

**DATE:**

**CROSS INDUSTRY REMOTE CONDITION MONITORING AGREEMENT  
[STANDARD FORM]**

**BETWEEN:**

**(1) [ ] ("THE FACILITATOR")**

**(2) [ ] ("THE BENEFICIARY")**

**[NOTE: THIS DOCUMENT IS INTENDED AS A STANDARD FORM AND STARTING POINT FOR AGREEMENT BETWEEN THE PARTIES. PLEASE REFER TO THE GUIDANCE NOTES FOR FURTHER INSTRUCTIONS AS TO HOW TO USE THIS DOCUMENT]**

**DOCUMENT CONTROL**

<b>Date</b>	<b>Comments</b>
19 February 2014	Final draft issued with full report.

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This Agreement, dated [REDACTED], is made between:

- (1) [REDACTED]<sup>1</sup> incorporated and registered in England and Wales with company number [REDACTED]<sup>2</sup> and whose registered office is at [REDACTED]<sup>3</sup> ("the **Facilitator**");<sup>4</sup>
- (2) [REDACTED]<sup>5</sup> incorporated and registered in England and Wales with company number [REDACTED]<sup>6</sup> and whose registered office is at [REDACTED] ("the **Beneficiary**");<sup>7</sup>
- (3) [Any other parties as necessary]<sup>8</sup>,

together, the **Parties**.

## **Whereas:**

- (A) The Facilitator and the Beneficiary have agreed, subject to the terms and conditions of this Agreement, to work together on a cross-rail industry basis to share data relating to the condition of the railway.
- (B) The Facilitator and the Beneficiary propose to enter into certain arrangements in relation to the supply, installation and maintenance of certain Equipment as set out in the Heads of Terms and detailed under this Agreement with the purpose of such Equipment generating, producing or recording information and/or data relating to the remote condition monitoring of certain assets.
- (C) Such information and/or data so generated may be used, developed and modified by one or more of the Parties in accordance with this Agreement and in order to enable such Parties to maximise efficiency gains and/or performance and to promote and enhance cross-industry incentives in the United Kingdom in relation to remote condition monitoring more generally.
- (D) The Parties have agreed that the costs of (i) the supply, installation operation and maintenance of any Equipment and (ii) data provision thereafter shall be determined on and subject to the terms of this Agreement.
- (E) [Provide other background details and/or objectives as necessary, including details of any alliance/risk reward relationship].

## **1 Definitions and interpretation**

### **1.1 Definitions**

For the purposes of this Agreement, the following definitions have the following meanings:

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<sup>1</sup> Company name and address

<sup>2</sup> Company registered number

<sup>3</sup> Registered office of the relevant company

<sup>4</sup> This would be the party who is providing the services under this agreement and/or installing the equipment on its assets and/or infrastructure.

<sup>5</sup> Company name and address

<sup>6</sup> Company registered number

<sup>7</sup> This would be the party who is benefiting from any of the services and or equipment, including any data received.

<sup>8</sup> May be relevant if there is a third company who wishes to have access to the data.

**Affiliate** means, in respect of a Party, that Party's Holding Company or another Subsidiary of that Party's Holding Company. For the purposes of this definition: "Holding Company" and "Subsidiary" have the meanings given to those terms in section 1159 of the Companies Act 2006;

**Applicable Law and Standards** means all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or any European Union legislation at any time in force in the United Kingdom and which are or may become applicable to this Agreement or any obligations performed under it, including, without limitation, Industry Standards, the Railways (Interoperability) Regulations 2011 and the Railways and Other Guided Transport Systems (Safety) Regulations 2006;

**Asset Protection Agreement** means the agreement of such name in respect of the installation, operation and maintenance of any Equipment, which may need to be entered into between Network Rail and the person identified in Schedule 1 (Contract Specific Provisions);

**Business Day** means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Data** means any data or information generated, produced or recorded by any Equipment, as more fully set out in Schedule 4 (Data Ownership and Intellectual Property);

**Data Sharing Protocol** means the data sharing protocol as more accurately defined in Schedule 2 (Specification);

**Dispute Resolution Rules** means the relevant dispute resolution procedure as described in Schedule 1 (Contract Specific Provisions);

**Equipment** means any equipment set out in Schedule 2 (Specification);

**Heads of Terms** means the heads of terms dated the date set out in Schedule 1 (Contract Specific Provisions) between the Facilitator and the Beneficiary setting out the business case and heads of terms for this Agreement;

**Industry Standards** means all the laws, rules, regulations, recommendations and instructions, including (without limitation) guidance, codes of practice and conduct which have the force of law or with which it is generally accepted within the United Kingdom rail industry that it is good practice to comply, relating to the performance of this Agreement and/or applicable to any Equipment which are or have been issued by ATOC, the Secretary of State, Network Rail, ORR, RSSB, or any other relevant approval authority or person from time to time legally authorised to set standards in respect of the rail industry including the European Railways Agency and shall include, without limitation, Railway Group Standards and the Rule Book;

**Intellectual Property Rights** means all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software,

database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extension of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**Joint Management Group** means the management group jointly responsible for the overall management and decision-making relating to the operation of this Agreement as reflected in Schedule 1 (Contract Specific Provisions) and further detailed at Schedule 8 (Joint Management Group) of this Agreement;

