

Amended and Restated **Master Services Agreement**

~~SITA INFORMATION
NETWORKING
COMPUTING IRELAND~~

ENTERPRISE REGISTRY
SOLUTIONS LIMITED
("SITA")

Regulis S.A.
("Registrar")

SITA Legal
26 Chemin de Joinville
1216 Cointrin Geneva
Switzerland

Level 2, Number 4, Customs House
Plaza, Harbourmaster Place, Dublin,
Ireland

SITA

Definizione stile: Titolo 2;h2;H2: Tabulazioni: Non a 4,02 cm

Tabella formattata

Tabella formattata

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Amended and Restated Master Services Agreement

Details page

Date of agreement	[]	insert date
Parties		
SITA_ERS	Name	SITA Information Networking Computing Ireland Enterprise Registry Solutions Limited
	Address	Building 1, Letterkenny Office Park, Windyhall, Letterkenny, Co. Donegal, Ireland Level 2, Number 4, Customs House Plaza, Harbourmaster Place, Dublin, Ireland
	Address for notices	General Counsel 26 Chemin de Joinville, 1216 Cointrin, Geneva, Switzerland
	Fax	To be advised
	Email:	+41 22 7476166 Head, Level 2, Number 4, Customs House Plaza, Harbourmaster Place, Dublin, Ireland
Registrar	Name	Regulis S.A.
	Reg. Address	L-1330 Luxembourg, 48, boulevard Grande-Duchesse Charlotte, Grand-Duché de Luxembourg
	Address for notices	Managing Director, L-1330 Luxembourg, 48, boulevard Grande-Duchesse Charlotte, Grand-Duché de Luxembourg
	Fax	To be advised
	Email:	
Recitals	A	SITAERS provides software and services throughout the world.
	B	Registrar has been awarded the contract to operate a rail registry by the Preparatory Commission, under the authority of the Convention and the Protocol
	C	Registrar has requested, and SITAERS has agreed to provide software development services, support, maintenance, hosting and other services to the Registrar.

Tabella formattata

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ha formattato: Evidenziato

Services

The services as set out in the [Statement of Work \(SOW Design, Implementation and Operational Requirements \(Schedule 1\)\)](#)

Schedules

- 1 [Statement of Work](#)
 - 2 [System Design Document](#)
 - 1 [Design, Implementation and Operational Requirements](#)
 - 2 [Intentionally deleted](#)
 - 3 Pricing and payment
 - 4 Service Level Agreement
 - 5 Change Control Procedure
 - 6 Project Plan
 - 7 Contract Management Procedures
 - 8 Ancillary Services
-

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Amended and Restated Master Services Agreement

1. Scope of the agreement

1.1 The Registrar entered into a Master Services Agreement with SITA Information Networking Computing Ireland Limited ("SITA") dated December 12, 2014 (the "Original MSA").

1.2 On [insert date], SITA assigned its interest in the Original MSA to Enterprise Registry Solutions Limited ("ERS").

1.3 Following the assignment, Registrar and ERS entered into this Amended and Restated Master Services Agreement (the "MSA").

~~1.1~~ 1.4 ERS agrees to develop the Software and supply the Technology Services to Registrar.

2. Term

2.1 This Agreement commences on the Effective Date and will continue until the end of the Initial Term, unless terminated in accordance with clause 19 below.

2.2 Where necessary, the terms of this Agreement may be extended by the Registrar for a period of twelve (12) months on its giving three (3) months' notice expiring on or prior to the expiry of the Initial Term.

3. Technology Services

3.1 ~~SITAERS~~ will provide to Registrar the Technology Services described in Schedule 1 (Statement of Work) and Schedule 2 (System Design Document, Implementation and Operational Requirements) in accordance with the Project implementation/Implementation Plan (Schedule 6) and to the standards set out in Schedule 4 (Service Level Agreement). The parties agree that ~~SITAERS~~ will not be obligated to commence activities under this Agreement until the Target Date is certified by the Supervisory Authority.

3.2 In the event ~~SITAERS~~ requires the services of any sub-contractors other than those set out in Schedule 2 (System Design Document), ~~SITA6 (the Project Implementation Plan)~~, ERS shall obtain the prior written approval and clearance of Registrar for such additional sub-contractors. The approval by Registrar of a sub-contractor shall not relieve ~~SITAERS~~ of any obligations under this Agreement.

3.3 The remedies set out in Schedule 4 (Service Level Agreement) for Technology Services shall be Registrar's sole remedy applying to ~~SITA's~~ERS's obligations in respect of the agreed Service Levels.

- 3.4 In providing [Hosting Services, SITA hosting services, ERS](#) shall not be responsible for any hardware, software and/or network facility owned, maintained or managed by Registrar or its third party supplier or agent or customer.
- 3.5 [SITAERS](#) is responsible for the [Technology](#) Services up to the demarcation point with the Internet service provider.
- 3.6 Apart from software and hardware required to run the Software, the provision, management and maintenance of all applications, content and public services hosted on the web server(s) on behalf of Registrar are the responsibility of Registrar unless otherwise agreed in this Agreement.

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3.7 At the Go-Live Date the Technology 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 at no additional charge. -The Registrar may request SITAERS to provide an additional Latin-alphabet language in accordance with Change Control.

4. Ancillary Services

4.1 Registrar appoints SITAERS with the exclusive rights to sell, operate and commercialise the Ancillary Services for the fees in clause 4.2 below for the period from three (3) months prior to the Go-Live Date until the end of the Term.

4.2 SITAERS shall credit to the Registrar the following amounts:

- (a) in the period between the Effective Date and the date that the accumulated fee revenues for all Ancillary Services have not yet equalled the Fee Threshold, an amount that is equal to 40% of gross revenues from fees for all Ancillary Services;
- (b) once such accumulated fee revenues have exceeded the Fee Threshold, an amount equal to 8% of gross revenues from fees for all Ancillary Services, subject to a maximum of 25% of the aggregate charges payable by the Registrar under this Agreement; and
- (c) - such Service Credits determined in accordance with Schedule 4 (Service Level Agreement).

4.3 SITAERS will provide Registrar with details of the required information requested by the Supervisory Authority for written approval for the provision of an Ancillary Service. The Registrar will submit all Ancillary Service provision requests it receives from SITAERS to the Supervisory Authority once it has received adequate information from SITAERS as noted below:

4.3.1-4.3.1 A detailed description of the Ancillary Service that is intended to be provided;

4.3.2-4.3.2 A detailed description of the resources that will or may be used in order to provide the Ancillary Service;

4.3.3-4.3.3 Details of the fees proposed to be charged for the Ancillary Service and auditing provisions for such fees;

4.3.4-4.3.4 Details of the extent to which the Ancillary Service will be provided using the resources of SITAERS, and of any proposed contracts with SITAERS; and

4.3.5-4.3.5 Details of the potential risks in relation to the provision of the Ancillary Service and how the Registrar, the Supervisory Authority and the Indemnified Parties will be indemnified and protected against such risks.

