

TERMS AND CONDITIONS FOR BUYER 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 Buyer Members of RISQS.

Formation of contract

These Terms together with pricing information are available on the RISQS website. Having reviewed these, potential Buyer Members may express their interest in becoming a Buyer Member by following the application instructions set out on the RISQS website. RSSB shall be entitled to accept or reject applications to become a Buyer Member at its absolute discretion. Where an application is successful, RSSB shall confirm this to the relevant potential Buyer Member in writing and shall request payment of the initial Membership Fees. Payment of the initial Membership Fees following such request shall be deemed to constitute the relevant potential Buyer Member’s acceptance of these Terms, and shall give rise to a contract between that potential Buyer Member and RSSB on the basis of these Terms (the “**Contract**”).

For the avoidance of doubt, these Terms are not capable of acceptance by a potential Buyer Member until RSSB has confirmed in writing to the potential Buyer Member that its application to join as a Buyer Member has been successful.

1 Interpretation

1.1 Definitions:

“**Buyer Member**” means the buyer party to the Contract;

“**Main Supplier Questionnaire**” means the dynamic online questionnaire to be completed by Supplier Members with information about their organisation and the products or services they offer that forms the basis of the information made available to Buyer Members on the RISQS Portal;

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

“**Membership Fees**” means the annual membership fees (excluding any fees for additional training agreed in accordance with clause 3.2 or additional questions agreed in accordance with clause 3.3) payable by the Buyer Member under the Contract. The initial Membership Fees shall be determined in accordance with the pricing information on the RISQS website as at the date of the Contract and any renewal Membership Fees shall be as notified to the Buyer Member under clause 7.2;

“**Membership Services**” means the services to be provided by RSSB or its Nominated Service Providers to the Buyer 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;

“**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 Supplier Members accessible to the buyer members of RISQS together with tools for the review and selection of potential suppliers for projects on UK railways; and

“**Supplier Member**” means a supplier member registered under RISQS, whose details are made available through the RISQS Portal to the Buyer Member and/or other buyer members of RISQS.

2 Membership commencement and contract term

- 2.1 The Buyer Member’s membership of RISQS shall commence on the date it pays the initial Membership Fees 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 payment of the Membership Fees, RSSB shall provide the Buyer Member with:
- 3.1.1 access to the buyer section of the RISQS Portal, together with the use of the Shortlisted Supplier Questionnaire facility allowing project specific questions to be asked of selected Supplier Members to assist with supplier selection;
 - 3.1.2 training in the use of the RISQS Portal to search and pre-qualify potential suppliers and to assist with procurement activities;
 - 3.1.3 ongoing support from the RISQS account management team;
 - 3.1.4 the right to send one delegate to meetings of the relevant RISQS Buyer Forum, which take place on an approximately quarterly basis and which feed information and proposals to the RISQS governing bodies; and
 - 3.1.5 the right to propose one delegate for membership of the RISQS Advisory Council, which oversees the operation of RISQS and reports to the board of RSSB.
- 3.2 Training provided in accordance with clause 3.1.2 may be delivered in person or in the form of webinars or training videos at RSSB’s discretion. RSSB’s standard training (including initial training and periodic refresher/update training) is included in

the Membership Fees. The Buyer Member may request additional training, which may be subject to an additional fee, particularly where in person training is required.

- 3.3 The Buyer Member may request that additional questions are included in the main question set and specified for only those supplier members that are potential suppliers for that Buyer Member. The inclusion of such additional questions will be subject to a further fee, calculated on the basis of the number and complexity of the additional questions requested.

4 RSSB Obligations

- 4.1 RSSB shall administer the completion of the Main Supplier Questionnaire by Supplier Members and shall use reasonable endeavours to verify each Supplier Member's response as it considers necessary or practical (whether through audit, third party sources or otherwise). However, responsibility for the accuracy of any Supplier Member information made available through the RISQS Portal shall remain with the relevant Supplier Member and, subject to clause 8.1 below, RSSB shall not be liable for any inaccuracies, errors or omissions.
- 4.2 In addition to its commitment to inform Sentinel and/or such other authority as may be required to promote the safety of the railways, RSSB shall use reasonable endeavours to report each of the following to the Buyer Member (whether by updating the relevant section of the RISQS Portal or otherwise): the lapsing of a Supplier Member's membership of RISQS, the removal of a Supplier Member's registration under a specific product code, or a Supplier Member's failure to complete or pass an audit when required.
- 4.3 RSSB shall use reasonable endeavours to:
- 4.3.1 make published information relating to Supplier Members available to the Buyer Member 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;
 - 4.3.2 safeguard the confidentiality of any data stored by the Buyer Member on the RISQS Portal to ensure it is only available to authorised users;
 - 4.3.3 maintain the data security of the RISQS IT system in accordance with ISO 27001; and
 - 4.3.4 ensure that no computer viruses are present in the RISQS IT system or transmitted to the Buyer Member through its use of and communication with the RISQS IT system.
- 4.4 The RISQS Portal and associated services are subject to continuous development. Accordingly, the Buyer Member acknowledges and agrees that the services provided under the Contract may be improved or otherwise changed at any time.
- 4.5 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.