**Network Rail** means Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is Kings Place, 90 York Way, London N1 9AG;

**ORR** means the Office of Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and has duties and obligations as set out in the Railways Act 1993;

**Programme** means the programme relating to the installation of the Equipment and provision of Data as set out at Schedule 3 (Programme);

**Railway Group Standards** means, to the extent applicable to any Equipment or any Data, those standards to which railway assets, equipment used on or as part of railway assets or data related to railways must conform, and operating procedures with which the operators of railway assets must comply, in each case, as prepared and updated by RSSB, as such may be specified in Schedule 2 (Specification);

**Relevant Approvals** means a consent, approval or permission, including any relevant derogation required to be granted by a Relevant Approval Authority in relation to any Equipment or provision of Data in order to permit the installation, operation and maintenance of such Equipment or provision of Data;

**Relevant Approval Authority** means any or all of the ORR, RSSB and the Department for Transport, or any other entity which has the appropriate authority for the granting of a Relevant Approval;

**Risk-Reward Arrangement** means any arrangement between the Parties in respect of the risks, rewards and apportionment thereof between the Parties as set out in Schedule 1 (Contract Specific Provisions);

**RSSB** means the Rail Safety and Standards Board;

**Service Level Agreement** means a service level agreement entered into between the Parties setting out the agreement of them in relation to various matters, as set out in more detail in Schedule 6 (Service Level Agreement);

**Specification** means the specification for any Equipment, provision of Data and any other services to be provided by the Parties set out at Schedule 2 (Specification); and

**VAT** means value added tax chargeable under the Value Added Tax Act 1994.

## 1.2 **Interpretation**

In this Agreement:

- 1.2.1 Unless the context otherwise requires, words denoting the singular include the plural and vice versa, words denoting persons include corporations, partnerships and other legal persons and references to a person include its successors and permitted assigns.
- 1.2.2 A reference to a specified Clause shall be construed as a reference to that specified Clause of this Agreement.
- 1.2.3 A reference to an agreement shall be construed as a reference to such agreement as it may be amended, varied, supplemented, novated or assigned from time to time.
- 1.2.4 The headings and the Table of Contents are inserted for convenience of reference only and shall not affect the interpretation of this Agreement.

### **Order of Precedence**

- 1.2.5 In the case of any inconsistency or discrepancy between the documents forming part of this Agreement, the following order of precedence shall apply:
  - (a) Schedule 1 (Contract Specific Provisions) to this Agreement;
  - (b) the other schedules to this Agreement;
  - (c) the terms of this Agreement; and
  - (d) the Service Level Agreement (if any).

### **Conditions Precedent**

- 1.2.6 This Agreement shall be conditional upon the items listed in Schedule 1 (Contract Specific Provisions).

## **2 Supply and Installation**

- 2.1 The Party responsible for the supply and installation of any Equipment shall (or shall procure the) supply and installation of such Equipment in accordance with the Specification and the Programme (as detailed under Schedule 2 (Specification) and Schedule 3 (Programme) of this Agreement) and in accordance with all Applicable Laws and Standards. The Parties shall have agreed the terms and conditions under which the Equipment shall be supplied, operated and/or maintained as specified in Schedule 2 (Specification) and Schedule 3 (Programme) of this Agreement.
- 2.2 The Party that installs any Equipment shall provide (or procure the provision of) written confirmation that such Equipment has been correctly installed in accordance with the Specification and is fully operational.
- 2.3 Where any Equipment is to be installed onto Network Rail infrastructure by any party other than Network Rail, an Asset Protection Agreement may be required. In such

case, the installing Party shall enter into (or procure the entry into) an Asset Protection Agreement.

- 2.4 The Parties shall otherwise work together to obtain any necessary approvals for the installation, operation and maintenance of any Equipment. Relevant Approvals shall be obtained in accordance with Schedule 2 (Specification) and by the Party(ies) identified in that Schedule.
- 2.5 Ownership of and legal and beneficial title to any Equipment shall vest in the Party described under Schedule 1 as being the owner of the Equipment (Contract Specific Provisions).

### **3 Operation and Maintenance of Equipment, Inspections and Monitoring**

- 3.1 The Party responsible for the installation, operation and maintenance of any Equipment shall, for the period of time that such Equipment is installed, operate and maintain (or procure the operation and maintenance of) such Equipment in line with all Applicable Laws and Standards and in accordance with good industry practice and any instructions and manuals issued by the manufacturer of such Equipment.
- 3.2 The Parties shall notify any other party promptly of any fault, defect or abnormality arising in respect of any Equipment, whereupon the Party responsible for the installation, operation and/or maintenance of such Equipment shall use all reasonable endeavours to make good such fault, defect or abnormality as soon as is reasonably practicable after receiving such notice.
- 3.3 In the event that a third party is appointed by one or more of the Parties to supply, install, operate and/or maintain the Equipment in accordance with Clauses 2 and 3 above, the Parties shall ensure that such third party provider is given such rights of access to fulfil its obligations to supply, install, operate and/or maintain any Equipment as determined in Schedule 1 (Contract Specific Provisions).
- 3.4 Subject to Clause 2.3 and any Asset Protection Agreement and Clause 3.3 above, the Parties shall agree who will be given any additional rights of access to inspect and monitor any Equipment, in accordance with Schedule 1 (Contract Specific Provisions).

