

DATED

2014

May 2014 Draft

(1) [Registrar]

and

(2) 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

(3) SITA Information Networking Computing Ireland Limited

DEED OF BUSINESS CONTINUITY

THIS DEED is made this _____ day of _____ 2014

BETWEEN:

- (1) [] a company registered in [Luxembourg] with company number [] having its principal office at [] ("**Registrar**"),
- (2) **The Preparatory Commission** established pursuant to Resolution No.1 of the Luxembourg Diplomatic Conference to act as the provisional supervisory authority pending entry into force of the Protocol ("**Supervisory Authority**"), and
- (3) **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**").

each a **"Party"** and together the **"Parties"**.

WHEREAS:

- (A) The Registrar has been awarded the contract to operate a rail registry (“**International Registry**”) by the Supervisory Authority, and has signed a contract with the Supervisory Authority for the provision of such an International Registry (“**Registrar Contract**”)
- (B) The Registrar is entering into an agreement (the “**MSA**”) with SITA on or around the date of this Deed relating to the delivery of professional services and provision of managed services by SITA to the Registrar to assist the Registrar in fulfilling its obligations under the Registrar Contract.
- (C) This Deed records the assignment-related terms that the Parties have agreed to in connection with the MSA on the occurrence of certain events as set out in the Registrar Contract.

NOW THIS DEED WITNESSES as follows:

This Deed is made on the date the last signatory below signs this Deed, and is effective as from the date denominated as the Effective Date in the MSA

1 SCOPE OF THIS DEED

- 1.1 The scope of this Deed is the assignment of the MSA from the Registrar to the New Service Provider.

2. DEFINITIONS

- 2.1 Terms defined in this Deed shall bear the same meaning in the MSA unless otherwise stated.
- 2.2 In this Deed, the following words and expressions shall have the following meanings:
 - 2.2.1 **“Invocation Notice”** means a notice served on the Registrar and SITA by the Supervisory Authority to ensure continued provision of support services for the International Registry by SITA to a New Service Provider.

- 2.2.2 **"Minimum Period"** shall be the period certified as such by the Supervisory Authority in the Invocation Notice.
- 2.2.4 **"Termination Option"** means the right of the New Service Provider to terminate the MSA at any time after the Minimum Period from the Transfer Date irrespective of any default on the part of the New Service Provider.
- 2.2.3 **"Transfer Date"** means the date identified as such and set out in the Invocation Notice by the Supervisory Authority.

3. NOVATION AND ASSIGNMENT

- 3.1 Each of the Parties hereby agrees with each of the other Parties that:
 - 3.1.1 with effect from the Transfer Date, the New Service Provider shall be substituted for the Registrar in the MSA and the MSA shall thereafter operate and continue in full force and effect, subject to the Termination Option, with respect to the provision of Services by SITA, on the basis that the New Service Provider is so substituted and as if references in the MSA to the Registrar were to the New Service Provider;
 - 3.1.2 subject to clause 3.2.1 and 3.2.3 below, the Registrar shall be irrevocably and unconditionally released and discharged from any and all of its obligations and liabilities arising under the MSA from the Transfer Date; and
 - 3.1.3 the Registrar shall remain liable for obligations and liabilities arising under the MSA prior to the Transfer Date.
- 3.2 Each of the Parties hereby agrees with each of the other Parties that:
 - 3.2.1 in circumstances where the Registrar Contract is terminated and the Registrar is not entitled to terminate the MSA under clause 19.2 thereof then, unless otherwise agreed between the Supervisory Authority and SITA, the Supervisory Authority shall be required to serve an Invocation Notice and clause 3.1.1 above shall apply;
 - 3.2.2 the Supervisory Authority shall have the right, but not the obligation, to serve an Invocation Notice on SITA in the circumstance where the Registrar Contract is terminated and the Registrar was entitled to terminate the MSA under clause 19.2 thereof. Where an Invocation Notice is served, clause 3.1 above shall apply.
 - 3.2.3 In the Invocation Notice, the Supervisory Authority may also require SITA to provide the Transition Services for the Transition Period but the Registrar shall remain liable to pay for Transition Services due after the Transfer Date.

4. GENERAL

- 4.1 This Deed, together with the Registrar Contract, the MSA and the Software Security Agreement and any agreements made pursuant to or in connection with the MSA this Deed or the Software Security Agreement, sets out the entire agreement and understanding between the Parties and supersedes any previous agreement between the Parties relating to its subject matter. Unless otherwise expressly agreed in writing this

Deed applies in place of and prevails over any terms or conditions contained in or referred to in correspondence or elsewhere or implied by trade, custom or course of dealing. Nothing in this Deed shall limit liability for any representations made fraudulently.

- 4.2 Any variation to this Deed shall only be effective if in writing signed by an officer or other duly authorised representative of each of the Parties.
- 4.3 Neither Party shall sub-licence, assign, transfer or charge this Deed or any of its rights under it or purport to do any of the acts described in this clause 4.3 without the prior written consent of the other Parties which may be refused at the absolute discretion of the other Parties.
- 4.4 The Parties agree that any New Service Provider may directly enforce and rely on clause 3 as if it were a party to this Agreement, but save for the foregoing no provision of this Deed shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 4.5 All obligations created by this Deed shall survive change or termination of the Parties' business relationship.
- 4.6 In the event that an Invocation Notice is served on one of the Registrar and SITA but not the other, the service of the Invocation Notice on one Party shall be deemed to be service of the Invocation Notice on the other Party. However, this shall not relieve the Supervisory Authority of its obligations to produce Invocation Notices for separate service on each of the relevant Parties.
- 4.7 This Deed shall be governed and construed in accordance with the laws of England and Wales. The Parties irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any matter, claim or dispute arising under, out of, from or in connection with this Deed (including as to its validity or the legal relationships established by this Deed).
- 4.8 The Registrar 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 4.7 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Registrar) and shall be valid until such time as the Supervisory Authority and SITA has received prior written notice from the Registrar 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 Registrar shall forthwith appoint a substitute acceptable to the Supervisory Authority and SITA and deliver to the Supervisory Authority and SITA the new agent's name, address [and fax number] within England and Wales.
- 4.9 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 4.7 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 Registrar and SITA 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 Registrar and SITA and deliver to the Registrar and SITA the new agent's name, address [and fax number] within England and Wales.

- 4.10 SITA 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 4.7 above. Such service shall be deemed completed on delivery to such agent (whether or not it is forwarded to and received by the Registrar) and shall be valid until such time as the Supervisory Authority and the Registrar has received prior written notice from SITA 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, SITA shall forthwith appoint a substitute acceptable to the Supervisory Authority and the Registrar and deliver to the Supervisory Authority and the Registrar the new agent's name, address [and fax number] within England and Wales.

IN WITNESS whereof this Deed has been duly executed on the date first above written.

Signed as a deed by

[Registrar]

Executed as a deed by:

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Director

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Director

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Date

Supervisory Authority

Executed as a deed:

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Date

**SITA Information Networking Computing Ireland
Limited**

Executed as a deed by:

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Director

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Director/Secretary

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Date