5 **Buyer Member's obligations**

5.1 The Buyer Member shall:

- 5.1.1 reasonably cooperate with and assist RSSB with the smooth running of RISQS;
- 5.1.2 only use the RISQS Portal for its own internal business purposes to assist with the review and selection of potential suppliers;
- 5.1.3 notify RSSB as soon as reasonably practicable if it believes any information relating to a Supplier Member available through the RISQS Portal is inaccurate, out of date or in any way misleading;
- 5.1.4 use its best endeavours to avoid any computer viruses being transmitted to the RISQS IT system; and
- 5.1.5 keep its RISQS Portal "login" details secret, limit distribution of them and notify RSSB of any actual or suspected breach of confidentiality.

5.2 The Buyer Member acknowledges and agrees that:

- 5.2.1 all Supplier Member data made available through the RISQS Portal is and shall remain the property of the relevant Supplier Member; and
- 5.2.2 the RISQS Portal and the RISQS website and any underlying software or data is and shall remain the property of RSSB (or their Nominated Service Providers, as applicable),

and that it may only access and use such data and the RISQS Portal in accordance with these Terms.

5.3 Subject to clause 5.4.2 below, the Buyer Member shall not disclose any information it obtains through the RISQS Portal relating to Supplier Members to any third parties and shall keep confidential all such information that would reasonably be regarded as confidential or commercially sensitive for five years following the termination of the Contract (or for so long as that information would still reasonably be regarded as confidential or commercially sensitive, whichever is shorter).

5.4 Where the Buyer Member obtains information through the RISQS Portal or otherwise from RSSB or any of its Nominated Service Providers that gives rise to concerns about the suitability of a Supplier Member to provide particular goods or services, the Buyer Member:

- 5.4.1 shall notify RSSB of those concerns; and
- 5.4.2 may only communicate those concerns to a third party:
 - (i) where it reasonably considers that not doing so presents a significant risk to safety and/or the integrity of UK railways; and
 - (ii) to the minimum extent necessary to mitigate that risk; and
- 5.4.3 shall notify RSSB as soon as reasonably practical of the details of any communications to third parties made under clause 5.4.2 above.

- 5.5 The Buyer Member shall ensure that any individuals who access the RISQS Portal on the Buyer Member's behalf or otherwise using the Buyer Member's "login" details comply with these Terms.
- 5.6 The Buyer Member acknowledges and agrees that it is and shall remain responsible for any use made by it, its authorised users or any other third party of:
- 5.6.1 its RISQS Portal account (including any comments submitted relating to any Supplier Member); and
 - 5.6.2 any information obtained through the use of its RISQS Portal account.
- 5.7 The Buyer Member shall indemnify RSSB against all damages, losses or expenses arising as a result of:
- 5.7.1 any breach of clause 5.5 above; or
 - 5.7.2 any activity for which it is responsible for under clause 5.6 above.
- 5.8 The Buyer Member shall comply with its obligations under the Data Protection Act 1998 or, from the date it comes into force in the UK, the General Data Protection Regulation (EU) 2016/679 (as applicable) in respect of any personal data associated with its use of the RISQS Portal.

6 Publicity and Buyer Member data

- 6.1 The Buyer Member acknowledges and agrees that RSSB may publicise its membership for the purposes of promoting RISQS. Accordingly, the Buyer Member hereby grants to RSSB a non-exclusive, royalty-free licence (with the right to sublicense to any Nominated Services Provider) to use the Buyer Member's name and logo in any RISQS publicity material (including without limitation on the RISQS Portal and RISQS website).
- 6.2 The Buyer 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).
- 6.3 The Buyer 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 Buyer Member (whether arising from the Buyer Member's failure to obtain any necessary consents in relation to personal data, the infringement of the rights of any third party or otherwise).

7 Charges and payment

- 7.1 If the Buyer Member wishes to commence receiving the Membership Services, it shall pay the initial Membership Fees.
- 7.2 On or before each Renewal Date, the Buyer Member shall pay the renewal Membership Fees. RSSB will determine the relevant renewal Membership Fees at its sole discretion and will notify the Buyer Member of the relevant renewal Membership Fees at least 2 months in advance of each Renewal Date.

- 7.3 For convenience it is recommended that the Supplier Member pay the membership fees by direct debit but other arrangements can be made if requested
- 7.4 No Membership Fees will be refunded where a Buyer Member's membership of RISQS is terminated part way through a membership year.

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 Buyer 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 Buyer Member, whether in contract, tort (including without limitation negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract during any 12 month period commencing on the Membership Commencement Date or any Renewal Date, shall be limited to the value of the Membership Fees the Buyer Member paid to RSSB 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 Membership Services 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 Buyer 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 Buyer 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 Buyer Member for the duration of the 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 Buyer 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 Buyer 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.