### **4 Data and Intellectual Property Rights**

#### **Data Collection and Handling**

- 4.1 The responsibility for the collection and handling of Data (including how such collection will be carried out and how often the Data is collected) shall be as set out in Schedule 2 (Specification).

#### **Data Sharing Protocol**

- 4.2 Data shall be shared between the Parties using the Data Sharing Protocol as more fully described in Schedule 2 (Specification).

#### **Ownership of Data**

- 4.3 Ownership of any Data and any Intellectual Property Rights associated with such Data shall be as set out in Schedule 4 (Data Ownership and Intellectual Property).

## **Use of Data and Intellectual Property Rights**

- 4.4 The Parties shall be entitled to use, develop and modify the Data in accordance with Schedule 4 (Data Ownership and Intellectual Property).
- 4.5 The rights of the Parties in relation to any Intellectual Property Rights associated with the Data (including as such Data is developed and modified from time to time) shall be as set out in Schedule 4 (Data Ownership and Intellectual Property).

## **5 Payment**

- 5.1 The Parties agree that all payments between them relating to this Agreement shall be made in accordance with Schedule 5 (Payments).
- 5.2 All payments shall be made within 30 calendar days of receipt of an invoice, unless otherwise specified in Schedule 5 (Payments).
- 5.3 All sums in this Agreement shall include value added tax.

## **Risk and Benefit Reward**

- 5.4 Where this clause is specified to apply in Schedule 1 (Contract Specific Provisions), the Parties shall maintain an overall financial record of the costs, revenue and efficiency savings that have arisen out of the operation of this Agreement. The Parties then agree to share any risk, reward, efficiencies, benefits, revenues or costs in accordance with Schedule 1 (Contract Specific Provisions).

## **6 Warranties, Indemnity and Limit on Liability**

### **Warranty**

- 6.1 Unless provided otherwise in Schedule 1 (Contract Specific Provisions) or in any Service Level Agreement entered into (in accordance with Schedule 6 (Service Level Agreement) or as otherwise agreed between the Parties in writing), the Parties give no warranty as to the accuracy, availability, timeliness, quality, dependability, security or otherwise in relation to any Data or Equipment.

### **General Indemnity**

- 6.2 Subject to each Party's duty to mitigate any losses it suffers hereunder, each Party (the "**Indemnifying Party**") shall be responsible for indemnifying, on first demand and on an after tax basis, the other Party (the "**Indemnified Party**") including its agents and employees from and against all expenses, liabilities, loss, damage, demands, proceedings and claims (including third party claims) suffered or incurred by the Indemnified Party arising from or in respect of negligence or breach by the Indemnifying Party of its obligations under this Agreement, or the acts or omissions of its officers, sub-contractors, representatives and/or agents.

### **Limit on Liability**

- 6.3 Notwithstanding any provision to the contrary herein, the total liability under this Agreement of each Party (including without limitation on termination of this Agreement) shall be no more than the amounts specified in Schedule 1 (Contract Specific Provisions).



## **7 Insurance**

- 7.1 Each Party shall effect and maintain such insurances as may be required by Applicable Law and Standards and as otherwise set out in Schedule 7 (Insurance).
- 7.2 Each Party may from time to time, upon reasonable request by the other Party, provide evidence to the satisfaction of the other Party that any premiums which have become payable in respect of insurances have been paid in accordance with the terms of the relevant policy.
- 7.3 No Party shall, without the prior written consent of the other Party, prejudice the insurances or any recovery thereunder, or create or permit to exist any encumbrance over such insurances.

## **8 Force Majeure**

- 8.1 No Party shall be in breach of its obligations under this Agreement to the extent that it is unable to perform that obligation, in whole or in part, by reason of the occurrence of a force majeure event ("**Force Majeure**"). This Clause shall not affect payment obligations in relation to obligations which have already been performed in whole or in part.
- 8.2 A Force Majeure shall be deemed to occur if any event, circumstance or combination of events or circumstances occurs which is beyond the reasonable control of any Party and which is either unforeseeable or, if foreseeable, could not have been avoided by any reasonable means and which prevents, hinders or delays that Party from performing any of its obligations under this Agreement.
- 8.3 If a Force Majeure occurs such that the Programme may not be met or any other obligations under this Agreement are delayed (including the operation or maintenance of any Equipment and the provision of any Data), the Parties will agree a reasonable revised programme or timetable for delivery. Such revised programme will include a reasonable long-stop date by which time the Equipment must have been supplied or installed and/or any other services have been provided. Payment in relation to obligations that have not been performed (in whole or in part) due to the Force Majeure shall be suspended during the Force Majeure.

### **Notice of Force Majeure**

- 8.4 As soon as is reasonably practicable after commencement of the Force Majeure, the Party that has been affected by the Force Majeure shall give written notice to the other Party of the Force Majeure event, providing details including the date of commencement and the effects of the Force Majeure on its ability to perform its obligations under this Agreement. The Party that has been affected by the Force Majeure shall use all reasonable endeavours to mitigate the effects of the Force Majeure upon the performance of its obligations under this Agreement and keep the other Party informed of those steps.
- 8.5 As soon as reasonably practicable after the cessation of the Force Majeure, the Party affected by the Force Majeure shall notify the other Party of the cessation of the Force Majeure and shall resume performance of all its obligations under this Agreement.