- 4.4 Following receipt of the first item of information under clause 4.3, the Registrar shall maintain a dialogue with [SITAERS](#) to advise whether further information is required. Once all relevant information which is identified by the Supervisory Authority is provided by [SITAERS](#), the Registrar shall provide a response within sixty (60) days of receipt of the last item of such information. –The Registrar shall keep [SITAERS](#) briefed on status.
- 4.5 Subject to approval of the Supervisory Authority (and any conditions of such approval), [SITAERS](#) will be licensed to:
- [4.5.1-4.5.1](#) use the International Registry brand;
 - [4.5.2-4.5.2](#) market advertising space on the International Registry website;
 - [4.5.3-4.5.3](#) use the Data;
 - [4.5.4-4.5.4](#) access and operate ~~Data-Feed Services;~~ [and data feed services;](#)
 - [4.5.5-4.5.5](#) operate the official training services for users of –the International Registry; and
 - [4.5.6-4.5.6](#) other items as deemed appropriate.
- 4.6 [SITAERS](#) agrees that it will not provide any Ancillary Service that it is entitled to provide under this MSA after the termination of this MSA unless otherwise agreed between the parties.
- 4.7 [SITAERS](#) grants the Registrar the right to share all information it deems necessary with the Supervisory Authority for the purposes of this clause.
- 4.8 [SITAERS](#) shall, for the duration of the period during which it is permitted to utilise the licence herein (Ancillary Services) and provide the Ancillary Service, 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 [SITAERS](#) to the Registrar and the end users, arising out of the provision of an Ancillary Service in accordance with industry standard terms and conditions for such services.
- 4.9 As part of the approval process of an Ancillary Service as set out in clause 4.3 and 4.4 above, the Registrar may require the indemnification of –the Indemnified Parties and itself in the manner it so determines.

5. Technology Refresh

- 5.1 [SITAERS](#) shall, at its own cost, submit a report to Registrar within thirty (30) calendar days after the end of the 6th Year, which shall identify the emergence of new and evolving relevant technologies and processes which could improve the [Technology Services](#) and a technology refresh of the hardware and operating software used to operate the International Registry with substantially the same or better functional and operational performance as the then current [Technology Services](#). Such report shall be provided in sufficient detail to enable Registrar to evaluate properly the benefits of the new technology or process.

5.2 If the Registrar wishes to incorporate any improvement identified by [SITAERS](#) pursuant to clause 5.1, Registrar shall send [SITAERS](#) a written consent to proceed and [SITAERS](#) will implement the technology refresh and associated new technologies and procedures in accordance with the Change Control as agreed between the parties.

6. Encumbrances/Liens

6.1 [SITAERS](#) 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.~~

6.2 ~~SITA shall not grant a hypothec or security over its assets necessary to operate the International Registry nor any undertaking to creditors, and~~ [ERS](#) shall make it clear in its dealings with creditors that the Data and 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.

7. Acceptance

7.1 Software and [Technology](#) Services provided under this Agreement shall be subject exclusively to the Test Strategy as agreed between the parties prior to the commencement of Provisional Acceptance Test (PAT). -All tests may be observed by any relevant regulatory authority of the Registrar or its nominee.

7.2 The Acceptance Tests (AT) will be conducted in two phases - PAT and Final Acceptance Test (FAT).- The period of time which is estimated as one (1) month between the PAT and FAT will be used as rectification of equipment or system deficiencies evidenced at PAT for removal of adverse comments made during PAT, and as equipment continuity verification (burn-in). In case of absence of deficiencies or adverse comments during the PAT, PAT and FAT may be merged and a Final Acceptance Certificate may be signed and issued.

7.3 [SITAERS](#) shall submit to Registrar at least forty-five (45) days before the PAT, the proposed PAT and Acceptance Criteria procedures which shall be subject to mutual agreement between the parties and after being agreed shall then form part of the Agreement.

7.4 The PAT and FAT testing, Acceptance Criteria and test procedures shall consist of verification of all equipment under this Agreement as an operational system and entity. Upon the FAT, [SITAERS](#) is responsible for removing any adverse comments or remarks considered as gating items which were documented during the PAT.

7.5 If the system or sub-system fails to pass one or more of the Acceptance Tests, i.e. the Acceptance Criteria are not met, then [SITAERS](#) shall correct the cause of the failure(s).- Registrar shall reserve the right to have all the Acceptance Tests or any single Acceptance Test performed again. -All additional costs for Registrar's participation in re-testing the system shall be borne by [SITAERS](#).

- 7.6 The Final Acceptance Certificate will be signed one month after the issuing of the Provisional Acceptance Certificate if all deficiencies and observations encountered at PAT which are documented as gating items have been rectified and if no operational fault or discrepancy occurs on an individual equipment or system level.
- 7.7 The Final Acceptance of all Software and Technology Services under this Agreement shall take place upon satisfactory completion of the following conditions:
- (a) all observations and comments of PAT which are documented gating items are successfully rectified;
 - (b) FAT is successful in accordance with the Acceptance Criteria;
 - (c) all installation details are completed;
 - (d) all technical documentation, drawings, plans, etc. are available and found acceptable;
 - (e) the training of the operational and help desk personnel is completed; and
 - (f) the staff assigned for the system operation is sufficient and adequately qualified.

7.8 Prior to the Go-Live Date, ERS shall engage a third party to conduct a penetration test and audit of the infrastructure of the International Registry System.

~~7.8.9~~ Any Software and/or Technology Services put to any use by the Registrar other than for testing purposes prior to Acceptance whether in whole or in part, shall be deemed accepted.

~~7.9.10~~ The Registrar shall be liable for any unrecoverable direct costs incurred by SITAERS in the event that SITAERS is delayed from achieving Acceptance due to a substantial fault of Registrar in complying with its obligations under Schedule 1 (always provided these costs have been mitigated by SITAERS.) provided that the maximum amount payable by the Registrar shall be limited to sixty thousand Euro (€60,000).

~~7.10 On or within thirty (30) days after Go-Live Date SITA shall deposit the then-current version of the Software and Documentation (the "Escrow Materials") with the National Computer Centre in Manchester, UK (the "NCC") under the NCC's standard escrow terms. SITA shall deposit (i) the Escrow Materials at least once a quarter and (ii) all updates as soon as such updates are operational, subject to SITA's reasonable costs and NCC charges being paid by the Registrar.~~

7.11 For these purposes a "**gating item**" means an item or issue which ~~are~~is considered serious enough to prevent progression to the next stage in a-production.

8. Registrar's obligations

8.1 Registrar agrees to carry out its responsibilities as described in Schedule 1 (Statement of Work Design, Implementation and Operational Requirements), in accordance with the time periods described in the Project Plan.

8.2 Without limiting the obligations described in clause 8.1, Registrar agrees that it will:

- (a) cooperate with [SITAERS](#) during the implementation of the Software and the requisite training;
- (b) perform its obligations during implementation;
- (c) if applicable, provide [SITAERS](#) with all technical data, including protocol specifications and functional specifications, as may be reasonably required by [SITAERS](#) to install the Software and provide the [Technology Services](#);
- (d) if applicable, facilitate connection of the [Technology Services](#) to Registrar's own computer systems;
- (e) if applicable, evaluate and provide [SITAERS](#) with all technical information as may be necessary, and if so requested by [SITAERS](#), designate a technical and/or commercial representative;
- (f) if applicable, maintain Registrar's equipment to the relevant up to date version as recommended by [SITAERS](#) from time to time; and
- (g) if applicable, incorporate the latest version of the Software with any updates or releases as provided by [SITAERS](#) from time to time.

8.3 Registrar will not give, sell or, in any manner make the Software provided in accordance with this Agreement available to any third party without [SITAERS's](#) prior written consent.

8.4 If applicable, Registrar agrees to give [SITAERS](#) access to Registrar's premises as described in the Project Plan in accordance with the time periods set out in that plan but subject to the Registrar's standard security procedures as notified to [SITAERS](#) from time to time.

9. Suitability assessment

9.1 Registrar acknowledges it has independently determined that the [Technology Services](#) described under this Agreement meet its requirements.

10. Service Continuity

10.1 The rights and obligations of the Registrar under this Agreement will be assigned to the Supervisory Authority's nominated New Service Provider, in accordance with the Deed of Business Continuity and subject to clause 10.2 below.

