Rail Delivery Group

National Rail

RDM PLATFORM AGREEMENT

DATA CONSUMER

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1. DEFINITIONS

In this Agreement, the following meanings shall apply:

'Account'	means the facility provided by RDG allowing the Data Consumer to access the Rail Data Marketplace;
'ADR Notice'	has the meaning set out in Clause 22.1;
'Agreement'	means this agreement, together with the Schedules and any policies incorporated by reference;
'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 Content displayed on the Rail Data Marketplace;
'Confidential Information'	has the meaning given to it at Clause 11;
'Content'	the content owned by the Data Publisher and made available for sharing under licence through the Rail Data Marketplace;
'Data Consumer'	the owner of the Account;
'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 Publisher'	an entity that publishes a Catalogue and Content and enters into Data Sharing Agreements with one or more Data Consumers;
'Data Sharing Agreement'	the licence agreement entered into between a Data Publisher and the Data Consumer to facilitate the sharing of Content;
'Dispute Notice'	has the meaning set out in Clause 22.1;
'Dispute Resolution Procedure'	the procedure set out at Clause 22;
'Dispute'	has the meaning set out in Clause 22.1;
'Initial Term'	has the meaning set out in Clause 2.1.1;
'Insolvency Event'	where the party cannot fulfil its obligations under this Agreement due to any of the following events:
	(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);
	(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;
	(c) that party has made an arrangement or composition with its creditors or an application to a court for protection from its creditors;
	(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 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 more particularly described in in Clause 7.1;
'Material Capacity Impact;	has the meaning set out in Clause 3.3;
'Party'	a party to this Agreement;
'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;
'Privacy Policy'	means RDG's privacy policy as amended from time to time;
'Rail Data Marketplace'	a marketplace that enables Data Publishers and Data Consumers to share date under licence;
'Rail Data Marketplace Policies'	the policies set out in Schedule 2;
'Renewal Term'	has the meaning given to it in Clause 2.1.2;
'Service Desk'	has the meaning given to it in Schedule 1;
'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 or any equivalent tax chargeable in the UK or elsewhere;

2. **TERM**

2.1 Unless earlier terminated pursuant to Clause 8, this Agreement shall take effect when the Data Consumer opens an Account and:

2.1.1 continues 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 Consumer warrants, represents and undertakes as follows:

3.1.1 it has the authority to enter into this Agreement; and

3.1.2   it will provide all information, materials and assistance reasonably required by RDG in order to maintain the Data Consumer's Account on the Rail Data Marketplace.

3.2   Upon entry into this Agreement, RDG will promptly:

    3.2.1   Activate the Data Consumer's Account;

    3.2.2   provide an online ordering process to enable the Data Consumer to acquire licences to Content and, where applicable, pay for the Content through the Rail Data Marketplace; and

    3.2.3   provide the Service Desk to help Data Consumer with general support, guidance, enquiries or complaints relating to Content.

3.3   In the event that Data Consumer's levels of usage of a Data Publisher's Content has a materially detrimental impact on the performance of the Rail Data Marketplace or the ability of other Data Consumers to access the Content (a "**Material Capacity Impact**"), RDG will work with the Data Consumer 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 Data Consumer's access to the relevant Content, throttle throughput or suspect the Data Consumer's access rights until whilst the Material Capacity Impact subsists.

4.   **POLICY COMPLIANCE**

The Data Consumer 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 Consumer 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 Consumer to terminate in whole or in part this Agreement,

5.4.3   impose additional obligations or liabilities on the Data Consumer, 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 Consumer and shall be without prejudice to any rights the Data Consumer may have under any prior versions of the service description in Schedule 1.

6.   **DATA LICENSING**

6.1   By describing its Content in the Catalogue, the Data Publisher is inviting the Data Consumer to enter into a licence for that Content. The Data Consumer will be able to select its desired Content from the Catalogue.

6.2   Once the Data Consumer has selected the Content, by presenting the licence terms to the Data Consumer, the Data Publisher makes an offer to the Data Consumer which the Data Consumer may accept by accepting the licence terms and, where applicable, paying the price.

