

COMMERCIAL IN CONFIDENCE

~~November 2014~~ Amended and Restated 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**

**Regulis S.A. having its registered address at L-1330 Luxembourg, 48, boulevard Grande-  
Duchesse Charlotte, Grand-Duché de Luxembourg**

~~12<sup>th</sup> November 2014~~

Date [insert date]

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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 Regulis S.A., a private limited liability company incorporated under the laws of Luxembourg with its registered office at L-1330 Luxembourg, 48, boulevard Grande-Duchesse Charlotte, Grand-Duché de Luxembourg the "Contractor") to provide such an international registry.

The Parties agree to the following:

## **1. INTRODUCTION AND INTERPRETATION**

1.1 ~~This Contract is~~ The Contract For the Establishment and Operation of the International Registry for International Interests in Mobile Equipment (Railway Rolling Stock) (the "Original Contract") was signed on 12<sup>th</sup> November 2014 between the Preparatory Commission acting in its capacity as Provisional Supervisory Authority and the Contractor.

1.2 The Contractor provided notice of a change of control pursuant to clause 17.2 of the Original Contract on [insert date].

1.3 The Preparatory Commission approved the change of control on [insert date].

1.4 Following approval of the change of control, the Preparatory Commission and the Contractor entered into this Amended and Restated Contract For the Establishment and Operation of the International Registry for International Interests in Mobile Equipment (Railway Rolling Stock) dated [insert date] (the "Contract").

~~1.21.5~~ 1.5 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.

~~1.31.6~~ 1.6 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.

1.7 1.4 Where used in this Contract, Supervisory Authority and Contractor are jointly referred to as "Parties" and singularly as a "Party".

1.8 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.

1.9 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.
- 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 **Authorising Entry Point** means an entry point designated by a Contracting State which shall or may authorize the transmission of information required for registration designated pursuant to Article XIII of the Protocol.
- 2.9**2.10 Baseline Regulations** mean the Regulations in Attachment II Appendix 2.
- 2.10**2.11 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**2.12 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~~2.13 **Commencement Date** means the date of signature of the Contract as set out in clause 1.~~14~~ (Introduction and Interpretation).

~~2.13~~2.14 **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.

~~2.15~~ **Contracting State** means a state which is a contracting state for the purposes of the Convention and the Protocol.

~~2.14~~2.16 **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~~2.17 **Convention** means the Convention on International Interests in Mobile Equipment, opened for signature in Cape Town on 16 November 2001.

~~2.16~~2.18 **Data or 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.

~~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~~2.19 **Day** means a calendar day in Luxembourg, and includes Saturdays, Sundays, and official public holidays.

~~2.19~~2.20 **Deed of Business Continuity** means the agreement, as amended and restated, 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~~2.21 **Designated Direct Entry Point** means an entry point designated by a Contracting State pursuant to Article XIII of the Protocol through which information required for registration under the Convention and the Protocol shall or may be directly transmitted to the International Registry.

~~2.21~~2.22 **Discloser** means the party disclosing Confidential Information.

~~2.22~~2.23 **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.

~~2.24~~ **ECE** means the [United Nations Economic Commission for Europe](#).

~~2.23~~2.25 **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~~2.26 **End Date** means the Expiry Date or the date of termination of the Contract, whichever is the earlier.

~~2.27~~ **Entry Points** means [Authorising Entry Points and Direct Entry Points](#).

~~2.28~~ **ERS** means [Enterprise Registry Solutions Limited with a registered address of Level 2, Number 4, Customs House Plaza, Harbourmaster Place, Dublin, Ireland](#).

~~2.25~~2.29 **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~~2.30 **Expiry Date** means the date that falls at the end of the tenth (10th) Year calculated from the Go-Live Date.

~~2.27~~2.31 **Fee Schedule** means the schedule of fees which forms part of the Regulations.

~~2.28~~2.32 **Fee Threshold** means the amount of [one million nine hundred thousand Euro (€1,900,000~~).~~].

~~2.29~~2.33 **Go-Live Date** means the date that the Protocol enters into force pursuant to Article XXIII(1) of the Protocol.

~~2.30~~2.34 **Handover Package** means the information referred to in Attachment IX.

