

TERMS AND CONDITIONS FOR SUPPLIER MEMBERSHIP OF RISQS

These terms and conditions (“**Terms**”) set out the basis on which Rail Safety and Standards Board Limited (Company No. 04655675) (“**RSSB**”) shall provide services to Supplier Members of RISQS.

Formation of contract

These Terms together with pricing information are available on the RISQS website. Having reviewed these, potential Supplier Members may express their interest in becoming a Supplier Member by entering the RISQS Portal and this shall be deemed to constitute that supplier’s acceptance of these Terms, and shall give rise to a contract between the supplier and RSSB on the basis of these Terms (the “**Contract**”).

1 Interpretation

1.1 Definitions:

“**Buyer Member**” means a buyer registered under RISQS that is entitled to access the details of Supplier Members made available through the RISQS Portal;

“**Membership Commencement Date**” has the meaning given in clause 2.1;

“**Membership Fees**” means the annual membership fees (excluding any audit fees) payable by the Supplier Member under the Contract. The initial Membership Fee shall be determined in accordance with the pricing information on the RISQS website as at the date of this Contract and any renewal Membership Fees shall be as notified to the Supplier Member under clause 7.2;

“**Membership Services**” means the services to be provided by RSSB or its Nominated Service Providers to the Supplier Member under the Contract during its membership of RISQS;

“**Nominated Service Provider**” means an organisation appointed to provide any aspect of RISQS on behalf of RSSB;

“**Questionnaire**” means the dynamic online questionnaire to be completed by the Supplier Member with information about its organisation and the products or services it offers that will form the basis of the information made available on the RISQS Portal;

“**Renewal Date**” has the meaning given in clause 2.1;

“**RISQS**” means the Railway Industry Supplier Qualification Scheme, which is a registration and qualification service run by RSSB for suppliers of products and services to the UK railway industry and also provides the underpinning assurance for the Sentinel Scheme through assessment against specific audit modules;

“**RISQS Portal**” means the online portal through which RSSB makes data relating to the Supplier Member (and other supplier members of RISQS) accessible to Buyer Members;

“**Supplier Member**” means the supplier party to the Contract.

2 Membership commencement and contract term

- 2.1 The Supplier Member's membership of RISQS shall commence on the date the initial Membership Fee is paid to RSSB ("**Membership Commencement Date**") and shall continue for the duration of the Contract. Unless terminated earlier in accordance with these Terms, the Contract shall continue for a period of one year following the Membership Commencement Date and shall automatically renew for further periods of one year on each anniversary of the Membership Commencement Date ("**Renewal Date**").
- 2.2 Either party may terminate the Contract on any Renewal Date by giving written notice to the other party at least one month in advance of that Renewal Date.

3 Provision of Membership Services

- 3.1 Following its receipt of the initial Membership Fee, RSSB shall invite the Supplier Member to complete the Questionnaire.
- 3.2 RSSB shall use reasonable endeavours to verify the Supplier Member's responses to the Questionnaire as it considers necessary or practical.
- 3.3 Subject to satisfactory verification (including without limitation audit, where required), RSSB shall publish the information provided in the Questionnaire on the RISQS Portal in a format and with the provision of tools to enable Buyer Members to search for suitable suppliers of relevant products or services.
- 3.4 RSSB shall use reasonable endeavours:
- 3.4.1 to make the published information available to Buyer Members through the RISQS Portal from 8am to 6pm Monday to Friday and at other times where practical, but RSSB will not be liable for any disruption to or unavailability of the service; and
- 3.4.2 to ensure that no computer viruses are present in the RISQS IT system or transmitted to Supplier Members during their use of and communication with the RISQS IT system.
- 3.5 RSSB shall use reasonable endeavours to maintain the data security of the RISQS IT system in accordance with ISO 27001 and to safeguard the confidentiality of the data submitted by the Supplier Member to ensure it is only available to Buyer Members or other authorised users. RSSB shall use reasonable endeavours to ensure that the Buyer Members are contractually required to maintain the confidentiality of any Supplier Member data they access.
- 3.6 The RISQS Portal and associated services are subject to continuous development. Accordingly, the Supplier Member acknowledges and agrees that the services provided under the Contract may be improved or otherwise changed at any time.
- 3.7 RSSB may appoint Nominated Service Providers to run aspects of RISQS and accordingly any of RSSB's obligations under the Contract may be performed by Nominated Service Providers on its behalf.