6.3   RDG is not a party to the Data Sharing Agreement and the Data Consumer acknowledges and agrees that it will not hold RDG responsible for any liabilities arising out of or connected to the Data Sharing Agreement.

6.4   Upon the Data Consumer entering into a Data Sharing Agreement with the Data Publisher, the Rail Data Marketplace will send an acknowledgement email confirming the data sharing arrangement has come into effect.

7.   **FEES AND E-COMMERCE**

7.1   RDG shall submit invoices and collect payment of Licence Fees from the Data Consumer 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.

7.2   Where Licence Fees are settled in arrears, the Data Consumer shall pay invoices properly submitted by RDG through the Rail Data Marketplace within thirty (30) days of their receipt of invoice.

7.3   Consumers that open an account on the Rail Data Marketplace and purchase subscription-based Content may select from a number of payment options in order to effect payment. Without prejudice to the Data Consumer's rights under Clause 7.5 below, RDG shall be entitled to collect the amount due and payable 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.

7.4   All payments will be paid in £ sterling unless otherwise agreed.

7.5   If there is any dispute between a Data Publisher and the Data Consumer in respect of the Licence Fees, where the disputed amount has already been collected by RDG by direct debit

from the Data Consumer, and the parties resolve that dispute such that they agree, or it is determined, that:

7.5.1 an overpayment has been made, the Data Publisher may require RDG to reimburse the Data Consumer or to set-off the disputed amount against the immediately subsequent invoice(s) submitted by RDG to the Data Consumer; and

7.5.2 an underpayment has been made, RDG shall invoice the Data Consumer for the underpaid amount in accordance with the provisions of Clause 7.1 above.

7.6 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 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 7.1 above.

8. **SUSPENSION AND TERMINATION**

8.1 Either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:

8.1.1 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;

8.1.2 the other Party is subject to an Insolvency Event;

8.1.3 if a default of the other Party results in any regulatory body taking or threating 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

8.1.4 on 14 days written notice in the circumstances set out in Clause 15 (Force Majeure).

8.2 RDG may terminate this immediately if the Data Consumer 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.

8.3 Without prejudice to its rights under Clause 8.1 and 8.2, RDG may suspend the Data Consumer's Account or access to Content if Data Consumer breaches the provisions of Clause 10, Clause 3.3 or otherwise behaves in a manner that is not in keeping with the spirit of this Agreement until such time as Data Consumer can demonstrate to RDG's reasonable satisfaction that it has rectified such breach or behaviour.

8.4 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.

9. **CONSEQUENCES OF TERMINATION**

9.1 On expiry or termination of this Agreement for any reason:

9.1.1   the Data Consumer shall immediately settle any outstanding invoices for use of the Licensed Data incurred prior to the date of expiry or termination; and

9.1.2   if required under the terms of any Data Sharing Agreement, the Data Consumer shall procure the destruction of any copies of the Licensed Data and promptly confirm such destruction to the Data Publisher.

9.2   In the event of expiry, termination or suspension of the Data Consumer from the platform:

9.2.1   Data Consumer will be prevented from entering into new Data Sharing Agreements; and

9.2.2   Data Consumer shall immediately terminate all existing Data Sharing Agreements and its Account will be disabled.

9.3   Subject to Clause 9.2 above, RDG shall use reasonable endeavours to procure that the Data Publisher shall refund the Data Consumer any Licence Fees paid in advance for the Content in accordance with RDG's Refund Policy.

10.   DATA CONSUMER CONDUCT

10.1   The Data Consumer acknowledges and agrees that:

10.1.1   In respect of the Rail Data Marketplace, it will;

(a)   comply with the terms of all applicable laws regarding online conduct;

(b)   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;

(c)   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);

(d)   not infringe or misappropriate the intellectual property rights of RDG or its licensors;

(e)   not take any action that may undermine any feedback or performance rating system;

(f)   ensure that it maintains up to date and appropriate antivirus precautions in accordance with industry best practice; and

(g)   not misuse or tamper with the Rail Data Marketplace, including but not limited to, hacking, introducing viruses or other technologically harmful material.

