

DATED

[DATE]

(1) RSP LIMITED

- and -

(2) [PARTY 2]

RDM PLATFORM AGREEMENT

DATA PUBLISHER

Rail Delivery Group



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THIS RDM PLATFORM AGREEMENT - DATA PUBLISHER (the '**Agreement**') is dated [DATE] and entered into

BETWEEN

- (1) **RSP LIMITED**, incorporated and registered in England and Wales with company number [03069033] whose registered office is at 200-202 Part Second Floor Aldersgate Street, London, EC1A 4HD ("**RDG**")

AND

- (2) [**INSERT DATA PUBLISHER**], incorporated and registered in England and Wales with company number [INSERT COMPANY NUMBER] whose registered office is at [REGISTERED ADDRESS] ("**Data Publisher**")

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

BACKGROUND

- (A) RDG operates the Rail Data Marketplace, a marketplace that enables Data Publishers and Data Consumers (as defined below) to share data.
- (B) The Data Publisher publishes data pertaining to the rail industry.
- (C) The Parties wish to enter into this Agreement so that the Data Publisher share its data under licence through the Rail Data Marketplace.

TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions:

In this Agreement, the following meanings shall apply:

'Account'	means the facility provided by RDG allowing the Data Publisher to present its Catalogue and share its Content under licence on the Rail Data Marketplace;
'ADR Notice'	has the meaning set out in Clause 29.1;
'Business Day'	a day, other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;
'Business Hours'	the period from 9.00 am to 5.00 pm on any Business Day;
'Catalogue'	the description of the Content displayed on the Rail Data Marketplace;
'Catalogue Policy'	the Catalogue policy and guidance available on raildata.org.uk as amended by RDG from time to time;
'Claim'	has the meaning set out in Clause 17.2;

‘Confidential Information’	has the meaning given to it at Clause 13;
‘Content’	the content owned by the Data Publisher and made available for sharing under licence through the Rail Data Marketplace;
‘Data Consumer’	an entity that enters into a Data Sharing Agreement with the Data Publisher;
‘Data Protection Legislation’	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party.
‘Data Sharing Agreement’	the licence agreement entered into between the Data Publisher and the Data Consumer to facilitate the sharing of Content;
‘Dispute Notice’	has the meaning set out in Clause 29.1;
‘Dispute Resolution Procedure’	the procedure set out at Clause 29;
‘Dispute’	has the meaning set out in Clause 29.1(a);
‘Effective Date’	has the meaning given at the beginning of the Agreement;
‘Initial Term’	has the meaning set out in Clause 2.1.1;
‘Insolvency Event’	<p>where the party cannot fulfil its obligations under this Agreement due to any of the following events:</p> <p>(a) it has passed a resolution for its winding up or a court has made an order for its winding up or dissolution (other than for the purpose of any bona fide amalgamation, merger or reconstruction);</p> <p>(b) an administration order has been made in relation to that party, or a receiver has been appointed over any material part of the assets or undertaking of that party;</p> <p>(c) that party has made an arrangement or composition with its creditors or an application to a court for protection from its creditors;</p> <p>(d) that party has ceased to carry on a material part of its business or disposed of a substantial part of its assets (other than</p>

for the purpose of a bona fide amalgamation, merger or reconstruction); or

(e) that party is unable to pay its debts as they fall due;