4 Supplier Member's obligations

4.1 The Supplier Member shall:

4.1.1 complete the Questionnaire (and provide updated responses as necessary) to ensure throughout the term of the Contract that the information provided to RSSB:

- (i) is accurate, up to date, includes all information required by RSSB in the Questionnaire and does not contain anything that infringes the right of any third party or is otherwise unlawful; and
- (ii) without prejudice to the generality of clause 4.1.1(i),
 - (A) accurately specifies the products and services the Supplier Member is able to provide and reflects any realistic limitations on volume or delivery locations; and
 - (B) reflects not only the Supplier Member's documented business policies and procedures but also the actual practices that take place within its business;

4.1.2 reasonably cooperate with and assist RSSB in the verification of any information it submits and generally with the smooth running of RISQS, including without limitation by providing further evidence when requested and participating in audits when required under clause 6;

4.1.3 use its best endeavours to avoid any computer viruses being transmitted to the RISQS IT system; and

4.1.4 keep its RISQS Portal "login" details secret, limit distribution of them and notify RSSB of any actual or suspected breach of confidentiality.

4.2 The Supplier Member shall not give or offer to give any gift or inducement to any person working for RSSB (or any Nominated Service Provider). Any breach of this clause 4.2 shall constitute an irremediable breach for the purposes of clause 9.1.1.

5 Supplier Member data

5.1 The Supplier Member acknowledges and agrees that any data relating to the Supplier Member submitted by the Supplier Member or obtained by RSSB from Equifax and other third party sources may be:

5.1.1 published on the RISQS Portal for review by Buyer Members and other authorised users to enable them to preselect suppliers of products and services; and

5.1.2 otherwise used or shared by RSSB for the benefit of rail industry safety initiatives provided appropriate confidentiality is maintained.

- 5.2 The Supplier Member further acknowledges and agrees that RSSB may report any of the following to the Buyer Members and to Sentinel and/or such other authority as may be required to promote the safety of the railways: the lapsing of its membership of RISQS, the removal of its registration under a specific product code, or its failure to complete or pass an audit when required.
- 5.3 Any data provided by the Supplier Member to RSSB shall (as between the Supplier Member and RSSB) remain the property and responsibility of the Supplier Member. The Supplier Member hereby grants to RSSB a non-exclusive, royalty-free licence (with the right to sublicense to any Nominated Services Provider) to use and make available to Buyer Members and other authorised users through the RISQS Portal the information contained in its responses to the Questionnaire or otherwise obtained by RSSB through verification or audit in accordance with these Terms. Ownership of the RISQS Portal and RISQS website and any underlying software or data shall remain with RSSB (or their Nominated Service Providers, as applicable).
- 5.4 The Supplier Member acknowledges that it is responsible for obtaining any necessary consents in relation to any personal data it provides to RSSB (or its Nominated Services Providers) and warrants that it will obtain the necessary consents prior to submitting such personal data to RSSB (or its Nominated Services Provider).
- 5.5 The Supplier Member shall indemnify RSSB against all damages, losses or expenses arising as a result of RSSB's or any Nominated Service Provider's use in accordance with these Terms of any information or materials provided by the Supplier Member (whether arising from the Supplier's failure to obtain any necessary consents in relation to personal data, the infringement of the rights of any third party or otherwise).

6 Audit

- 6.1 To ensure the ongoing accuracy of the information relating to the Supplier Member published on the RISQS Portal, RSSB may require the Supplier Member to be audited on an annual basis (subject to payment by the Supplier Member of the relevant audit fee in accordance with clause 7.3).
- 6.2 RSSB shall notify the Supplier Member where an audit is required and will suggest three possible audit dates. The Supplier Member must agree one of these dates or an alternative date acceptable to RSSB. Where such notification relates to the annual renewal of a previous audit, such notification shall be given approximately 4 months in advance of expiry of the previous audit. The Supplier Member shall ensure suitable staff and resources are made available to enable the performance of the audit on any agreed audit date.
- 6.3 Subject to the Supplier Member's reasonable cooperation, RSSB shall facilitate the booking of audits, associated invoicing and payment receipt such that the audit can be completed and the final reports written and published prior to the expiry of the previous annual audit.
- 6.4 The Supplier Member acknowledges and agrees that the results of any audits may be published on the RISQS Portal for the benefit of Buyer Members in the selection of suppliers and infrastructure managers or their designated service providers to assist with permit to work permissions.