10.2 In addition to any other right to terminate this Agreement hereunder, the New Service Provider shall be entitled to terminate this Agreement at any time after one (1) year from the Transfer Date for any reason on giving three (3) months' prior written notice to [SITAERS](#).

11. Use of data and data protection

11.1 [SITAERS](#) and Registrar will each comply with all applicable legislation, rules and regulations (including relating to the protection of Personal Data) in relation to the use and delivery of the Software and the [Technology Services](#).

- 11.2 If for any reason [SITAERS](#) is permitted access to Personal Data or is supplied with or otherwise provided with Personal Data by Registrar during the delivery of the Software and the [Technology Services](#), then [SITAERS](#) shall:
- (a) use and/or hold such Personal Data for the purposes and in the manner directed by Registrar and shall not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of the Personal Data to any third party unless specifically authorised in writing by Registrar and shall take all such steps as may be necessary to safeguard the Personal Data;
 - (b) comply in all respects with the relevant data protection legislation in the relevant jurisdictions [from](#) where [SITAERS and Registrar](#) provides the [Technology Services](#);
 - (c) implement appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alterations, and unauthorised disclosure or access; and
 - (d) return the Personal Data to Registrar on request or termination or expiry of this Agreement (whichever is sooner).
- 11.3 During the Term Registrar shall comply with all applicable data protection rules and regulations relating to the protection of Personal Data. Registrar shall, with respect to each and all Personal Data loaded onto the [SITAERS](#) System by Registrar or by [SITAERS](#) on behalf of Registrar, be responsible for the management of the Personal Data and shall ensure that any Personal Data shall have been lawfully obtained and limit such Personal Data as is specifically required for the purposes of the [Technology Services](#). Registrar shall ensure that at all times its personnel and agents shall not load or store any sensitive Personal Data onto the [SITAERS](#) System.
- 11.4 Where, through no fault of its own, [SITAERS](#) would not be able to perform an obligation under this Agreement without being in breach of the relevant data protection legislation (including where this happens as a result of any actual or stated non-compliance by Registrar with such legislation in relation to Personal Data of [SITAERS](#) or its sub-contractors), it shall notify Registrar promptly and shall not be obliged to perform the obligation until such obligation would cease to involve it being in breach of such legislation.
- 11.5 [SITAERS](#) will not be responsible for the accuracy of the Data and Archives, except as stated in clauses 21.4 and 21.6.

12. Charges

- 12.1 Registrar agrees to pay to [SITAERS](#) all charges identified in Schedule 3 ([Pricing and Payment](#)) in the manner set out in that schedule.
- 12.2 Unless otherwise set out in Schedule 3, [SITAERS](#) will invoice Registrar with the Charges monthly in arrears.
- 12.3 [SITAERS](#) may only vary the Charges in the manner described in Schedule 3.

12.4 Registrar agrees to pay the Charges to [SITAERS](#) within thirty (30) days of the date of invoice. If the invoice is not paid in full by the due date (and Registrar has not raised with [SITAERS](#) a reasonable query or queries to the charges in the invoice, either in whole or in part), then interest will automatically and without further notice accrue, on a daily basis, as from the end of such thirty (30) day period until the date on which payment is received by [SITAERS](#). The rate of such late payment interest shall be equal to the percentage rate per annum being the LIBOR three months' rate for Euro (as quoted by Barclays Bank plc from time to time and published by the Reuters Services), multiplied by:

- (a) 1.05 for amounts due for over 30 days;
- (b) 1.10 for amounts due for over 60 days; and
- (c) 1.15 for amounts due for over 90 days

calculated on a day to day basis using a 360 day year, provided that interest shall be simple and not compounded. Accordingly, as an illustrative example, if the Registrar paid a month's invoice amount for 100,000 Euro on the 40th day after the due date for payment and if LIBOR was 1%, then the Registrar would owe 29.16 Euro in interest.

The maximum amount of interest on a late payment to [SITAERS](#) for any given month's charges shall not exceed 2 per cent of that month's invoiced amount.

12.5 All invoices will be Euro, and payment must be made in Euro.

12.6 The Charges do not include taxes, and Registrar shall pay all taxes relating to the provision of the Registrar Services and subject to any credits given under clause 4.2. In respect of withholding tax, Registrar agrees to pay such additional amounts as may be necessary, such that [SITAERS](#) receives the amount it would have received had no withholding tax been imposed.

13. Change control

13.1 If Registrar wishes [SITAERS](#) to provide any additional software or services or change the Software and [Technology](#) Services, then the parties will follow the change control procedures set out in Schedule 5.

13.2 No waiver or modification of this Agreement or of any of its provisions shall be valid unless in writing and executed by duly authorised representatives of both parties.

14. Contract Management

The parties shall set up and operate Service Review Meetings and Contract Review Meetings, in accordance with Schedule 7 (Contract Management Procedures), the function of which shall include monitoring and controlling [SITA'sERS's](#) performance of this Agreement.

15. Liquidated damages for delay

15.1 [SITAERS](#) shall perform its obligations under this Agreement to meet the Go-Live Operation Date in accordance with the Project Implementation Plan subject to clause 20.7 (*Force Majeure*) or the Registrar's failure to meet its obligations under the Project Implementation Plan as such failure is notified to it by [SITAERS](#).

- 15.2 In the event that the Go-Live Operation Date is not met in accordance with clause 15.1 above due to a fault attributable to [SITAERS](#) then liquidated damages shall be payable by [SITAERS](#) to the Registrar amounting to five thousand Euro (€5,000) per week for each week where the Go-Live Operation Date is delayed beyond the twelfth (12th) month following the Notification to Begin Date.
- 15.3 The maximum amount of liquidated damages payable by [SITAERS](#) in accordance with clause 15.2 above shall be limited to sixty thousand Euro (€60,000~~-~~) and are the Registrar's sole remedy in the event that the Go-Live Operation Date is not met in accordance with clause 15.1.
- 15.4 Any dispute as to the quantum of liquidated damages payable shall be referred to the procedure set out in clause 25 (Dispute Resolution).

16. Confidentiality

- 16.1 The Recipient may be given access to Confidential Information from the Discloser in order to perform its obligations under this Agreement. 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 Agreement. 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 Agreement. –The obligations in this clause 16 shall not apply to Confidential Information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the Recipient by a third party without restriction on disclosure;
 - (d) is independently developed by the Recipient, which independent development can be shown by written evidence;
 - (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 Registrar in writing.
- 16.2 [SITAERS](#) shall not communicate at any time to any other person or authority external to the Registrar, any information known to it by reason of its association with the Registrar which has not been made public except with the written authorization of the Registrar; nor shall the [SITAERS](#) at any time use such information for private advantage.
- 16.3 Unless authorized in writing by the Registrar, [SITAERS](#) shall not disclose the particulars of the Agreement, advertise or make otherwise public the fact that it is performing, or has performed, services for the Registrar, or use the name, emblem,

or official seal of the Registrar, or any abbreviation of the name of the Registrar for advertising or for any other purpose.

16.4 Notwithstanding the foregoing, nothing shall preclude the Registrar or [SITAERS](#) from disclosing Confidential Information to the Supervisory Authority.

17. Intellectual Property Rights and other propriety rights

17.1 [SITAERS](#) recognises that it is not entitled to the Intellectual Property Rights with regard to the Data and Archives, the name of the International Registry and its domain and website as well as any social media sites in the name of the Registrar or International Registry. At the Registrar's request, [SITAERS](#) shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights in relation to the Data and Archives for the benefit of the Registrar in compliance with the requirements of the applicable law. At the Registrar's request, [SITAERS](#) shall take all necessary steps, execute all necessary documents and generally assist in carrying out [SITA'sERS's](#) obligations in relation to the portability of software pursuant to clause 20.9.