#### **8.6 Grounds for Termination due to a Force Majeure event**

The Party that has not been affected by the Force Majeure event shall be entitled, on 10 Business Days' written notice to the other Party, to terminate the provision of Equipment and/or any other services provided hereunder (including the provision of Data) if one or more Force Majeure events persist for a continuous period of days as set out in Schedule 1 (Contract Specific Provisions) and the Party seeking to rely on the Force Majeure event has complied with the provisions of this Clause.

#### **8.7 Consequence of Termination due to a Force Majeure**

In the event that this Agreement terminates for Force Majeure and unless agreed otherwise, the Party responsible for installing any Equipment shall uninstall all Equipment previously installed and each Party shall otherwise bear its own costs arising out of such termination.

### **9 Confidentiality**

9.1 Subject to Clause 9.2 below, each Party shall keep confidential and shall not disclose (without the other Party's prior consent in writing) to any third party:

- (a) this Agreement, all documents related hereto and all information and data furnished hereunder;
- (b) all information or data concerning the operations, contractual, commercial or financial arrangements or affairs of the other Party which may come to its knowledge under or pursuant to this Agreement except as may be necessary for the proper performance of this Agreement or the operation of the Equipment; and
- (c) all information and/or data received, generated or shared other than as specifically allowed pursuant to this Agreement and, in particular, Schedule 2 (Specification).

#### **9.2 Carve-outs from confidentiality obligation**

Clause 9.1 above shall not apply to any information that is disclosed to:

- (a) to the ORR or the Department for Transport; or
- (b) as far as may be necessary for the proper performance of a Party's obligations under this Agreement; or
- (c) for the purposes of obtaining any Relevant Approval, regulatory or government authorisation, approval or consent; or
- (d) as required by law or any relevant stock exchange or if ordered to do so by a court of competent jurisdiction, HM Revenue and Customs; or
- (e) to any Affiliate of a Party upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in this Clause 9; or

- (f) to the directors, officers and employees of a Party or representatives, consultant or adviser who need to know such information in order to carry out the Party's obligations under this Agreement. Each Party shall procure that its employees, officers, representatives, consultant or advisers to whom it discloses any confidential information shall comply with this Clause 9; or
- (g) any other person(s) specified in Schedule 1 (Contract Specific Provisions),

unless or until a Party can reasonably demonstrate that any such document, material, information or data is in the public domain whereupon to the extent that it is in the public domain this obligation shall cease but without prejudice to any claim by any Party in respect of any prior breach.

9.3 If Schedule 1 (Contract Specific Provisions) indicates that any Party to this Agreement is subject to obligations under the Freedom of Information Act 2000 ("**FOIA**") or the Environmental Information Regulations 2004 ("**EIR**") (such Party being the "**FOIA Party**"), the other Party(ies) to this Agreement agree to assist and co-operate with the FOIA Party, as reasonably requested, to enable it to comply with its information disclosure obligations under FOIA or EIR. The other Parties hereby acknowledge that the FOIA Party may need, in complying with its FOIA and/or EIR obligations, to disclose certain information of a confidential nature without the prior consultation or consent of the other Party(ies). In the event that FOIA and/or EIR applies:

9.3.1 the FOIA Party shall be responsible for determining, in its absolute discretion, whether any confidential information and/or any other information is exempt from disclosure in accordance with the provisions of FOIA and/or EIR;

9.3.2 the FOIA Party shall take reasonable steps to inform the other Party(ies) of an information request to the extent that it is possible and reasonably practical for the FOIA Party to do so. The other Party(ies), may, at the request of the FOIA Party, be invited to identify which parts of any confidential or other information subject to such information request are or may be commercially sensitive. In providing such information, the other Party(ies) shall provide reasons why such information should not be disclosed; and

9.3.3 the FOIA Party retains the right under this Clause 9.3 to apply the FOIA, in all respects, as it, in its sole discretion, sees fit.

## **10 Costs**

Except as otherwise agreed in this Agreement, each Party shall bear its own costs incurred in connection with the execution and implementation of this Agreement.

## **11 Assignment**

11.1 Unless specified to the contrary in Schedule 1 (Contract Specific Provisions), no Party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this Agreement

without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

- 11.2 Each Party confirms that it is acting on its own behalf and not for the benefit of any other person or Party.

## **12 Termination**

- 12.1 Without prejudice to any rights accruing under this Agreement or any of its rights and remedies, a Party may at any time terminate this Agreement with immediate effect by giving written notice to the other Party(ies) if:

12.1.1 another Party commits a material breach of any term of this Agreement, and, if such breach is capable of being remedied, fails to remedy that breach within a period of 10 Business Days after receiving written notice to remedy such breach; or

12.1.2 another Party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or

12.1.3 another Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or

12.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of another Party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other Party with one or more other companies or the solvent reconstruction of that other Party; or

12.1.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over another Party (being a company); or

12.1.6 the holder of a qualifying floating charge over the assets of another Party (being a company) has become entitled to appoint or has appointed an administrative receiver, or a receiver is appointed over the assets of another Party; or

12.1.7 a creditor or encumbrancer of another Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other Party's assets and such attachment or process is not discharged within 14 days; or

12.1.8 another Party suspends, or cases, or threatens to suspend or case, carrying on all or a substantial part of its business.

- 12.2 If in Schedule 1 (Contract Specific Provisions) this Clause is specified to apply, without prejudice to any rights that have accrued under this Agreement or any of its rights and remedies, the Party or Parties specified in Schedule 1 (Contract Specific Provisions) may voluntarily terminate this Agreement on giving not less than the number of Business Days' written notice set out in Schedule 1 (Contract Specific Provisions) to the other Party(ies).

### **13 Consequences of Termination**

- 13.1 In the event that this Agreement terminates in accordance with Clause 12 and unless otherwise agreed by the Parties under Schedule 1 (Contract Specific Provisions), the Party responsible for the installation of any Equipment shall uninstall all Equipment previously installed and the defaulting Party shall bear any costs of the non-defaulting Party arising out of such termination in accordance with Schedule 1 (Contract Specific Provisions).
- 13.2 Other than as set out in this Clause, no Party shall have any further obligation under this Agreement after its termination.
- 13.3 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement, including any Clauses identified in Schedule 1 (Contract Specific Provisions), shall remain in full force and effect.
- 13.4 Termination of this Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

### **14 Governance**

- 14.1 If required under Schedule 1 (Contract Specific Provisions), the Parties shall establish a Joint Management Group which shall have the responsibility of managing the operation of this Agreement, including the supply, installation and maintenance of any Equipment as well as any issues relating to the Data.
- 14.2 In the event that a Joint Management Groups is established, the Parties shall each appoint a representative to the Joint Management Group and the provisions set out in Schedule 8 shall apply.

### **15 General**

#### **Franchise Agreement**

- 15.1 Where this Clause is specified to apply in Schedule 1 (Contract Specific Agreements), the Parties shall work together with any relevant train operator and the Department for Transport and use all reasonable endeavours to ensure that this Agreement is transferred to a Successor Operator (as such term is defined in a franchise agreement) at the end of the current train operator's franchise agreement.

#### **Notices**

- 15.2 **Communications in writing:** Any communication to be made under or in connection with this Agreement shall be made in English and in writing and, unless otherwise stated, may be made by fax, letter or email (Contract Specific Provisions).

15.3 **Addresses:** The address, fax number and email address of each Party for any communication or document to be made or delivered under or in connection with this Agreement is as set out in Schedule 1.

15.4 **Delivery:** Any communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

15.4.1 if by way of fax, upon receipt by the sender of a facsimile transmission report (or other appropriate evidence) showing the correct fax number and the number of pages sent and that such transmission is "OK" or equivalent; or

15.4.2 if by way of email, when it has been sent provided the message is in legible form and no message is received by the sender indicating that such message has not been received by or delivered to the intended recipient; or

15.4.3 if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided in Schedule 1 (Contract Specific Information), if addressed to that department or officer.

#### **Set Off**

15.5 Where either Party has incurred any liability towards any other Party under this Agreement, then provided that such liability is liquidated and undisputed, they may set-off the amount of such liability against any other liquidated and undisputed amount under this Agreement.

#### **Entire Agreement**

15.6 This Agreement constitutes the entire Agreement between the parties and supersedes the Heads of Terms, all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to the subject matter.

#### **Waiver and Variation**

15.7 No failure or delay by any Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right of remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

15.8 No variation of this Agreement shall be effective unless it is in written and is signed by the parties or their authorised representatives.

## **Other**

- 15.9 For the avoidance of doubt, title to the Equipment and all other equipment, system parts and components incorporated into such Equipment shall vest in the person identified in Schedule 1 (Contract Specific Information).
- 15.10 Any person who is not a Party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 15.11 This Agreement may be executed in counterparts, and all such counterparts shall together constitute a single instrument.

## **Disputes and Governing law**

- 15.12 This Agreement and any dispute or claim arising out of, or in connection with, it or its subject matter, including non-contractual disputes or claims, shall be governed by and construed in accordance with the law of England and Wales.
- 15.13 Unless otherwise provided in Schedule 1 (Contract Specific Provisions), no Party shall commence any legal or arbitral proceedings in connection with any dispute arising out of or in connection with this Agreement (a "**Dispute**") until the following steps (the "**Escalation Procedure**") have been completed, unless it is necessary for a Party to do so to protect a cause of action it may have against any other Party (in which case, once proceedings have been served, they shall be stayed until such time as the Parties have completed the Escalation Procedure):
- 15.13.1 each Party shall use reasonable endeavours to resolve Disputes expeditiously;
- 15.13.2 any Dispute shall be referred to an appropriate director or representative of each Party (or to the Joint Management Group if one has been appointed pursuant to this Agreement), who shall meet within 10 Business Days of referral for good faith negotiations to resolve the Dispute;
- 15.13.3 if such directors or representatives fail to resolve the Dispute within 20 Business Days of referral or such other period as the Parties may agree, the Parties shall attempt to resolve the Dispute by mediation before a single mediator in accordance with the Dispute Resolution Rules prescribed in Schedule 1 (Contract Specific Provisions); and
- 15.13.4 all negotiations, discussions and mediation meetings pursuant to this sub-clause shall be confidential and treated as "without prejudice".
- 15.14 Any Dispute which is not resolved in accordance with the Escalation Procedure shall be finally resolved by arbitration before a single arbitrator in accordance with the Dispute Resolution Rules. The Escalation Procedure shall be deemed to be completed on termination of the mediation pursuant to the Dispute Resolution Rules.
- 15.15 Nothing in this Agreement shall prevent any Party from seeking interim relief from the English Courts.