7 Charges and payment

- 7.1 If the Supplier Member wishes to commence the Membership Services, it shall pay the initial Membership Fee.
- 7.2 On or before each Renewal Date, the Supplier Member shall pay the renewal Membership Fee. RSSB will determine the relevant renewal Membership Fee at its sole discretion and will notify the Supplier Member of the relevant renewal Membership Fee at least 2 months in advance of each Renewal Date.
- 7.3 Where required in accordance with clause 6, the Supplier Member shall make payment for each audit at least 8 weeks in advance of the relevant audit date (unless otherwise agreed in writing by RSSB).
- 7.4 For convenience it is recommended that the Supplier Member pay the membership fees by direct debit but other arrangements can be made if requested.
- 7.5 No Membership Fees or audit fees will be refunded where a Supplier Member fails to meet the necessary criteria for listing on the RISQS Portal in any or all of the categories for which it has applied.

8 Limitation of liability

- 8.1 Nothing in this Contract shall limit or exclude RSSB's liability for:
- 8.1.1 death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
 - 8.1.2 fraud or fraudulent misrepresentation; or
 - 8.1.3 any other liability that cannot be limited or excluded by law.
- 8.2 Subject to clause 8.1, RSSB shall not be liable to any Supplier Member, whether in contract, tort (including without limitation negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 8.2.1 loss of profits, loss of sales or business, loss of agreements or contracts or loss of or damage to goodwill; or
 - 8.2.2 any indirect or consequential loss.
- 8.3 Subject to clause 8.1, RSSB's total liability to the Supplier Member whether in contract, tort (including without limitation negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited as follows:
- 8.3.1 in respect of liability arising during the period prior to the Membership Commencement Date, to £100;
 - 8.3.2 in respect of liability arising during any 12 month period commencing on the Membership Commencement Date or any Renewal Date, to the value of the Membership Fees paid to RSSB by the Supplier Member in respect of that period.

- 8.4 Except as expressly set out in these Terms, all conditions, warranties, terms and undertakings, express or implied, in respect of the RISQS Portal or the services to be provided by RSSB are hereby excluded to the fullest extent permitted by law.

9 Termination and Suspension

- 9.1 Without affecting any other right or remedy available to it (and in addition to its rights under clause 2.2), either party may terminate the Contract 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 the Contract that is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;

9.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

9.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

9.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

- 9.2 Without affecting any other right or remedy available to RSSB, if the Supplier Member fails to pay any amount due under the Contract on or before the due date for payment, RSSB may terminate the Contract by written notice with immediate effect.

- 9.3 If any default of the Supplier Member gives rise to a right for RSSB to terminate the Contract, RSSB may instead elect to suspend the provision of the Member Services to the Supplier Member for the duration of such default.

10 General

- 10.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

- 10.2 **Entire agreement.** The Contract constitutes the entire understanding between the parties with respect to the subject matter of the Contract and supersedes and replaces all prior agreements, negotiations and discussions between the parties relating to it. The Supplier Member confirms and acknowledges that it has not been induced to enter into the Contract by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in the Contract purports to exclude liability for any fraudulent statement or act.

- 10.3 **Variation.** RSSB may vary these Terms (and so vary the Contract) from time to time by publishing an updated version on the RISQS website (www.risqs.org). Any such variation shall take effect on publication and RSSB shall endeavour to provide the Supplier Member with as much notice as reasonably practicable of any planned variations.
- 10.4 **Waiver.** No failure or delay by any party to fully exercise any right or remedy provided under the Contract or by law shall constitute a full or partial waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 10.5 **Severance.** If any clause in these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If this is not possible, it shall be deemed deleted. Any such modification or deletion shall not affect the validity or enforceability of the rest of the Contract.
- 10.6 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 10.7 **Law.** The Contract and any dispute or claim (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales.