

# **Software Security Agreement**

This Software Security Agreement, (the "**Agreement**") is made on the date of the latest to sign of the signatories below (the "**Effective Date**")

## **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 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**").

## **WHEREAS:**

- (A) The Supervisory Authority has awarded the Registrar the contract to operate the International Registry and such parties have, on or about the Effective Date entered into the an agreement for such purpose (the "**Registrar Contract**");
- (B) SITA has agreed, pursuant to a Master Services Agreement dated on or about the Effective Date, (the "**MSA**") to provide services to the Registrar in connection with the operation of the International Registry and in order to support the Registrar in its duties under the Registrar Contract, and in so doing will use certain Source Code and Object Code;
- (C) Registrar has agreed with the Supervisory Authority that at the expiry or sooner termination of the Registrar Contract it will, under the circumstances set forth in the Registrar Contract, ensure that the License Materials will be made available to the service provider replacing Registrar (the "**New Service Provider**") in relation to the operation of the International Registry under a licence agreement substantially in the form as attached as Schedule 1 hereto (the "**Licence Agreement**"); and
- (D) To secure the provision of the License Materials to the New Service Provider, SITA agrees to make certain undertakings to the Supervisory Authority in the terms as set out herein

## **THE PARTIES HERETO AGREE AS FOLLOWS:**

### **1. Scope of the Agreement**

The scope of this Agreement is the securing of the provision to the New Service Provider of a limited licence of the Licensed Program for the sole purpose of operating and developing the International Registry.

### **2. Grant of Licence and Authorised Use**

#### **2.1 Deposit**

Within thirty (30) days after Go-Live Date, stipulated under the Registrar Contract and certified by the Supervisory Authority, SITA shall deposit the License Materials with the National Computer Centre in Manchester, UK (the "**NCC**") under the NCC's standard escrow terms. SITA shall deposit (i) License Materials at least once a calendar quarter and (ii) all updates and enhancements as soon as they are operational, subject to SITA's reasonable costs and NCC charges which shall be paid by the Registrar.

## **2.2 Delivery**

On receiving from the Registrar or the Supervisory Authority a notice requesting delivery of the License Materials (the "**Transfer Notice**") to the New Service Provider, SITA will, as soon as practically possible (but in any event no later than seventy two (72) hours following receipt of the Transfer Notice), deliver to the New Service Provider the then current version of the License Materials. If, the Transfer Notice having been sent, the New Service Provider has not for any reason received from SITA the License Materials within three (3) days after the date of such notice, SITA hereby irrevocably authorises and requires the NCC on the Supervisory Authority or the New Service Provider presenting the NCC with a copy of the Transfer Notice, a copy of the Licence Agreement signed by the New Service Provider and a copy of this Agreement, forthwith and without further enquiry, to release to the New Service Provider the License Materials. Notwithstanding the foregoing, neither the Registrar nor the Supervisory Authority shall be able to serve a valid Transfer Notice as long as SITA is providing services to the Registrar or the New Service Provider under the MSA.

## **2.3 Licence**

SITA's obligations under clause 2.2 shall be subject to the New Service Provider signing and delivering to SITA the Licence Agreement, which shall be promptly countersigned and delivered to the New Service Provider by SITA. The Supervisory Authority shall, within 10 (ten) days of the Effective Date under the Licence Agreement, notify SITA and the New Service Provider of the Software Negotiated Value in accordance with the Registrar Contract, which shall be deemed, in the absence of material manifest error, to be the corresponding amount for the purposes of clause 7 of the Licence Agreement.

## **2.4 Recovery of the License Materials**

Subject to the License Materials being provided by SITA to the New Service Provider to its reasonable satisfaction, SITA shall be entitled to recover the License Materials from the NCC and clause 2.1 shall cease to apply.

## **2.5 Termination of MSA by the Registrar**

In the event that the MSA is terminated by the Registrar for any reason, the Registrar shall have the right to call for the License Materials as if it were the New Service Provider and in such case the Registrar agrees that this Agreement will continue to apply as if the Registrar had assumed SITA's obligations herein in relation to any upgrades or enhancements to the License Materials made after the date of such termination.