‘Intellectual Property Rights’	means all rights in or in relation to any and all patents, utility models, trade and service marks, rights in designs, get up, trade, business or domain names, copyrights, moral rights (whether registered or not and any applications to register or rights to apply for registration of any of the foregoing), rights in inventions, know-how, trade secrets and other Confidential Information, rights in databases and all other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world and any rights to receive any remuneration in respect of such rights;
‘Licence Fees’	the charges, if any, for use of the Licensed Data by the Data Consumer more particularly described in in Clause 8.3;
‘Material Capacity Impact’	has the meaning set out in Clause 3.5;
‘Open Access’	means Data made available by way of Creative Commons, Open Government 3.0 or similar open licensing method;
‘Permitted Change’	has the meaning set out in Clause 5.2;
‘Personal Data’	means any information which is related to an identified or identifiable natural person;
‘Platform Fees’	has the meaning set out in Clause 8.1;
‘Privacy Policy’	means RDG’s privacy policy as amended from time to time;
‘Rail Data Marketplace Policies’	the policies set out in Schedule 2;
‘Rail Data Marketplace’	has the meaning given to it in the Background to this Agreement.
‘RDM Contract Builder’	has the meaning given to it in Clause 7.1;
‘Refund Policy’	means RDG’s refund policy as amended from time to time;
‘Renewal Term’	has the meaning given to it in Clause 2.1.2;
‘Service Desk’	has the meaning given to it in Clause 3.3.3;
‘Service Levels’	means the service levels set out in Schedule 1;
‘Term’	the duration of the Agreement, as set out in Clause 2; and

'VAT' value added tax or any equivalent tax chargeable in the UK or elsewhere.

1.2 **Interpretation.** In this Agreement, unless the context otherwise requires:

- 1.2.1 references to a **clause** is to a clause in these terms and conditions and to a paragraph is to a paragraph in the Schedules; and
- 1.2.2 words in the singular include the plural and vice versa and words of any gender include every other gender and references to legal persons shall include natural persons and vice versa; and
- 1.2.3 headings in these conditions shall not affect their interpretation; and
- 1.2.4 a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and
- 1.2.5 a reference to **writing** or **written** includes e-mail; and
- 1.2.6 any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done; and

2. **TERM**

2.1 Unless earlier terminated pursuant to Clause 9, this Agreement shall take effect on the Effective Date and:

- 2.1.1 continue in force for twelve (12) months (the "**Initial Term**"); and
- 2.1.2 upon expiry of the Initial Term, automatically renew for successive periods of twelve (12) months unless either party gives written notice of non-renewal at least three months prior to the expiry of the current term (each a "**Renewal Term**"),

together referred to as the "**Term**".

3. **ACCOUNT SET UP AND MANAGEMENT**

3.1 The Data Publisher warrants, represents and undertakes as follows:

- 3.1.1 it has the authority to enter into this Agreement and to publish its Content on the Rail Data Marketplace; and
- 3.1.2 it will provide all information, materials and assistance reasonably required by RDG in order to set up Data Publisher's account on the Rail Data Marketplace.

3.2 The Data Publisher hereby authorises RDG to act as its agent to solicit and promote the Data Publisher's Content through the Rail Data Marketplace, and, where applicable, to collect the Data Consumers' payments made in respect of licences of the Data Publisher's Content.

3.3 Upon execution of this Agreement, RDG will onboard the Data Publisher onto the Rail Data Marketplace and will:

- 3.3.1 display the Data Publisher’s Catalogue as available for sharing subject to the entry into a Data Sharing Agreement between the Data Publisher and the Data Consumer.
 - 3.3.2 facilitate and implement an online ordering process which will enable Data Consumers to purchase and pay for the Content through the Rail Data Marketplace.
 - 3.3.3 provide Service Desk to help Data Consumers with general support, guidance, enquiries or complaints relating to Content.
- 3.4 Prior to publishing Content on the Rail Data Marketplace, the Data Publisher shall consult with RDG on its capacity requirements and shall use reasonable endeavours to estimate and inform RDG of its capacity requirements, including its likely volume requirements and likely requests per minute per consumer. RDG shall use reasonable endeavours to accommodate the Data Publisher’s capacity requirements but reserves the right to implement a further Platform Fee where the anticipated capacity requirements are exceeded.
- 3.5 In the event that volume, throughput or performance of the Data Publisher’s Content has a materially detrimental impact on the performance of the Rail Data Marketplace (a “**Material Capacity Impact**”), RDG will work with the Data Publisher to seek a resolution to the issue. Without prejudice to the foregoing, in the event of a Material Capacity Impact, RDG reserves the right to suspend the Content or throttle throughput whilst the Material Capacity Impact subsists.

4. **POLICY COMPLIANCE**

The Data Publisher acknowledges and agrees that it will comply with the Rail Data Marketplace Policies set out in Schedule 2.

5. **RAIL DATA MARKETPLACE SERVICE**

- 5.1 During the Term of the Agreement, RDG shall use reasonable endeavours to:
- 5.1.1 make the Rail Data Marketplace available in the form substantially described in Schedule 1.
 - 5.1.2 deliver the Rail Data Marketplace in accordance with the Platform Service Levels as set forth in Schedule 1.
- 5.2 In order for RDG to continuously develop and improve the Rail Data Marketplace and the Customers experience of the platform, there are process improvements which RDG may decide to implement from time to time, requiring variation to the service description set out in Schedule 1 (“**Permitted Change**”).
- 5.3 Subject to the provisions of Clause 5.3, RDG shall have the right to vary the service description in Schedule 1 with Permitted Changes as RDG deems reasonably necessary from time to time on giving the Data Publisher at least thirty (30) days’ notice.
- 5.4 Changes to Schedule 1 which:
- 5.4.1 restrict or exclude liability on the part of RDG,
 - 5.4.2 affect the ability of the Data Publisher to terminate in whole or in part this Agreement,

5.4.3 impose additional obligations or liabilities on the Data Publisher, or

5.4.4 are by their nature material

are not Permitted Changes under this Clause 5.

5.5 Permitted Changes shall take effect no sooner than (30) days after service of notice on the Data Publisher and shall be without prejudice to any rights the Data Publisher may have under any prior versions of the service description in Schedule 1.

6. **CONTENT**

6.1 The Data Publisher warrants, represents and undertakes as follows:

6.1.1 it has the right to distribute and make available the Content through the Rail Data Marketplace (including, where applicable, all necessary permissions and consents from its licensors);

6.1.2 any licences granted by the Data Publisher for use of the Content shall not be unlawful or illegal;

6.1.3 the Content has been checked with an up to date virus checker immediately prior to delivery through the Rail Data Marketplace; and

6.1.4 it has used reasonable endeavours (which includes using adequate anonymisation techniques), to ensure that the Content does not contain any Personal Data.

6.2 The Data Publisher acknowledges and agrees that it:

6.2.1 will use reasonable skill and care in selecting and presenting appropriate Content in its Catalogue on the Rail Data Marketplace;

6.2.2 will use reasonable endeavours to keep its Content up to date; and

6.2.3 will use reasonable endeavours to describe its data quality fairly using the the Rail Data Marketplace's Quality Indicator, the output of which populates the Data Catalogue entry.

6.3 The Data Publisher acknowledges that the placement of the Catalogue and / or Content on the Rail Data Marketplace may vary and depends on a wide variety of factors including search parameters and preferences more particularly described in the Catalogue Policy.

7. **DATA LICENSING**

7.1 By presenting Content in its Catalogue, the Data Publisher is inviting the Data Consumer to enter into a licence for that Content, the terms of which depend on the Data Publisher's approaching to licensing. The Data Publisher may offer its Content under an Open Access licence, use the RDM Contract Builder to automate the terms of the licence accompanying Content, or the Data Publisher may publish its own bespoke licence terms for the Content subject to the approval of RDG. In each case by presenting the licence terms to the Data Consumer, the Data Publisher is making an offer to the Data Consumer, which the Data Consumer may accept by accepting the licence terms and, where applicable, paying the price.

- 7.2 Notwithstanding the provisions of Clause 7.1, where a Data Publisher offers to share the Content for a fee, the Data Publisher shall rate, where it is practicable to do so (and without liability to the Data Consumer), the quality of the Licensed Data using the Rail Data Marketplace's Quality Indicator.
- 7.3 Where the Data Publisher licences its Content by means of its own proprietary licence terms and conditions, it shall use reasonable endeavours to promptly progress and enter into the licence and to incorporate the following clause: *'Whilst the Rail Delivery Group operates the Rail Data Marketplace, it is neither buyer nor seller of the Licensed Data and is not a party to the licence between Data Publisher and Data Consumer. RDG takes no responsibility and shall have no liability for any bespoke licence terms entered into between the Data Publisher and the Data Consumer.'* Should the Data Publisher wish to limit or suspend a Data Consumer's access to the Licensed Data for good cause under a Data Sharing Agreement, prior to doing so the Data Publisher shall consult with RDG.
- 7.4 Where the Data Publisher licences its Content by means of its own proprietary licence terms and conditions, Schedule 1: Licensed Rights and Schedule 2: Licence Fees generated by the Contract Builder will be added to the Data Publishers proprietary licence and Schedule 1 and Schedule 2 will take precedence if there is any conflict within the body of the Data Publishers own licence.

8. FEES AND E-COMMERCE

Platform Fees

- 8.1 In consideration of RDG providing the Publisher with access to the Rail Data Marketplace in accordance with this Agreement, RDG shall charge the Data Publisher the Platform Fees detailed in Schedule 3, which it will deduct from the applicable Licence Fees prior to remitting the same to the Data Publisher pursuant to Clause 8.9
- 8.2 Any sum payable by the Data Publisher to RDG under this Agreement will be exclusive of any VAT which will be payable in addition to the sum in question at the rate and in the manner for the time being prescribed by law on delivery of a valid VAT invoice.

Licence Fees

- 8.3 RDG shall submit invoices and collect payment of Licence Fees from Data Consumers for and on behalf of the Data Publisher (i) at point of purchase in the case of 'pay as you go' Content; (ii) at point of purchase and then monthly in advance for subscription based Content; (iii) at point of purchase and then monthly in arrears for any volume element of the Licence Fees; and (iv) any other sums that are otherwise properly due under a Data Sharing Agreement and notified to RDG.
- 8.4 RDG shall use reasonable endeavours to procure that Data Consumers pay invoices properly submitted by RDG through the Rail Data Marketplace within a reasonable time of their receipt of invoice. RDG shall enable receipt of payment by providing a number of payment options. Without prejudice to the Data Publisher's rights under Clause 8.6 below, RDG shall be entitled to collect the amount due and payable under the invoice from the Data Consumer to the extent that the Data Consumer does not dispute the amount in the invoice received from RDG. RDG shall use reasonable endeavours to contact the Data Consumer with respect to the

payment of outstanding invoices on three (3) separate occasions with each occasion to be at least seven (7) days apart but no more than fourteen (14) days apart.

- 8.5 All payments will be paid in £ sterling unless otherwise agreed.
- 8.6 If there is any dispute between the Data Publisher and the Data Consumer in respect of the Licence Fees, RDG shall be entitled to withhold payment only of the disputed amount until the matter is resolved. If the Data Publisher and the Data Consumer are unable to resolve any dispute relating to the Licence Fees, the matter will be resolved by the Dispute Resolution Procedure set out in Clause 29.
- 8.7 Where the disputed amount has already been collected by RDG by direct debit from a Data Consumer, and the parties resolve that dispute such that they agree, or it is determined, that:
- 8.7.1 an overpayment has been made, the Data Publisher may require RDG to reimburse the relevant Data Consumer or to set-off the disputed amount against the immediately subsequent invoice(s) submitted by RDG to the relevant Data Consumer; and
- 8.7.2 an underpayment has been made, RDG shall invoice the Data Consumer for the underpaid amount in accordance with the provisions of Clause 8.3 above.
- 8.8 If undisputed Licence Fees are not paid by the date that they are due and payable, RDG shall levy interest on the Licence Fees, for and on behalf of the Data Publisher, for the period from and including the due date of payment up to the date of actual payment. The interest shall be paid at the base rate from time to time of the Bank of England and shall be invoiced to the Data Consumer in accordance with the provisions of Clause 8.3 above.
- 8.9 RDG shall remit to the Data Publisher the Licence Fees collected pursuant to each invoice less the Platform Fees within thirty (30) days of their receipt from the Data Consumer together with a statement of account detailing Licence Fees due, Licence Fees collected, and Platform Fees levied in respect of the Licensed Data. Any disputes arising pursuant to this Clause 8.9 shall be governed by the provisions of Clause 29 below.

9. **SUSPENSION AND TERMINATION**

- 9.1 Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- 9.1.1 the other Party commits a material breach of any term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- 9.1.2 the other Party is subject to an Insolvency Event;
- 9.1.3 if a default of the other Party results in any regulatory body taking or threatening to take regulatory action against the other Party where the default is not rectified within a reasonable time or within the time stipulated in any notice from the regulatory authority; and
- 9.1.4 on 14 days written notice in the circumstances set out in Clause 18 (Force Majeure).

- 9.2 RDG may terminate this immediately if the Data Publisher does, or omits to do something, which will cause adverse publicity about RDG and / or the Rail Data Marketplace or will weaken the image and reputation of RDG and / or the Rail Data Marketplace.
- 9.3 Without prejudice to its rights under Clause 9.1 and 9.2, RDG may suspend the Data Publisher's Catalogue or Content if Data Publisher breaches the provisions of Clause 11, Clause 3.5 or otherwise behaves in a manner that is not in keeping with the spirit of this Agreement until such time as Data Publisher can demonstrate to RDG's reasonable satisfaction that it has rectified such breach or behaviour.
- 9.4 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry or the right to receive payment for any Services provided up to the date of termination or expiry.

10. CONSEQUENCES OF TERMINATION

- 10.1 On expiry or termination of this Agreement for any reason, RDG shall have thirty (30) days to settle any outstanding remittance due to the Data Publisher incurred prior to the date of expiry or termination.
- 10.2 In the event of expiry, termination or suspension of the Data Publisher from the platform:
- 10.2.1 Data Publisher Catalogue will be immediately removed; and
- 10.3 10.2.2 access to the platform will be restricted to facilitate only performance of the terms of any existing Data Sharing Agreements until expiry (renewals may not be offered), after which its Account will be disabled. Subject to Clause 10.2.2 above, the Data Publisher shall refund its Data Consumers any Licence Fees paid in advance for Content in accordance with RDG's Refund Policy.

11. DATA PUBLISHER CONDUCT

- 11.1 The Data Publisher acknowledges and agrees that:
- 11.1.1 In respect of the Rail Data Marketplace, it will;
- (a) comply with the terms of all applicable laws regarding online conduct;
 - (b) use good judgement in its interactions with Data Consumers
 - (c) supervise and control use of the Rail Data Marketplace, ensuring that its employees, representatives and other authorised users access and use the Rail Data Marketplace in accordance with this Agreement;
 - (d) ensure that all passwords and other security information are kept secure and confidential in accordance with industry best practise, including applying appropriate password policies (including frequency of change);
 - (e) not infringe or misappropriate the intellectual property rights of RDG or its licensors;

- (f) not take any action that may undermine any feedback or performance rating system;
- (g) ensure that it maintains up to date and appropriate antivirus precautions in accordance with industry best practice; and
- (h) not misuse or tamper with the Rail Data Marketplace, including but not limited to, hacking, introducing viruses or other technologically harmful material.

11.1.2 In respect of the Data Publisher's Catalogue, it will:

- (a) comply with the Catalogue Policy, as may be amended by RDG from time to time upon reasonable notice; and
- (b) not list Content in a manner that is false, inaccurate, misleading or in any way libellous.

11.1.3 In respect of the Content, it will:

- (a) not misappropriate or infringe any third party intellectual property rights
- (b) not by its own acts or omissions, fail to perform the Data Sharing Agreement once entered into with the Data Consumer.
- (c) not ask for the Data Consumer's contact information in the context of entering into licensing arrangements for the Data outside of the Rail Data Marketplace and the Data Publisher acknowledge and agrees that should it do so, it will be liable for the full value of the Platform Fees in consideration of RDG's introduction of the Data Consumer to the Data Publisher.

11.2 If RDG has reasonable grounds to believe that the Data Publisher has violated the provisions of Clause 11.1 above, the Data Publisher may be subject to a range of actions including but not limited to suspension of Data Publisher's Catalogue or Content in accordance with Clause 9.3 above.

11.3 The Data Publisher acknowledges and agrees that it shall to the best of its ability, exercise good judgement in all interactions with Data Consumers and other users of the Rail Data Marketplace.

11.4 Should RDG receive any complaint regarding the display of the Data Publisher's Catalogue and / or Content, it reserves the right to suspend any such Catalogue and /or Content immediately whilst the complaint is investigated.

12. **CONTRACT MANAGERS**

12.1 The Data Publisher shall appoint a representative who shall have full authority to take all necessary decisions regarding the Data Publisher's engagement with the Rail Data Marketplace under this Agreement, and any variations to this Agreement.

12.2 Where such representative changes, the Data Publisher shall make reasonable efforts to notify RDG of the change and ensure continuity in performance of the role.

13. CONFIDENTIALITY

13.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Data Consumers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs and which is marked as confidential or is by its nature confidential. A Party's confidential information shall not be deemed to include information which: (i) is known to the receiving Party, under no obligation of confidence, at the time of disclosure by the other Party; (ii) is or becomes publicly known through no wrongful act or omission of the receiving Party; (iii) is lawfully obtained by the receiving Party from a third Party who in making such disclosure breaches no obligation of confidence to the other Party; or (iv) is independently developed by the receiving Party; or (v) is disclosed by the disclosing Party to another party without any obligations of confidentiality. Notwithstanding the foregoing, the Parties agree that any unsolicited feedback relating to the Rail Data Marketplace shall not be treated as confidential information.

13.2 Each Party may disclose the other Party's confidential information:

13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising such Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this Clause 13; and

13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, where it is lawfully able, it shall notify the other Party of such requirement prior to such disclosure.

13.3 No Party shall use any other Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

13.4 Upon the expiry or termination of the Agreement or the request of the disclosing Party, whichever is earlier, the receiving Party will return to the disclosing Party, or, at the option of the disclosing Party, will destroy, the Confidential Information provided by the disclosing Party under this Agreement and all copies thereof. Upon the request of the disclosing Party, the receiving Party shall confirm such destruction in writing to the other Party.

13.5 The obligations contained under this Clause 13 shall survive for a period of five (5) years from the expiry or termination of this Agreement.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property Rights in the Content and the Data Publisher's Catalogue shall remain the property of the Data Publisher and its licensors.

14.2 The Data Publisher grants RDG a non-exclusive, worldwide, royalty free right and licence to:

14.2.1 display the Data Publisher's Catalogue for the purposes of advertising the Content; and

14.2.2 if applicable, displaying sample Content.

- 14.3 All Intellectual Property Rights in Rail Data Marketplace shall remain the property of RDG and its licensors.
- 14.4 RDG grants the Data Publisher a non-exclusive, non-transferable, non-sublicensable right and licence to:
- 14.4.1 access and use the Rail Data Marketplace for the purposes of receiving the platform services under this Agreement; and
- 14.4.2 to use the term 'Rail Data Marketplace' and any applicable logo to advertise and promote the Data Publisher's Catalogue on the Rail Data Marketplace provided always that RDG may rescind this grant at its sole discretion if it considers the Data Publisher's use to be detrimental to RDG and / or the Rail Data Marketplace.
- 14.5 Save as provided in this Agreement, all Intellectual Property Rights of a Party are reserved by that Party and its licensors. Any copying, storage, transmission, publication, affixation or use other than set out in this Agreement is not permitted.
15. **PERSONAL DATA**
- 15.1 Where "data controller" and "data subject" have the meaning ascribed in the Data Protection Legislation:
- 15.1.1 the Parties acknowledge and agree that for the purposes of the Data Protection Legislation each Party is a data controller processor and shall take responsibility for its own compliance with Data Protection Legislation;
- 15.1.2 RDG shall only process Personal Data provided by the Data Publisher for the purpose of enabling RDG to provide the Rail Data Marketplace services in accordance with the RDG Privacy Policy; and
- 15.1.3 until a direct relationship has been formed between the Data Publisher and the Data Consumer by means of a Data Sharing Agreement, the Data Publisher shall only use the Personal Data of the Data Consumer for the purposes of progressing the transaction contemplated through the Rail Data Marketplace.
16. **LIMITATION OF LIABILITY**
- 16.1 Neither Party limits or excludes its liability for death or personal injury caused by its negligence or any other liability the limitation or exclusion of which is prohibited by law.
- 16.2 Subject to Clause 16.1, neither Party shall be liable for:
- 16.2.1 loss of business, revenue or profit, anticipated savings or wasted expenditure, corruption or destruction of data; and
- 16.2.2 for any indirect or consequential losses.
- arising out of or in connection with this Agreement.
- 16.3 Subject to Clause 16.1, 16.2 and Clause 17, each Party's maximum aggregate liability to the other arising under or in connect with this Agreement (whether in contract, tort (including for

negligence or breach of statutory duty), misrepresentation or otherwise) shall be limited to 100% of the Licence Fees (if applicable), in respect of any Losses arising per Term.

- 16.4 Subject to Clause 16.1, RDG shall not be liable to the Data Publisher (whether in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise) and the Data Publisher shall not bring such a claim for any Losses suffered or incurred by the Data Publisher under or in connection with any Data Sharing Agreement.

17. **CONTENT INDEMNITY**

- 17.1 The Data Publisher shall indemnify and hold harmless RDG from any claim or demand made by any third party (including Data Consumers) arising out of the Content published on the Rail Data Marketplace.

- 17.2 If any third party makes a claim or notifies an intention to make a claim which may reasonably be considered likely to give rise to a liability under this Clause 17 (a "**Claim**"), RDG shall:

17.2.1 as soon as reasonably practicable after becoming aware of the Claim, give written notice of the Claim to the Data Publisher specifying the nature of the Claim in reasonable detail;

17.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Data Publisher (such consent not to be unreasonably conditioned, withheld or delayed); and

17.2.3 be deemed to have given to the Data Publisher sole authority to avoid, dispute, compromise or defend the Claim (provided that the Data Publisher shall not settle or compromise any Claim in the name of RDG without the RDG's prior written consent (not to be unreasonably withheld or delayed)).

18. **FORCE MAJEURE**

- 18.1 No party shall be liable to any other party for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control which could not reasonably be planned for or avoided subject to:

18.1.1 the affected party promptly notifying the other parties in writing of the cause of the delay or non-performance and, if known, the likely duration of the delay or non-performance; and

18.1.2 the affected party using its reasonable endeavours to limit the effect of that delay or non-performance on the other party and, where the affected party is Data Publisher, using its reasonable endeavours to comply with any directions of RDG reasonably necessary or desirable to ensure the continued operation of the Rail Data Marketplace.

and the performance of the affected party's obligations under this Agreement, to the extent affected by the cause, shall be suspended during the period that the cause persists.

19. **RIGHTS CUMULATIVE**

19.1 The rights and remedies of the Parties in connection with this Agreement are cumulative and, except as expressly stated in this Agreement, are not exclusive of any other rights or remedies provided by this Agreement, in law, equity or otherwise.

20. **COSTS**

20.1 Except as otherwise stated in this Agreement, each Party shall bear its own costs and expenses incurred in connection with the preparation, negotiation and execution, of this Agreement and all ancillary documents and any variations to this Agreement, or such ancillary documents.

21. **TAXATION**

21.1 All payments to be made under this Agreement by one Party to another Party must be without any tax deduction unless a tax deduction is required by law.

22. **VARIATION**

22.1 No change to this Agreement shall be valid or effective unless it is in writing and signed for and on behalf of each Party by its duly authorised representative.

23. **ASSIGNMENT AND TRANSFER**

23.1 The Data Publisher shall not be entitled to assign, transfer, or otherwise deal with any of its rights or obligations arising under or in connection with this Agreement except with RDG's prior written consent which RDG may grant or withhold in its absolute discretion.

23.2 This Agreement may be assigned or novated by RDG, in whole or in part, at any time and on more than one occasion to any member or successor of RDG [including to Great British Railways].

24. **WAIVER**

24.1 No failure or delay by a party to insist upon strict performance or observance of any terms of this Agreement, or to exercise any right or remedy provided under this Agreement shall constitute a waiver of any breach, right or remedy, unless it is in writing signed by an authorised representative of that Party and refers expressly to this Clause 24.

25. **SEVERABILITY**

25.1 If any provision of this Agreement is or becomes illegal, invalid or unenforceable the provision will apply with whatever minimum level of deletion or modification is necessary so that the provision is legal, valid and enforceable and gives effect to the Parties' commercial intention.

25.2 Any modification to or deletion of a provision under Clause 25 shall not affect the validity and enforceability of the rest of the Agreement.

26. **NOTICES**

26.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business; or
- (b) sent by email to the following addresses (or an address substituted in writing by the party to be served):
 - (i) RDG: raildatamarketplace@raildeliverygroup.com
 - (ii) [INSERT DATA PUBLISHER]: [INSERT EMAIL ADDRESS].

26.2 Any notice shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at [9.00 am] on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

26.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27. ENTIRE AGREEMENT

27.1 This Agreement sets out the entire agreement between the Parties, and supersedes all proposals and prior written or oral agreements, agreements and understandings between the Parties, relating to its subject matter. Each Party acknowledges that in entering into this Agreement it does not rely on any representation, warranty, undertaking, collateral contract or other assurance of the other Party that is not set out in this Agreement. Nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.

28. NO PARTNERSHIP OR AGENCY

28.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party. Each Party confirms it is acting on its own behalf and not for the benefit of another person.

29. DISPUTE RESOLUTION

29.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (“**Dispute**”) then the Parties shall follow the procedure set out in this Clause 29:

Platform Disputes

- (a) either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (“**Dispute Notice**”), together with relevant supporting documents. Upon receipt of the Dispute Notice the Parties shall work together and attempt in good faith to resolve the Dispute.

(b) If the Parties are unable to resolve the Dispute within a reasonable period of time, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR. To initiate the mediation, a Party must serve notice in writing ("**ADR notice**") to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than thirty (30) days after the date of the ADR notice.

29.2 The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute under Clause 30 which Clause shall apply at all times.

Content Disputes

29.3 RDG is not a party to the Data Sharing Agreements entered into between the Data Publisher and the Data Consumer and, without prejudice to the provisions of Clause 11, the Data Publisher acknowledges and agrees that it shall resolve any disputes arising out of or in connection with its Data Sharing Agreements directly with its Data Consumers,

30. GOVERNING LAW AND JURISDICTION

30.1 This Agreement and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter or formation shall be governed by and shall be interpreted in accordance with the laws of England and Wales

30.2 Subject to the provisions in Clause 29 each Party irrevocably submits to the exclusive jurisdiction of the English courts in relation to all matters (including any non-contractual dispute or claim) arising out of or in connection with this Agreement, its subject matter or formation.

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

Signed by:

.....

Print name of signatory

on behalf of **RSP LIMITED**

Signed by:

.....

Print name of signatory

on behalf of **[INSERT DATAPUBLISHER]**

Schedule 1

Service Description and Service Levels

[TBC]

Schedule 2

Policies

- Catalogue Policy
- Privacy Policy
- Cookie Policy
- Security Policy
- Refund Policy

Schedule 3

Platform Fees (insert table)