17.1a To the extent that ERS is required to delete or otherwise transfer Personal Data forming part of the Data and Archives pursuant to clause 11 herein, this action may only be taken with the consent of the Supervisory Authority, unless otherwise delegated by the Supervisory Authority to ERS.

17.2 All Intellectual Property Rights in the Software, ServiceTechnology Services, Materials and Documentation are either licensed to or are the property of [SITAERS](#), and this Agreement does not convey to the Registrar any title or interest in them. [SITAERS](#) hereby provides the Registrar with a non-exclusive licence to use the Intellectual Property Rights in the Software, Service, and Technology Services, Materials and Documentation solely for the purposes as set out in this Agreement for the Term and thereafter where required pursuant to this Agreement or agreed between the parties.

17.3 It is [SITA'sERS'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 based on any claim of an infringement of third party Intellectual Property Rights. Should any software or equipment procured by [SITAERS](#) for the operation of the Software and Technology Services be held to constitute infringement and its use is prevented or limited, [SITAERS](#) shall modify the software or equipment so that it is not infringing yet performs the task specified in this Agreement, or remove such software, equipment or systems from operation without compromising the required performance or functionality of the overall system in all material respects.

17.4 Subject to clauses 17.5 – 17.7, [SITAERS](#) shall indemnify the Registrar, against any damages, costs and expenses finally awarded against the Registrar 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 Registrar in relation to (a) the use of [SITA'sERS's](#) equipment, (b) the Software and Technology Services or (c)

equipment, proprietary or open source software supplied by [SITAERS](#) as contemplated in this Agreement.

17.5 If a Claim is made against the Registrar in connection with the Software and [Technology](#) Services supplied by [SITAERS](#), then the Registrar shall:

- (a) promptly notify [SITAERS](#) 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 [SITAERS](#);
- (c) allow [SITAERS](#) to defend and have full conduct of any negotiations and settlement of any Claim;
- (d) provide [SITAERS](#) with all information and assistance reasonably required by [SITAERS](#) in respect of its defence of any Claim (at [SITAERS's](#) reasonable cost); and
- (e) do all things reasonable to mitigate all losses arising from the Claim

and nothing herein shall preclude the Registrar in connection with such Claim from taking all steps against [SITAERS](#) that a prudent claimant in its position would take vis-à-vis [SITAERS](#).

17.6 The indemnity in clause 17.4 shall not apply where the Claim results from:

- (a) any modification, adaptation or development of materials used in the Software and [Technology](#) Services supplied by [SITAERS](#) not made by or on behalf of [SITAERS](#);
- (b) any combination or use of a Service or any part thereof (including the Equipment or the Software) with any item or in a manner not authorised by this Agreement or by [SITAERS](#);
- (c) [SITAERS's](#) compliance with specifications provided by third parties unconnected with [SITAERS](#), where such infringement would not have occurred but for such compliance; or
- (d) subject to [SITAERS](#) complying with clause 17.7, any subcontractor equipment, proprietary or open source software.

17.7 [SITAERS](#) will provide the Registrar with the benefit of any indemnity provided to [SITAERS](#) from a subcontractor in relation to such subcontractor's equipment, proprietary or open source software.

17.8 In the event of any Claim or where in [SITAERS's](#) reasonable opinion a Claim is likely to be made, [SITAERS](#) may at its sole option and expense:

- (a) procure for the right to continue using the software and services supplied by [SITAERS](#) in accordance with this Agreement;
- (b) modify the software and services supplied by [SITAERS](#) or the infringing or allegedly infringing materials used by [SITAERS](#) so that they are no longer infringing; or
- (c) replace the software and services supplied by [SITAERS](#) or the infringing or allegedly infringing materials used by [SITAERS](#) with non-infringing services

and/or materials that offer the same or equivalent performance or functionality in all material respects.

18. Technology and Security Assurance

18.1 ERS shall ensure that International Registry System will be hosted on a cloud platform (the "Cloud") at data centers maintained and operated within the European Union under an agreement in industry standard terms (the "Service Agreement") with a globally-recognized and credible service provider (the "Cloud Provider"). ERS shall provide a copy of the Service Agreement to the Registrar and the Supervisory Authority subject to the redaction of confidential and/or commercially sensitive terms provided that such redaction does not exclude the terms and conditions related to the access to the cloud infrastructure and information. On or before the Go-Live Date, ERS shall ensure that the applicable Licensed Materials have been uploaded on to the Cloud. ERS shall ensure that applicable updates and enhancements to the Licensed Materials are uploaded to the Cloud as soon as reasonably practicable.

18.1a ERS shall comply with the terms of the Service Agreement. ERS shall notify the Registrar and the Supervisory Authority in the event of a material default for which ERS receives a written notice from the Cloud Provider, and ERS shall not terminate its contract with the Cloud Provider without first providing notice to the Registrar and the Supervisory Authority of its intention to do so.

18.2 At all times, ERS shall ensure that the Registrar or New Service Provider, as the case may be, and the Supervisory Authority have the ability to operate (or facilitate others to operate) the International Registry System and its corresponding website autonomously.

18.3 ERS will implement reasonable security standards that it determines are necessary and reflect the best practices in current use in the field of electronic registry design and operation, including those relating to security systems and networking, but in no event less than industry standards in the cloud computing/online services industry, to protect the International Registry System against unauthorized access, use, or disclosure and facilitate the International Registry System becoming ISO 270001 and GDPR compliant.

18.4 ERS will document standards for records and data management, as well as operating procedures, which will be regularly reviewed and auditable by a third party.

18.5 ERS will assist the Registrar in the creation of a business continuity plan and a disaster recovery plan for the International Registry System in accordance with industry standards but compatible with its obligations under clause 18.1, and engage in business continuity and disaster recovery exercises on an annual basis.

~~18.1~~18.6 Registrar or its nominated representatives (such nominated representatives to be approved by SITAERS, such approval not to be unreasonably withheld or delayed) shall have the unlimited right at any time to undertake a security audit of SITA's/ERS's provision of any of the Software and Technology Services and all relevant records to the extent that they relate to the availability, confidentiality and integrity of data and the confidentiality and integrity of systems pertaining to the Software and Technology Services ("**Security Audit**"). ~~SITAERS~~ shall ensure that Registrar

or its nominated representatives have all necessary rights of access for this purpose. For the purposes of this clause 18, the Security Audit may evaluate and test the Software and [Technology Services](#) using industry best practice (for example, ISO [1779927001](#)), or such other standards and methods as Registrar shall, in its sole discretion, determine.

[18.218.7](#) For the purposes of clause 18.1, [SITA6, ERS](#) will provide Registrar with all assistance which Registrar may reasonably require.

[18.318.8](#) Subject to clause 18.69 and clause 18.710 the carrying out of any Security Audit by or on behalf of Registrar pursuant to this Agreement shall not relieve [SITAERS](#) of any of its obligations or responsibilities under this Agreement.

[18.418.9](#) Registrar shall at the request of [SITAERS](#) ensure that Registrar's nominated representatives under this clause 18 shall treat all Confidential Information as confidential and shall comply with the obligations in clause 16.

[18.518.10](#) In exercising any Security Audit right under this Agreement, Registrar shall and shall procure that its nominated representatives shall:

- (a) comply with any reasonable site security and health and safety regulations as notified to Registrar and/or nominated representatives; and
- (b) use reasonable endeavours not to disrupt the provision of the [Technology Services](#) and the conduct of any other business of [SITAERS](#) or any relevant sub-contractor.

[18.618.11](#) To the extent that disruption to the [Technology Services](#) occurs as a result of exercise of the Security Audit rights in this clause 18, subject to [SITAERS](#) mitigating any disruption using reasonable endeavours, [SITAERS](#) shall not be liable for such disruption.