This Agreement has been entered into on the date stated at the beginning of the Agreement.

SIGNED FOR AND ON BEHALF OF )  
[Facilitator] )

Director:

Director/Secretary:

SIGNED FOR AND ON BEHALF OF )  
[Beneficiary] )

Director:

Director/Secretary:



## Schedule 1

### Contract Specific Provisions

Clause reference	Item	Input
Definition of Asset Protection Agreement	The identity of the party that has entered into the Asset Protection Agreement	[Facilitator/Beneficiary/Other]/[NONE]
Definition of Heads of Terms	The date the relevant Heads of Terms were entered into	[Specify the relevant date]/[NONE]
1.2.6 (Conditions Precedent)	Conditions to the contract becoming live	[Specify whether there are any CPs prior to the Agreement coming live e.g. any approvals or consents needed]/[NONE]
2.5 (Supply and Installation)	Who shall be the owner of any Equipment once it has been installed	[Specify which Party shall be the owner of any Equipment]
3.3 (Operation, Maintenance, Inspections and Monitoring)	Rights of access to inspect and monitor any Equipment	[Specify who will be given rights of access to inspect and monitor any Equipment and at what times such rights of access will be available]
Definition of Risk-Reward Arrangement and Clause 5.4 (Risk and Benefit Reward)	Details of any risk-reward and benefit sharing arrangements	Clause applies: [Yes/No] [Existing Risk/Reward arrangements (e.g. Alliance Agreement) to be inserted and/or other specific detail to be set out here]
6.3 (Limit on Liability)	The limit on liability that applies to each of the Facilitator and Beneficiary	<b>Facilitator:</b> £[ ] <b>Beneficiary:</b> £[ ] [NOTE: the limit on liability could be zero if the parties are not accepting liability to each other]
8.6 (Force Majeure)	Number of days that a Force Majeure has to continue before termination.	[Specify number of days here. Usual is 150 or 180 days so approximately 5 or 6 months but could be longer]
9.2(g)(Confidentiality)	Right to disclose confidential information	[Specify here if there are other circumstances where the Parties may disclose confidential

Clause reference	Item	Input
		information]/[NONE]
9.3 (Freedom of Information Act)	Identify whether the FOIA applies	Identify which Party(ies) are subject to FOIA compliance
11.1 (Assignment)	Right to assign the contract	[Specify here if there are specific circumstances where one or more of the Parties may seek to assign, for example, under any intra-group assignment or assignment related to any transfer of underlying contract(s) (e.g., on any franchise change)]/[NONE].
12.2 (Termination)	Applicability of the voluntary termination right	Does this Clause apply: [YES/NO] If Yes, which Parties can voluntarily terminate: [Specify here] If Yes, number of Business Days' notice required: [Specify here]
13.1 (Consequences of Termination)	Removal/de-installation of any Equipment	[Specify who shall uninstall any Equipment (if not the Party who installed it) and who shall bear the costs of such de-installation]
13.3 (Consequences of Termination)	Clause references that will survive termination of the Agreement	[Specify here whether any Clauses survive termination of the Agreement. Examples may be the obligation to remove any Equipment, maintenance requirements and Confidentiality arrangements]/[NONE]
13.3 (Consequences of Termination)	Basis of costs to be paid by defaulting Party arising out of termination	[Specify details as to the basis and payment of costs borne by the defaulting Party to the non-defaulting Party arising out of termination]
14.1 (Governance)	Joint Management Group	[Yes – see Schedule 8 for further details/No]
15.1 (Franchise Agreement)	Transfer of Agreement at the end of a franchise	[YES/NO] [NOTE: this is likely to apply mainly where a franchised train operator is party to the Agreement and will provide certainty over what happens if the franchise ends. If the Agreement does not transfer, there may need to

Clause reference	Item	Input
		be additional provisions relating to the termination of the agreement on franchise change, along with removal of the Equipment]
15.3 (Notices)	Address, fax number and email address for communication or notices	[Specify here the relevant information for each of the Parties]
15.9 (General)	Title to the Equipment	[Specify here if it is the Facilitator, Beneficiary or a third party who owns the title to the Equipment]
15.13-15.15 (Disputes and Governing Law)	Dispute Resolution Rules	<p>[Parties to specify any alternative dispute resolution mechanism other than those set out under Clause 15 to resolve any Dispute(s) arising from or in connection with this Agreement]</p> <p>For <b>Rail Industry Parties</b>, unless the Parties otherwise agree, the Dispute Resolution Rules shall be the Railway Industry Dispute Resolution Rules ("<b>the RIDR Rules</b>").For <b>Non-Rail Industry Parties</b>, unless the Parties otherwise agree, the the Dispute Resolution Rules shall be as prescribed by Technology and Construction Bar association ("<b>TECBAR</b>").</p>

