses, arising out of negligent or wilful acts or omissions or default under this Contract of the Contractor or the Contractor's employees, officers, agents, Subcontractor or Subcontractors, in the performance of this Contract. This provision shall extend to claims and liability in the nature of workmen's compensation claims. The Contractor shall not take any action or pursue any claim against the officials, agents, servants, representatives, co-chairpersons, employees and subsidiary bodies of the Indemnified Parties arising from this Contract or the Protocol.
- 20.2 Neither Party shall be liable to the other for any indirect, special, punitive, incidental or consequential damage, loss of revenue, profit or goodwill howsoever arising.
- 20.3 The total liability of the Contractor in respect of any claims made under this Contract (whether or not caused by the negligence or default of the Contractor or Subcontractors or their respective employees or agents arising out of or in connection with the fulfillment or purported fulfillment or failure in the fulfillment of the obligations of the Contractor hereunder) shall not exceed an aggregate amount of one million and five hundred thousand US dollars (US\$1,500,000) for all incidents related or unrelated in any period of twelve (12) months.
- 20.4 Notwithstanding any provision of this Contract to the contrary, neither Party excludes or limits its liability to the other Party for death or personal injury to the extent only that the same arises as a result of the negligence of that Party, its employees or authorised agents and clause 20.3 shall not apply where a Claim arises under clause 23.4 (Intellectual Property Rights).
- 20.5 The Contractor shall not be liable to the Supervisory Authority and the Secretariat in relation to any acts or omissions of third parties other than where permitting such acts or omissions represents a breach by the Contractor of its obligations under this Contract. For purposes of this subclause, Subcontractors shall not be considered as third parties.
- 20.6 The Parties expressly agree that:
- (a) the limitations and exclusions in this clause 20 are each subject to clause 20.4 and are otherwise each to be interpreted separately and without prejudice to the generality of the other limitations and exclusions; and
 - (b) should any limitation or provisions contained in this clause 20 be held to be invalid under any applicable statute or rule of law it shall to the extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded, such liability shall be subject to the other limitations and provisions set out herein.
- 20.7 The Parties recognise that contractual arrangements between the International Registry and its users may, to the extent that they relate to the provision of Ancillary Services, provide for industry-standard limits and exclusions of liability.
- 20.8 Subject to the prior written approval of the Supervisory Authority, contractual arrangements between the Contractor and Subcontractors may provide for the Contractor to hold harmless and indemnify Subcontractors against liability pursuant to Article 28 of the Convention and Article XV of the Protocol.

21. ENCUMBRANCES / LIENS

COMMERCIAL IN CONFIDENCE

- 21.1 The Contractor shall not cause or permit any hypothec, lien, attachment or other encumbrance to be created over the Data or Archives or any asset necessary to operate the International Registry by any person or to be placed on file in any public office or on file with the Supervisory Authority or the Secretariat against any monies due or to become due for any work or material furnished under this Contract, or by reason of any other claim or demand against the Contractor.
- 21.2 The Contractor shall not grant a hypothec or security over its assets necessary to operate the International Registry nor any undertaking to creditors, and shall make it clear in its dealings with creditors that the Data Archives of the International Registry are the property of the Supervisory Authority, and that these and all other assets necessary to operate the International Registry are inviolable and immune from seizure or other legal or administrative process.

22. CONFIDENTIALITY

- 22.1 The Recipient may be given access to Confidential Information from the Discloser in order to perform its obligations under this Contract. The Recipient shall hold the Confidential Information in confidence and, unless required by law, not make the Confidential Information available to any third party, or use the Confidential Information for any purpose other than the implementation of this Contract. The Recipient shall take all reasonable steps to ensure that the Confidential Information to which it has access is not disclosed or distributed by its employees or agents or Subcontractors in violation of the terms of this Contract. The obligations in this clause 22.1 shall not apply to Confidential Information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
 - (b) was in the other party's lawful possession before the disclosure; or
 - (c) is lawfully disclosed to the Recipient by a third party without restriction on disclosure; or
 - (d) is independently developed by the Recipient, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body; or
 - (f) is disclosed to an adviser under a professional duty of confidentiality or a Subcontractor or other third party who enters into a non-disclosure agreement substantially in the terms approved by the Supervisory Authority in writing.
- 22.2 The Contractor shall not communicate at any time to any other person or authority external to the Supervisory Authority (save for the Secretariat and its advisors), any information known to it by reason of its association with the Supervisory Authority which has not been made public except with the written authorization of the Supervisory Authority; nor shall the Contractor at any time use such information for private advantage.
- 22.3 Unless authorized in writing by the Supervisory Authority, the Contractor shall not disclose the particulars of the Contract, advertise or make otherwise public the fact that it is performing, or has performed, services for the Supervisory Authority, or use the name, emblem, or official seal of the Supervisory Authority or the Secretariat, or any abbreviation of the name of the Supervisory Authority or the Secretariat for advertising or for any other purpose.

23. INTELLECTUAL PROPERTY RIGHTS

COMMERCIAL IN CONFIDENCE

- 23.1 The Supervisory Authority shall be entitled to all Intellectual Property Rights with regard to the Data Archives. At the Supervisory Authority's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights in relation to the Data Archives for the benefit of the Supervisory Authority in compliance with the requirements of the applicable law. At the Supervisory Authority's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in carrying out the Contractor's obligations in relation to the portability of Software pursuant to clause 14 (Portability).
- 23.2 All Intellectual Property Rights in the Software, Registrar Services and Materials are either licensed to or are the property of the Contractor, and this Contract does not convey to the Supervisory Authority any right, title or interest in them. The Contractor hereby provides the Supervisory Authority with a non-exclusive licence to use the Intellectual Property Rights in the Software, Registrar Services and Materials solely for the purposes as set out in this Contract for the Term and thereafter where required pursuant to this Contract or agreed between the Parties.
- 23.3 It is the Contractor's responsibility to use All Reasonable Efforts to ensure that no Intellectual Property Rights and other proprietary rights, including but not limited to copyrights, patents, and trademarks which are material to the use and operation of the International Registry are violated and to defend at its own expense any suit or proceedings against the Indemnified Parties based on any claim of an infringement of third party Intellectual Property Rights. Should any equipment procured by the Contractor for the operation of the International Registry be held to constitute infringement and its use is prevented or limited, the Contractor shall modify, or procure modification of, the equipment so that it is not infringing yet performs the task specified in this Contract, or remove such equipment or systems from operation without compromising the required performance or functionality of the overall system in all material respects.
- 23.4 Subject to clauses 23.5 – 23.6 and 23.8, the Contractor shall indemnify the Indemnified Parties against any damages, costs and expenses finally awarded against such parties by a court or arbitral tribunal in respect of a Claim arising from the infringement of any Intellectual Property Rights of any third party unaffiliated to the Indemnified Parties arising in relation to (i) the use of Software, the Registrar Services and the Materials supplied by the Contractor for the International Registry as contemplated in this Contract; and (ii) the provision by the Prime Subcontractor of the Prime Subcontractor's equipment, Software and services or equipment, proprietary or open source software supplied by the Prime Subcontractor under its Subcontract.
- 23.5 If an Indemnified Party is aware of a Claim or a potential or actual Claim is made against it in connection (i) with Software, Registrar Services and Materials supplied by the Contractor for the International Registry, or (ii) the provision by the Prime Subcontractor of the Prime Subcontractor's equipment, Software and services or equipment, proprietary or open source software supplied by the Prime Subcontractor under its Subcontract, then the Indemnified Party claiming the benefit of the indemnity referred to in clause 23.4 shall:
- (a) promptly notify the Contractor in writing of the Claim or potential Claim together with all relevant facts;
 - (b) not make any admissions or settlement in respect of any Claim or potential Claim without the consent of the Contractor (such consent not to be unreasonably withheld or delayed), it being acknowledged that, where the Claim relates to the Prime Subcontractor, the Contractor will need to have reasonable time to discuss the matter with the Prime Subcontractor;
 - (c) if requested by the Contractor, allow the Contractor or Prime Subcontractor (as the case may be), at its own expense, to defend and have full conduct of any negotiations and settlement of any Claim, including instructing such professional (including legal) and other advisers as it

COMMERCIAL IN CONFIDENCE

chooses subject to the Indemnified Party being indemnified against all reasonable costs or expenses which may be incurred by the Indemnified Party as a result of such defence and conduct;

- (d) provide the Contractor (and where requested by the Contractor, the Prime Subcontractor), with all information and assistance reasonably required by the Contractor or Prime Subcontractor in respect of its defence of any Claim (at, respectively, the Contractor's or Prime Subcontractor's reasonable cost); and
- (e) without prejudice to the foregoing, do all things reasonable to mitigate all losses arising from the Claim.

23.6 Where the Contractor is made aware by any Indemnified Party of a potential or actual Claim arising from the infringement of any Intellectual Property Rights of any third party arising from the Prime Subcontractor providing the Prime Subcontractor's equipment, Software and services or equipment, proprietary or open source software services under its Subcontract, the Contractor shall be under an obligation to pursue a claim against the Prime Subcontractor in connection with such Claim and will take all steps in such pursuit that a prudent claimant in its position would take vis-à-vis the Prime Subcontractor.

23.7 The indemnity in clause 23.4 shall not apply where the Claim results from

- (a) any modification, adaptation or development of materials used in the Software, Registrar Services and Materials supplied by the Contractor for the International Registry not made by or on behalf of the Contractor;
- (b) any combination or use of the Software, Registrar Services and Materials or any part thereof (including the equipment provided by the Contractor or the Software) with any item or in a manner not authorised by this Contract or by the Contractor;
- (c) the Contractor's compliance with specifications provided by third parties unconnected with the Contractor, where such infringement would not have occurred but for such compliance; and
- (d) subject to the Contractor complying with clause 23.8, any Subcontractor equipment, proprietary or open source software.

23.8 The Contractor will provide the Supervisory Authority with the benefit of any indemnity provided to the Contractor from a Subcontractor in relation to such Subcontractor's equipment, proprietary or open source software.

23.9 In the event of any Claim or where in the Contractor's reasonable opinion a Claim is likely to be made, the Contractor may at its sole option and expense:

- (a) procure for the right to continue using the Software, Registrar Services and Materials supplied by the Contractor for the International Registry in accordance with this Contract;
- (b) modify the Software, Registrar Services and Materials supplied by the Contractor for the International Registry or the infringing or allegedly infringing materials used by the International Registry or the Contractor so that they are no longer infringing; and
- (c) replace the Software, Registrar Services and Materials supplied by the Contractor for the International Registry or the infringing or allegedly infringing materials used by the International Registry or the Contractor with non-infringing services and/or materials that offer the same or equivalent performance or functionality in all material respects.

24. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES

COMMERCIAL IN CONFIDENCE

- 24.1 The Contractor shall be responsible for the professional and technical competence of its employees and will select for work under this Contract reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs and conform to a high standard for moral and ethical conduct. The Contractor shall notify the Supervisory Authority of any change in its management and shall provide the Supervisory Authority with corresponding *curricula vitae*.
- 24.2 The Contractor and its employees shall conform to all applicable laws, regulations and ordinances.
- 24.3 The Supervisory Authority and the Contractor agree that, as at the Commencement Date, the Acquired Rights Directive shall not apply in such a way as to transfer the employment of any employee of the Supervisory Authority to the Contractor at the Commencement Date.
- 24.4 This Contract envisages that, subsequent to the commencement of the Registrar Services, the identity of the provider of the Registrar Services may change (whether as a result of the termination of this Contract or otherwise) resulting in the provision of the Registrar Services being undertaken by a New Service Provider. Such change in the identity of the supplier of such Registrar Services shall be a "Transfer". The Parties acknowledge that such a Transfer may be subject to the provisions of the Acquired Rights Directive and in such event a New Service Provider may inherit liabilities in respect of the Contractor's employees.
- 24.5 The Contractor agrees, subject to applicable data protection legislation, that it shall, when requested by the Supervisory Authority, provide to a New Service Provider all relevant information regarding its employees as is required under the Acquired Rights Directive to inform any prospective New Service Provider, provided that the Supervisory Authority imposes on such New Service Provider obligations of confidence that are no less onerous than the Supervisory Authority has to the Contractor in relation to that information.
- 24.6 The Contractor agrees that, following the date which is twelve (12) months before the end of the Term or on receipt of notice from the Supervisory Authority terminating this Contract, it will not, other than in the ordinary course of business, without the prior written consent of the Supervisory Authority (which shall not be unreasonably withheld or delayed):
- (a) increase the total number of employees providing the Registrar Services;
 - (b) make, propose or permit any material changes to the terms and conditions of employment of any of its employees;
 - (c) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees of the Contractor; and
 - (d) replace any of its staff or deploy other persons to perform the Registrar Services or terminate or give notice to terminate the employment or contract of any persons employed by the Contractor.
- 24.7 The Parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employees' representatives in relation to a Transfer will be fulfilled.
- 24.8 The Supervisory Authority will procure that the New Service Provider shall assume the outstanding obligations of the Contractor and any Subcontractor in relation to the transferring employees in respect of salaries, bonuses or other employee benefits or statutory payments, accrued holiday entitlements and accrued holiday remuneration up to the date of the Transfer in connection with the provision of Registrar Services. In consideration, the Contractor will, and will procure that any Subcontractor will, pay to the New Service Provider within fourteen (14) Days of the date of the

COMMERCIAL IN CONFIDENCE

Transfer the full amount necessary to enable New Service Provider to meet the cost of providing any such untaken holiday entitlement and remuneration up to and including the date of the Transfer.

- 24.9 The Contractor will indemnify the Supervisory Authority and any New Service Provider against all Employee Liability arising from any act or omission of the Contractor or any of its Subcontractors in relation to their obligations under the Acquired Rights Directive except to the extent that the liability arises from the Supervisory Authority's or the New Service Provider's failure to comply with the relevant provisions of the Acquired Rights Directive.

25. INSURANCE & LIABILITY

- 25.1 The Contractor shall obtain comprehensive insurance, with insurers of recognized reputation, responsibility and having at least an A.M. Best rating of "A" or better, for a reasonable premium, covering the establishment and operation of the International Registry under this Contract. The International Registry, including equipment, shall be insured against reasonable risks, including third-party liability.
- 25.2 The level and amount of insurance referred to in clause 25.1 shall be that set by the Supervisory Authority in accordance with Article XV(7) of the Luxembourg Protocol, Resolution No. 6 of the Luxembourg Diplomatic Conference and, subject to the terms of this clause 25.2, the Regulations. With respect to third party losses caused by the error or omission of the Registry, the amount of insurance or financial guarantee to be not less than fifteen million Special Drawing Rights (SDR 15,000,000) per year, and five million Special Drawing Rights (SDR 5,000,000) per event of loss covering up to three (3) events of loss per annual insurance or guarantee period (as appropriate). An event of loss would comprise all losses caused by the same error or omission or malfunction insofar as the losses are compensable under Article 28(1) of the Convention. If three (3) events of loss occurred in any one annual insurance or guarantee period (as appropriate), the Contractor would need to procure additional insurance coverage to cover any additional events of loss that might occur in that year.
- 25.3 The insurances referred to in clause 25.1 above shall be maintained by the Contractor during the Term and the Supervisory Authority shall be named as additional insured and loss payee. All such insurance shall contain a Breach of Warranty Endorsement in favour of the Supervisory Authority and the insurer shall provide the Supervisory Authority with thirty (30) Days' advance notice of cancellation or material alteration.
- 25.4 The Contractor shall provide the Supervisory Authority with satisfactory evidence that all insurances required under this Contract have been taken out. Copies of such policies and certificates of insurance shall be furnished to the Supervisory Authority promptly on request.

26. DOCUMENTATION AND LANGUAGE

- 26.1 The Contractor shall provide the Supervisory Authority with the necessary technical documentation, including all operating/maintenance manuals and installation drawings necessary for the efficient operation of the International Registry as is reasonably required by the Supervisory Authority for its activities under this Contract. The Contractor shall provide copies of such documents and any updates to them to the Supervisory Authority as soon as reasonably practicable after they have been produced.

COMMERCIAL IN CONFIDENCE

- 26.2 All drawings, designs, specifications, manuals, name plates, marking, and operating instructions, statements, schedules, notices, documents, and all written communications between the Supervisory Authority and the Contractor concerning this Contract shall be in the English language and in the metric system of weights and measures and in other internationally accepted units unless otherwise specified.

27. OFFICIALS NOT TO BENEFIT

- 27.1 The Contractor warrants that no official of the Supervisory Authority or the Secretariat has been or shall be admitted by the Contractor to any direct or indirect benefit arising from this Contract or the award thereof.

28. WORKMEN'S COMPENSATION INSURANCE

- 28.1 The Contractor shall provide and thereafter maintain appropriate workmen's compensation and liability insurance, including insurance with respect to employment under this Contract.
- 28.2 The Contractor shall comply with the applicable labour laws providing for benefits covering injury or death in the course of employment.

29. SOURCE OF INSTRUCTIONS

- 29.1 The Contractor shall neither seek nor accept instructions from any person or entity external to the Supervisory Authority in connection with the performance of the work under this Contract. The Contractor shall refrain from any action which may adversely affect, and shall fulfil its commitments with fullest regard for, the interests of the Supervisory Authority.

30. ASSIGNMENT

- 30.1 The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof or of any of the Contractor's rights, claims or obligations under this Contract except with the prior written approval of the Supervisory Authority.

31. AMENDMENT

- 31.1 This Contract may, by agreement in writing between the Parties, be amended from time to time.
- 31.2 Contract amendments shall be effective only when executed and delivered on behalf of the Supervisory Authority and the Contractor by persons duly authorized in writing to do so.

32. DIRECTION OF CONTRACT

- 32.1 The Contractor shall perform the work in accordance with the terms of this Contract including its Attachments, and in accordance with the decisions and directions of the Supervisory Authority. Upon notification by the Supervisory Authority of the details of any failure by the Contractor to meet its obligations, without prejudice to the provisions of clause 34 (Licences), the Contractor shall take corrective action as soon as possible but in any event within two (2) weeks. Such directions shall be given in writing. If verbal instructions must be given, those verbal instructions shall be confirmed in writing within seven (7) Days.

33. REGULATORY REQUIREMENTS

- 33.1 It shall be the Contractor's responsibility to ensure that it is, and to procure that its Subcontractors are, fully in compliance with all applicable laws, enactments, rules, regulations, and procedures of their industry which have been established by any regulatory body with jurisdiction over any aspect of the scope of works of the Contract.

34. LICENCES

- 34.1 If any licence or permit is required for the performance of the Contract, the Contractor shall obtain, at its own cost, any such licence or permit.

35. OTHER REGISTRIES

- 35.1 The Supervisory Authority's prior written approval shall be required in order for (1) the Contractor, and/or its employees to participate in any other registry and (2) the use in any other Registry of the tangible assets solely used by the International Registry. Customized intellectual property used solely by the International Registry may be used in subsequent Registries created pursuant to Protocols under the Convention. If such intellectual property is built specifically for and is used in non-Cape Town Registries, where such usage occurs within five (5) years of its introduction into the International Registry, the Supervisory Authority may use Change Control or other appropriate procedures to adjust fees and/or obtain equitable compensation with respect to that portion of the customized intellectual property so used. The Contractor shall give at least three months' prior notice of such to the Supervisory Authority.

- 35.2. With respect to common changes or upgrades to the International Registry and to at least one other Registry created under a Protocol of the Convention, if implemented within one (1) year of each other, the Supervisory Authority may use change control or other appropriate procedures so that the cost of such to the International Registry is proportionally reduced.

36. FORCE MAJEURE

- 36.1 *Force majeure* as used herein means acts of God, war, civil commotion, terrorist act or insurrection and which neither party is able to overcome. As soon as possible after the occurrence of any cause constituting *force majeure*, the Contractor shall give notice and full particulars in writing to the Supervisory Authority of such *force majeure* if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. If the Supervisory Authority agrees that a *force majeure* has occurred, it shall so notify without undue delay the Contractor in writing, specifying the date of the *force majeure*, and then the following provisions shall apply:
- (a) Subject to clauses 36.1(b) and 36.1(c), the obligations and responsibilities of the Contractor under this Contract shall be suspended to the extent of its inability to perform them and for as long as such inability continues;
 - (b) If the Contractor is rendered permanently unable, wholly or substantially, by reason of *force majeure* to perform its obligations and meet its responsibilities under this Contract, the Supervisory Authority shall be entitled to terminate this Contract on the same terms and conditions as are provided for in clause 37 (Termination); and
 - (c) For the purpose of the preceding subparagraph, the Supervisory Authority may consider the Contractor permanently unable to perform in case of any period of suspension in excess of thirty (30) Days. Any such period of thirty (30) Days or less shall be deemed temporary inability to perform.

37. TERMINATION

- 37.1 Either Party, provided it is not in default of its obligations under this Contract, shall be entitled (but not required) to terminate this Contract on Notice thirty (30) Days after the service of such Notice if:
- (a) the other Party has failed to pay when due amounts due hereunder and such amount remains outstanding thirty (30) Days after it has received written notice of such non-payment;
 - (b) any representation or warranty made herein by the other Party is or shall become incorrect in any material respect; or
 - (c) the other Party fails to perform or observe any other material covenant, condition or obligation to be performed or observed by it hereunder or any agreement, document or certificate delivered by it in connection herewith and (if such failure is capable of being remedied) such failure shall continue for thirty (30) Days after written notice thereof.
- 37.2 The Supervisory Authority shall be entitled (but not required) to terminate this Contract forthwith on the service of Notice:
- (a) for default of the Contractor if a breach as referred to in clause 17.1 (Change in Ownership and Control) has occurred on the date of notification of non-acceptance;

COMMERCIAL IN CONFIDENCE

- (b) for default of the Contractor if a breach referred to in clause 17.2 (Change in Ownership and Control) has occurred on the date the Supervisory Authority becomes aware of such Substantial Change in Control;
- (c) in accordance with clause 18.1 (Insolvency); or
- (d) in accordance with clause 36.1(b) (*Force Majeure*).

37.3 Termination shall be given by Notice to the other party and shall be without prejudice to the accrued rights and liabilities of the parties up to the date of termination. The Notice shall be sent by registered mail, return receipt requested.

38. EFFECT OF TERMINATION OR EXPIRY

38.1 Subject to clauses 10.6 (Subcontractors), 14 (Portability) and 24 (Contractor's Responsibility for Employees), the Parties have agreed the effects and consequences of:

- (i) expiry;
- (ii) termination by the Supervisor Authority under clause 37.1 (Termination);
- (iii) termination by the Contractor under clause 37.1 (Termination); and
- (iv) termination by the Supervisory Authority under clause 37.2 (Termination),

and these are set out in this clause 38.

38.2 The following provisions shall apply generally in the event that expiry, termination or any entitlement to terminate arises:

- (a) the Contractor shall comply with its portability obligations under clause 14 (Portability) except where the Deed of Business Continuity is invoked through the issue of an Invocation Notice by the Supervisory Authority;
- (b) the Contractor shall provide Transition Services to the New Service Provider for the Transition Period for fees as agreed between the Contractor and the New Service Provider from time to time;
- (c) the Contractor agrees that it shall comply with the provisions of clause 51.6 (End of the Term of the Contract) in respect of the transition of the International Registry to a New Service Provider;
- (d) during the period between the Notice set out in clause 38.10(a) or clause 38.11(a) (as the case may be) and the End Date the Contractor shall not incur costs which are additional to those general costs required for the smooth running of the International Registry without the prior written approval of the Supervisory Authority; and
- (e) save as otherwise provided in this Contract, expiry or termination of this Contract for any reason shall not affect or prejudice the Parties' accrued rights as at the date of such expiry or termination.

38.3 Upon receipt of the Notice set out in clause 38.10(a) or clause 38.11(a), the Contractor shall take immediate steps to facilitate the transition of the International Registry to a New Service Provider in a prompt and orderly manner.

38.4 The steps contemplated in clause 38.3 shall include the Contractor:

- (a) complying with the provisions relating to the Handover Package as set out in clause 40 (Handover);

COMMERCIAL IN CONFIDENCE

- (b) complying with the provisions relating to the transition of the International Registry as set out in clauses 51.6 and 51.5 (End of the Term of the Contract);
- (c) liaising with the Supervisory Authority and any entity/person designated by the Supervisory Authority to provide reasonable assistance and advice concerning the provision of
 - (i) the Registrar Services and their transfer to the New Service Provider;
 - (ii) the Ancillary Services and their continued provision by the Prime Subcontractor;
- (e) not disposing of any assets required to operate the International Registry to the extent practicable; and
- (f) allowing the Supervisory Authority or the New Service Provider such access to the premises and any staff of the Contractor as the Supervisory Authority or the New Service Provider shall reasonably require for the purpose of informing and consulting with such staff over the terms and conditions on which their employment will be transferred (to the extent this is the case) to the New Service Provider.

38.5 In the event of the expiry or termination of this Contract and subject to all necessary third party consents, conditions and costs, both the Supervisory Authority and the New Service Provider shall have the option to require the prompt transfer to, or purchase by, the New Service Provider of some or all of the assets of the Contractor, other than the Software, used for the provision of the Registrar Services, at their fair market value. They shall further have the option to request the assignment to the New Service Provider, at no premium or cost other than reasonable out of pocket cost of the transfer, of the lease or licence (such lease or licence having been initially subject to the approval of the Supervisory Authority) for the premises occupied by the Contractor prior to the End Date (provided that the Contractor shall have no ongoing obligation for rent or licence fees following the effective date of the assignment) and all necessary Documentation as is required to operate the International Registry in accordance with this Contract, including but not limited to the Handover Package.

38.6 The Contractor shall, no later than ten (10) Days after the End Date:

- (a) provide to the Supervisory Authority a full accounting of:
 - (i) all payments received which relate, in whole or in part, to amounts attributable to Registrar Services to be provided after the End Date as the case may be, by any New Service Provider ("Pre-payments"); and
 - (ii) all amounts due to the Contractor from the Prime Subcontractor in respect of Ancillary Services to be delivered after the End Date ("Prime Subcontractor Receivables")

together with a certificate from its Chief Executive or Chief Financial Officer certifying the accuracy and completeness of the calculations; and

- (b) pay the Pre-payments and assign the Prime Subcontractor Receivables to the Supervisory Authority or to the New Service Provider (if so directed by the Supervisory Authority).

38.7 For the purposes of calculating the Pre-payments and the Prime Subcontractor Receivables:

- (a) where an annual fee is paid, the amount payable shall be the pro rata amount of the fee for the number of Days remaining from the End Date until the date when the next annual fee is payable;
- (b) where fees have been paid in respect of Registrar Services where some will be provided after the End Date, the amount payable shall be the pro rata amount of the fee for the such services remaining to be provided;

COMMERCIAL IN CONFIDENCE

- (c) where fees are due to the Contractor in respect of Ancillary Services where some will be provided after the End Date, the amount payable shall be the pro rata amount of the fee for such Ancillary Services remaining to be provided; and
- (d) where the fees have been paid on account of future services, the amount of such fees.

In the event that the Parties do not agree on the amount payable, the provisions of clause 41 (Dispute Settlement and Jurisdiction) shall apply and in the interim the Contractor shall pay to the Supervisory Authority or to the New Service Provider (if so directed by the Supervisory Authority), the amount it considers payable under clause 38.6.

- 38.8 The Contractor hereby irrevocably and unconditionally charges the Pre-payments and assigns by way of security the Prime Subcontractor Receivables (collectively the "Collateral") in favour of the Supervisory Authority as a first ranking chargee in order to secure the Contractor's obligations under clause 38.7 (b) and any costs incurred by the Supervisory Authority in enforcing its rights thereunder and the terms of this charge. If an event occurs which, either immediately or with the lapse of time, would give the Supervisory Authority the right to terminate this Contract, or the Supervisory Authority reasonably believes that such event will occur (a "Default"), the Contractor agrees, on being notified of the Default, to pay any Pre-payments, and to cause all Pre-payments received thereafter to be paid, to a designated bank account in a jurisdiction agreed with the Supervisory Authority and enter into such additional documentation as may be reasonably required by the Supervisory Authority in order to perfect such security (including a pledge over any designated bank account receiving the Pre-Payments). The Contractor hereby covenants that on the occurrence of a Default, it shall not transfer, assign charge or otherwise deal with the Collateral without the prior written consent of the Supervisory Authority unless and to the extent that the Collateral relates to a Registrar Service provided prior to the End Date, in which case the amount may be released into its general funds.
- 38.9 In the event that a Termination Event occurs, or this Contract shall not be renewed, and the Contractor fails to remit Pre-payments to the Supervisory Authority, or its assignee, after receiving not less than ten (10) Days' Notice of non-payment, the Supervisory Authority shall be entitled to foreclose on the Collateral in order to settle all amounts due to the Supervisory Authority, or its assignee.

On expiry

38.10 In the event that this Contract shall not be renewed then the following shall occur:

- (a) the Supervisory Authority shall give Notice to the Contractor that the Contract will end on the Expiry Date;
- (b) the Supervisory Authority shall provide the Contractor with the identity of the New Service Provider once it is selected;
- (c) the Contractor shall continue to provide the Registrar Services until the Expiry Date;
- (d) the Contractor shall procure that the Software shall be made available to the New Service Provider under the terms of the Licence Agreement and to such end will promptly issue a Transfer Notice as defined in and accordance with the Software Security Agreement; and
- (e) the Contractor shall provide details of the suggested value of the software together with reasons for such value to substantiate the Software Negotiated Value claims as at the Expiry Date to the Supervisory Authority and the Supervisory Authority shall use its reasonable endeavours to procure that the New Service Provider will pay to the Contractor the amount certified by the Supervisory Authority to be the Software Negotiated Value. To that end the Supervisory Authority shall, pursuant to the Software Security Agreement, notify to the Prime Subcontractor and the New Service Provider the amount of the Software Negotiated Value.

On Termination

38.11 In the event that this Contract is terminated by the Supervisory Authority in accordance with clause 18, 37.1 or clause 37.2 or by the Contractor in accordance with clause 37.1 then the following shall occur:

- (a) the Party giving the Notice shall give Notice to the other Party identifying the default, whether the default can be remedied, and the date and time that the Contract will end or would end if the default is not remedied;
- (b) where there is a notice period before the date of termination of the Contract the Supervisory Authority shall use reasonable endeavours to provide the Contractor with the identity of the New Service Provider;
- (c) in the event that events or circumstances entitle either party to terminate in respect of more than one Termination Event at the same time, such party shall be entitled to elect the Termination Event more or most beneficial to it;
- (d) where both the Supervisory Authority and the Contractor serve termination notices on each other on the same Day, that of the Supervisory Authority shall take precedence;
- (e) the Contractor shall continue to provide the Registrar Services until the date of termination of the Contract as set out in the Notice and the User Fees shall continue to be paid to the Contractor in consideration of the Contractor providing the Registrar Services;
- (f) the Contractor shall procure that the Software shall be made available to the New Service Provider under the terms of the Licence Agreement and to such end will promptly issue a Transfer Notice as defined in, and accordance with, the Software Security Agreement; and
- (g) the Contractor shall, where Termination Event occurs pursuant to clause 37.1 entitling the Contractor to terminate this Contract or pursuant to clause 37.2 (d), provide details of the suggested value of the software together with reasons for such value to substantiate the Software Negotiated Value claims as at the effective date of termination, to the Supervisory Authority and the Supervisory Authority shall use its reasonable endeavours to procure that the

COMMERCIAL IN CONFIDENCE

New Service Provider will pay to the Contractor the amount certified by the Supervisory Authority to be the Software Negotiated Value. To that end the Supervisory Authority shall, pursuant to the Software Security Agreement, notify to the Prime Subcontractor and the New Service Provider the amount of the Software Negotiated Value.

- 38.12 For each Termination Event that entitles the Supervisory Authority to exercise its right to terminate and which is based on an act or omission or the insolvency of the Contractor and which act or omission is not caused directly or indirectly by the Prime Subcontractor, the Supervisory Authority shall invoke the Deed of Business Continuity by the submission of an Invocation Notice to the Contractor and to the Prime Subcontractor requiring the Prime Subcontractor to continue to provide the services supporting the Registrar Services that it had been providing to the Contractor to a New Service Provider as notified by the Supervisory Authority, provided that:
- (a) the New Service Provider would have, at any time after one (1) year from the date of the Invocation Notice, on giving three months' prior written notice, the option to terminate the Deed of Business Continuity with the Prime Subcontractor irrespective of any default on the part of the Prime Subcontractor;
 - (b) upon the termination of the Deed of Business Continuity pursuant to clause 38.12(a) the New Service Provider shall be entitled to license the Software under the terms of the Licence Agreement for the Software Negotiated Value; and
 - (c) where the Prime Subcontractor is unable to provide the services supporting the Registrar Services due to a *force majeure* event which would have entitled the Contractor to have terminated the Subcontract with the Prime Subcontractor the Supervisory Authority shall have the option as to whether it invokes the Deed of Business Continuity. If the Supervisory Authority does not invoke the Deed of Business Continuity and the Software is not utilised after the date of termination, accordingly no Software Negotiated Value shall be payable.
- 38.13 For each Termination Event that entitles the Supervisory Authority to terminate under clause 37.2 (a) and (b) the Supervisory Authority will have the option to invoke the Deed of Business Continuity by the submission of an Invocation Notice. If such option is exercised, clause 38.12 above shall apply. In the event that this option is not exercised and the Software is not utilised after the date of termination, there will be no Deed of Business Continuity and accordingly no Software Negotiated Value shall be payable.
- 38.14 For each Termination Event that entitles the Supervisory Authority to exercise its right to terminate and which is based on an act or omission of the Contractor which is caused directly or indirectly by the Prime Subcontractor, the Supervisory Authority shall have the option to invoke the Deed of Business Continuity by the submission of an Invocation Notice to the Contractor and to the Prime Subcontractor. In the event that such an option is exercised, the provisions of the services supporting the Registrar Services by the Prime Subcontractor shall be subject to the terms in clause 38.12 and provided that the New Service Provider would have, at any time after three (3) months from the date of the Invocation Notice, on giving one month's prior written notice, the option to terminate the Deed of Business Continuity with the Prime Subcontractor on the basis of a Software Negotiated Value discounted to reflect, in the Supervisory Authority's opinion, both the losses incurred and losses expected to arise due to the acts or omissions of the Prime Subcontractor. For the avoidance of doubt, such discount will not affect any rights the Supervisory Authority has for redress against either the Contractor or the Prime Subcontractor. In the event that this option is not exercised and the Software is not utilised after the date of termination, there will be no Deed of Business Continuity and accordingly no Software Negotiated Value shall be payable.
- 38.15 Where an Invocation Notice is served on the Prime Subcontractor, pursuant to clause 38.12 or 38.14, (as the case may be) the Prime Subcontractor respectively shall or may be permitted to continue to

COMMERCIAL IN CONFIDENCE

provide the Ancillary Services and the Supervisory Authority shall use its reasonable endeavours to procure that the New Service Provider continues to provide such resources of the International Registry as the Prime Subcontractor had access to under its contract with the Contractor. If no such Invocation Notice is served, the Prime Subcontractor shall not be entitled to provide the Ancillary Services after the date of termination.

- 38.16 If this Contract is terminated by the Supervisory Authority, the Contractor shall be liable for all costs, charges and expenses, losses including reasonable legal fees and disbursements, incurred by the Supervisory Authority by reason of the Termination Event or the exercise of the Supervisory Authority's remedies with respect thereto. No remedy referred to herein is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to the Supervisory Authority at law or in equity. Notwithstanding the foregoing, the Parties agree that an amount of one hundred and fifty thousand Euro (€150,000.00) shall be payable on termination to the Supervisory Authority as liquidated damages relating to its direct costs and expenses in arranging for a New Service Provider to assume the obligations of the Contractor.
- 38.17 The Supervisory Authority shall not be deemed to have waived any Termination Event or right hereunder unless the same is acknowledged in writing by a duly authorized representative of the Supervisory Authority. No waiver by the Supervisory Authority of any Termination Event hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Termination Event. The failure or delay of the Supervisory Authority in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set out herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by the Supervisory Authority shall not exhaust the same or constitute a waiver of any other right provided herein.
- 38.18 Where there is a termination of the Contract by virtue of clauses 17 (Change in Ownership and Control), 18 (Insolvency) and 37.1 (Terminations) (in cases where the Supervisory Authority has the right to terminate), or clause 37.2(a), (b) and (c), the Contractor shall not receive compensation for Software and associated Documentation as referred to in clause 14.4. Where a Software Negotiated Value is established under this clause 38, the Contractor agrees that the Prime Subcontractor is entitled to seek such Software Negotiated Value from the New Service Provider pursuant to a pay-out schedule agreed to by the Prime Subcontractor and the New Service Provider, in any event no longer than 3 (three) years. Neither the Contractor nor the Prime Subcontractor may seek such compensation from any other person or entity nor withhold the Software from the New Service Provider pending the agreement of the Software Negotiated Value. This prohibition will not affect the Prime Subcontractor's right, subject to clause 35, to apply a commercial licence fee to anyone else to whom it licenses the Software.

39. RESIDUAL ASSETS

- 39.1 The Contractor, the Supervisory Authority and, where relevant the New Service Provider, shall use their diligent attempts, using the standard of the measures that a reasonable person in the same circumstances would take, to amicably arrive at a mutually beneficial transfer arrangement, including, without limitation, the facilitation of any due diligence, the terms and conditions for transfer such as support offered during the transfer process in absorbing and adapting the software, and technical support and training for use of the software and related equipment as necessary.

40. HANDOVER PACKAGE

COMMERCIAL IN CONFIDENCE

40.1 The Contractor shall:

- (a) maintain the Handover Package as from the date that is ninety (90) Days after the Go-Live Date, and ensure it is reviewed and updated, as necessary, and at least on an annual basis; and
- (b) provide an electronic copy of the Handover Package to the Supervisory Authority ninety (90) Days after the Go-Live Date, and thereafter to provide the Supervisory Authority with an updated electronic copy of the Handover Package as soon as practicable.

41. DISPUTE SETTLEMENT AND JURISDICTION

41.1 The Parties shall use their best efforts to settle amicably through negotiation any dispute, controversy or claim arising out of, or relating to, this Contract or the breach, termination or invalidity thereof. If the Parties cannot reach such amicable settlement through negotiations, the matter shall first be referred to conciliation, by a request by either party for conciliation procedures. The conciliation shall take place in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules then prevailing, or according to such other procedure as may be agreed between the Parties, within a time period of ninety (90) Days.

41.2 Notwithstanding the terms of clause 41.1, nothing herein will limit the right of a Party to take proceedings against the other in the courts of England or Luxembourg or in any other court of competent jurisdiction, nor will the taking of proceedings in one or more jurisdictions preclude a Party from taking proceedings in any other jurisdiction, whether concurrently or not, nor restrict either party from applying to the courts of England or Luxembourg for interlocutory relief. The Parties irrevocably waive any objections to the bringing of proceedings on the ground of venue or inconvenient forum or any similar grounds.

41.3 The Contractor irrevocably appoints [NAME] of [ADDRESS] [FAX NUMBER] as its agent to receive on its behalf in England or Wales service of any proceedings under clause 41.2 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Contractor) and shall be valid until such time as the Supervisory Authority has received prior written notice from the Contractor that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Contractor shall forthwith appoint a substitute acceptable to the Supervisory Authority and deliver to the Supervisory Authority the new agent's name, address [and fax number] within England and Wales.

41.4 The Supervisory Authority irrevocably appoints [NAME] of [ADDRESS] [FAX NUMBER] as its agent to receive on its behalf in England or Wales service of any proceedings under clause 41.2 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Supervisory Authority) and shall be valid until such time as the Contractor has received prior written notice from the Supervisory Authority that such agent has ceased to act as agent. If for any reason such agent ceases to be able to act as agent or no longer has an address in England or Wales, the Supervisory Authority shall forthwith appoint a substitute acceptable to the Contractor and deliver to the Contractor the new agent's name, address [and fax number] within England and Wales.

42. NOTICES

42.1 Any notices given by the Parties to this Contract shall be sent in writing addressed as follows:

Supervisory Authority To: The Secretary General
Intergovernmental Organisation

COMMERCIAL IN CONFIDENCE

for International Carriage by Rail (OTIF)
Gryphenhübeliweg 30
CH - 3006 Berne
On behalf of the Supervisory Authority

Contractor To: XXXX

Secretariat To: The Secretary General
Intergovernmental Organisation
for International Carriage by Rail (OTIF)
Gryphenhübeliweg 30
CH - 3006 Berne

Phone: + 41 (0)31 - 359 10 10

Fax: + 41 (0)31 - 359 10 11

E-mail: info@otif.org

43. PRIVILEGES AND IMMUNITIES OF THE SUPERVISORY AUTHORITY

- 43.1 Nothing in or relating to this Contract shall be deemed a waiver, express or implied, of any immunity from suit or legal process or any privilege, exemption or other immunity enjoyed or which may be enjoyed by officials, agents, servants, co-chairpersons, representatives and employees of the Supervisory Authority and the Secretariat, pursuant to the Convention and the Protocol or other conventions, agreements, laws or decrees of an international character.

44. COMPLETE NATURE OF AGREEMENT

- 44.1 This Contract, along with the Software Security Agreement and the Deed of Business Continuity, constitute the complete and exclusive statement of the agreement between the Parties and supersedes all proposals or all other communications, verbal and/or written arrangements or agreements between the Parties relating to the subject matter of this Contract unless this Contract is changed, amended or modified in accordance with clause 31 (Amendment).
- 44.2 No Party has entered into this Contract in reliance upon any representation, warranty or undertaking made orally or in writing of the other Party which is not set out specifically in this Contract.
- 44.3 The Indemnified Parties shall not be liable or personally liable, as the case may be, for any losses or damages, costs or expenses suffered or incurred by the Contractor as result of the Contractor's reliance upon any assistance or information provided by the Indemnified Parties to the Contractor in respect of models predicting the throughput of business for the International Registry or other matters relating to budgeted revenue or otherwise and the Contractor must rely on its own due diligence in relation to such assistance or information. For the avoidance of doubt, the Indemnified Parties make no representations or warranties in respect of such assistance or information.

45. PARTIAL INVALIDITY

- 45.1 If any provision of this Contract is or becomes invalid, illegal or unenforceable by force of law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and the invalid, illegal or unenforceable provision shall be replaced by a mutually

COMMERCIAL IN CONFIDENCE

acceptable provision, which, being valid, legal and enforceable, comes closest to the intention of the Parties underlying the invalid, illegal or unenforceable provision.

46. DISCLAIMER

- 46.1 Neither the Preparatory Commission, the Supervisory Authority, the Secretariat, the Rail Working Group nor officials, agents, servants, co-chairpersons and employees thereof shall be liable in relation to any decision or recommendation of the Ratifications Task Force pursuant to clause 7 (Ratification Strategy) or if the operation of the International Registry is delayed, rendered uneconomical or otherwise negatively affected due to lack of sufficient ratifications for the timely entry into force of the Protocol by the end of or subsequent to the Establishment Phase.

47. CONSULTATIONS

- 47.1 Consultations between the Parties shall be held from time to time at the request of either Party.

48. EXPORT/IMPORT

- 48.1 The Parties acknowledge that UN export and trade restrictions, EU export and trade restrictions, US export and trade restrictions, or other in-country export restrictions ("Export Restrictions") may apply to the software or to any of the services of the International Registry. The Contractor may therefore be unable by law to provide the services in any country to which Export Restrictions apply, to the extent they apply to such software or to such services.