[18.718.12](#) In the event that Security Audits carried out by Registrar or its nominated representatives reveal any breach by [SITAERS](#) of its obligations under this Agreement then [SITAERS](#) shall take such measures as are necessary to remedy the breach.

[18.818.13](#) Registrar shall not exercise its right under this clause 18 to instigate a Security Audit more than twice in any Year, except where an additional Security Audit (or part thereof) is required to verify that any changes to the Software and [Technology Services](#) required as a result of a previous Security Audit have, in fact, been implemented by [SITA-ERS](#).

[18.918.14](#) Information to be made available by [SITAERS](#) under this clause 18 shall be limited to that relevant to the Security Audit in question, and shall in particular not require [SITAERS](#) to provide or allow access to any information relating to [SITAERS's](#) business terms and projects with other customers and (other than as far as is relevant to such suppliers in their roles as sub-contractors under this Agreement) suppliers.

19. Suspension and termination

19.1 [SITAERS](#) may suspend the [Technology](#) Services if any payment for any [Technology](#) Services under this Agreement is more than thirty (30) days overdue, but only after giving Registrar a further ninety (90) days' notice, in writing, of its intention so to do. During the said ninety day period the parties shall enter into consultations with a view to considering what measures might enable the payment issues to be resolved, which measures may include modifications to the [Technology](#) Services, or such other measure as the parties may consider to be effective, and on the failure of the parties to agree to any such measures, [SITAERS](#) shall be entitled to suspend the [Technology](#) Services at the expiry of the ninety (90) day period.

19.2 Either party may terminate this Agreement by notice to the other party with immediate effect if the other party:

- (a) commits a material breach of its obligations in this Agreement and does not remedy that breach within 30 days of receiving a notice detailing the breach and requiring that it be rectified;
- (b) is Insolvent; or
- (c) in accordance with clause 26.6, [SITAERS](#) is rendered permanently unable, wholly or substantially, by reason of *force majeure* to perform its obligations and meet its responsibilities under this Agreement.

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

Notwithstanding the foregoing, [SITAERS's](#) exercise of its right to terminate is subject to the provisions of clause 20.8.

19.3 In the event the Registrar and [SITAERS](#) are at that time related parties:

- (a) clause 19.1 will not apply; and
- (b) clause 19.2 will be modified as follows:
 - (i) the period specified under clause 19.2 (a) will be increased to ninety (90) days and the words "(other than by reason of that party being Insolvent)" will be added after "Agreement"; and
 - (ii) after the words "is insolvent" in clause 19(2) (b), add "but this action cannot be taken earlier than 6 years after the Go-Live Date".

19.4 In the event that the Registrar is required to review its supplier arrangements to implement cost savings, [SITAERS](#) agrees to provide support to the Registrar in order for the Registrar to carry out its discussions with the Supervisory Authority regarding potential changes to the [Technology](#) Services provided under this MSA which would result in a reduction in the charges payable by the Registrar under this MSA or an overall cost savings to the Registrar.

20. Consequences of termination

20.1 The parties have agreed the effects and consequences of (i) expiry or (ii) termination by the Registrar under clause 19.2, and (iii) [SITAERS](#) under clause 19.2 and these

are set out at clauses 20.4 to 20.9 below.– The following provisions shall apply generally in the event that expiry, termination or any entitlement to terminate arises:

- (a) in the event that the Deed of Business Continuity is not invoked on termination or expiry of this Agreement [SITAERS](#) shall comply with its portability obligations under clause 20.9;
- (b) 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;
- (c) Registrar shall be entitled on, ninety (90) days' notice in advance of the expiration of this Agreement or within thirty (30) days of termination of this Agreement by [SITAERS](#) or Registrar, to elect to invoke the Transition Services for the Transition Period and in that event [SITAERS](#) shall provide such Transition Services in the manner provided in this Agreement and without regard to the reason for expiry or termination;
- (d) expiry or termination of this Agreement for any reason shall not affect or prejudice the parties' accrued rights as at the date of such expiry or termination;
- (e) on expiry or termination of this Agreement for any reason all such provisions as are expressly stated to or impliedly continue thereafter shall continue; and
- (f) where [SITAERS](#) would be entitled to receive the Software Negotiated Value, it shall only claim such amount from the New Service Provider and no other person, without affecting [SITAERS](#)'s right to charge a commercial licence fee to a party to whom it licenses the Software.

20.2 Upon receipt of notice of termination, and subject to its portability obligations under clause 20.9, [SITAERS](#) shall take immediate steps to facilitate the transition of the [Technology](#) Services and Software to the Registrar or to an entity/person designated by the Registrar in a prompt and orderly manner and shall reduce expenses to a minimum and shall not undertake any forward commitment from the date of receipt of notice of termination, including, without limitation, any capital expenditures.

20.3 The steps contemplated in this clause 20 shall include [SITAERS](#) :

- (a) liaising with the Registrar and any entity/person designated by the Registrar to provide reasonable assistance and advice concerning the provision of the [Technology](#) Services and their transfer to the Registrar or any entity/person designated by the Registrar; and
- (b) not disposing of any assets required to operate the [Technology](#) Services to the extent practicable.

20.4 **On expiry:** In the event of expiry of this Agreement then the following shall occur:

- (a) if the Registrar or the Supervisory Authority requests Transition Services for the Transition Period, then [SITAERS](#) will provide such services;
- (b) the Registrar shall pay to [SITAERS](#) in arrears the Transition Fees as applicable; and
- (c) the New Service Provider or the Registrar and [SITAERS](#) shall enter into a licence agreement substantially in the form of the Model License Agreement

subject to the payment by the New Service Provider or the Registrar to [SITAERS](#) of Software Negotiated Value within a three year period.

20.5 **Termination Event** – In the event of termination of this Agreement by [SITAERS](#) in accordance with

(a) clause 19.2 (a); or

(b) clause 19.2 (b) (after taking into account clause 19.3),

then the following shall occur:

(i) if the Registrar or the Supervisory Authority requests Transition Services for the Transition Period, then [SITAERS](#) will provide such services;

(ii) the Registrar shall pay to [SITAERS](#) in arrears the Transition Fees as applicable and

(iii) clause 2.2 of the Software Security Agreement shall apply and if there is a New Service Provider, it and [SITAERS](#) shall enter into a licence agreement substantially in the form of the Model License Agreement subject to the payment by the New Service Provider to [SITAERS](#) of Software Negotiated Value within a three year period.

20.6 **Termination Event** – In the event of termination of this Agreement by the Registrar in accordance with clause 19.2 (a) or (b) then the following shall occur:

(a) if the Registrar or the Supervisory Authority requests Transition Services for the Transition Period, then [SITAERS](#) will provide such services to the extent it is legally able to do so, if it is Insolvent);

(b) the Registrar shall pay to [SITAERS](#) in arrears the Transition Fees as applicable; and

(c) clause 2.5 of the Software Security Agreement will apply and the Registrar and [SITAERS](#) shall enter into a licence agreement substantially in the form of the Model License Agreement subject to the payment by the New Service Provider or the Registrar to [SITAERS](#) of the Software Negotiated Value (subject to any discount applicable thereto) within a three year period.

20.7 **Termination Event** – In the event of termination of this Agreement in accordance with clause 19.2 (c) then the following shall occur:

(a) if the Registrar or the Supervisory Authority requests Transition Services for the Transition Period, then [SITAERS](#) will provide such services (to the extent it is legally able to do so);

(b) the Registrar shall pay to [SITAERS](#) in arrears the Transition Fees as applicable; and

(c) If there is a New Service Provider, [SITAERS](#) shall, at the New Service Provider's request (unless unable to do so by reason of *force majeure*), enter into a licence agreement with the New Service Provider substantially in the form of the Model License Agreement subject to the payment by the New Service Provider or the Registrar to [SITAERS](#) of the Software Negotiated Value within a three year period.

