

## **SOFTWARE LICENCE AGREEMENT**

**THIS SOFTWARE LICENCE AGREEMENT** (the "Agreement") is made by and between **Sperry Rail (International) Limited**, a company registered in England and Wales under number 04374749 and having its registered office at Derwent House, RTC Business Park, London Road, Derby, Derbyshire, DE24 SUP ("Sperry") and **Rail for London Infrastructure Limited** a company registered in England and Wales under number 09366341 and having its registered office at 5 Endeavour Square, London E20 1JN (the "Customer", which expression shall include its successors and assigns). "Party" or "Parties" means, individually, Customer or Sperry, as the context requires, and, collectively, Customer and Sperry. The effective date of this Agreement shall be the last date executed by the undersigned ("Effective Date").

### **RECITALS**

**WHEREAS**, Customer has purchased Equipment (as defined in Section 1) under a certain Supply Agreement dated 05 December 2017, intended for Customer's own internal rail flaw detection and rail surface condition monitoring operations and regulatory compliance, separately;

**WHEREAS**, Equipment contains Software (as defined in Section 1) that Sperry has developed and owns as more fully described herein;

**WHEREAS**, Customer desires to obtain a licence from Sperry to use such Software;

**WHEREAS**, Sperry desires to license Software to Customer for use in connection with the Equipment in performance of rail flaw detection testing in accordance with the Services Agreement; and

**WHEREAS**, Customer and Sperry have expressed their respective intents to enter into a certain Remote Analysis and Ancillary Services Agreement of even date here with related to the performance of certain services associated with rail flaw detection testing in the Sperry Edge® (formerly known as Software-enabled Service or SeS ("Edge") mode;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, covenant and agree as follows:

### **AGREEMENT**

1. **Definitions and Interpretation.** For purposes of this Agreement, the terms below have the following meanings whenever capitalized:
  - 1.1. "Affiliate" means in relation to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that Party from time to time.
  - 1.2. "Customer Data" means information and data provided by or on behalf of Customer to Sperry or to which Sperry has access in connection with this Agreement, and output or results from the Software and/or Support Services excluding Testing Data.
  - 1.3. "Delivery Date" for a Release or Software means the later of: (1) the date that the Software or Release is to be delivered to Customer as described in this Agreement; and (2) the date the

Software or Release is actually delivered to Customer electronically.

- 1.4. **"Documentation"** means, in digital, printed or other form, the technical, user and reference manuals, notes, instructions and summaries, technical release notes, Specifications and any other supporting documentation, which must be written in English, related to the Software.
- 1.5. **"Equipment"** means the ultrasonic and eddy current test system that Customer procured through that certain Supply Agreement dated 05 December 2017 noted in the Recitals.
- 1.6. **"Intellectual Property Rights"** means any and all right, title and interest, arising or existing as of the Effective Date or at any time thereafter, anywhere in the world, including, but not limited to, all copyright, moral rights, patent, patent registration, service mark, service name, trade name, trade secret, trademark, or other proprietary right arising or enforceable under applicable laws.
- 1.7. **"Licence Fee"** means the licence fee for the corresponding Licensed Technology set forth in the Schedule.
- 1.8. **"Licensed Technology"** means the Software and Documentation and any and all related Intellectual Property Rights as more fully defined in Schedule A.
- 1.9. **"Releases"** means bug fixes, enhancements, maintenance releases, error corrections, upgrades, additions, improvements, modifications, extensions, new versions or successor or replacement products of or to any components of the Licensed Technology created by or for Sperry and made available by Sperry to Customer or any other party, regardless of how the bug fixes, enhancements, maintenance releases, error corrections, upgrades, additions, improvements, modifications, extensions, new versions or successor or replacement products are marketed or denominated and any and all related Intellectual Property Rights; provided, however, the Release (i) does not adversely affect the Licensed Technology from operating in accordance with the Documentation; (ii) does not materially reduce the functionality of the Licensed Technology; and/or (iii) is backward- and forward-compatible with the Licensed Technology.
- 1.10. **"Services Agreement"** means the Remote Analysis And Ancillary Services Agreement entered into by the Parties of even date herewith.
- 1.11. **"Software"** means the software, data, content, Releases and any other digital information hosted by the Equipment, as more fully described in the Schedule, and any and all Intellectual Property Rights related to any of the foregoing.
- 1.12. **"Specifications"** means (i) the specifications for the Licensed Technology set out in the Schedule; and (ii) any other specifications mutually agreed upon by the Parties in writing.
- 1.13. **"Supply Agreement"** means the Supply Agreement between Transport for London and Sperry dated 5th December 2017.
- 1.14. **"Support Services"** means the technical maintenance and support services and training provided by Sperry for the Software via mobile application during Sperry's normal business hours except during holidays observed by the United Kingdom government maintenance or upgrades to the Software, as provided from time to time, for enhanced features and improvements, bug fixes, and error corrections as more particularly defined in the Schedule.

- 1.15. **"Training"** means as set out in the Schedule.
- 1.16. **"Testing Data"** means the content, data, or other material generated through the use of Equipment including rail flaw detection data collected by Customer through such use.
- 1.17. **"Term"** means as set out in Section 8.1.
- 1.18. **Interpretation**
- 1.18.1. A **"person"** includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.18.2. A reference to a **"company"** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.18.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.18.4. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.18.5. A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.18.6. A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.18.7. A reference to **"writing"** or **"written"** includes email.
- 1.18.8. References to sections and the Schedule are to the sections and the Schedules of this Agreement; references to paragraphs are to paragraphs of the Schedule to this Agreement.
- 2. Licensed Technology.** The license granted hereunder is intended to support Customer's use of the Licensed Technology in performance of rail flaw detection testing in the Sperry Edge® (formerly known as Software-enabled Service or SeS ("Edge") mode).
- 2.1. **Software Licence Grant.** Sperry hereby grants to Customer and its Affiliates a non-exclusive, non-transferable, worldwide, enterprise wide licence and right to use the Software on mutually agreed upon servers, workstations or machines owned, leased or controlled by Customer, for use by employees, agents and subcontractors of Customer for Customer's own internal rail flaw

detection operations and regulatory compliance during the Term. The Parties may agree to additional or varying terms in accordance with Section 14.8.

2.2. **Reserved.**

2.3. **Documentation.** At no charge to Customer, Sperry must provide one full set of all Documentation for each copy of the Software provided by Sperry to Customer.

2.4. **Delivery.** Sperry must deliver the Licensed Technology electronically to Customer to a location and in a format acceptable to Customer on the Delivery Date.

2.5. **Licence Restrictions.** Customer shall not:

2.5.1. Decompile, disassemble, interpret, reverse engineer, translate, or otherwise determine or attempt to determine any source code, algorithms, or underlying ideas of the file formats, the Licensed Software or any portion thereof.

2.5.2. Remove or modify any Sperry or third party markings, identification, copyright or other notices from the Licensed Technology;

2.5.3. Sublicense, provide, lease, lend, pledge, use as a service bureau, or make available in any manner the Licensed Technology to or for the benefit of third parties, including other providers or competitors of Sperry;

2.5.4. Modify, change, incorporate into other software, create any databases other than as permitted herein, or create a derivative work of any part of the Licensed Technology;

2.5.5. Install or use the Licensed Software on any servers, workstations or machines other than those agreed upon by Customer and Sperry;

2.5.6. Disclose results of any performance information, analysis, or program benchmark tests associated directly with the Licensed Technology, without Sperry's prior written consent. Notwithstanding anything in this Agreement to the contrary and for the avoidance of doubt, there shall be no restrictions on Customer's use of Customer Data) and/or any of its Intellectual Property Rights.

2.6. **No Other Licence.** Except as specifically granted in this Section, no licence or other right is granted either directly or indirectly, by implication, estoppel or otherwise, to Customer. All other rights are expressly reserved to Sperry.

2.7. **Account Security.** Customer shall (i) be responsible for the accuracy, integrity, quality and legality of Customer Data, the means by which Customer acquired Customer Data, and Customer's use of Customer Data with the Software, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of Software, including securing its account authentication credentials, and taking any appropriate steps to securely encrypt or backup any Customer Data uploaded to the Software, and (iii) notify Sperry promptly of any such unauthorized access or use.

- 2.8. **Audit of Use.** Sperry may, at its expense, audit Customer's use of the Licensed Technology. Audits shall be conducted during regular business hours at Customer's place or places of business and shall not unreasonably interfere with Customer's business activities. Audits shall be conducted no more than once annually. If, as a result of any such audit, Sperry identifies unauthorized use of the Licensed Technology, Customer shall pay, in addition to a full Licence Fee for each copy of the Software in use by the Customer, the reasonable expenses of Sperry in conducting the audit.

### 3. Support Services.

- 3.1. **Support Services.** Sperry will provide Support Services to Customer during the Term.
- 3.2. **Training.** Sperry will provide to Customer the Training.

### 4. Fees and Payment.

- 4.1. **Licence Fee.** In consideration for the licence of the Licensed Technology and provision of the Support Services, the Customer shall pay the Licence Fee as set out in the Schedule A. Sperry may adjust pricing upon each Renewal Term, by providing one month's prior notice to Customer.
- 4.2. **Payment of the Licence Fee.** Unless otherwise agreed to, Customer must pay Sperry the Licence Fee as set out in the Schedule A within 30 days from the date the invoice is received by Customer. Interest shall accrue on unpaid invoices on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of Sperry's bankers in the UK from time to time, commencing on the due date and continuing until fully paid.
- 4.3. **Invoices.** Licence Fee will be charged in advance, on a per vehicle basis. Sperry will issue monthly invoices for the total Licence Fee divided by 12 months.
- 4.4. **Taxes.** The invoiced amounts include all applicable taxes (including but not limited to sales and use taxes, goods and services taxes, any other value added taxes, import/export taxes, fees, duties, imposts or other similar governmental charges) which shall be remitted to the proper taxing authority by Sperry; and, for clarity, Customer is not required to pay any taxes based on Sperry's net income.

### 5. Warranties.

- 5.1. **Authorization and Title Warranty.** Sperry represents and warrants that (i) it has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement without any further ratification or approval; (ii) this Agreement constitutes the legal, valid and binding obligations of Sperry; (iii) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated in this Agreement violate or conflict with any obligation, contract, lease or licence which could reasonably be expected to interfere with the consummation of the transactions contemplated in this Agreement; (iv) it has the right, power and authority to grant the rights and licenses under this Agreement free and clear of any claims, liens and encumbrances; and (v) the Licensed Technology does not infringe upon the rights of, or misappropriate the Intellectual Property Rights of any third party.

- 5.2. **Performance Warranty.** Sperry warrants and represents that (i) the Support Services will be performed in a professional workmanlike manner; (ii) Sperry's performance under this Agreement, the Licensed Technology and/or the Support Services shall not violate any applicable law, rule or regulation; (iii) the Licensed Technology, will conform to and operate in accordance with all Documentation, and industry standards; and (iv) there are no defects or any limitations which render the Licensed Technology unsuitable for use.
- 5.3. **Remedy.** If the Software does not perform in accordance with the warranties in this Section 6, Sperry shall use all commercially reasonable efforts, consistent with industry standards, to repair such defects through the Support Services.
- 5.4. **Surreptitious Code.** Sperry represents and warrants that it has tested the Licensed Technology, which includes any Releases, in line with industry standards to ensure (i) that neither the Licensed Technology and the media on which the Licensed Technology or Deliverables are contained contain computer instructions, including, but not limited to, any Trojan horse, worm, trapdoor, backdoor or malicious code the purpose of which is (A) to disrupt, damage, destroy, alter or interfere with the use or operation of any of the software, firmware, hardware, services, data, programs or computer or telecommunications facilities; or (B) to perform functions which are not an appropriate part of the functionality of the computer programs, Documentation or other deliverables and whose result is to disrupt the use or operation of computer programs, Documentation or other deliverables.
- 5.5. **DISCLAIMER.** THE WARRANTIES SET FORTH IN SECTION 5 ARE LIMITED WARRANTIES AND ARE THE ONLY WARRANTIES MADE BY SPERRY. SPERRY EXPRESSLY DISCLAIMS, AND CUSTOMER HEREBY EXPRESSLY WAIVES, ALL OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE AND ALL OTHER CONDITIONS, WARRANTIES OR OTHER TERMS WHICH MIGHT HAVE EFFECT BETWEEN THE PARTIES OR BE IMPLIED OR INCORPORATED INTO THIS AGREEMENT OR ANY COLLATERAL CONTRACT, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, ARE HEREBY EXCLUDED, INCLUDING THE IMPLIED CONDITIONS, WARRANTIES OR OTHER TERMS AS TO SATISFACTORY QUALITY, FITNESS FOR PURPOSE OR THE USE OF REASONABLE SKILL AND CARE. EXCEPT FOR THE WARRANTIES SET FORTH IN 5, SPERRY DOES NOT WARRANT AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS THAT THE LICENSED SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE AND/OR ITS USE OR USE OF THE DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT EVERY DEFECT IN THE LICENSED SOFTWARE OR DOCUMENTATION, IF ANY, WILL BE CORRECTED.

## **6. Ownership.**

- 6.1. **Sperry Intellectual Property.** Sperry shall own all right, title, and interest in and to all Sperry Intellectual Property Rights (including all derivatives or improvements thereof), and any enhancement, updates, upgrades, or modifications relating to the Licensed Technology. All rights to the Licensed Technology not expressly granted by Sperry under the Agreement are reserved. For purposes of this Section, "**Sperry Intellectual Property**" means Sperry's preexisting proprietary information, Sperry-owned materials, document templates, Testing Data, or project tools used by Sperry to provide the Licensed Technology.

- 6.2. **Customer Data.** Customer Data is the sole and exclusive property of Customer and/or its licensors and suppliers. Customer Data is Confidential Information, as defined in Section 7. Customer hereby grants Sperry a worldwide, royalty-free, fully paid-up, non-exclusive, non-transferable, irrevocable licence to host, collect, use, store and process the Customer Data for the purpose and to the extent necessary for making available the Licensed Technology to Customer in accordance with this Agreement and to support development of Sperry's products and services.
- 6.3. **Aggregated Use.** Sperry may collect, analyze, use, or disclose data derived from Customer Data, including, but not limited to, Customer information, for the purposes of enhancing the Licensed Technology or other internal business purposes, provided any such data is reconfigured, de-identified, or aggregated such that data cannot be used to identify the source of data nor contain any personally identifiable information.
- 6.4. **Copies and Removal.** Upon Customer's reasonable request and/or within thirty (30) days following any termination or expiration of this Agreement, Sperry must return to Customer all Customer Data. Upon Customer's reasonable written request at any time or times during the Term, Sperry must provide to Customer a copy of Customer Data at no charge to Customer in an industry standard format.

## **7. Confidential Information.**

- 7.1. **Confidentiality Obligations.** Both Parties acknowledge that either Party may receive (the "Receiving Party") Confidential Information from the other Party (the "Disclosing Party") during the Term of this Agreement, and all Confidential Information is deemed to have been received in confidence. Receiving Party may use the Disclosing Party's Confidential Information only to perform its obligations or exercise its rights under this Agreement, and may disclose Disclosing Party's Confidential Information only to Receiving Party's employees, agents or contractors that need to know the information pursuant to this Agreement and who are required (by written agreement, written and enforceable internal policy, or legally enforceable code of professional responsibility) to maintain the confidentiality of the Confidential Information as required by this Agreement. Receiving Party must protect the Confidential Information at least as well as it does its own valuable and sensitive information of a similar nature and, in any event, with no less than a reasonable degree of care. Following termination or expiration of this Agreement, and/or if requested by Disclosing Party, Receiving Party must return or destroy all Confidential Information and upon request, certify in writing as to having returned or destroyed all Confidential Information. The obligation of confidentiality continues for three (3) years from the expiration or termination of this Agreement; provided, however, Receiving Party must keep (i) any personally identifiable information ("PII") confidential as required by any applicable law; and (ii) any trade secrets of Disclosing Party confidential as long as the information remains a trade secret.
- 7.2. **Definition.** "Confidential Information" includes, without limitation, (i) all information communicated by Disclosing Party that should reasonably be considered confidential under the circumstances, in written form, electronically transmitted, through Sperry's website or web portal, verbally, or in any other form or if disclosed verbally, whether it was or was not identified as confidential at the time of disclosure; (ii) all information identified as confidential to which Receiving Party has access in connection with the subject matter of this Agreement, whether before or after Effective Date; (iii) this Agreement, (iv) any trade secret; (v) any existing or contemplated product, service, design, technology, software, process, technical data,

engineering, technique, research, development, invention, methodology, all non-public know-how, trade secrets, techniques, test data, reports, strategies, algorithms, schematic, designs, contracts and concept and any related information; (vi) information relating to any business plan, sale or marketing method, marketing, merchandising, pricing, analysis and report, customer information, PII, customer or supplier list or requirement, and (vii) financial and accounting information.

- 7.3. **Exceptions.** The obligations of either Party under this Section 7 do not apply to information that Receiving Party can demonstrate (i) was in its possession at the time of disclosure without confidentiality restrictions; (ii) at the time of disclosure by Disclosing Party is generally available to the public or after disclosure becomes generally available to the public through no breach of agreement or other wrongful act by Receiving Party; provided, however, PII remains subject to confidentiality obligations regardless of its availability to the public or availability through unauthorized disclosure; (iii) was received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by Receiving Party; or (iv) is independently developed by Receiving Party without reference to the Confidential Information of the other Party.
- 7.4. **Disclosure by Law.** In the event Receiving Party is required by law, regulation, stock exchange requirement or legal process to disclose any of Disclosing Party's Confidential Information, Receiving Party must (i) give Disclosing Party, to the extent possible, reasonable advance notice prior to disclosure so Disclosing Party may contest the disclosure or seek a protective order, and (ii) reasonably limit the disclosure to the minimum amount that is legally required to be disclosed.

## **8. Term and Termination.**

- 8.1. **Term.** This Agreement commences on the Effective Date, continues for a period of 5 years (the "Initial Term") and automatically renews for an additional 2 year period ( "Renewal Term"), unless either Party provides written notice of non-renewal to the other Party at least six (6) months prior to the expiration of Initial Term, until terminated in accordance with this Agreement (collectively, the "Term").
- 8.2. **Termination for Cause.** If a Party materially breaches any provision of this Agreement and fails to remedy the breach within thirty (30) days of receipt of written notice from the non-breaching Party, the non-breaching Party may terminate this Agreement, and any licences granted hereunder. In addition, immediately upon termination, such Software licence granted to Customer shall cease and such Licensed Technology shall be returned to Sperry. Termination under this Section 8.2 does not limit either Party from pursuing any other remedies available to the Party, including, but not limited to, injunctive relief.
- 8.3. **Termination in the Event of Bankruptcy.** Either Party may terminate this Agreement upon written notice to the other Party in the event (i) the other Party files a petition for bankruptcy or is adjudicated a bankrupt; (ii) a petition in bankruptcy is filed against the other Party and the petition is not dismissed within thirty (30) calendar days; (iii) the other Party becomes insolvent or makes an assignment for the benefit of its creditors or an arrangement for its creditors pursuant to any bankruptcy or other similar law; (iv) the other Party discontinues its business; (v) a receiver is appointed for the other Party or its business; or (vi) any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that



has an effect equivalent or similar to any of the events mentioned in Section 8.3(i) to (v) (inclusive). In addition, immediately upon termination, the licence granted to Customer shall cease and such Licensed Technology shall be returned to Sperry.

- 8.4. **Survival.** In the event of any termination or expiration of this Agreement for any reason, all provisions of this Agreement whose meaning requires them to survive will survive the expiration or termination of this Agreement, including, but not limited to, Sections 4 (Fees and Payment), 5 (Warranties), 6 (Ownership), 7 (Confidential Information), 8.4 (Survival), 9 (Indemnification), 10 (Limitation of Liability) and 14 (General).

## 9. Indemnification.

- 9.1. **Indemnification Obligations by Sperry.** Sperry will defend, indemnify and hold harmless Customer from and against any and all third party Claims (defined below) asserted against, imposed upon or incurred by an Indemnitee due to, arising out of or relating to (i) any suit or claim that the Licensed Technology, and/or Sperry Intellectual Property infringe or misappropriate the Intellectual Property Rights of any third party; or (ii) any negligent act or omission, or intentional misconduct other than if the breach has arisen due to the Customer's misuse of the Licensed Technology, of Sperry.
- 9.2. **Procedure for Indemnification.** If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, Sperry's obligations under Section 9.1 are conditional on the Customer:
- 9.2.1. as soon as reasonably practicable, giving written notice of the Claim to Sperry, specifying the nature of the Claim in reasonable detail;
  - 9.2.2. not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of Sperry (such consent not to be unreasonably conditioned, withheld or delayed);
  - 9.2.3. giving Sperry and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable Sperry and its professional advisers to examine them and to take copies (at Sperry's expense) for the purpose of assessing the Claim; and
  - 9.2.4. subject to Sperry providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 9.3. **Remedies.** If an injunction or order is obtained against Customer's use of any Licensed Technology ("Infringing Material") by reason of allegations or infringement, Sperry must at its reasonable expense (i) procure for Customer the right to continue using the Infringing Material; or (ii) modify or replace the Infringing Material with compatible, functionally equivalent, non-infringing material; or (iii) if (i) or (ii) is not possible, provide a prorated refund of all Licence Fees paid for the applicable Infringing Material on a five (5) year depreciation basis for Licensed Technology and Deliverables.

- 9.4. **Indemnification Obligations by Customer.** Customer agrees to indemnify, defend and hold harmless Sperry against any and all Claims resulting from or arising out of (i) Customer's failure to comply with applicable regulations or laws, (ii) any delay in the commencement of analysis, any delay in reporting of test results, any undetected defect, any unreported defect, any inaccurately reported defect, or any otherwise untimely or incomplete reporting of test results relative to any rail tested or not tested, irrespective of the nature of the claim asserted, or (iii) any claims, or allegation, of infringement or misappropriation of a third party's Intellectual Property Rights based on Customer Data.
- 9.5. **Definition.** For purposes of this Section 9, the word "Claim(s)" means any and all foreseeable or unforeseeable and alleged or actual actions, causes of action (whether in tort, agreement or strict liability, and whether in law, in equity, statutory or otherwise), bodily harm or personal injury (including sickness, disease or death of any person), claims, damages, demands, disbursements, judgments, lawsuits, legal proceedings, liability, litigation, losses, property damage (including any harm, impairment, theft, loss or loss of use), sanctions, settlement payments, costs or expenses, whether accrued, absolute, contingent or otherwise, including, without limitation, reasonable attorneys' fees and costs.

## **10. Limitation of Liability.**

- 10.1. By entering this Agreement, the parties mutually acknowledge and agree that rail flaw detection testing equipment, and processes used in rail flaw detection have inherent susceptibility to interference that can prevent effective testing and detection at any time. The parties further acknowledge and agree that Customer's status as a railroad operator and/or internal risk management procedures require(s) Customer to (i) timely commence testing of tracks using rail flaw detection testing equipment, including the Equipment used by Customer under this Agreement, (ii) timely detect rail defects, and (iii) to take certain timely actions based on the findings of such tests, including reporting the results of such testing and detection, and verifying the accuracy of any testing reports, such as Deliverables. Supporting the railroad's fulfillment of these testing and detection obligations is the sole purpose of the Service provided under this Agreement. In no way should the Agreement be interpreted as a transfer of liability for the risks inherent to the operations of the railway from the Customer to Provider. In addition, the parties acknowledge and agree that Customer is contracting with Provider to assist Customer with the testing, due to Provider's specialized Equipment, knowledge, and experience with rail flaw detection, but not to assume Customer's responsibilities relative to its duties and obligations as a railroad operator. Nothing in this Agreement excludes the liability of a Party:
- 10.1.1. for death or personal injury caused by negligence; or
- 10.1.2. for fraud or fraudulent misrepresentation.
- 10.2. **No Consequential Damages.** EXCEPT TO THE EXTENT OF CUSTOMER'S OBLIGATIONS PURSUANT TO SUBSECTION 10. f. OF THIS AGREEMENT, NEITHER PARTY IS LIABLE UNDER ANY THEORY OF TORT, CONTRACT, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR LOST PROFITS, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR THE LIKE, EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER DAMAGES WERE FORESEEABLE OR WHETHER THE OTHER PARTY HAD BEEN ADVISED OF THE POSSIBILITY OF DAMAGES.

- 10.3. **Monetary Cap.** SUBJECT TO SECTION 10.1, NEITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY FOR ANY CLAIMS, LOSSES, INJURIES, SUITS, DEMANDS, JUDGMENTS, LIABILITIES, COSTS, EXPENSES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS ADDENDUM), REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY, SHALL EXCEED THE LICENCE FEES PAID BY CUSTOMER TO SPERRY IN THE 12 MONTHS PRECEDING THE CLAIM.
- 10.4. **Allocation of Risk.** THE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES. THE LIMITATIONS SPECIFIED IN THIS SECTION 10 SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## **11. Anti-Modern Slavery**

- 11.1. Sperry undertakes, warrants and represents that neither it nor any of its officers, employees, agents or sub-contractors:
- 11.1.1. has committed an offence under the Modern Slavery Act 2015 (a "MSA Offence"); or
  - 11.1.2. has been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
  - 11.1.3. is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

## **12. Anti-Bribery And Anti-Corruption**

- 12.1. Sperry shall during the Term:
- 12.1.1. comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including to the Bribery Act 2010 ("**Relevant Requirements**");
  - 12.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - 12.1.3. establish, maintain and enforce its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and Section 12.1.2;
  - 12.1.4. notify the Customer (in writing) if it becomes aware of any breach of Section 12.1.1 or 12.1.2, or has reason to believe that it has received a request or demand for any undue financial or other advantage in connection with the performance of this Agreement;
  - 12.1.5. on the Effective Date, and where reasonably requested in writing thereafter, certify to the Customer in writing signed by an officer of Sperry, compliance with this Section 12 by Sperry. Sperry shall provide such supporting evidence of compliance as the Customer may reasonably request.

- 12.2. Sperry shall ensure that any of its agents, consultants, contractors, subcontractors or other persons engaged in performance of Sperry's obligations under this Agreement do so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Sperry in this Section 12 (Relevant Terms). Sperry shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Customer for any breach by such persons of any of the Relevant Terms.
- 12.3. Breach of this Section shall be deemed a material breach under Section 8.2.
- 12.4. For the purpose of this Section 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

### 13. Force Majeure.

- 13.1. "**Force Majeure**" in this Section 13 means, in relation to any Party, an event beyond the reasonable control of that Party involving an act of God, war, armed conflict, riot, acts of terrorism, nuclear contamination, nuclear, biological or chemical warfare, security alert, civil commotion, explosion, malicious damage, disease, pandemic, or epidemic, or other uncontrolled outbreak of a health condition, as well as any and all governmental action imposed or taken in response to such condition, including, without limitation, travel restrictions, quarantine(s), "social distancing" guidance, business closures and other measures imposed by any governmental authority with jurisdiction over a place where performance of an obligation under this Agreement is to occur, or any of the same which affects travel or either Party necessary to facilitate its performance obligations hereunder, pestilence, accident, fire, flood or storm, including any strike, lock-out, pestilence, accident, fire, flood or storm, strike, lock-out, industrial dispute or go-slow within or by any employees of a Party, and provided that in each case such event does not arise (directly or indirectly) as a result of any willful act or default of the Party claiming relief. For the avoidance of doubt, Force Majeure shall not include failure or inability to pay monies due.
- 13.2. If any Party is affected by a Force Majeure (the "**Affected Party**") it shall promptly notify the other Party in writing in reasonable detail of the nature and extent of the circumstances in question. The Parties shall consult with each other and make every reasonable effort to mitigate the effect of such an event of Force Majeure on the performance of its obligations under this Agreement.
- 13.3. Notwithstanding any other provision of this Agreement, the Affected Party shall be deemed not to be in breach of this Agreement, or otherwise liable to the other Parties, for any delay in performance or the non-performance of any of its obligations under this Agreement to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Parties in accordance with Section 13.2 and the time for performance of the affected obligations shall be extended accordingly.
- 13.4. The Affected Party shall use its reasonable endeavours to mitigate the effects of the Force Majeure on the performance of its obligations under this Agreement.
- 13.5. The Affected Party shall notify the other Party immediately in writing once the Force Majeure has ended and shall forthwith resume performance of all of its obligations under this Agreement.

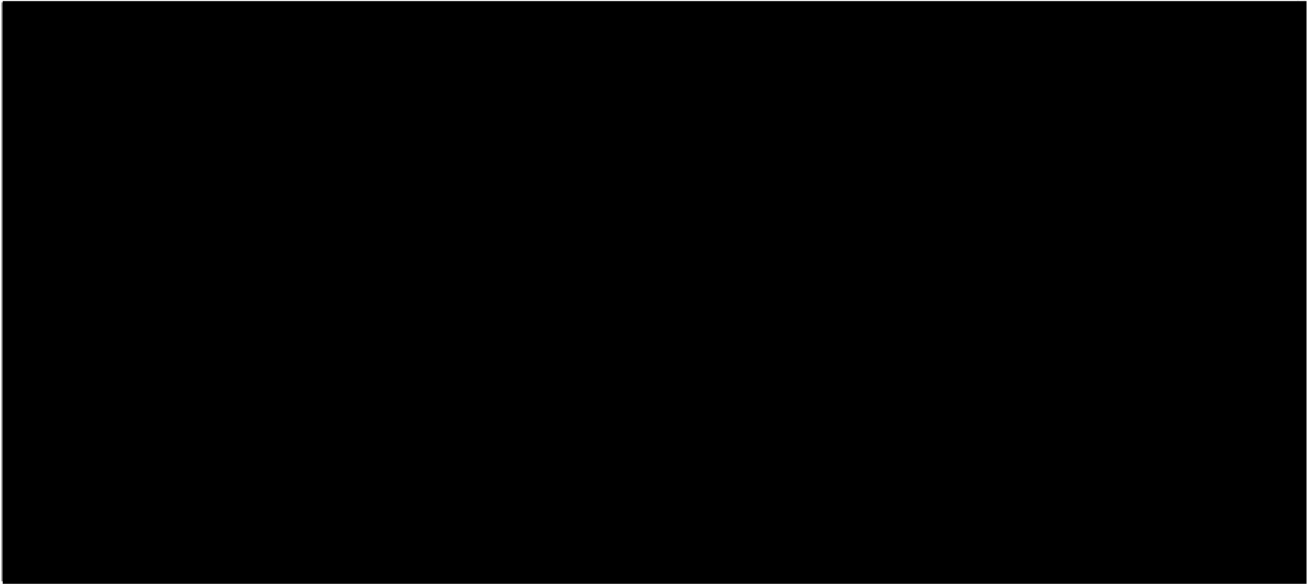
- 13.6. If the Force Majeure resulting in the delay in performance or the non-performance by a Party or any obligations under this Agreement continues for more than 3 months after the date on which the Force Majeure begins, either Party may by notice in writing to the other Parties terminate this Agreement.

#### 14. General.

- 14.1. **Choice of Law and Venue.** This Agreement shall be construed according to, and the rights of the parties shall be governed by, the laws of England and Wales. The Parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be conducted, tried and litigated exclusively in the courts of England and Wales. Any final judgment rendered against a Party in any action or proceeding shall be conclusive as to the subject of such final judgment and may be enforced in other jurisdictions in any manner provided by law.
- 14.2. **Independent Contractors.** The Parties are acting under this Agreement as independent contractors. Sperry is not considered or deemed to be an agent, employee, joint venturer or partner of Customer. Sperry is responsible for the conduct of its personnel. Neither Party has the right to exercise any control over the other Party. Each Party is solely responsible for hiring, firing, promoting, demoting, rates of pay, taxes, benefits and other terms and conditions in regard to its own personnel. Sperry's personnel are not considered employees of Customer, are not entitled to any benefits that Customer grants its employees and will have no authority to act on Customer's behalf.
- 14.3. **Injunctive Relief.** Unless otherwise specified in this Agreement, all rights, remedies and powers of a Party are irrevocable and cumulative, and not alternative or exclusive, and are in addition to all other rights, remedies and powers given under this Agreement or any laws now existing or subsequently enacted. Each Party acknowledges and agrees that if it breaches any obligations under this Agreement, the other Party may suffer immediate and irreparable harm for which monetary damages alone are not a sufficient remedy, and that, in addition to any other remedies the non-breaching Party may have, the non-breaching Party is entitled to seek injunctive relief, specific performance or any other form of relief in a court of competent jurisdiction, including, but not limited to, equitable relief, to remedy the breach or threatened breach by the breaching Party and to enforce this Agreement.
- 14.4. **Assignment.** This Agreement is binding upon, and inures to the benefit of, the Parties and their respective successors and permitted assigns. The Customer shall not, without the prior written consent of the Sperry, assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 14.5. **Waiver.** No waiver of any provision of this Agreement may be deemed or constitute a waiver of any other provision of this Agreement, whether or not similar, nor may any waiver constitute a continuing waiver unless otherwise expressly provided in writing. The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by either Party of any of the provisions of this Agreement, may in no way be construed to be a present or future waiver of provisions or in any way affect the ability of a Party to enforce each and every provision after such event.
- 14.6. **Severability.** If any provision of this Agreement is adjudged by a court to be invalid, void or unenforceable, the Parties agree that the remaining provisions of this Agreement will not be

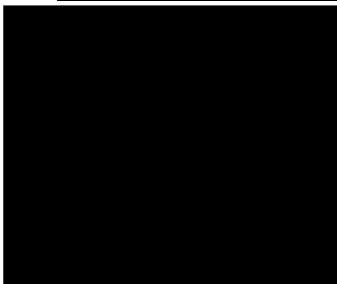
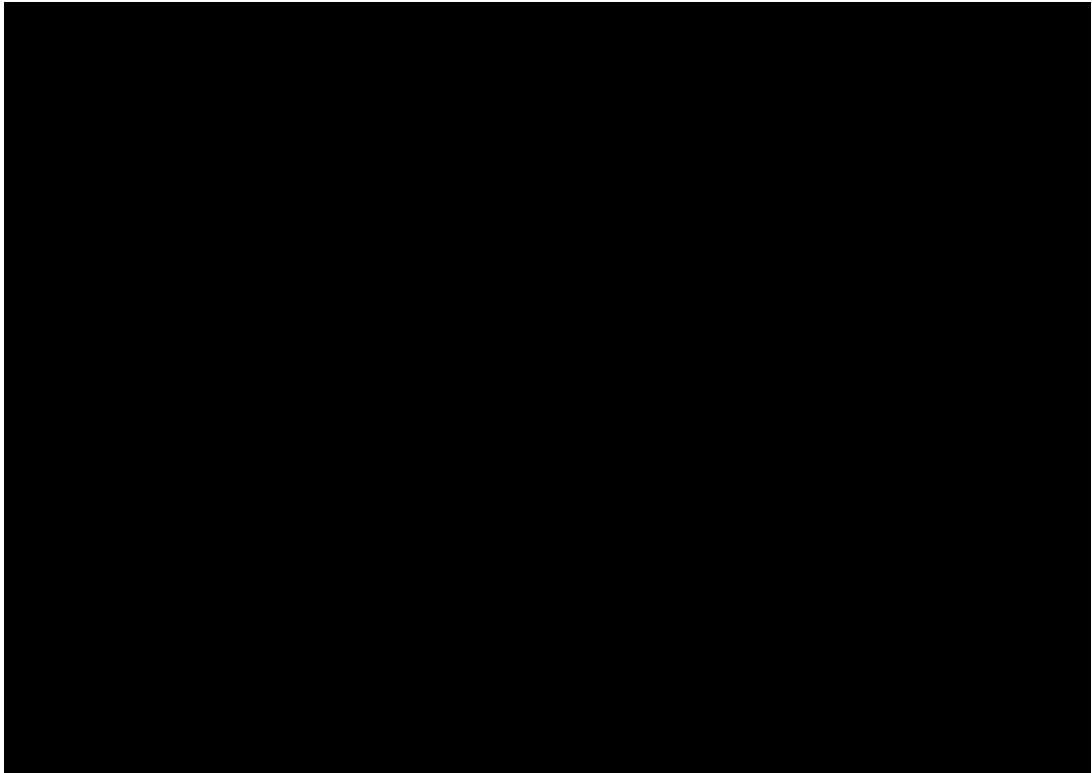
affected by such determination, that the provision in question must be replaced by the lawful provision that most nearly embodies the original intention of the Parties and that this Agreement will in any event otherwise remain valid and enforceable.

- 14.7. **No Third Party Parties.** This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. Sperry
- 14.8. **Amendments.** No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement is valid or binding on either Party unless mutually assented to in writing by authorized representatives of both Parties.
- 14.9. **Notices.** All notices, requests, demands, waivers and other communications required or permitted hereunder must be in writing and deemed to have been duly given (i) when delivered by hand; (ii) one (1) day after delivery by receipted overnight delivery; (iii) three (3) days after being mailed by certified or registered mail return receipt requested, with postage prepaid to the Party at the address set forth above to the attention of the person executing this Agreement, and with a copy to the attention of the legal department, or to the address as either Party furnishes to the other Party in writing pursuant to this Section 14.9 or (iv) if sent by email, at the time of transmission.
- 14.10. **Counterparts.** This Agreement may be executed in counterparts or duplicate originals, all of which are regarded as one and the same instrument. The Parties consent to use of facsimile, electronic and/or digital signatures in the execution of this Agreement, and the same are binding upon the Parties as if they were an original signature. Facsimile, electronic and digital copies of this Agreement, including properly executed PDF versions of this Agreement, are regarded as an original instrument by the Parties.
- 14.11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter. Each Party acknowledges that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.



## SCHEDULE A

### 1. Licensed Technology.



The licence fee will rise in accordance with the UK CPI increase one year after the contract has been signed and subsequent increases will follow annually. Where adjustment to the fees is more than 5% in a given year, then the Parties agree to discuss the increase, with the principle of sharing evidence of the actual underlying cost increase incurred, and demonstrating that only fair and reasonable costs have been added and passed on to the customer. The final adjustment agreed by the Parties will not exceed CPI.



4. **Software Support Services.**

Customer operators are trained to carry out daily and weekly maintenance of the 195 test system and its various components. Technical maintenance and support services are provided by Sperry for the Software via the Sperry mobile app on Monday through Friday from 9am to 5pm, except during holidays observed by the UK government and any maintenance or upgrades to the Software, as provided from time to time, for enhanced features and improvements, bug fixes, and error corrections.

5. **Training.**

Included in the Licence is the following 1950 test system training:

A Sperry trainer will be available to tutor 2 Customer operators, for the first six months of each year (1 through to 3). In total, the Customer has the opportunity to train 6 operators over three years. Each trainee will spend approximately 375 contact hours with a trainer, and be examined for competence at the end of the syllabus. Each operator trainee is required to demonstrate a high level of competency in safety, test system maintenance, test procedures and BSCAN interpretation.

Sperry's standard operator training programme includes tutoring from one of our experienced trainers, and on-the-job training from one of our qualified chief operators.

The training programme is split into several phases and there a number of comprehensive tests timed regularly throughout.

No further training is included after the third year of the Term but additional training can be purchased from Sperry.