49. EXCLUSION OF THIRD PARTY RIGHTS

- 49.1 The Parties agree that any Indemnified Party may directly enforce and rely on clause 20 subject to the terms therein, as if it were a party to this Contract but save for the foregoing, a person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999, having application in the United Kingdom, to enforce any term of this Contract.

50. SURVIVAL

- 50.1 The following Clauses will survive termination of this Contract and will remain in full force and effect following the termination of this Contract: clauses 2 (Definitions), 13.1 (Title and Rights to Equipment), 14 (Portability), 16 (Law of the Contract), 22 (Confidentiality), 23 (Intellectual Property Rights), 38 (Effect of Termination or Expiry), 39 (Residual Assets), 41.2 (Dispute Settlement and Jurisdiction), 50 (Survival) and 52 (Performance Guarantee).

51. PROCESSES RELATING TO THE END OF THE TERM OF THE CONTRACT

- 51.1 The Parties acknowledge that there shall be no right to renewal of this Contract.
- 51.2 No later than ninety (90) months after the Go-Live Date, the Contractor shall give the Supervisory Authority written notice as to whether it would wish to be reappointed as Registrar for an additional period following the Expiry Date. If the Contractor indicates that it would not wish to be reappointed

COMMERCIAL IN CONFIDENCE

as Registrar for an additional period following the Expiry Date, the Contractor shall not undertake any forward commitment including, without limitation, any capital expenditures without the prior written approval of the Supervisory Authority.

- 51.3 No later than ninety six (96) months after the Go-Live Date, the Supervisory Authority will advise the Contractor of the process that will be followed for the appointment of a registrar for the period after the Expiry Date.
- 51.4 If the process notified pursuant to clause 51.3 involves the renewal of the Contract between the Supervisory Authority and Contractor, the parties shall commence negotiations for the renewed contract as soon as possible, and shall use All Reasonable Efforts to ensure that the contract negotiations are completed to enable the contract to be finalised and signed no later than one hundred and two (102) months after the Go-Live Date. Any such renewal period shall be for a term no greater than ten (10) years.
- 51.5 The Contractor shall provide to the Supervisory Authority such information regarding the operation of the International Registry that the Supervisory Authority reasonably requires in connection with procuring a prospective New Service Provider.
- 51.6 In the event that a New Service Provider is appointed by the Supervisory Authority, the Parties agree to establish arrangements to ensure a smooth transition of the International Registry to the New Service Provider and the Contractor shall take no action at any time which is calculated or intended to prejudice or frustrate or make more difficult such transfer.
- 51.7 Where necessary, the terms of the Contract may be extended in a separate document (but on the same terms and conditions save for the expiry date) at the Supervisory Authority's option for a minimum of twelve (12) months in order to allow the Contractor to continue to operate the International Registry until the International Registry operations have been transferred to the New Service Provider. In the event that the New Service Provider requires support from the Contractor to assist with the transfer, such support and the fees for such support shall be agreed between the Contractor and the New Service Provider from time to time, both parties acting reasonably.

52. PERFORMANCE GUARANTEE

- 52.1 A performance bond in the form of a bank guarantee, as per the sample at Attachment V, shall remain in effect for the period from the Commencement Date until the date which is six months after the End Date. The amount of the performance bond shall be one hundred and fifty thousand Euro (€150,000.00).
- 52.2 The signature of this Contract shall cause the Contractor to agree that the Supervisory Authority may retain the performance bond in accordance with clause 52.1. The performance bond shall serve to ensure full compliance of the Contractor with its obligations under this Contract and may be used in case of failure to fulfill material Contract obligations, failure to make payment and other instances of non-performance of material obligations under this Contract. Before drawing upon the performance bond, the Supervisory Authority shall give at least one (1) week prior written notice to the Contractor.

Signed as an agreement:

On behalf of the
Preparatory Commission and at its

Contractor

COMMERCIAL IN CONFIDENCE

express direction

BY:-----

BY:-----

NAME:-----

NAME:-----

DATE:-----

DATE:-----

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

ATTACHMENT I

SERVICE LEVEL AGREEMENT (SLA)

1. Service Description

Introduction

This Service Description section of the SLA outlines the service which will be supplied.

Service Summary

The Contractor will operate the IR pursuant to the Convention, Protocol, Regulations and Procedures and using the best practices in current use in the field of electronic registry design and operation.

The IR will be available continuously through the Internet using standard technology and web browser software. An annual system availability of 100% will be achieved subject to the provisions of this SLA and the Regulations and Procedures.

Public Key Infrastructure technology will be utilised to provide data integrity and non repudiation.

The Contractor will provide technical support and business process support to users of the IR as described in this SLA.

The help desk is for technical and business support only and cannot provide support on other matters, including legal questions. The help desk cannot respond to queries concerning an administrator's, a registry user's or a searching person's:

- (a) computer or network system;
- (b) system security policies;
- (c) Internet access, including its connectivity and performance; or
- (d) browser.

The Contractor will provide feedback to the Supervisory Authority regarding industry needs and may propose changes to the Regulations and Procedures.

The Contractor will continuously develop system enhancements to meet the needs of the industry and to further improve the efficiency of the IR subject to the prior approval of the Supervisory Authority pursuant to the Change Control.

The Contractor will ensure that adequate security management and governance measures are in place.

Governance

The Contractor will be governed under Luxembourg company law through its Board of Directors and will engage with industry through representative industry bodies and during conference events and seminars as well as through direct customer feedback.

The Contractor will undertake annual customer satisfaction surveys to ensure that it continues to meet the needs of the industry and to adjust its service offering in light of changing needs.

The Contractor will seek advice from the advisory board should one be established and industry feedback through, *inter alia*, the Rail Working Group (RWG).

The Contractor will comply with its duties under the applicable data protection legislation.

2. System Availability

The System Availability target is 100% except if precluded by maintenance performed outside peak periods, or technical or security problems.

Maintenance Window

Planned Maintenance will be carried out at times of low system usage. Low system usage will be determined through analysis of the web logs and is defined as times where system activity, measured in page downloads per second, is less than 20% of peak usage.

3. Support

Technical and Business Support

Provision of live help-desk services from 09:00 until 17:00 local time each local business day by email and phone as further specified in the Regulations.

Target response times

Target response and fix times will be achieved in more than 80% of cases raised excluding major system faults affecting all users, where all resources available to the Contractor will be deployed to resolve the issue as soon as is technically possible.

COMMERCIAL IN CONFIDENCE

Account vetting and approval –
24 Hours (during Luxembourg office hours) from receipt of all documentation.

Technical Support –

Priority	Response Time	Fix Time
High	4 hours	8 hours
Other	8 hours	24 hours

These fix times exclude cases where software development is required. High priority issues are issues which make registrations and searches unavailable for multiple customers.

4. Reporting

The Contractor shall submit quarterly operational reports to the Supervisory Authority (within six (6) weeks of quarter end) indicating:

- 4.1 Accounting vetting –
 - 4.1.1 applications received;
 - 4.1.2 applications approved;
 - 4.1.3 applications declined; and
 - 4.1.4 decision times.
- 4.2 Technical support response and fix times summary.
- 4.3 Outages which occurred during the reporting period, planned and unplanned, along with a brief explanation.
- 4.4 List of official complaints received during the reporting period and the current status.

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

ATTACHMENT II

SYSTEM DESIGN

1. Summary

This document provides an indicative description of the IR's technical features. [All references to software versions shall be deemed to be modified to mean not earlier than the last applicable version issued by the software supplier prior to the version current on the Go-Live Date.] For clarity these have been broken down into two sub-sections which are further elaborated by 2 (two) appendices. The sub-sections are a) Software Architecture Components, and b) Functionality of the IR system. These sub-sections refer to the more detailed appendices. The appendices are as follows:

Appendix 1 – High Level Design: This describes the indicative technical infrastructure at system launch. The initial technical infrastructure is designed taking account of the parties' wish to minimise cost. As capacity needs increase the technical infrastructure may be upgraded under the Commercial Change Control Process.

Appendix 2 - Baseline Regulations which are the baseline system requirements.

2. Software Architecture Components

Limitations

The software system and architecture will not include or support the following items:

1. The entry of Authorising Entry Point Codes (AEP codes). Where users are required to obtain an AEP code they will do so and make a declaration on the IR web site that they have obtained the code and have met the requirements of the Entry Point. This is necessary to avoid data entry of the codes for each registration which would reduce greatly the benefits of block registration functionality.
2. All browsers which support the following list of technologies will be supported by the system:
 - 2.1 Java
 - 2.2 Keystore

3. The system will be tested against the latest version of MS-Internet Explorer supporting the technologies noted above.
4. When necessary, support for Contracting State numbering formats will be handled through Change Control.
5. On-line help will be provided through the availability of documents for download from the web site such as the User Manual.
6. Should fulfilment of recommendations from the independent audit of the software require greater than 5 days of software development the resourcing of additional software development will be handled through Change Control.
7. Tracing of IP addresses and dynamic Internet addresses will be carried out by the use of standard network logging and monitoring technology e.g. Firewall, Server System logs and Oracle logging. Such records will not be directly linked to individual records in the database.

Commercial Off The Shelf (COTS) Software Components:

The general approach is to use COTS packages of the highest standard with a strong brand name, good credibility and with strong technical support available. This allows the Contractor to confirm that the quality of the system is to the highest standards and that there is a traceable organisation and product history which can support future evidentiary needs. Oracle was selected as the highest standard database technology and for that reason other COTS components available from Oracle were also selected. This gives a single strategic supplier which reduces the likelihood of compatibility issues; however, this also minimizes the options for lowering costs in this area. At the time of deployment the Contractor may elect to use an alternative provider of an equivalent standard.

Oracle

The database used on the IR is Oracle Edition, Standard Version 11g. The database contains tables such as the registration table and the entity table. The database is set up in high integrity mode such that a change to the database will not be made unless it occurs at two sites simultaneously.

Operating Systems and Java version

Sun Solaris Operating System, Version 10 (64 Bit) is used on all servers. The system has been developed using Java, Version 1.6.

VeriSign gateway

VeriSign provides a web-service to which the bespoke application communicates to manage Digital Certificates. This facilitates the account set-up and consent requirements of the Regulations.

Payment gateway

A payment gateway client provided by ATOS (Version 2.04) is installed to process all credit card payments to facilitate the requirements of the Fee Schedule (Appendix to the Procedures).

Email gateway

An e-mail gateway, Sendmail, Version 8.14.4, is used to send, but not to receive, emails to registry users to notify them of system events such as those stipulated in the Regulations.

Bespoke Software Components

A bespoke application will be developed by Prime Subcontractor to meet the requirements of the Regulations. In simple terms, the bespoke application covers three main areas i) Applications, ii) Registrations, and iii) Searches, although there is much more functionality to the bespoke application to be described in the User Manual.

Applications

A person may connect to the website and make an on-line application to set up a registry user entity account and to be the administrator of that entity. During the application process data is gathered about the administrator and the registry user entity and, once confirmed by a registry official to the standard set out in the Regulations, the administrator and the registry user entity may be approved. Once approved, a digital certificate is issued to the administrator in question which allows them to be identified and to consent. An administrator may, *inter alia*, approve registry users and may authorise professional users to work on specific objects on behalf of the registry user entity.

Registrations

The IR system allows registry users to make, amend and discharge registrations as required by the Regulations. Each registration is consented to electronically and that consent or consents is/are stored along with the registration data in the registration table where its integrity is protected by a set of hash functions based on public key infrastructure technology.

Searches

A registry user may search the IR, based upon URVIS number, for registrations made against that object. The registry user must follow a work flow and then a priority search certificate (PSC) is issued. The User Manual provides more detail. The application stores and digitally signs all PSCs.

A registry user may also perform a Contracting State search for which a certificate is also issued, signed and stored. This certificate details, *inter alia*, the declarations made under the Convention and Protocol by States Parties.

Registry users may also perform other searches for the purpose of efficiently using the IR system, including searches for contact details of named parties and professional user entities.

Java Applet

A java applet is downloaded onto a registry user's PC. The applet manages the Java Key Store file which contains the registry user's private key and their digital certificate. It allows registry users to select which certificate they are using and allows them to download a new certificate upon renewal.

3. Functionality of the IR system

The functionality of the IR will be based upon the functionality of the International Aircraft Registry software at the Notification Date, such software will be based on the Regulations Draft First Edition. The IR allows approved registry users to register interests as contemplated by the Convention and Protocol. Furthermore, it allows anyone, whether approved or not, to search the IR to ascertain what interests have been registered against an object. It also allows anyone to generate a Contracting State search certificate as described in the "Searches" section above. All of this functionality is provided by

the bespoke application developed by Prime Subcontractor as described in the Bespoke Software Components section above.

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

ATTACHMENT II

Appendix 1 – High Level Design Document (HLD)

Solution for Railway Registry

Overview

This document describes the indicative high level design of the server solution that will support the operational requirements for the International Registry.

Data Centre Hosting

The Data Centre configuration is as follows:

- Two separate data centres will provide hosting for the Primary and Disaster Recovery infrastructures. The data centres will be provided by EBRC and will be located in Luxembourg.
- Each data centre will provide a single, private rack with 2 kW of capacity and remote “Hands and Eyes” services.
- The servers in each data centre will be provided with 10 Mb Internet access, and each location will be provided with 8 public IP addresses. For resilience purposes, each data centre will use a different ISP. The data centres will be connected via a 1 Gb interconnection with a standard SLA that includes 99.6% availability.

Primary Site Infrastructure

The proposed Primary site infrastructure is as follows:

- A single Check Point IP295 external firewall managed by a SMART-1 appliance.
- A single Cisco ASA 5510 internal firewall.
- Sun Fire X2270 M2 Web and Management servers.
- Sun Fire X4170 M2 Application and Database servers.
- A single Cisco 2911 router to provide secure inter-site connectivity
- Cisco Catalyst 2960 switches at each tier.
- A Quantum Scalar i40 tape library with a single LTO-4 tape drive.
- An ETERNUS DX90 S2 iSCSI disk array with replication option.

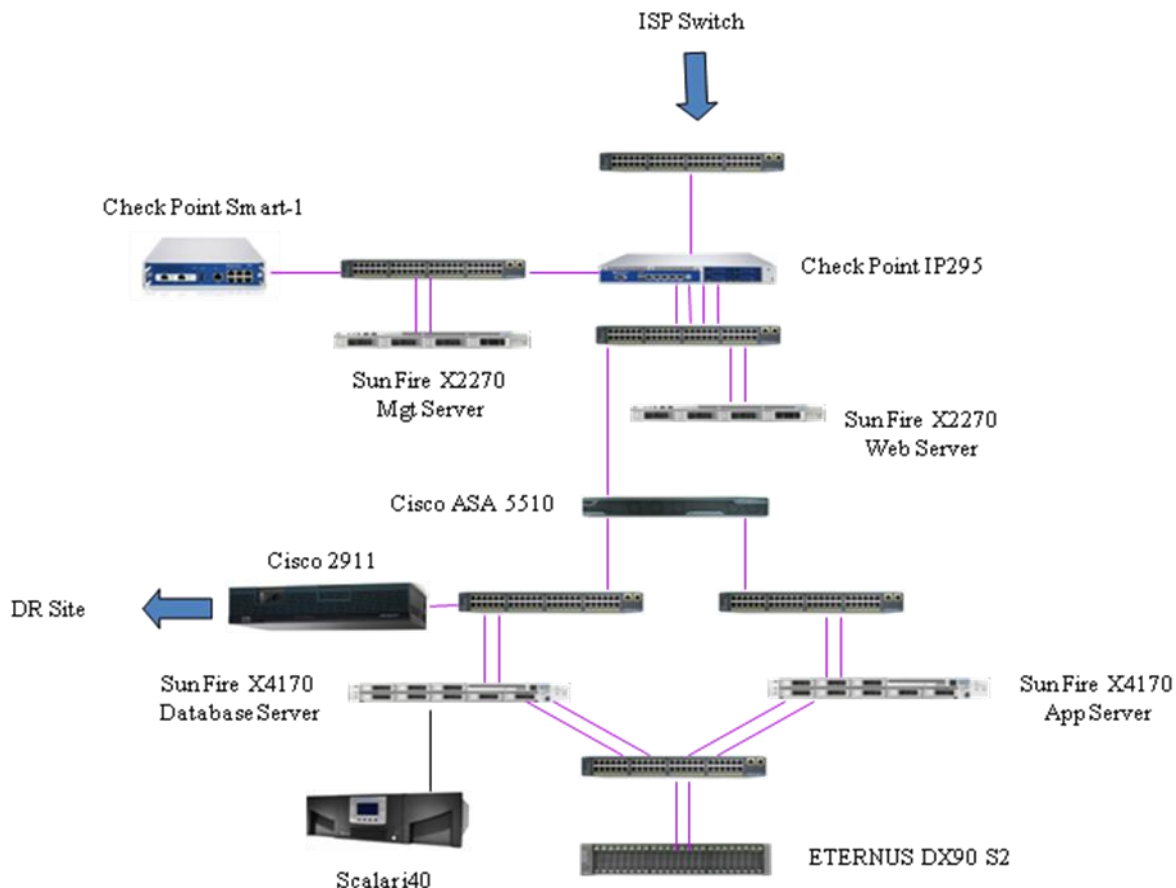
The Sun servers will run the Solaris 10 operating environment and Solaris Containers will be used to isolate workloads and minimise software license requirements.

COMMERCIAL IN CONFIDENCE

The servers will provide internal resilience features including disk mirroring via Solaris ZFS, redundant NICs via IPMP, and redundant fans and power, where available.

Apache v2.0 (or later) will be used for the Web server and Apache Tomcat application server will be used to support the Rail Registry application.

Oracle Database Standard Edition One has been proposed to support the Rail Registry database, which provides substantial cost savings over Enterprise Edition. Replication of changes to the primary database storage to the second site will be provided by the ETERNUS disk array Advanced Copy Manager's Remote Copy license.



All servers and devices will log to a central Solaris container and Splunk will be employed to search, monitor and analyse log file data. Backups will be performed to the Quantum tape library under the control of NetBackup. All offsite database backups will be encrypted.

DR Site Infrastructure

The Disaster Recovery site infrastructure is the same as the Primary site. The DR site will host both Disaster Recovery and Pre-Production environments.

COMMERCIAL IN CONFIDENCE

ATTACHMENT II

Appendix 2 – Regulations of the International Registry

(to be submitted to the Preparatory Commission for approval prior to Entry into Force)

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

ATTACHMENT III

COST SCHEDULE

The figures below are provided as an indicative estimation of the set up and running costs of the Prime Subcontractor and Contractor.

1. Establishment and Development Costs of the Registrar

1.1. Legal Expenses - €200,000

An estimation of the external legal fees associated with legal separation assessment, establishing Contractor, review of Prime Subcontractor & Contractor contracts and post signature review. The figure is based on quotes from external organizations which have provided advice to the International Aircraft Registry when it was formed and as it has developed.

A breakdown of effort is as follows:

- o 30% - post-signature review and report
- o 21% - legal establishment of Contractor
- o 19% - legal separation assessment
- o 17% - review of Contractor contract
- o 13% - review of Prime Subcontractor contract [similar costs associated with a Prime Subcontractor review of the contract to ensure separacy appear in the “All Other” section of the Prime Subcontractor establishment costs in section 3.4 below.

The external activity includes:

- o Confirm if the proposed structure for Contractor and Prime Subcontractor provide sufficient legal separation so as not to expose Prime Subcontractor to Article 28 liability under the Convention for either Rail or Aviation based on the Legal Separation paper prepared for the set up of the International Aircraft Registry.
- o Buy off the shelf company and implement relevant legal separation items in the corporate documents and provide generic duties to directors and establish first Board Meeting and minutes to (i) appoint Directors (ii) appoint auditors (iii) approve articles etc (iv) approve and sign contracts.
- o Review contract for report to Contractor Board.
- o Review procedures based on procedures for Aviation to ensure optimum contractual protection for Contractor
- o Create website User terms and conditions based on website User terms and conditions for Aviation to ensure optimum contractual protection for Contractor
- o Create website User terms and conditions based on Original website User terms and conditions for Aviation to ensure optimum contractual protection for Prime Subcontractor

COMMERCIAL IN CONFIDENCE

- o Review Certification Practice Statement (CPS) based on CPS for Aviation to ensure optimum contractual protection for Contractor
- o Review contract between Prime Subcontractor and Contractor for legal separation
- o Create insertion as per Irish Legislation re certificate production
- o Support to conclude contract
- o Support to conclude contract with Subcontractor

1.2. All other - €34,167

Miscellaneous cost items, including furniture and fixtures, hiring costs and administration. These break down as follows:

- o Furniture €10,000
- o Establishment €7,500
- o Hiring €10,000
- o Administrative €6,667

2. Yearly Operating Costs of the Registrar

2.1. Personnel - €437,000

This is an estimated cost, based on employing a Registrar, Director of Operations, an Assistant and an Intern; all based in Luxembourg including local social charges. Assumed salaries used were:

- o Registrar €225,000
- o Director of Operations €125,000
- o Assistant €62,000
- o Intern €25,000

2.2. Audit and Professional Services - €156,618

Annual estimated fees covering charges for audit, legal services, financial and treasury management based upon actual costs at the Aircraft Registry. These break down as follows:

- o Financial Audit of Contractor and additional costs of auditing OpsCo as part of Prime Subcontractor
- o Legal advice during the operation of the International Registry, based upon the fees currently paid by Aviareto for advice in operating the Aircraft registry
- o Professional Finance and Treasury managements services, again based upon the actual fees paid by Aviareto for these services.

2.3. Security Review - €58,824

Cost of conducting an annual security review in keeping with best practice and based on Aviareto experience and actual costs. This covers an annual security audit and scan of the ICT infrastructure of the International Registry and an annual follow up on recommendations from the Audit to be completed by a respected industry name. The costs are based on those of Aviareto in its role as Registrar of the Aircraft registry.

2.4. All Other - €105,000

Miscellaneous charges covering insurance, marketing, office facilities and third party customer surveys. These break down as follows:

- o Promotion and marketing €35,000
- o Insurance €50,000
- o Customer survey €15,000
- o Luxembourg offices €5,000

2.5. Secretariat - €15,000

Secretariat charges as specified in the RFP.

3. Establishment and Development Costs of Prime Subcontractor

3.1. Hardware Assembly - €519,784

This is based on the result of a competitive process involving five organizations, to identify the most suitable provider of hardware and hosting services for the International Aircraft Registry. Fujitsu were selected as the chosen supplier, which also enabled us to leverage the existing relationship and services provided by them to Aviareto. The total amount is split into components of Server & Storage, Networking, Software and Professional Services as follows:

- o Server & Storage - €86,057

This is the hardware, such as web, application and database servers and specialised, resilient data storage equipment.

- o Networking - €92,985

This covers LAN and WAN infrastructure, such as firewalls, switches, routers, cabling etc. Linking all the devices in a secure manner to the outside world.

- o Software - €66,790

This is the core, off the shelf software such as Operating System, and Oracle Database management system upon which the International Registry application will run.

- o Professional Services - €273,952

This is a resource based cost covering specialist IT expert personnel in the following areas: hardware detailed design, build, configuration and installation; installation and configuring the operating system; installation and configuration of the Oracle database management systems; detailed design, installation and configuration of the network components, in particular the firewall security; configuration of management system to send and receive alert notifications; final security hardening of all components. Additional personnel will carry out system testing of the above components. In addition there will be Project Management resource to coordinate the above activities and Technical Authorship to produce support documentation. The above activity is estimated at 253 man-days of effort based on experience in systems build and in particular previous experience with the aviation registry.

In order to ensure value for money, we recently tested the hosting market again and have received additional quotations from ebrc based in Luxembourg. This was significantly (in

excess of 20%) more expensive than the quote from Fujitsu from both a one off and on-going basis.

3.2. Software Creation - €567,500

This covers development resource time to create the necessary software components, including:

- o 2 Business Analyst
- o 5 Developers
- o 3 Quality Assurance & Testing Analysts
- o 1 Project Manager

The Business Analysts develop the specification for the Rail Registry based upon the regulations and the content of Prime Subcontractor's response to the RFP. This is then passed to the Developers who write the software code. Quality and Testing Analysts develop and execute test plans to during and post development to ensure the software meets the specification and is of high quality. The Project Manager coordinates all activities and acts as single point of contact for the development team. All resource is expected to be engaged for the full duration of the development, estimated at 35 weeks.

After a competitive process for the International Aircraft Registry involving three companies, Prime Subcontractor was selected as the software developer and approved by ICAO. This enabled us to leverage the existing Aviareto relationships and core systems. As the software proposed for the International Rail Registry is to be based upon the latest Aircraft Registry software, it is necessary to use the same supplier under similar terms. We estimate that in excess of \$6m has already been spent by the Aircraft Registry on developing this core system, to the benefit of the Rail Registry.

3.3. Software Approval & Certification - €107,000

This is an estimate based on quotes received from PwC to carry out testing and audit services. This is to provide an independent third party examination of the software and security so to ensure that they cannot be manipulated, and to ensure that the design is adequate. PwC were chosen following a competitive process for the International Aircraft Registry in 2009 which included Deloitte and EDS.

3.4. All other - €104,167

Comprised of miscellaneous cost items including furniture and fixtures, hiring costs, legal expenses, administration, and professional services relating to the high level design of the hardware and software environments to create high level design documentation which will then feed into the Professional Services described above. These numbers break down as follows:

- o Furniture €10,000
- o Legal €20,000
- o Administrative €6,667
- o Software design €30,000
- o Hiring €10,000
- o Hardware design €20,000
- o Other €7,500

4. Yearly Operating Costs of Prime Subcontractor

4.1. Personnel - €431,000

This is an estimated cost based on employing a General Manager and three Registry Officials located in Dublin. The cost is made up from basic salary estimations (using Aviareto experience and market information), and employer costs including pensions, health insurance, social welfare costs etc. Assumed salaries used were:

- o General Manager €125,000
- o Registry Official €62,000

4.2. Hardware Maintenance and Hosting- €385,723

This is a quote from Fujitsu, selected after a competitive process, for providing a hosted environment for the hardware, including maintenance support. As previously described, Fujitsu were selected after a competitive process that determined they offered the best cost-benefit solution. This quote includes a hardware refresh after 5 years. The details of the hardware environment are included in the relevant service schedule of the SITA contract.

A recent alternate quote from ebrc gave an annual recurring cost that was approximately 25% more expensive than the one quoted above from Fujitsu.

4.3. Software Maintenance and Support - €253,714

This represents an estimate of the charges associated with providing software maintenance, support to agreed service levels and minor enhancements, based on Aviareto experience. Typically in the market, this software maintenance forms 15-20% of the full software development initial charges. For the Rail Registry, it should be noted that much of the development of the core software components came from the Aircraft Registry system. As such, the Software Maintenance figure above appears to be a higher percentage than market norms. To be clear however, neither Registry is funding the others maintenance or support. Given the estimated costs of developing both Aircraft and Rail Registry software, this figure represents approximately 10% of total software cost.

4.4. Certificates - €62,000

This is an estimate of the annual costs associated with digital certificates following discussions with VeriSign / Symantec. We expect to be able to leverage the existing relationships and purchasing power of Aviareto in order to ensure competitive pricing. This is significantly less than Aircraft Registry is currently paying for its certificates.

4.5. All Other - €128,667

Miscellaneous charges covering insurance, legal and other professional services, ISO certification and audit, and office facilities. These break down as follows:

- o Insurance €10,000
- o Legal, audit and professional €52,000

COMMERCIAL IN CONFIDENCE

- o ISO Certification and Audit €15,000
- o Dublin costs €47,000
- o Additional language €4,500

5. Prime Subcontractor Monthly Charges to Contractor

Year	Monthly Amount
Year 1	€115,437
Year 2	€117,169
Year 3	€118,926
Year 4	€120,710
Year 5	€122,521
Year 6	€124,358
Year 7	€126,224
Year 8	€128,117
Year 9	€130,039
Year 10	€131,990

The monthly charges above reflect a 1.5% annual inflation adjustment with respect to the operating cost component of the fee and no inflation adjustment to the establishment cost component.

The Contractor may second its personnel to another part of the SITA SC group of companies or to third parties at arm's length rates and income there from shall be credited against its yearly operating costs.

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT**

(RAILWAY ROLLING STOCK)

ATTACHMENT IV

PERFORMANCE BOND

Guarantee no:

Guarantor: [Issuing bank] [address in UK]

Applicant and instructing party: [Registrar – name and address]

Beneficiary: The Supervisory Authority established in accordance with Article 17 of the Cape Town Convention on International Interests in Mobile Equipment and Article XII (1) of the Protocol thereto on matters specific to railway rolling stock (the “Luxembourg Protocol”).