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## **3. Term and Termination**

### **3.1 Term**

This Agreement shall remain in full force and effect for the Term. It shall not be terminated due to any default or termination by the Registrar or SITA under the MSA.

### **3.2 Prior Termination**

Notwithstanding the foregoing, this Agreement and the obligations of the parties hereunder, shall terminate 60 (sixty) days after the conclusion of a Licence Agreement between SITA and the New Service Provider in accordance with this Agreement subject to all parties then having fulfilled their obligations hereunder.

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## **4. Notices**

### **4.1 Notice in writing**

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

### **4.2 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.

## **5. Dispute resolution**

### **5.1 Settle dispute expeditiously**

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

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## **6. General**

### **6.1 Variation and waiver**

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

### **6.2 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 Agreement expressly states otherwise.

### **6.3 Entire agreement**

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

### **6.4 Force majeure**

Neither party shall be considered in default or liable for any delay or failure to perform its obligations under this 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.

## **6.5 Severability**

If any provision of this 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 Agreement and the remainder of such provision shall continue in full force and effect.

## **6.6 Assignment**

No party shall assign and nor purport to assign, this Agreement or any part thereof to any party that is a direct competitor of SITA without the prior written consent of SITA.

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## **7. Governing law and submission to jurisdiction**

This 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 Agreement or its subject matter or formation (including non-contractual disputes or claims).

The Registrar 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 7. 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 other parties hereto have received notice from the Registrar 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 Registrar shall forthwith appoint a substitute and deliver to the other parties hereto 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 7. 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 other parties hereto have received 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 other parties hereto the new agent's name, address [and fax number] within England or Wales.

The Supervisory Authority 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 7. 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 as the other parties hereto have received notice from the Supervisory Authority 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 Supervisory Authority shall forthwith appoint a substitute and deliver to the other parties hereto the new agent's name, address [and fax number] within England or Wales.

## 8. Definitions and interpretation

### 8.1 Definitions

The following words have these meanings in this 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 Convention and the Protocol.

**Licensed Materials** means the Source Code, the Object Code 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 the 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.

**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 23 February 2007.

**Software Negotiated Value** shall be that amount being the Software Negotiated Value, if any, as certified by the Supervisory Authority pursuant to clause 38 of the Registrar Contract as the amount payable to SITA.

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

**Term** means the period of time from the Effective Date until the Termination Date.

**Termination Date** shall be the day which is twelve (12) months from the date which is the later of dates SITA ceases to provide services under the MSA (i) to the Registrar and (ii) to the New Service Provider (or its successor or assignee).

### 8.2 Reference to general terms

Unless the contrary intention appears, a reference herein to:  
this "Agreement" includes any current or future amendments or the annexes hereto;  
a "party" or the "parties" is to the party to this 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.

### 8.3 Headings

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

### 8.4 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 Agreement or any part of it.

**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 Registrar )  
by its duly authorised representative: )

\_\_\_\_\_  
(Signature)  
Print name:  
Title:  
Date:

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

\_\_\_\_\_  
(Signature)  
Print name:  
Title:  
Date:

## **Schedule 1**

### **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
- (2) **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.

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##### **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 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, 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.

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## **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.

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## **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.

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## 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.

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## 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.

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## **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 Negotiated 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.

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## **8. Term and Termination**

### **8.1 Term**

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

### **8.2 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.

### **8.3 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 Negotiated 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.

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## **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.

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## **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.

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## **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.

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.

### **12.3 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.

### **12.4 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.

### **12.5 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.

### **12.6 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.

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### 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.

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### 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 Negotiated Value** shall be that amount, if any, as certified as the Software Negotiated Value 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

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:

Date:



## **Annex 1**

### **Third Party Access Agreement**

**THIS THIRD PARTY 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 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: \_\_\_\_\_