10.1.2   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 comply with the Data Sharing Agreement once entered into with the Data Publisher.

10.2   If RDG has reasonable grounds to believe that the Data Consumer has violated the provisions of Clause 10.1 above, the Data Consumer may be subject to a range of actions including but not limited to suspension of Data Consumer's Account in accordance with Clause 8.3 above.

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

11.   **CONFIDENTIALITY**

11.1   Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, 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.

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

11.2.1 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 11; and

11.2.2 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.

11.3   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.

11.4   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.

11.5   The obligations contained under this Clause 11 shall survive for a period of five (5) years from the expiry or termination of this Agreement.

12. **INTELLECTUAL PROPERTY RIGHTS**

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

12.2 All Intellectual Property Rights in Rail Data Marketplace shall remain the property of RDG and is licensors.

12.3 RDG grants the Data Consumer a non-exclusive, non-transferable, non-sublicensable right and licence to access and use the Rail Data Marketplace for the purposes of receiving the platform services under this Agreement. Any copying, storage, transmission, publication, affixation or use other than set out in this Agreement is not permitted.

13. **PERSONAL DATA**

13.1 Where "data controller" and "data subject" have the meaning ascribed in the Data Protection Legislation:

13.1.1 for the purposes of the Data Protection Legislation RDG is a data controller processor and shall take responsibility for compliance with Data Protection Legislation;

13.1.2 RDG shall only process Personal Data provided by the Data Consumer for the purpose of enabling RDG to provide the Rail Data Marketplace services in accordance with the RDG Privacy Policy; and

13.1.3 until a direct relationship has been formed between the Data Publisher and the Data Consumer by means of a Data Sharing Licence, the Data Consumer shall only use the Personal Data of the Data Publisher for the purposes of progressing the transaction contemplated through the Rail Data Marketplace.

14. **LIMITATION OF LIABILITY**

14.1 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.

14.2 Subject to Clause 14.1, neither Party shall not be liable for:

14.2.1 loss of business, revenue or profit, anticipated savings or wasted expenditure, corruption or destruction of data; and

14.2.2 for any indirect or consequential losses.

arising out of or in connection with this Agreement.

14.3 Subject to Clause 14.1 and 14.2 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.

14.4 Subject to Clause 14.1, RDG shall not be liable to the Data Consumer (whether in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise) and the Data Consumer shall not bring such a claim for any Losses suffered or incurred by the Data Consumer under or in connection with any Data Sharing Agreement.

15. **FORCE MAJEURE**

15.1 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:

15.1.1 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

15.1.2 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 Consumer, 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.

16. **RIGHTS CUMULATIVE**

16.1 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.

17. **ASSIGNMENT AND TRANSFER**

17.1 The Data Consumer 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.

17.2 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.

18. **WAIVER**

18.1 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 18.

19. **SEVERABILITY**

19.1 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.

19.2 Any modification to or deletion of a provision under Clause 19 shall not affect the validity and enforceability of the rest of the Agreement.

20. **NOTICES**

20.1 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)   Data Consumer: address provided upon Account set up; and

            (ii)   RDG: raildatamarketplace@raildeliverygroup.com

20.2 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.

20.3 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.

21. **ENTIRE AGREEMENT**

21.1 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.

22. **DISPUTE RESOLUTION**

22.1 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 22:

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.

22.2   The commencement of mediation shall not prevent the Parties commencing or continuing court proceedings in relation to the Dispute.

Content Disputes

22.3   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 10, the Data Consumer acknowledges and agrees that it shall resolve any disputes arising out of or in connection with any Data Sharing Agreements directly with the relevant Data Publisher.

23.   **GOVERNING LAW AND JURISDICTION**

23.1   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

23.2   Subject to the provisions in Clause 22 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.

Schedule 1

Service Description and Service Levels

TBC

Schedule 2

Policies

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