20.8 **Termination Event** – In the event that either party has the right (without taking into account this subclause) to terminate this Agreement pursuant to clauses 19.2 (a) or (b) and an Invocation Notice is received by [SITAERS](#) pursuant to the Deed of Business Continuity, notwithstanding clause 19, the Agreement will not be terminated, the Deed of Business Continuity shall thereupon become operative and this Agreement shall remain in force pursuant thereto.

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20.9 Upon termination or expiration of this Agreement then:

- (a) [SITAERS](#) shall ensure the portability of all Software and Documentation used for the purposes of the operation of the [Technology Services](#) but excluding any Software developed exclusively in relation to the provision of Ancillary Services;
- (b) For Software and Documentation subject to portability as described in clause 20.9(a) used under licence, [SITAERS](#) shall use All Reasonable Efforts to ensure portability of the licences under the relevant licence agreements to the extent permissible under applicable law and software vendor practice, at the same fee unless otherwise agreed by the Registrar, by commercial agreement and subject to any third party licence fees. [SITAERS](#) shall furnish evidence of portability of the licences to the Registrar upon demand;
- (c) For Software, and associated Documentation, individually developed by [SITAERS](#) or its Subcontractors other than Software developed exclusively in relation to the provision of Ancillary Services, [SITAERS](#) shall ensure portability in accordance with the Software Security Agreement (where applicable) and pursuant to a licence agreement substantially in the form of the Model License Agreement;
- (d) Upon receipt of a notice of termination or a notice of non-renewal of this Agreement, [SITAERS](#) shall maintain a copy of all updated Software, source code(s) and Documentation and the updated system design used for the purposes of the [Technology Services](#), until their subsequent transfer to the New Service Provider or a person or entity designated by the Registrar, in accordance with this clause 20;
- (e) Both parties will return all property in its possession belonging to the other party, including all Confidential Information;
- (f) Registrar will pay to [SITAERS](#) within thirty (30) days of the effective date of such termination or expiration, all charges due and payable; and
- (g) under the direction of Registrar, [SITAERS](#) shall ensure that all data, including the Data and Archives, relating to the [Technology Services](#) are destroyed and/or made unusable and shall provide evidence of the same to Registrar.

21. Warranties and Undertakings

- 21.1 [SITAERS](#) warrants and undertakes that the Software will perform substantially in accordance with the software specifications.
- 21.2 [SITAERS](#) warrants and undertakes that it will provide the [Technology 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.
- 21.3 [SITAERS](#) warrants the International Registry System does not infringe any Intellectual Property Rights of any third party at the Go-Live Date and undertakes that it will not do so during the Term.
- 21.4 Subject always to clause 21.5 below [SITAERS](#) warrants and undertakes that it shall use reasonable endeavours to ensure that there are no errors or omissions in the

Data and Archives but, save as provided in clauses 21.6 below, accepts no liability for any errors or omissions that may exist.

- 21.5 Registrar recognises that the Data and Archives delivered by SITAERS on an "as is" basis and SITAERS assumes no responsibility regarding the use or the results of use of the Technology Services and or any Data and Archives in terms of correctness, accuracy, reliability or otherwise other than in clauses 21.4 and 21.6. Responsibility for using or relying upon the Technology Services, the Data and Archives for Registrar's business use lies exclusively with Registrar.
- 21.6 If there are serious errors or omissions in an edition of the Data and Archives delivered by SITAERS due to the fault of SITAERS or wilful manipulation by SITAERS or its employees or agents, Registrar may within seven days after delivery of that edition of the Data and Archives, notify SITAERS and SITAERS will re-constitute the Data and Archives at Registrar's request as soon as possible and in any event within twenty-four (24) hours and at no additional cost and redeliver that edition of the Data and Archives to Registrar. In such case SITAERS shall have no further liability to Registrar whatsoever in respect of errors or omissions in that edition of the Data and Archives.
- 21.7 Registrar acknowledges that software in general is not error free and agrees that the existence of such errors shall not constitute a breach of this Agreement. Registrar agrees that its sole remedy arising from a breach of the warranty under this Agreement in relation to errors in the Software is to notify SITAERS of a defect in the Software and provide a reasonably detailed written description of the defect to Registrar (the "Defect"). Thereupon, SITAERS shall use its reasonable efforts to correct the Defect according to the priority levels, response and solution objectives set out under the Service Level Service schedule, provided that SITAERS is satisfied that the Defect is of a nature of a malfunction, as opposed to a modification of the Software.

22. Limitations of Liability

22.1 External Dependencies

The System and Technology Services provided under this MSA rely on the public Internet to support user access and so any unavailability of the Internet due to restricted or no access from a customer server, a failure by an Internet Service Provider or a general failure of the Internet in whole or in part, may cause a loss of the System and Technology Services for which SITAERS will not be liable under this MSA. Equally, SITAERS will not be liable under this MSA for a failure on the site or of the IT environment of another organisation through which access to the System and Technology Services is available or if, in order to protect the security or facilities of the System and Technology Services, SITAERS decides to disable the System and Technology Services or access to it.

- 22.2 Subject to clause 22.5 below, SITAERS excludes all implied representations, warranties, conditions and other terms whether statutory, collateral or otherwise, relating to the subject matter of this Agreement.

22.3 Subject to clause 22.5 below, neither party shall be liable to the other for:

- (a) indirect, special and consequential loss; or
- (b) loss or corruption of data, loss of business revenue, loss of profits (whether direct or indirect), failure to realise expected profits or savings and any other economic loss of any kind)

in contract, negligence or other tort, under any statute or otherwise howsoever arising from or in relation to this Agreement.

22.4 Subject to clause 22.5 below and excluding the indemnity in clause 17.4, [SITA's and any liquidated damages payable under Clause 15](#), ERS's total liability to Registrar for loss or damage of any kind not excluded by clause 22.2, however caused (whether in contract, negligence or other tort, under any statute or otherwise howsoever) arising from or in relation to this Agreement for all incidents related or unrelated in any period of twelve (12) months shall not exceed an aggregate amount equal to the annual Charges payable by the Registrar for such period.

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

- (a) 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;
- (b) for fraud or fraudulent misrepresentation;
- (c) arising under clause 12 of the Sale of Goods Act 1979 or clause 2 of the Supply of Goods and Services Act 1982; or
- (d) for any other liability that it is prevented from restricting or excluding by law; save in the case of (a)-(c) where that liability can be excluded or limited under applicable laws.

22.6 [SITAERS](#) shall maintain throughout the term of this Agreement suitable insurance from reputable insurers or underwriters in respect of all sums that it may become legally liable to pay to Registrar or other parties pursuant to this Agreement.

23. Insurances

23.1 **Insurance.** [SITAERS](#) agrees to keep in full force and effect and maintain at its sole cost and expense the following policies of insurance with the specified minimum limits of liability for the duration of this Agreement:

- (a) **Workers' Compensation and Employer's Liability Insurance** in full compliance with, and if required by, the applicable Laws of the state and/or country in which the work is to be performed or the country of hire (whichever is applicable). –Each such policy shall be endorsed to include an alternate employer or borrowed servant endorsement. The limits of liability of Workers' Compensation Insurance shall be not less than the limits required by applicable Law. The limits of liability of Employer's Liability Insurance with minimum limits of \$1,000,000.00 per employee by accident, \$1,000,000.00 per employee by disease, \$1,000,000.00 policy limit by disease (or, if higher, the policy limits required by applicable Law);

- (b) **Commercial General Liability Insurance** (including coverage for Contractual Liability assumed by [SITAERS](#) under this Agreement, Premises-Operations, Completed Operations--Products, Independent Contractors) providing coverage for bodily injury, personal injury and property damage with combined single limits of not less than US\$1,000,000.00 per occurrence, US\$2,000,000.00 in the aggregate;
 - (c) **Professional Liability** (also known as Errors and Omissions Liability) Insurance covering acts, errors and omissions arising out of [SITA'sERS's](#) operations or [Technology Services](#) that includes coverage as follows:
 - (i) coverage for software and operations development work, implementation, testing, training and maintenance of software and systems, including coverage for copyright and trademark protection;
 - (ii) coverage for: (x) web and application hosting services including coverage for copyright and trademark protections and (y) network risk coverage for damages related to security breaches and unauthorized access including privacy damages, data destruction and misappropriation of data; and
 - (d) Professional Liability (Errors and Omissions Liability) Insurance policies shall have a limit of liability of no less than US\$5,000,000.00 per occurrence and in the aggregate and with a retroactive date no later than the signature of this Agreement. [SITAERS](#) further agrees that Professional Liability/Errors and Omissions Insurance will be maintained for two years following the termination of this Agreement. Any incidents, accidents, claims or potential claims of which [SITAERS](#) has knowledge shall be communicated to Registrar within fifteen (15) days of such knowledge.
- 23.2 Each policy shall provide that it will not be cancelled or materially altered except after thirty (30) days' advance written notice to Registrar. Should any policy expire or be cancelled during the period of this Agreement and [SITAERS](#) fails to immediately procure replacement insurance as specified, Registrar reserves the right (but not the obligation) to procure such insurance and to deduct the cost thereof from any sums due to [SITAERS](#) under this Agreement. All insurance required under this section shall be primary insurance and any other valid insurance existing for Registrar's benefit shall be excess of such primary insurance. [SITAERS](#) shall obtain such endorsements to its policy or policies of insurance as are necessary to cause the policy or policies to comply with the requirements stated herein.
- 23.3 **Certificates.** [SITAERS](#) shall provide Registrar with certificates of insurance evidencing compliance with this article (including evidence of renewal of insurance) signed by authorized representatives of the respective carriers for each year that this Agreement is in effect. Each certificate of insurance shall provide that the issuing company shall not cancel, reduce, or otherwise materially alter the insurance afforded under the above policies unless notice of such cancellation, reduction or material alteration has been provided at least thirty (30) days in advance to Registrar.

24. Notices

24.1 A notice, approval, consent or other communication in connection with this Agreement must be in writing, signed by the sender, and marked for the attention of the person identified in the details set out in clause 24.2 below.

24.2 They must be:

- (a) delivered by hand and a receipt obtained at the address set out in the details;
- (b) sent by prepaid, registered mail to the address set out in the details; or
- (c) sent by fax to the fax number set out in the details, with a signed copy of the fax sent by prepaid, registered mail to the email address set out in the details.

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

24.3 In the interests of business continuity, copies of all notices delivered pursuant to clause 19 shall be sent to the Supervisory Authority at the same time as they are delivered to the other party hereto.

24.4 Any notices given by the parties shall be addressed as follows:

Registrar: To: Regulis S.A.
L-1330 Luxembourg, 48, boulevard Grande-Duchesse
Charlotte, Grand-Duché de Luxembourg

SITA: _____ Email : [ISC to insert]

ERS: To: SITA Information Networking Computing
(Ireland) Enterprise Registry Solutions Limited,
Building 1, Letterkenny Office Park, Windyhall,
Letterkenny, Co. Donegal Level 2, Number 4, Customs House Plaza, Harbourmaster Place,
Dublin, Ireland

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

Fax: + 41 (0)31 359 10 11

E-mail: info@otif.org

25. Dispute resolution

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

25.2 Neither party may otherwise commence court proceedings or arbitration relating to the Dispute except where that party seeks urgent interim or interlocutory relief.

- 25.3 Any party claiming that a Dispute has arisen may give a written notice (the "**Dispute Notice**") to the other party. The Dispute Notice must:
- (a) identify the party's representative for negotiations relating to the Dispute, being a person with authority to settle the Dispute on behalf of that party; and
 - (b) set out succinctly the issues that are the subject of the Dispute and, with relevant particulars, a description of the circumstances giving rise to the Dispute and the relief sought including, to the extent possible, any amount claimed.
- 25.4 The recipient of the Dispute Notice must within 14 days of receipt of the Dispute Notice reply in writing to the other party. The Reply must:
- (a) identify the recipient's representative for negotiations relating to the Dispute, being a person with authority to settle the Dispute on behalf of the recipient; and
 - (b) set out succinctly the recipient's response to the matters set out in the Dispute Notice and any additional matters the recipient considers relevant.
- 25.5 The representatives designated above will make whatever investigations each considers appropriate and, within 60 days of receipt of the Reply, use their reasonable endeavours to resolve the dispute on a "without prejudice" basis.
- 25.6 If the dispute is not resolved within this time, then the parties must resolve the Dispute by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The arbitration will be conducted in ~~London~~Dublin, in the English language and using one arbitrator.

26. General

Assignment

- 26.1 Subject to clause 10 and with the approval of the Supervisory Authority, either party may assign or otherwise deal with all or any of its rights under this Agreement, with the written consent of the other party, which shall not be unreasonably withheld or delayed.

Variation and waiver

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

Discretion in exercising rights

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

Partial exercise of rights

26.4 If a party does not exercise a right or remedy fully at a given time, then the party may still exercise it later.

Entire Agreement

26.5 This Agreement, the Software Security Agreement and the Deed of Business Continuity contain the entire understanding between the parties and supersede any prior understandings and agreement between them respecting this subject matter. Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in such agreements. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this Agreement.

Force majeure

26.6 Force majeure as used herein means acts of God, war, civil commotion, terrorist act, [pandemic](#) or insurrection and which neither party is able to overcome. As soon as possible after the occurrence of any cause constituting *force majeure*, [SITAERS](#) shall give notice and full particulars in writing to the Registrar of such *force majeure* if [SITAERS](#) is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Agreement. If the Registrar agrees that a *force majeure* has occurred, it shall so notify [SITAERS](#) in writing, specifying the date of the *force majeure*, and then the following provisions shall apply:

- (a) the obligations and responsibilities of [SITAERS](#) under this Agreement shall be suspended to the extent of its inability to perform them and for as long as such inability continues;
- (b) if [SITAERS](#) is rendered permanently unable, wholly or substantially, by reason of *force majeure* to perform its obligations and meet its responsibilities under this Agreement, the Registrar shall be entitled to terminate this Agreement on the same terms and conditions as are provided for in clause 19; and
- (c) for the purpose of the preceding subparagraph, the Registrar may consider [SITAERS](#) 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.

Convention not to apply

26.7 The International Convention on the Sale of Goods does not apply to this Agreement.

Exclusion of third party rights

26.8 The parties agree that, the parties to this Agreement do not intend that any term of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

Severability

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

Export/Import control compliance

26.10 Registrar will, in relation to all services and rights it receives under this Agreement, comply with the applicable United Nations, United States, European Community and other country laws and regulations relating to governmental export/import control regulations, 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.

Conflicting Terms

26.11 In the event of conflict, the following order of precedence shall prevail;

- (a) any signed order approving Change Control;
- (b) amendments to the Agreement and schedules thereto
- (c) Schedules to the Agreement;
- (d) this Agreement (aside from schedules hereto).

Survival

26.12 The following Clauses will survive termination of this Agreement and will remain in full force and effect following the termination of this Agreement: clauses 16, 20, 21, 22.1 to 22.4, 24, 26, 27 and 28.