~~2.31~~2.35 **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~~2.36 **Identifier Reservation Services** means a facility to reserve specific unique identifiers for railway rolling stock [pursuant to the Model Rules](#).

~~2.33~~2.37 **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, [domain names, websites](#), 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.



2.342.38 **International Registry** means the international registry for railway rolling stock as established by the Convention and the Protocol.

2.352.39 **International Aircraft Registry** means the international registry for aircraft assets as established by the Convention and the Aircraft Protocol.

2.362.40 **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.

2.41 **ISC** means Information Services Corporation, with a registered address of 300 – 10 Research Drive, Regina, Saskatchewan, Canada, S4S 7J7.

2.42 **ISC Atlantic** means ISC Atlantic Services Inc., with a registered address of 300 – 10 Research Drive, Regina, Saskatchewan, Canada S4S 7J7.

2.372.43 **Licence Agreement** means the licence substantially in the form of the model form of licence as set out in Attachment V.

2.382.44 **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.

2.392.45 **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).

2.46 **Model Rules** means the Model Rules on the Permanent Identification of Railway Rolling Stock issued by the Working Party on Rail Transport of the Inland Transport Committee of United Nations Economic Commission for Europe and as amended from time to time and approved by the Supervisory Authority.

2.402.47 **New Service Provider** means any third party provider of the Registrar Services which replaces the Contractor.

2.412.48 **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.

2.422.49 **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).

2.432.50 **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

2.442.51 **OTIF** means the Intergovernmental Organization for International Carriage by Rail.

~~2.45~~2.52 **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~~ISC and ~~SITA SC~~ISC Atlantic.

~~2.53~~ **Permitted Change of Control** means, in relation to an entity, a Substantial Change in Control event:

(a) that results in some or all of the Control of the entity being obtained by another entity that was, immediately prior to the Substantial Change in Control, a directly or wholly-owned subsidiary of ISC or ISC Atlantic; or

(b) where a person or combination of persons acting jointly or in concert with each other that held more than fifty percent (50%) of the then outstanding voting securities of the entity prior to the Substantial Change of Control event continue to hold more than fifty percent (50%) of the then outstanding voting securities of the surviving entity after such event.

~~2.46~~2.54 **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.

~~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.

~~2.55~~ **Prime Subcontractor** means ERS.

~~2.49~~2.56 **Professional User Services** means certification and training, promotion, forums and reporting services to be provided to selected parties.

~~2.50~~2.57 **Project Implementation Plan** means the detailed project plan in Attachment VIII.

~~2.51~~2.58 **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~~2.59 **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~~2.60 **Ratifications Task Force** means the task force constituted under clause 7.1(e) (Ratification Strategy).

~~2.54~~2.61 **Recipient** means the party receiving Confidential Information.

~~2.55~~2.62 **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~~2.63 **Registrar Services** means the International Registry services required to be provided by the Registrar under the Regulations and as described in clause 9 (Establishment of the International Registry) of this Contract.

~~2.57~~2.64 **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~~2.65 **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 ~~5<sup>th</sup>~~8<sup>th</sup> 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 ~~6<sup>th</sup>~~9<sup>th</sup> edition).

~~2.59~~2.66 **RFP** means the *Request for Proposals for the International Registry* issued by the Preparatory Commission on 30 June 2010.

~~2.60~~2.67 **Secretariat** means the Secretariat to the Supervisory Authority referred to in Article XII(6) of the Protocol.

~~2.61~~2.68 **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.~~

~~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~~2.69 **Software** means the version of the software used for the operation of the International Registry on or after the Go-Live Date.

~~2.65~~2.70 **Software Negotiated Value** means the agreed value of the software as negotiated between Supervisory Authority and the Contractor.

~~2.66~~2.71 **Software Security Agreement** means the agreement, as amended and restated, 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~~2.72 **Subcontract** means a contract between the Contractor and a Subcontractor approved pursuant to clause 10 (Subcontractors).

~~2.68~~2.73 **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.

2.74 **Substantial Change in Control**, in relation to an entity, means the occurrence of any change in Control of the entity that results in someone or all more of the Control of the entity being obtained by another entity that was following events, but does not, immediately prior to the change, include a Permitted Change of Control:

(a) the acquisition of ownership, directly or indirectly wholly owned subsidiary of SITA SC, beneficially or SITA NV of record, by any person or combination of persons acting jointly or in concert with each other, of more than fifty percent (50%) of the then outstanding voting securities of the entity; or

2.69 (b) a merger, consolidation, amalgamation or arrangement with another entity, reorganization, or transfer of securities, by the entity, as a result of which more than fifty percent (50%) of the voting securities of the surviving entity are held by a person or combination of persons acting jointly or in concert with each other.

2.70 **2.75 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~~2.76 **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~~2.77 **Target Date** means the date as determined in accordance with clause 7.1 (Ratification Strategy).

~~2.73~~2.78 **Term** means the term of the Contract pursuant to clause 5 (Term of the Contract) herein.

~~2.74~~2.79 **Termination Event** means an event under this Contract pursuant to which a Party is entitled to terminate the Contract.

~~2.75~~ **Test Strategy** means an outline that describes the testing approach of the software development cycle to a product/solution. Test Strategy describes how the product risks of the stakeholders are mitigated at the test level, which types of tests are to be performed and which entry and exit criteria apply.

~~2.76~~2.80 **Transfer** shall have the meaning as set out in clause 24.4.

~~2.77~~2.81 **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
- 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.

~~2.78~~2.82 **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.

~~2.79~~2.83 **UNIDROIT** means the International Institute for the Unification of Private Law.

~~2.80~~2.84 **User Manual** means the user manual similar to the International Aircraft Registry User Manual but specifically amended for the International Registry.

~~2.81~~2.85 **Year** means a period of twelve (12) months starting on the Go-Live Date or the anniversary thereof.

### 3. SCOPE OF THE CONTRACT

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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.

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:

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- (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:
- (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 [to the Registrar the authoritative approved versions of the Regulations and the Model Rules and any revisions thereof approved by the Supervisory Authority from time to time;](#)
- (f) [providing](#) ratification support as described in clause 7 (Ratification Strategy) above;  
and
- (fg) 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 [and as required under the Regulations;](#)
- (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 [as required under the Regulations;](#)
- (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;



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- (e) ~~Ensuring~~Maintaining, and making available on the International Registry website, a current list of Entry Points that have been designated by Contracting States and ensuring that the International Registry enables the registration of interests through ~~a Designated, or with information provided by, an~~ Entry Point as provided for in the Convention, the Protocol and the Regulations;
- ~~(f)~~(f) Maintaining, and making available on the International Registry website access, through a website or other appropriate link, to current details on a website or other relevant media maintained by UNIDROIT and, if it is in operation, such media maintained by the Supervisory Authority, of agreements between the Supervisory Authority and Contracting States, and ratifications of, and declarations and designations thereunder, and withdrawals thereof, made under the Convention and the Protocol by a Contracting State;
- (g) Processing of all Data in accordance with the relevant data applicable protection legislation provided that it shall require the Supervisory Authority's consent before deleting or transferring such Data, such consent not to be unreasonably withheld or delayed.
- (h) Provision of a closing facility as required under the Regulations;
- (i) Ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration;
- ~~(g)~~ (i) 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)~~ (k) To receive, and record on a dedicated page on the International Registry website, notifications by a party of
  - (i) its declaration on behalf of itself, and where appropriate, its affiliates and subsidiaries, to be bound by the Model Rules and if made, or
  - (ii) its revocation of such declaration (in whole or in part), in each case showing the effective date of the declaration and, if appropriate, the date of revocation in respect of a party;
- (l) to create a link from the International Registry website to the website showing the Model Rules;
- (m) Provision of Identifier Reservation Services;
- ~~(i)~~ Provision of Professional User Account Services to users of the International Registry;  
~~and~~

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- (f)(n) 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.
- 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~~
- ~~(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 (6<sup>th</sup>) 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.

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- 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.
- 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)~~ (a) [Secure two factor access system for International Registry users;](#)
  - (b) Hosting environment – The complete design, establishment and operation of the hosting environment, including equipment refresh after five years;
  - ~~(c)~~ (c) Software – The complete design, development and operation of the International Registry application, including 3<sup>rd</sup> level support;
  - ~~(d)~~ (d) Helpdesk – Registry Official 1<sup>st</sup> Level support for end users;
  - ~~(e)~~ (e) Operations management –management of the complete International Registry system and operations model, including managing the technical certification of the system; and
  - (f) 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:

- (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.