#### Other Contract Specific Clauses:

[Here should be specified any other contract specific arrangements not covered by the above. Care should be taken to ensure that these do not conflict with the general terms and conditions. To the extent that they do, Schedule 1 takes priority – see Clause 1.2.5]

## Schedule 2

### Specification

#### [PARTIES TO COMPLETE]

#### Equipment – Specifications and Use

To include:

- Specification of any Equipment – what is being fitted and where; who is installing such Equipment – NB different parties may be installing different Equipment
- Any Relevant Approvals that need to be sought e.g. from ROSCOs, DfT, ORR etc., who will be responsible for obtaining them and by when
- Parties also to consider whether they can list the applicable Industry Standards for clarity
- Who owns the Equipment e.g. if it is being provided by a third party manufacturer etc.
- Who can use any Equipment – including any third parties
- Are there circumstances in which the Equipment may need to be removed? E.g. for maintenance?
- Parties may also wish to provide for any safety/operational issues in respect of any Equipment – for example, any liabilities if any Equipment fails and has knock-on repercussions

#### Data Collection, Processing, Hosting Transmission

Parties to provide details of who is responsible for the collection and handling of the Data produced from the Equipment. To include details of:

- Data to be collected;
- Information lifecycle (initial processing, cleansing, transmission etc);
- Frequency of collection and provision;
- Reporting provisions
- Storage provisions
  - Who, if any Party, shall be entitled to store the Data, for what period of time and on what terms?
  - Who, if any Party, shall be entitled to keep records of the collected Data? If so, on what terms and for what period of time?

## **Data Sharing**

[Parties to provide details of how Data may be shared and the terms of any Data Sharing Protocol]

The Parties shall use the following protocol to share any Data [reference to be made to Standards – ISO or T1010-01 output]

[Parties to consider any back-up arrangements in respect of the transmission of Data in the event that primary transmission methods are unavailable]

### **Schedule 3**

#### **Programme**

#### **[PARTIES TO COMPLETE]**

To include:

- Programme (if any) for supply and installation of the Equipment
- Programme (if any) for the delivery, transmission etc of any Data
- May also include provisions relating to the schedule for monitoring condition of assets, for example regarding train-borne Equipment, where particular units will be located, which areas of track this will monitor and over what timescale.
- Any other dates that the Parties need to agree upfront.

## **Schedule 4**

### **Data Ownership and Intellectual Property**

#### **Use of Data**

The Parties shall be entitled to use, develop and modify the Data in accordance with the following provisions:

[PARTIES TO SPECIFY FURTHER DETAILS AS TO HOW DATA, OR ANY DERIVED DATA<sup>9</sup>, MAY BE USED OR MODIFIED]

#### **Intellectual Property Rights**

##### **Title to Data**

[OPTION 1 – to be used where a particular Party retains all IPR to the Data as it is recorded – perhaps with licence to another Party for various purposes (see below)]

1. Title to any Intellectual Property Rights in relation to the Data that is recorded by the Equipment shall be vested in and owned by the Party that produces such Data, being, for the purpose of this Agreement, [Facilitator/Beneficiary/third party].

[OPTION 2 – title to the original Data remains vested in a particular Party, but another Party has title to any modifications or improvements or processed output made in respect of the Data]

2. Title to any Intellectual Property Rights in relation to the Data that is recorded by the Equipment shall remain vested in and owned by the Party that produces such Data, being, for the purposes of this Agreement, [Facilitator/Beneficiary/third party]. Title to any Intellectual Property Rights in relation to improvements and/or modifications made to such Data shall be vested in and owned by the Party who has made such improvements and/or modifications immediately on such improvement and/or modification.

[OPTION 3 – title to IPR developed or created in the course of the Agreement, to be owned by the party that developed or created the IPR]

3. All Intellectual Property Rights arising, developed or created by or on behalf of a Party to this Agreement in the course of or as a consequence of performance of this Agreement shall vest in and shall be owned by that Party immediately upon creation.

##### **Licensing of IPR**

4. [The Facilitator/Data owner] grants or agrees to grant to [the Beneficiary/Data user] a non-exclusive, irrevocable, royalty-free licence (with[out] a right to sub-licence) of any Intellectual Property Rights in relation to the Data that is generated by the Equipment for the Permitted Purpose.

[OPTION 1 – license to use the Data for any and all purposes]

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<sup>9</sup> Parties may wish to consider what they want to do with the Data once modified and/or derived, including whether the Data shall be provided to any other third party(ies), or returned to the Beneficiary, or other alternative scenario(s).

**Permitted Purpose** means for any and all purposes, including to improve and/or modify such Intellectual Property Rights.

[OPTION 2 – Limited license to use the Data for a particular purpose only]

**Permitted Purpose** means [solely for the following purposes: [to be specified]]



## Schedule 5

### Payments

#### [PARTIES TO COMPLETE]

#### Part A – Payment for Equipment

The total cost of supply and installation of the Equipment by the [Facilitator] to the [Beneficiary] shall be £[ ], to be made on completion of the following milestones:

Payment Number	Milestone	Amount
1		
2		
3		
4		

#### Part B – Payment for the maintenance and operation of the Equipment

[PARTIES TO AGREE HOW PAYMENT FOR THE OPERATION AND MAINTENANCE OF EQUIPMENT WILL WORK. SOME OPTIONS ARE INCLUDED BELOW – DELETE THOSE NOT RELEVANT:]

[OPTION 1] The Parties agree that the following payments shall be made in respect of the operation and maintenance of the Equipment in accordance with the times, frequency and amounts set out below:

Payment Number	Time/Frequency	Amount
1		
2		

[OPTION 2 - PARTIES TO AGREE ON AN ALTERNATIVE BASIS FOR PAYMENT IN RESPECT OF THE MAINTENANCE AND OPERATION OF THE EQUIPMENT.]

#### Part C – Payment for Data

[PARTIES TO AGREE HOW PAYMENT FOR DATA WILL WORK. SOME OPTIONS INCLUDED BELOW – DELETE THOSE NOT RELEVANT:]

**[OPTION 1]** There shall be no payment made between the Parties in relation to any other rights and obligations contained in this Agreement, including for access and ownership to data or otherwise<sup>10</sup>.

**[OPTION 2]** The Parties agree that the following payments shall be made in relation to other rights and obligations contained in this Agreement and the times, frequency and of the amounts set out below:

Payment Number	Time/Frequency	Amount
1		
2		
3		
4		

### Part C - General

Any provisions relating to refund of payments also included (if applicable).

Any other payment terms between the Parties also to be specified e.g how invoicing will work, time for payment of invoice etc. This is likely to be bespoke depending on the relevant company payment terms. Some options:

The Parties agree that the payments referred to above shall be submitted, via appropriate invoice, to the address specified in Schedule 1 (Contract Specific Provisions).

After receipt by it of an appropriate invoice, the receiving Party shall pay the amount set out in the invoice, in arrears, by no later than 30 calendar days following the receipt of such invoice.

In the event that any disputed amount or invoice is received, the Party receiving such invoice shall provide written notification to the invoicing Party stating the reasons for dispute within [10] Business Days of receiving such invoice.

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<sup>10</sup> No payment between the parties may be the standard position – particularly where data is at a low level of refinement

## Schedule 6

### Service Level Agreement

**[PARTIES TO COMPLETE (if an SLA is agreed). These are likely to be highly bespoke to each project<sup>11</sup>]**

The contents of Schedule 2 are likely to impact on what is included in Schedule 6 as the Specification should drive the output and both must be achievable

To include details of the following in relation to the Data:

- Availability
- Timeliness (or frequency)
- Quality (integrity, precision, accuracy)
- Transfer dependability
- Security
- Fault tolerances
- Response times
- Steps that are to be taken in the event of service delivery issues
- Escalation procedure
- Compensation for downtime
- Disaster recovery in the event of system failure
- Parties to consider whether a performance regime may be appropriate and what remedies there may need to be for any failure to meet the Specification – for example, liquidated damages, increased monitoring, remedial plans, liability caps for breach etc

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<sup>11</sup> Details are required of the levels of service agreed between the Facilitator and the Beneficiary – principally in relation to the provision of data. The extent of detail required is most likely to be proportional to the size, scale and importance of the project and the level of investment/payment involved. If the size of the agreement is small or the Parties are not paying each other for data, there may not be an SLA.

## **Schedule 7**

### **Insurance**

**[DELETE/COMPLETE AS APPROPRIATE]**

#### **Product liability insurance**

Each Party shall maintain in full force and effect public and product liability insurances for death or injury to any person and loss or damage to any property in an amount of not less than £[ ] for any one occurrence or series of occurrences consequent upon one event or original cause and annually in the aggregate a maximum of £[ ].

#### **Third party liability insurance**

Each Party shall maintain in full force and effect third party liability insurance in an amount of £[ ] for any one occurrence or series of occurrences consequent upon one event or original cause and annually in the aggregate a maximum of £[ ].

#### **Employers' liability insurance**

Each Party shall maintain in full force and effect employer's liability insurance in an amount of not less than £[ ] for any one occurrence or series of occurrences consequent upon one event or original cause and annually in the aggregate a maximum of £[ ].

**[OTHER CONTRACT SPECIFIC INSURANCES TO BE INCLUDED]**

## Schedule 8

### Joint Management Group

#### **[PARTIES TO COMPLETE IF A JOINT MANAGEMENT GROUP IS AGREED]**

To include the following (non-exhaustive) details in respect of the Joint Management Group (delete/complete as appropriate):

- Specify how frequently the Joint Management Group shall meet, what will constitute quorum at Joint Management Group meetings and other administrative details
- Identify how key issues that to be discussed/managed by the Group will be determined
- Specify how different operational workstreams will be monitored and developed and who will take ultimate responsibility for overseeing such workstreams in each respective case
- How to identify and monitor key risks and challenges to the Programme and to meet the objectives of each respective Party
- Decision-making process – determine who will have the ultimate say in the event of any Dispute and/or will Parties have the opportunity to refer Disputes to any higher authority(ies) or governing body(ies)?