The Contract:

The Applicant and the Preparatory Commission, established by Resolution No. 1 of the Diplomatic Conference adopted on 23rd February 2007 in Luxembourg to adopt the Luxembourg Protocol, acting in its capacity as Provisional Supervisory Authority, have entered into a contract.....dated [dd.mm.yyyy] regarding the appointment of the Applicant as the exclusive contractor to establish the International Registry pursuant to the Luxembourg Protocol.

Guarantee amount and currency: EUR 150,000 (Euro one hundred and fifty thousand).

Documents required:

A Statement purportedly signed by an authorized representative of Beneficiary:

- (a) giving full details of the Applicant’s default with reference to particular article(s) of the Contract and the amount called by Beneficiary within the limit of this Guarantee; and
- (b) confirming that the Applicant has been given no less than the period allowed by the Contract to remedy such default; and
- (c) accompanied by the following documentary evidence of the said default:
 - (i) A copy of letter to the Applicant advising the Applicant of the default and expressly advising Applicant of the period allowed under the Contract to remedy such default (but in any case not less than 30 days); and
 - (ii) A statement that the Applicant has not denied the default, or, in the absence of such a statement, a certification that Applicant has not remedied the default within the period allowed by the Contract.

Language of any required documents: English.

Form of presentation: Paper.

Place for presentation: Guarantor's counters.

Liability for charges: with the Guarantor.

Transferability: This Guarantee is transferrable by the Beneficiary.

Expiry of guarantee:

This Guarantee will expire on the date which is one year after the expiry or sooner termination of the Contract.

Applicable Law and Jurisdiction:

English law. Disputes subject to the exclusive jurisdiction of the High Court of England and Wales.

As Guarantor, we hereby irrevocably undertake to pay Beneficiary any amount up to the guarantee amount upon presentation of Beneficiary's complying demand, in the form of presentation indicated above, supported by such other documents as may be listed above and in any event by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, indicating in what respect applicant is in breach of its obligations under the underlying relationship.

Any demand under this Guarantee must be received by us on or before expiry at the place for presentation indicated above.

This Guarantee is subject to the uniform rules for demand guarantees (URDG) 2010 revision, ICC publication no. 758.

.....
Duly authorised signatories for and on behalf of the Guarantor

.....
Date/location

Note: The Preparatory Commission and the Applicant will need to agree in advance on what institutions will be the issuing bank and the guarantor."

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

ATTACHMENT V

Model Licence Agreement

THIS LICENCE AGREEMENT (the "**Licence Agreement**") is made on the date which is the date the last of the signatories hereto signs this Licence Agreement (the "**Effective Date**")

BETWEEN:

- (1) [] a company registered in [] with company number [] having its principal office at [] ("**Licensee**"), and

SITA Information Networking Computing (Ireland) Limited a company registered in Ireland with company number 369682 having its principal office at Building 1, Letterkenny Office Park, Windyhall, Letterkenny, Co. Donegal, Ireland ("**SITA**").

WHEREAS:

- (A) SITA has been providing services in connection with the operation of the International Registry, and in so doing has used certain Source Code and Object Code;
- (B) The Supervisory Authority under the authority of the Cape Town Instruments has awarded the Licensee the contract to continue the operation of the International Registry and the Licensee has signed the New Registrar Contract with the Supervisory Authority for the operating of such an International Registry; and
- (C) The Licensee wishes to licence the Licensed Program for the purposes of operating the International Registry

THE PARTIES HERETO AGREE AS FOLLOWS:

1. Scope of the Agreement

The scope of this Licence Agreement is the acquisition, in accordance with this Licence Agreement, of a limited licence of the Licensed Program for the sole purpose of operating and developing the International Registry for the Term.

2. Grant of Licence and Authorised Use

2.1 Delivery

As soon as practically possible (but in any event no later than 72 hours after the Effective Date), SITA will deliver to the Licensee the then current version of the License Materials.

2.2 Licence

SITA hereby grants to the Licensee, a non-exclusive, worldwide, revocable, non-transferable, limited licence to access, operate, reproduce, perform, load, execute, display, store, modify, enhance, create derivatives of and otherwise use the License Materials for the purpose of the International Registry in

COMMERCIAL IN CONFIDENCE

accordance with the terms and conditions of this Licence Agreement for the duration of the Term.

2.3 Licensee Responsibility

The Licensee accepts responsibility for (a) the selection of the Licensed Program to meet the Licensee's requirements and to achieve the desired results, (b) the use of the Licensed Program, (c) the commercial results obtained from the Licensee's use of the Licensed Program and (d) liability under Article 28 of the Convention.

2.4 Scope of Use and Access to Software by Third Parties

The Licensed Program and the Documentation will be utilized by the Licensee for the operation and development of the International Registry by adding, modifying and enhancing the Licensed Program in order to meet the requirements of the International Registry. The Licensee shall have the right to modify or enhance the Licensed Program, including, without limitation, adapting or modifying the Source Code or the Object Code ("**Licensee Enhancements**"). Any intellectual property rights in Licensee Enhancements shall belong to the Licensee and shall not be part of the Licensed Program.

The Licensee shall not use the services of any then current direct competitor of SITA for the development of the Licensed Program.

Prior to giving access to the License Materials to a third party the Licensee shall obtain written consent from SITA, such consent not to be unreasonably withheld or delayed, and ensure that such third party duly executes the "Third Party Access Agreement" substantially in the form as attached hereto as Annex 1.

2.5 Backups

The Licensee may make unlimited copies of the Licensed Program and Documentation for archival and disaster recovery purposes and for use in accordance with this clause 2. The Licensee will keep current, detailed records of each such copy made, including its current location, form and disposition. If Licensee uses a third party to provide disaster recovery services, Licensee will require such third party to execute a confidentiality agreement containing terms and conditions no less restrictive than those set forth in clause 6.

2.6 Branding

Licensee will not alter, conceal or remove any copyright, trade secret, patent, proprietary or other legal notice contained on or in the Licensed Program or the Documentation. Licensee will include or create on or in all copies of the Licensed Program and the Documentation the exact form of any such notices.

2.7 Safeguards

The Licensed Program and the Documentation are being disclosed by SITA to Licensee in confidence. Licensee will implement and maintain precautions, no less rigorous than those Licensee uses to protect its own confidential information, but in no event less than reasonable precautions, to safeguard the Licensed Program and the Documentation so that no unauthorized persons have access to the Licensed Program or the Documentation and that no persons authorized to have such access will take any action that would violate the confidentiality obligations of this Licence Agreement. Licensee will promptly report to SITA any actual or suspected violation of the confidentiality obligations of this Licence Agreement. Licensee will, at its expense, take such reasonable steps as SITA may request to remedy any such violation, including retrieving any portion of the Licensed Program or the Documentation that is being used,

COMMERCIAL IN CONFIDENCE

or is otherwise possessed, in breach of this Licence Agreement, and will pay or reimburse SITA all reasonable expenses that SITA reasonably incurs which are related to the remedy of any such violation.

2.8 Injunctive Relief

Licensee acknowledges and agrees that the Licensed Program and the Documentation are the valuable property and trade secrets of SITA, that any violation by Licensee of the confidentiality obligations of this Licence Agreement would cause SITA irreparable injury for which it would have no adequate remedy in damages and that, in addition to any other remedies that SITA may have, it will be entitled to preliminary and other injunctive relief against any such violation. This clause 2.8 will not limit either party's right to seek injunctive relief for any other violation of this Licence Agreement, including a breach of clause 6.

2.9 Investigation

During normal business hours, with reasonable notice to Licensee and without causing undue business disruption to the Licensee, SITA may conduct an investigation, through a designated representative that is not a competitor of Licensee and at SITA's expense, to determine Licensee's compliance with the terms and conditions of this Licence Agreement. Licensee will allow such designated representative to have access to any records (in whatever form kept by or on behalf of Licensee) relating to this Licence Agreement and Licensee's use of the Licensed Program and the Documentation.

3. Ownership

3.1 Licensed Program

For all purposes, SITA will be considered the owner of the Licensed Program and the Documentation and of all Intellectual Property Rights contained or evidenced therein but the Licensee Enhancements shall belong to the Licensee together with all Intellectual Property Rights contained or evidenced therein. All copies of the Licensed Program and the Documentation will remain the property of SITA. The provisions of this clause 3 will survive the termination of this Licence Agreement for any reason.

3.2 Derivative Works

In accordance with the terms of the Licence in clause 2.2, but subject to clause 2.4, of this Licence Agreement the Licensee is only permitted to create derivative works of the Licensed Program for the International Registry and will only use such derivative works for the purposes of the International Registry.

4. Warranties

4.1 Warranty on Licensed Program

Whilst SITA has used reasonable care and skill in designing the Licensed Program, the Licensed Program is licensed to Licensee "AS IS" and, to the extent permissible by law, no warranty other than expressly provided in this Licence Agreement is provided by SITA (a) in relation to the Licensed Program or (b) the uses to which it may be put or (c) its fitness or suitability for any particular purpose or under any special conditions.

4.2 Documentation

SITA warrants that the Documentation contains all written materials prepared by or on behalf of SITA in relation to the International Registry.

4.3 Disclaimer

Except as otherwise expressly provided in this clause 4, neither party makes any representations or warranties, express or implied, regarding any matter, including the merchantability, suitability, originality, fitness for a particular use or purpose, or results to be derived from the use, of any information technology service, software, hardware or other materials provided under this Licence Agreement. In particular, SITA does not warrant that the operation of the Licensed Program will be uninterrupted or error-free.

5. Maintenance and Support

Licensee acknowledges that the Licensed Program is provided under this Licence Agreement without maintenance or support services from SITA and Licensee agrees to be responsible for software maintenance and support services in relation to the Licensed Program.

6. Confidentiality

6.1 Confidential information

Licensee and SITA acknowledge that they will receive confidential information and trade secrets ("**Confidential Information**") from each other in connection with this Licence Agreement. Subject to clause 6.3, Confidential Information will be deemed to include all the information each party receives from the other, except anything expressly designated as not confidential. Licensee and SITA agree to maintain the secrecy of the Confidential Information and agree neither to use it (except for purposes of performing hereunder) nor to disclose it to any person other than their employees who have a need to know in order to perform their obligations under this Licence Agreement.

6.2 Release

The parties acknowledge and confirm that the contents of, and their performance under this Licence Agreement constitute, for the purposes of this clause 6 (Confidentiality), Confidential Information. Notwithstanding the foregoing, neither party will be prevented from releasing any public press, trade or other announcement stating that an agreement has been concluded between the parties, nor shall a party be precluded from disclosing Confidential Information to its professional advisers, auditors and others under a professional duty of confidentiality or in order to enforce the terms of this Licence Agreement.

6.3 Exclusions

Confidential Information will not include any information which is publicly available at the time of disclosure or subsequently becomes publicly available through no fault of Licensee or SITA, or is rightfully acquired from a third party who is not in breach of an agreement to keep such information confidential.

6.4 Disclosure required by law

Nothing contained in this clause 6 (Confidentiality) will prevent either party from disclosing any Confidential Information of the other party to regulatory agencies and/or government authorities, to the extent that such disclosure is required by law, rule, regulation or government or court order. In such event, the disclosing party will take all reasonable steps to maintain the confidentiality of such Confidential Information to be disclosed and shall forthwith advise the other party of such impending disclosure.

6.5 Survival

The obligation of the parties under this clause 6 shall remain in force for a period of five years after the end of the Term.

7. Licence Fee

7.1 Licence Fee

In consideration of SITA making the Licensed Program and the License Materials available to the Licensee, the Licensee will pay to SITA:

- (i) The Software Residual Value pursuant to a payout schedule agreed to by SITA and the Licensee, in any event no longer than 3 (three) years; and
- (ii) An amount of US\$ 100 per calendar year from the Effective Date until the end of the Term (pro rata for a part of a year).

7.2 Taxes

The Licence Fee does not include taxes, and Licensee must pay all taxes arising under this Agreement, excluding income taxes that are based on or measured by SITA's income or gains or any penalty payments or duties in relation to late or non payment of taxes by SITA.

8. Term and Termination

8.1 Term

This Licence Agreement shall remain in full force and effect for the Term.

Termination by Either Party

- 8.2.1. Licensee may terminate this Licence Agreement by notice to SITA on three (3) months' notice at any time.
- 8.2.2. Licensee may terminate this Licence Agreement by notice to SITA with immediate effect if SITA commits a material breach of its obligations in this Licence Agreement and does not remedy that breach within thirty (30) days of receiving a notice detailing the breach and requiring that it be rectified.

8.2 Consequences of Termination

- 8.3.1. In the event of a material breach of its obligations under this Agreement by Licensee, Licensee may continue to use the Licence in accordance with this Licence Agreement provided it compensates SITA for any damages assessed in accordance with applicable law.
 - 8.3.2. At SITA's request the Licensee shall, on termination of this Licence Agreement, execute a certificate of destruction in relation to any material associated with the Licensed Program (other than Licensee Enhancements) to SITA's satisfaction and any such execution shall be legalized in accordance with the Licensee's jurisdiction of operation.
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9. Limitation of liability

9.1 Exclusions

Subject to clause 4 and 9.5, SITA excludes all implied representations, warranties, conditions and other terms whether statutory, collateral or otherwise, relating to the subject matter of this Licence Agreement.

9.2 Indirect, special and consequential loss excluded

Subject to clause 9.5, each party excludes all liability for indirect, special and consequential loss (including without limitation for loss or corruption of data, loss of business revenue, loss of profits (whether direct or indirect), failure to realise expected profits or savings and any other economic loss of any kind) in contract, negligence or other tort, under any statute or otherwise howsoever arising from or in relation to this Licence Agreement.

9.3 Total liability

Other than for the Licensee's breach of the Licence in clause 2.2 of this Licence Agreement, either party's total liability to the other party for loss or damage of any kind not specified in clause 9.5, however caused (whether in contract, negligence or other tort, under any statute or otherwise howsoever) arising from or in relation to this Licence Agreement is limited in the aggregate to the amount stated as payable under clause 7 of this Licence Agreement to SITA by Licensee but assuming that, for these purposes only, the Software Residual Value is the sum of the acquisition costs of software comprising the Licensed Program in any given year amortised on a straight line basis over a three (3) year period.

9.4 Article 28 Liability

The Licensee shall indemnify and hold SITA harmless for any liability or claim under Article 28 of the Convention arising during the Term.

9.5 Death, personal injury or fraudulent misrepresentation

Neither party excludes or limits its liability to the other party for:

- (i) death or personal injury resulting from the negligence of that party, its employees or authorised agents; or
- (ii) fraudulent misrepresentation.

10. Notices

10.1 Notice in writing

A notice, approval, consent or other communication in connection with this Licence Agreement must be in writing, signed by the sender.

10.2 Receipt of notices

They must be:

- (i) left at the address of the designated recipient at its address set out at the beginning of this Agreement ;
- (ii) sent by prepaid post to such address; or
- (iii) sent by fax to the party's fax number at such address.

If the intended recipient has notified a changed postal address or fax number, then the communication must be to that address or fax number.

11. Dispute resolution

11.1 Settle dispute expeditiously

If a dispute arises the parties undertake in good faith to use all reasonable endeavours to settle the dispute expeditiously.

12. General

12.1 Variation and waiver

A provision of this Licence Agreement or a right created under it, may not be varied or waived except in writing, signed by the party to be bound.

12.2 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Licence Agreement expressly states otherwise.

12.3 No implied waiver

The failure of a Party to exercise any right under this Licence Agreement (which shall include the granting by a party to the other party of an extension of time in which to perform its obligations under any provision hereof) shall not be deemed to constitute a waiver of the right to exercise any such right in the future.

12.4 Entire agreement

This Licence Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

12.5 Force majeure

Neither party shall be considered in default or liable for any delay or failure to perform its obligations under this Licence Agreement if such delay or failure arises directly or indirectly out of acts of God, war, civil commotion, terrorist act or insurrection and which neither party is able to overcome.

12.6 Severability

If any provision of this Licence Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this Licence Agreement and the remainder of such provision shall continue in full force and effect.

12.7 Assignment

Licensee shall not assign, nor shall it purport to assign, this Licence Agreement or any part thereof to any party that is a then current direct competitor of SITA without the prior written consent of SITA.

13. Governing law and submission to jurisdiction

This Licence Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Licence Agreement or its subject matter or formation (including non-contractual disputes or claims).

The Licensee appoints [NAME] of [ADDRESS] [FAX NUMBER] as its agent to receive on its behalf in England or Wales service of any proceedings pursuant to this clause 13. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Licensee) and shall be valid until such time as SITA has received prior notice from the Licensee that such agent has ceased to act as agent. If for any reason such agent ceases to act as agent or no longer has an address in England or Wales, the Licensee shall forthwith appoint a substitute and deliver to SITA the new agent's name, address [and fax number] within England or Wales.

SITA appoints [NAME] of [ADDRESS] [FAX NUMBER] as its agent to receive on its behalf in England or Wales service of any proceedings pursuant to this clause 13. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by SITA) and shall be valid until such time as the Licensee has received prior notice from SITA that such agent has ceased to act as agent. If for any reason such agent ceases to act as agent or no longer has an address in England or Wales, SITA shall forthwith appoint a substitute and deliver to

the Licensee the new agent's name, address [and fax number] within England or Wales.

14. Definitions and interpretation

14.1 Definitions

The following words have these meanings in this Licence Agreement and the recitals:

Cape Town Instruments means the Convention and the Protocol.

Convention means the Convention on International Interests in Mobile Equipment, opened for signature in Cape Town on 16 November 2001.

Documentation means at any time and from time to time one complete set of each of the (i) installation instructions, (ii) utilities (if any), (iii) user manual, (iv) functional and technical specifications (v) technical and programmers' guide and similar materials as SITA itself uses, in each case for and in relation to the International Registry.

International Registry means the international registry for railway rolling stock as established by the Cape Town Instruments.

Intellectual Property Rights means patents, trademarks, service marks, trade secrets, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, trade or business names and other similar rights and obligations whether registerable or not in any country.

License Materials means the Licensed Program and the Documentation from time to time.

Licensed Program means at any time and from time to time the most up to date version of the Source Code and Object Code with the full source listings, annotations, the executable and such other materials as SITA itself uses for and in relation to the International Registry.

Luxembourg Diplomatic Conference means the diplomatic conference held in February 2007 to adopt a rail protocol to the Convention on International Interests in Mobile Equipment

New Registrar Contract means the agreement between the Supervisory Authority and the Licensee for the operation of the International Registry.

Object Code means the machine readable format of the Licensed Program.

Protocol means the Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock, signed in Luxembourg on February 23, 2007.

Software Residual Value shall be that amount, if any, as certified by the Supervisory Authority as the amount payable to SITA.

Source Code means the human readable format of the Licensed Program.

Supervisory Authority means the Preparatory Commission established pursuant to Resolution No.1 of the Luxembourg Diplomatic Conference to act as provisional supervisory authority pending entry into force of the Protocol.

Term means the period from the Effective Date until the date which is the expiry or the sooner termination of the New Registrar Contract.

14.2 Reference to general terms

COMMERCIAL IN CONFIDENCE

Unless the contrary intention appears, a reference in this Agreement to:

this "Agreement" includes any current or future amendments hereto or the annexes hereof, which form part of this Licence Agreement for all purposes;

a "party" or the "parties" is to the parties or the parties (as the case may be) to this Licence Agreement and includes any permitted assignees of a party;

the word "person" includes an individual, a firm, a corporation, an unincorporated association, government, state or agency of state, association, partnership or joint venture; and

the words "include" and "including", are not used as, nor are they to be interpreted as, words of limitation.

14.3 Headings

Headings are inserted for convenience only and do not affect the interpretation of this Licence Agreement.

14.4 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this Licence Agreement or any part of it.

14.5 Order of precedence

If there is any inconsistency between a provision in:

- (i) these terms and conditions; and
- (ii) an Annex to these terms and conditions,

then the document higher in the list above takes precedence to the extent of the inconsistency.

IN WITNESS WHEREOF this Agreement is _____

SIGNED for and behalf of)
SITA)
by its duly authorised representative:)

(Signature)

Print name:

Title:

Date:

SIGNED for and behalf of)
the Licensee)
by its duly authorised representative:)

(Signature)

Print name:

Title:

COMMERCIAL IN CONFIDENCE

Date:

Annex 1

Third Party Access Agreement

THIS THIRD PARTY SYSTEM ACCESS AGREEMENT (the "**Access Agreement**")
effective as of,

BETWEEN

- (1) SITA Information Networking Computing (Ireland) Limited a company registered in Ireland with company number 369682 having its principal office at Building 1, Letterkenny Office Park, Windyhall, Letterkenny, Co. Donegal, Ireland ("**SITA**")
- (2) xxxxxxxxxxxxxxxx ("**Third Party**") and
- (3) [] a company registered in [] with company number [] having its principal office at [] ("**Licensee**")

WHEREAS,

- (1) SITA and Licensee have entered into a license agreement for the provision of software to facilitate the Licensee's operation of the International Registry (as defined therein), dated [] (the "**Licence Agreement**"), pursuant to which SITA licensed to Licensee certain software products more specifically described in the Licence Agreement (hereinafter referred to as the "**Licensed Program**");
- (2) Licensee and Third Party have entered into an software development agreement (the "**ITS Agreement**") pursuant to which Third Party will provide services ("**Services**") to Licensee requiring that Third Party have access to the Licensed Program; and
- (3) The parties desire that Third Party undertake appropriate contractual commitments to assure that the Licensed Program will be used only in accordance with and subject to the terms and conditions of the Licence Agreement and this Access Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensee, SITA and Third Party hereby agree as follows:

1. SITA hereby grants Third Party the rights over the Licensed Program granted in clause 2 of the Licence Agreement for the purpose of performing its obligations pursuant to the ITS Agreement. The parties agree that Third Party's Access of such Licensed Program shall be governed by the terms and conditions of the Licence Agreement; provided, however, Third Party may access the source code and object code forming part of the Licensed Program for the sole and exclusive purpose of providing Services to the Licensee.
2. The Third Party shall keep, and shall not disclose, and shall procure that its employees and the employees of any sub-contractor shall keep, the information obtained by reason of the Access Agreement ("Confidential Information") safe from unauthorised and accidental disclosure using the same level of care that the Third Party affords its own most confidential information, but in no event less than a reasonable level of care, except information which is in the public domain otherwise than by reason of a breach of this provision.
3. All moral rights together with any inventions, patents, copyrights, designs and any other types of intellectual property invented, devised or originated by SITA or any of its affiliates (or by the Third Party in breach of this Access Agreement) in relation to Confidential Information shall belong and continue to belong to SITA and/or the relevant one or more of its affiliates and no license is granted to the Third Party to use the same other than for the purposes specified in this Access Agreement. The

COMMERCIAL IN CONFIDENCE

Third Party agrees that, as and when requested, it will execute all necessary further documents to vest the full title to such rights, which are infringed by the Third Party in breach of this Access Agreement, in SITA without further payment.

4. The Third Party further acknowledges and confirms to SITA that money damages would not be a sufficient remedy for any breach of clauses 2 and 3 by the Third Party, and that in addition to all other remedies which SITA may have, SITA will be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach.
5. This Access Agreement shall commence as of the date first set forth above and shall continue in effect until the earlier of (i) the termination of the ITS Agreement, (ii) SITA's receipt of written notice from Licensee that the Third Party's need to access the Licensed Program has ceased, or (iii) the termination of the Licence Agreement. Upon termination of this Access Agreement, the Third Party shall discontinue all use of the Licensed Program and; provided that the Licence Agreement has not terminated, Licensee's continued use of the Licensed Program shall be governed by the terms and conditions of the Licence Agreement. At such time, Third Party shall have no further liability or responsibility with respect to such Licensed Program.
6. At SITA's request the Third Party shall, on termination of this Access Agreement, execute a certificate of destruction in relation to any material associated with the Licensed Program to SITA's satisfaction and any such execution shall be legalized in accordance with the Third Party's jurisdiction of operation.
7. This Access Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Access Agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF, the parties have caused this Access Agreement to be executed as of the dates indicated.

Licensee

By:

Printed Name: _____

Title: _____

THIRD PARTY

By:

Printed Name: _____

Title: _____

SITA

By:

Printed Name: _____

Title: _____

COMMERCIAL IN CONFIDENCE

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

ATTACHMENT VI

MASTER SERVICES AGREEMENT

[TBA]

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

ATTACHMENT VII

CHANGE CONTROL

1. Objective

The purpose of this document is to establish a framework and procedure for processing and approving changes to the International Registry (“IR”) that may be required or desirable in order to:

update the security, operation, functioning, and user-friendliness of the IR system;
alter the Services; and
any other changes to this Contract.

References

The following references have been used in the preparation of, and/or are referred to in, this document. Where referred to in the text, the references are abbreviated as per one of the entries in the table below.

Abbreviation	Reference
SA	Supervisory Authority
Registrar	Contractor
Convention	<i>Convention on International Interests in Mobile Equipment</i> signed at Cape Town on 16 November 2001
Protocol	<i>Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Railway Rolling Stock</i> signed in Luxembourg on 23 February 2007
Regulations	Regulations for the International Registry
Procedures	Procedures for the International Registry
Fee Schedule	Fee Schedule appended to the Procedures
Contract	Contract between SA/Preparatory Commission and the Registrar for the Establishment and Operation of the International Registry, signed on []
HLD	High Level Design Document, Version [], dated [] – Appendix 1 to Attachment II of the Contract

SDI	System Design Information incorporated into the Contract as Attachment II of the Contract
IRRCE	International Rail Registry Commission of Experts
ABIRR	Advisory Board of the International Rail Registry

Readership

The intended audience for this document consists of:

IR staff;
SA officials;
Members of IRRCE; and
Members of ABIRR.

2. Overview

2.1 The International Registry System

The IR is to be established by the Registrar under the Contract in accordance with the Convention and Protocol, and the Regulations and Procedures issued there under. The IR will become operational on the Go Live Date in conjunction with the entry into force of the Protocol. The IR system is to be built according to the HLD and the SDI.

From time to time it will be necessary to make changes to the system as a result of user feedback and/or in the interest of updating its security, efficiency and user friendliness. A procedure is required in order to process user feedback and determine, on a periodic basis, whether such changes are appropriate, the timing and frequency of the changes and the mechanism for processing the changes.

The SA is empowered to amend the Regulations and the Procedures, and changes to the IR system design can be brought about through changes in the HLD and the SDI.

2.2 The Role of the Supervisory Authority

The SA exercises its functions pursuant to Article 17 of the Convention, Article XII of the Protocol.

The SA intends to establish IRRCE pursuant to Article XII (5) of the Protocol to assist in the discharge of its functions. IRRCE is to be consulted by the SA as needed.

The SA has the right to initiate Change Control procedures for the first and second level changes. In doing so, it shall closely coordinate with the Registrar.

2.3 User Feedback Channels

ABIRR, consisting primarily of professional users of the IR, will be established by the Registrar to provide user input on matters relating to the needs of users in connection with the operation, procedures and practices of the IR. While ABIRR is not intended to be the exclusive channel for receiving user input, it will provide a mechanism for consolidating comments and recommendations from a sector representing substantial users and user groups. ABIRR is to hold regular meetings where feedback from the membership is solicited.

In addition, the Registrar will participate in or organize, in consultation with SA, conferences, seminars and workshops, and conducts a number of demonstrations and familiarization exercises with individual users and/or groups of users in the form of online tutorials or otherwise. These, *inter alia*,

are to serve the purpose of facilitating a dialogue between the Registrar and relevant user groups/representatives on the functioning of the IR, including proposed changes to the system.

The Registrar will log and classify all user feedback and ABIRR feedback regarding proposed changes to the system. The Registrar shall provide to SA, upon request, information obtained from the users, either directly, or through ABIRR. The Registrar shall maintain a Comprehensive Issues List which summarizes the items requiring system changes, and which shall be available to the SA upon request.

2.4 Change Control Process

The following classification of proposed changes and associated procedures shall apply to the changes to the IR system and shall be collectively referred to as the Change Control Process:

2.4.1 The proposed changes to the IR system shall be classified as follows:

2.4.1.1 The changes impacting the Contract, the Regulations, the Procedures and/or the Fee Schedule shall hereinafter be called “first level changes”;

2.4.1.2 The facilitating changes, which are technical changes to the IR system to ensure that it continues to operate in conformity with the Convention, the Protocol, the Contract, the Regulations and the Procedures (including amendments thereto resulting from approved first level changes), or to enhance the functionality of the system for users or the ability of the Registrar to manage the IR, shall hereinafter be called “second level changes”; and

2.4.1.3 The changes to the system required to correct any malfunctions in the IR system shall hereinafter be called “third level changes”.

2.4.2 For the purpose of classifying the proposed changes, the Registrar and the SA may consult informally before initiating the procedures outlined below.

2.4.3 First Level Changes

2.4.3.1 The amendment proposals for first level changes shall be transmitted by the Registrar to the SA or vice versa in accordance with paragraph 2.4.6 below, for its consideration and approval.

2.4.3.2 The SA and the Registrar shall review and consult on the proposed first level changes to the system.

2.4.3.3 The SA may instruct the Registrar to prepare such changes to the IR system as are considered necessary following the review and consultation referred to in 2.4.3.2.

2.4.3.4 The Registrar shall obtain timeframe and cost estimates for proposed changes and submit these estimates to the SA.

2.4.3.5 The SA shall approve or disapprove the proposed changes following submission to it by the Registrar of the timeframe and cost estimates referred to in 2.4.3.4. In doing so, it shall give consideration to, among other things, the perceived benefits of any change; the cost estimates of any change associated with a request for a fee increase or the addition of a new fee; the requirement for the IR to operate on a cost-recovery basis; the contribution of any change to the overall functioning of the IR; and the timeframe and the need to avoid potential disruptions to the operation of the IR.

2.4.3.6 If the Registrar proposes a change to the fees at Table 1 of the Fee Schedule, the SA shall use All Reasonable Efforts to revert expeditiously with a decision as to the proposed change.

2.4.4 Second Level Changes

2.4.4.1 The second level changes shall be subject only to a notification procedure as follows:

COMMERCIAL IN CONFIDENCE

- (a) the changes shall be processed in accordance with paragraph 2.4.6 below;
- (b) each intended change shall be notified by the Registrar to the SA or vice versa no later than one (1) month prior to its intended implementation;
- (c) if the SA considers that the intended change falls under the category of first level changes, the Registrar shall be notified accordingly within that period and the change shall be treated as a first level change under paragraph 2.4.3 above; and
- (d) if, within the period of one (1) month after notification to the SA by the Registrar of an intended change, the SA notifies the Registrar that it has no objection or makes a notification pursuant to 2.4.4.1(c), the Registrar may implement the intended change.
- (e) the Registrar, upon being notified by the SA of an intended change pursuant to 2.4.4.1(b), shall implement the change unless, within the period of one (1) month after notification to the Registrar the Registrar notifies the SA of the need for consultations regarding the intended change and, following consultations between the SA and the Registrar, the SA modifies or withdraws its notification.

2.4.5 Third Level Changes

The Registrar shall give *post facto* notification of third level changes to the SA as they occur, but no less than once a year.

2.4.6 Proposals and Notifications of Changes

The proposals of the SA referred to in paragraph 2.4.3 and 2.4.4.1 shall be recorded in writing by the SA and sent to the Registrar. The proposals and notifications referred to in paragraphs 2.4.3 and 2.4.4 above respectively shall be recorded in writing by the Registrar and sent to the SA in the following formats:

- 2.4.6.1 For first level changes, an International Registry Change Request Approval Form (sample at Annex I);
 - 2.4.6.2 For second level changes, an International Registry Change Notification Form (sample at Annex II), which shall include the technical specification for that change covering, *inter alia*, hardware/software specifications, web site user work flow and associated texts.
 - 2.4.6.3 For third level changes, an International Registry Change Information Form (sample at Annex III)
- 2.4.7 Second level changes and third level changes (where applicable) shall be bulked together and released in batches that shall occur no more than three (3) times a year at a timeframe to be agreed. This excludes any changes which SA and the Registrar may jointly agree would be beneficial to implement expeditiously and urgent second level changes.
 - 2.4.8 The HLD is a live document and as such must reflect changes to the IR system design as they occur. To that end, the Registrar shall update the HLD upon implementation of IR system changes covered under this Change Control Process and shall concurrently record the dates of implementation in a table annexed to the HLD. The Registrar shall send the updated HLD/ to the SA.

2.4.9 The User Manual is a document which describes the IR system from a registry user's perspective. As such, certain changes made to the HLD will need to be reflected in the User Manual, and the Registrar shall update the Manual accordingly.

2.5 Budget Cycle

Any cost required which is not addressed through the three levels described in paragraphs 2.4.3 to 2.4.5 above shall be handled through the budget cycles in clauses 10.7 and 10.8.

**ANNEX I
TO THE CHANGE CONTROL PROCESS**

**International Rail Registry Change Request
Approval Form for First Level Changes**

Change Title:

Change Order number:

Change submitted to SA on:

Priority: (P1/P2)

Registrar's view of this change:

Impacts Fees	(Yes/No)
Impacts Regulations and/or Procedures	(Yes/No)
Seeking Pre Approval to begin software development	(Yes/No)
Seeking Final Approval to go live	(Yes/No)

Classification of change (select all that apply)

Improved user efficiency	(Yes/No)
Improved user interface	(Yes/No)
Enhanced functionality	(Yes/No)
Improve clarity	(Yes/No)
User request	(Yes/No)
Security issue	(Yes/No)
Compliance issue	(Yes/No)
Improved Registrar administration / efficiency	(Yes/No)
Any other:	(Yes/No)

Problem Statement:

Problem Statement:

Describe the problem:

Proposed change:

Impact on Regulations and Procedures:

Benefits:

Does this change benefit all users or a subset?

Risks (if change made and if change not made):

Registrar's position:

Change description:

Software changes:

Regulations and/or Procedures change:

Timeline for implementing change:

Cost estimate:

Incremental Cost taking into account efficiencies/savings

Estimated change in fees:

Timeline for cost recovery:

Associated documents:

**ANNEX II
TO THE CHANGE CONTROL PROCESS**

**International Rail Registry Change Notification
Form for Second Level Changes**

Change Title:

Change Order number :

Change submitted to SA on:

Priority (P1/P2):

Registrar's view of this change:

Impacts Fees (Yes/No)

Impacts Regulations and/or Procedures (Yes/No)

Classification of change (select all that apply)

Improved user efficiency (Yes/No)

Improved user interface (Yes/No)

Enhanced functionality (Yes/No)

Improve clarity (Yes/No)

User request (Yes/No)

Security issue (Yes/No)

Compliance issue (Yes/No)

Improved Registrar administration / efficiency (Yes/No)

Any other: (Yes/No)

Change resulting from an approved first level change: (Yes/No)

[Change resulting from a rail registry requirement: (Yes/No)]

Problem Statement:

Describe the problem:

Proposed change:

Impact on Regulations and Procedures:

Benefits:

Does this change benefit all users or a subset?

Risks (if change made and if change not made):

Registrar's position:

Change description:

Hardware/Software changes:

Regulations and/or Procedures change:

Timeline for implementing change:

Cost estimate:

Incremental Cost taking into account efficiencies/savings

Estimated change in fees:

Timeline for cost recovery:

Associated documents:

**ANNEX III
TO THE CHANGE CONTROL PROCESS**

**International Rail Registry Change Information
Form for Third Level Changes**

Change Title:

Change Order number :

Change submitted to SA on:

Date change implemented:

Registrar's view of this change:

No impact on Fees

No impact on Regulations and/or Procedures

Classification of malfunction remedied (select all that apply)

User issue (Yes/No)

Security issue (Yes/No)

Compliance issue (Yes/No)

Registrar administration / efficiency (Yes/No)

Any other: (Yes/No)

Change resulting from an approved first level change: (Yes/No)

[Change resulting from a rail registry requirement: (Yes/No)]

Problem Statement:

Describe the problem:

Change implemented:

Benefits:

Does this change benefit all users or a subset?

Registrar's position:

Change description:

Timeline for implementing change:

Cost estimate:

Incremental Cost taking into account efficiencies/savings

Timeline for cost recovery:

Associated documents:


























CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT (RAILWAY ROLLING STOCK)

ATTACHMENT VIII

PROJECT IMPLEMENTATION PLAN




















The International Registry Project Schedule is divided into two basic parts. Part One of the schedule focuses on those activities up to the point where the software development phase begins. Many of the activities take place prior to the Commencement Date however their relationship to activities following the Commencement Date are important and are therefore reflected below (Part One). Part Two of the schedule involves those activities that must be addressed as part of the software development and operational implementation of the International Registry. Both Parts of the schedule include suggested owners for the particular task. The dates reflected in these schedules assume a Commencement Date before and a Notification Date of [October 2014].

Part One – Pre-Software Development

	Task Name	Duration	Start	Finish	Resource Names
	Phase 1 - Finalise Negotiations and SIGN	45 days	Fri 2/28/14	Wed 4/30/14	
	Contract Finalization	4 days	Fri 2/28/14	Wed 3/5/14	SITA, Prep Comm
	SITA Approval Process	30 days	Thu 3/6/14	Tue 4/15/14	SITA
	PrepComm Approval Process	40 days	Thu 3/6/14	Tue 4/29/14	Prep Comm
	Director Rail Co Assigned	0 days	Wed 3/26/14	Wed 3/26/14	SITA
	Contract Signatures	1 day	Wed 4/30/14	Wed 4/30/14	SITA, Prep Comm
	Phase 2 - Drive Initial Ratifications	120 days	Thu 5/1/14	Wed 10/15/14	
	RegCo Agree Ratification Strategy	20 days	Thu 5/1/14	Wed 5/28/14	Rail Co, Prep Comm
	RegCo Attend conferences and meetings to drive ratification	120 days	Thu 5/1/14	Wed 10/15/14	Rail Co, Prep Comm
	Viable Ratifications exist, Target Date Set & Fees Agreed	0 days	Wed 10/15/14	Wed 10/15/14	Rail Co, Prep Comm
	Project Mgr Assigned (part time initially)	0 days	Wed 10/15/14	Wed 10/15/14	SITA
	Phase 3 - Pre Development Activities	244 days	Thu 7/24/14	Tue 6/30/15	
	Key Contracts to Draft Stage / Regs&Proc	105 days	Thu 7/24/14	Wed 12/17/14	
	Expose Draft Regulations	66 days	Thu 7/24/14	Thu 10/23/14	Rail Co, Prep Comm
	Select Potential Mgt Team	45 days	Thu 10/16/14	Wed 12/17/14	Rail Co
	Prep Comm Formalities	75 days	Wed 10/15/14	Wed 1/28/15	
	Convene meeting	0 days	Wed 1/28/15	Wed 1/28/15	Prep Comm
	Approve Regulations Draft 1st Edition	9 days	Fri 1/16/15	Wed 1/28/15	Prep Comm
	Official Notification to Begin Development	0 days	Wed 10/15/14	Wed 10/15/14	Prep Comm, Rail Co, S
	Investment Phase	184 days	Thu 10/16/14	Tue 6/30/15	
	Establish SITA Delivery Team	20 days	Thu 10/16/14	Wed 11/12/14	SITA
	Begin Hiring Registrar Team	45 days	Thu 10/16/14	Wed 12/17/14	Rail Co
	Formalize Key Support Contracts (Hardware, Data Center, Facilities, Certificates, Credit Card processing)	20 days	Thu 12/18/14	Wed 1/14/15	SITA, Rail Co
	Negotiate and Sign Other necessary Contracts	119 days	Thu 1/15/15	Tue 6/30/15	SITA, Rail Co

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Part Two – Software Development and Operational Implementation

	Task Name	Duration	Start	Finish	Resource Names
	Phase 4 - Establishment Phase	368 days	Wed 4/30/14	Fri 9/25/15	
	Development Kick Off Meeting	2 days	Thu 10/16/14	Fri 10/17/14	SITA,Rail Co
	Hire Operations Staff (RO)	59 days	Thu 4/16/15	Tue 7/7/15	SITA
	Operations Staff Training (RO)	59 days	Thu 6/4/15	Tue 8/25/15	SITA
	Software Component	150 days	Thu 10/30/14	Wed 5/27/15	
	Requirements Specification Agreed	10 days	Thu 10/30/14	Wed 11/12/14	Rail Co,SITA
	Functionality Review Meeting 1	0 days	Wed 1/7/15	Wed 1/7/15	SITA,Rail Co
	Functionality Review Meeting 2	0 days	Wed 2/18/15	Wed 2/18/15	SITA,Rail Co
	Functionality Review Meeting 3	0 days	Wed 4/15/15	Wed 4/15/15	SITA,Rail Co
	Functionality Review Meeting 4	0 days	Wed 5/27/15	Wed 5/27/15	SITA,Rail Co
	Hardware Components	130 days	Thu 11/13/14	Wed 5/13/15	
	Hardware Design Confirmed	10 days	Thu 11/13/14	Wed 11/26/14	SITA,Rail Co
	Hardware Configuration and Test	20 days	Thu 4/16/15	Wed 5/13/15	SITA
	Test and Acceptance	67 days	Wed 6/24/15	Fri 9/25/15	
	PAT and Acceptance Criteria Submitted to Registrar	0 days	Wed 6/24/15	Wed 6/24/15	SITA,Rail Co
	PAT	5 days	Thu 8/13/15	Wed 8/19/15	SITA,Rail Co
	FAT	5 days	Mon 9/21/15	Fri 9/25/15	SITA,Rail Co
	Operations Support Model	58 days	Fri 6/5/15	Tue 8/25/15	
	SITA Managed Services Guide	25 days	Fri 6/5/15	Thu 7/9/15	SITA
	SITA Operations Support in Place	0 days	Tue 8/25/15	Tue 8/25/15	SITA,Rail Co
	Administrative Establishment	355 days	Wed 4/30/14	Tue 9/8/15	
	Secure Office (Rail Co)	0 days	Wed 4/30/14	Wed 4/30/14	Rail Co
	Secure Office (SITA Ops)	20 days	Thu 5/14/15	Wed 6/10/15	SITA
	Procedures Review	20 days	Wed 8/12/15	Tue 9/8/15	SITA,Rail Co
	Phase 5 - Live Operational Phase (Go Live Date)	4 days	Mon 10/5/15	Thu 10/8/15	
	Agree Procedures	1 day	Mon 10/5/15	Mon 10/5/15	SITA,Rail Co
	Verify Completion of System Testing (FAT)	1 day	Mon 10/5/15	Mon 10/5/15	SITA,Rail Co
	Review Pre-Operations Check List	3 days	Tue 10/6/15	Thu 10/8/15	SITA,Rail Co
	Go Live	0 days	Thu 10/8/15	Thu 10/8/15	SITA,Rail Co,SA

The above start dates and end dates are for illustrative purposes only. A completed project implementation plan, as agreed to between Contractor and the Supervisory Authority, will be provided on the Notification Date.

**CONTRACT FOR THE OPERATION OF THE INTERNATIONAL REGISTRY FOR
INTERNATIONAL INTERESTS IN MOBILE EQUIPMENT
(RAILWAY ROLLING STOCK)**

**ATTACHMENT IX
HANDOVER PACKAGE**

1. Key Contacts

A list of all staff to include the Registrar and all directors and managers with responsibility for the operation of the International Registry. This list must include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2. Property

A list of all real estate owned, leased, operated or occupied by the Contractor which shall include the address, telephone number and contract telephone number of each property. Where applicable, the list will also include the name, address and telephone number of any lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

3. Insurance

A list of names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Contractor, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.