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- 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 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;

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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 ~~fivethree~~ ~~fifteen thousand (15€26,000) euro~~ years of the Registry's operation, ~~fifteen thousand (15€26,000) 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.
- 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.

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- 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 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



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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.
- 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~~ 14.6 The Contractor shall ensure that, at all times, the Supervisory Authority has, to its reasonable satisfaction, the ability to operate (or facilitate others to operate) the

International Registry autonomously in the event of termination or non-renewal of this Contract, whether through escrow, providing login credentials to the Supervisory Authority that allow full administrative access, or any other alternative arrangement mutually agreed upon by the Contractor and the Supervisory Authority. Upon receipt of a notice of termination or a notice of non-renewal of this Contract, the Contractor shall maintain a copy of all Data and Archives, 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 17.32, 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~~ 17.2 Notwithstanding clause 17.1 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, or by virtue of the nature of the Substantial Change in Control, then as soon as possible after the ~~restriction is~~ restrictions are lifted, as the case may be, 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 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- with respect to the Contractor. 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.

17.3 The Contractor shall inform the Supervisory Authority as soon as reasonably possible upon becoming aware of the occurrence of a Permitted Change of control involving the Contractor or a Parent.

## **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

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- (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;
- (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

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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).

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- 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**

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.

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- 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**

- 23.1 The Supervisory Authority shall be entitled to all Intellectual Property Rights with regard to the Data Archives-, [the name of the International Registry and its domain and website as well as any social media sites in the name of the International Registry.](#) 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



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(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 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;

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- (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**

- 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

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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 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,

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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.
- 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.

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### 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 protocols~~ to 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. The Supervisory Authority acknowledges and agrees that nothing within this Agreement or any other Agreement between the Parties restricts ISC or ERS from operating its current lines of business or prohibits ISC or ERS from soliciting new customers or entering into new lines of business.
- 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, pandemic, 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; or

(d) the Go-Live Date does not occur by December 31, 2032.

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, from~~ the date the Supervisory Authority becomes aware of notification of non-acceptance such Substantial Change in Control;
- (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~~ notification of non-acceptance;
- (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:



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- (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 Package);
  - (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

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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;
- (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

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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 (Insolvency), 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;

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- (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 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.

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- 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 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

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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 (Other Registries), 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**

- 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

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according to such other procedure as may be agreed between the Parties, within a time period of ninety (90) Days.

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- 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 General Counsel, SITA, Legal Department, 252-254 Blyth Road, Hayes, Middlesex, UB3 1HA, UK~~ shall, on or prior to the Commencement Date designate, by written notice delivered to the Supervisory Authority, a party appointed to act 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 OGR Stock Denton LLP of Winston House, 349 Regents Park Road, London N3 1DH, attn. Ms Gitta Atlmann~~ shall, on or prior to the Commencement Date designate, by written notice delivered to the Contractor, a party appointed to act 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  
for International Carriage by Rail (OTIF)  
Gryphenhübeliweg 30  
CH - 3006 Berne  
*On behalf of the Supervisory Authority*  
[Email: secretary.general@otif.org](mailto:secretary.general@otif.org)

Contractor To: The Registrar  
Regulis S.A.  
Bâtiment Nouvel Hémicycle  
1, rue du Fort  
Thüngen  
L-1499 Luxembourg



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**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~~ [including the United States Presidential and Congressional prohibitions against trade and commerce with certain named countries, including those administered by the United States Office of Foreign Asset Control, or other country laws and regulations relating to governmental export/import](#) 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.

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- 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 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,

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the Supervisory Authority shall give at least one (1) week prior written notice to the Contractor.

Signed as an agreement:

On behalf of the Contractor  
Preparatory Commission and at its

express direction

BY: ..... BY: .....

~~José Angelo Estrella Faria~~ ..... ~~Elizabeth Hirst~~  
~~Secretary General of UNIDROIT~~ ..... ~~Managing Director, Regulis SA~~

SIGNATURE: ..... SIGNATURE  
NAME: ..... NAME: .....

DATE: ..... DATE: .....