27. Governing law

27.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

28. Definitions and interpretation

28.1 Definitions

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

Acceptance Criteria means the technical, functional and non-functional criteria as agreed in the test strategy as agreed between the parties prior to the commencement of PAT.

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.

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.

Ancillary Service means any service, that is not a Registrar Service, utilising the resources of the International Registry and which is authorized by the Registrar and the Supervisory Authority under the Registrar Contract including but not limited to using the website, branding, personnel and data of the International Registry.

Archives or **Data Archives** means all 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.~~

Cape Town Instruments means the Convention and the Protocol on the Convention of International Interests in Mobile Equipment on Matters specific to Aircraft Equipment (ICAO Doc. 9794), signed at Cape Town on 16 November 2001.

Change Control means the processes and procedures, set out in Schedule 5 for approving changes to this Agreement or to the specifications for the International Registry.

Charges means the charges set out in Schedule 3 ("Pricing and Payment") in the manner set out in that schedule and any other amounts payable hereunder by the Registrar to [SITAERS](#).

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.

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

Effective Date means the date of signature of this Agreement.

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 Agreement 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.

Data and Archives means the information entered by the users of the International Registry, information relating to the users themselves, financial information relating to user licences, registrations and searches, registration statistics and all such other data (whether archived or not) relating to the International Registry, Data and Data Archives.

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.

Day means a calendar day, and includes Saturdays, Sundays, and official public holidays.

Deed of Business Continuity means the deed signed on the Effective Date by the Supervisory Authority, [SITAERS](#) and the Registrar.

Discloser means the party disclosing Confidential Information.

Dispute means any dispute, controversy, difference or claim between the parties as to the construction of this Agreement, the rights or obligations of a party or any other matter arising out of or relating to this Agreement including any question regarding the existence, validity or termination of this Agreement.

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.

Effective Date means the date of execution of this Agreement.

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

Final Acceptance Certificate means the certificate signed by the Registrar confirming the successful completion of the PAT and FAT.

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

Go-Live Operation Date means the date the Registrar issues the Final Acceptance Certificate in accordance with clause 7 (Acceptance).

Indemnified Parties means the Supervisory Authority, the Preparatory Commission, the Secretariat, as well as the officials, agents, servants, representatives, co-chairpersons, employees and subsidiary bodies of the Supervisory Authority, Preparatory Commission, and the Secretariat and an Indemnified Party means any one of them.

Initial Term means the period of time commencing on the Effective Date and expiring ten (10) Years from the Go-Live Date.

Insolvent means having an administrator appointed, being in receivership, in liquidation, in provisional liquidation, wound up, subject to any arrangement, assignment or composition, protected from creditors under any law, dissolved (other than to carry out a restructure while solvent) or being otherwise unable to pay debts when they fall due or having something with the same or a similar effect happen under the laws of any jurisdiction.

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](#)[trademarks](#), 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.

International Aircraft Registry means the registry established under the authority of the Cape Town Instruments.

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

International Registry System means all [Data and Archives, software \(including but not limited to the Licensed Materials\) and the operational and security protocols required to operate the International Registry in accordance with the MSA.](#)

Invocation Notice has the meaning set forth in the Deed of Business Continuity.

Licensed Materials shall have the meaning set forth in the Software Security Agreement

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.

Model Licence Agreement means the model agreement as set out in Schedule 1 to the Software Security Agreement.

New Service Provider means any third party provider of the Registrar Services which replaces the Registrar [who cannot be a direct competitor of ERS without the prior written consent of ERS.](#)

Notification Date means the date that the Ratifications Task Force notifies the Secretariat of the Target Date pursuant to clause 7.2 of the Registrar Contract.

Notification to Begin Date means the date which is no more than twenty four (24) hours after the Notification Date

Personal Data means any data defined as such under the Data Protection Act [1998](#)[2018](#) or successor UK legislation thereto.

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.

Project Implementation Plan means the detailed Project Plan in Schedule 6 as amended from time to time by the parties.

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.

Provisional Acceptance Certificate means the certificate signed by the Registrar confirming the successful completion of the PAT.

Ratifications Task Force means the task force constituted under clause 7.1 of the Registrar Contract.

Recipient means the party receiving the Confidential Information.

Registrar Contract means the contract between the Registrar and the Preparatory Commission signed on the Effective Date.

Registrar Services means the International Registry services described in clause 9 of the Registrar Contract.

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.

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 (as attached to the Registrar Contract) and modified, where appropriate, to incorporate by analogy the changes from the 5th8th 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 6th9th edition).

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

Service Levels means those service measurement parameters as described in Schedule 4.

~~**Services** means the services described under this Agreement and more specifically in the System Design Document (Schedule 2).~~

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

Software Negotiated Value shall have the meaning set forth in the Software Security Agreement and payable in accordance with the Model Licence Agreement.

Software Security Agreement means the Software Security Agreement signed by [SITAERS](#), the Registrar and the Preparatory Commission on the Effective Date.

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.

Supplemental Charge means an amount equal to sixty percentage points (60%) of gross revenues from fees received by the Registrar for Identifier Reservation Services, [Professional User Account Services](#) and other services pursuant to the Registrar Contract increasing to ninety-two percentage points (92%) once the Fee Threshold has been met.

System means the system made up of the hardware, infrastructure, software and the Software which is made available by [SITAERS](#) to the Registrar to obtain the Final Acceptance Certificate in accordance with clause 7 (Acceptance) and any subsequent changes in accordance with the Change Control Procedure in Schedule 5.

Target Date means the date as determined in accordance with the Registrar Contract.

Technology Services means the services provided by ERS under this Agreement and more specifically in the Design, Implementation and Operational Requirements (Schedule 1).

Term means the term of this Agreement pursuant to clause 2 herein.

Termination Event means an event under this Agreement pursuant to which the Registrar is entitled to terminate the Agreement.

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.

Tax means value added tax, sales tax, excise tax, gross receipts tax and withholding taxes, and any similar tax which may be applicable thereto, together with any related interest, penalties, fines and expenses in connection with them except if imposed on the overall net income or a party.

Transfer Date means the date as determined in accordance with the Deed of Business Continuity.

Transition Fees means reasonable consideration for the provision of the Transition Services by [SITAERS](#), taking into account the time incurred by [SITAERS](#), to be agreed with [SITAERS](#), or in the absence of agreement determined by the Supervisory Authority.

Transition Services means the activities below:

- any activity the Registrar has 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 Period means the period up to twelve (12) months as the Registrar or the Supervisory Authority may elect for which the Registrar requests and during which [SITAERS](#) shall supply the Transition Services.

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

User Registration means that a prospective user of the International Registry is able to use the user registration functionality as described in the [System Design Document, Implementation and Operational Requirements](#) (Schedule 21) to allow the registration to be processed by Registrar.

Year means a period of 12 months starting on the Go-Live Date or the anniversary thereof.

28.2 Reference to terms

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

- (a) this or the "Agreement" and this "MSA" means this agreement and includes the schedules, which form part of this agreement for all purposes;
- (b) a "party" or the "parties" is to the party or the parties (as the case may be) to this Agreement and includes any permitted assignees of a party;
- (c) the word "person" includes an individual, a firm, a corporation, an unincorporated association, government, state or agency of state, association, partnership or joint venture;
- (d) the words "include", "including", are not used as, nor are they to be interpreted as, words of limitation;
- (e) a statutory provision includes that provision as from time to time modified or re-enacted or consolidated whether before or after the date of this Agreement.

28.3 Headings

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

28.4 Construction

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

EXECUTED as an agreement

For [SITAERS](#)

For Registrar

Name

Title

Signature Signature

Date Date

Draft