

# **RAIL SAFETY AND STANDARDS BOARD LIMITED ~ TERMS & CONDITIONS FOR ACCREDITATION AS A RAIL INDUSTRY SUPPLIER APPROVAL BODY (RISAB)**

## **1. INTERPRETATION**

**'Accreditation Certificate'** means the certificate issued by RSSB to an Applicant successfully completing the Accreditation Procedure and specifying the product group(s) for which the Applicant has been accredited, the terms of that accreditation and any conditions applying to it.

**'Accreditation Procedure'** means the procedure set out in the RISAS Rules and Principles and applied by RSSB in considering the suitability of Applicants wishing to become a RISAB.

**'Applicant'** means a person or body applying to RSSB for accreditation as a RISAB for the purposes of and under RISAS.

**'Contract'** means the agreement between RSSB and the Applicant which incorporates these Terms and Conditions and the conditions set out in the Accreditation Certificate (if applicable) and the Proposal.

**'Person'** means any body with legal personality or without legal personality, including but not limited to any individual, company, firm, partnership, body corporate or unincorporate.

**'Proposal'** means the proposal letter from RSSB to the Applicant of the terms applying to the Accreditation Procedure and the charges and day rates which shall be payable by the Applicant whether or not the Applicant passes the Accreditation Procedure.

**'RISAB'** means a person or body accredited by RSSB as a railway industry supplier approval body for the purposes of RISAS.

**'RISAB'** means the railway industry supplier approval scheme.

**'RISAS Rules and Principles'** means all and any rules, principles, arrangements and guidance published by RSSB and identified by it as being applicable to the operation of RISAS which shall include, but not be limited to, RISAS/001/01 (Principles of the Railway Industry Approval Scheme), RISAS/002/001 (Arrangements for the Board of the Railway Industry Approval Scheme), RISAS/003/01 (Railway Industry Supplier Approval Scheme: Supplier Assessment Module), RISAS/004/01 (Accreditation of Approval Bodies within the Railway Industry Supplier Approval Scheme) and RISAS/005/001 (Operation and Management of the Railway Industry Supplier Assurance Scheme), as may be amended or replaced from time to time.

**'RSSB'** means Rail Safety and Standards Board Limited (registered in England and Wales under number 04655675) whose registered office is at Block 2 Angel Square, 1 Torrains Street, London, EC1V 1NY, its successors in the title and/or permitted assignees.

**'Terms of Accreditation'** means any conditions RSSB attaches to the provision of RISAB services by an Applicant referred to or described in the Proposal and/or the Accreditation Certificate and any modification to them as may be agreed.

**'RSSB Standard Payment Terms'** referred to in the Proposal means the payment terms described in Clause 9 of these Conditions.

**'RSSB's Representative'** means the Person on the Proposal appointed for the time being by RSSB to act on its behalf in carrying out those duties described in the Contract.

**'RISAB Services'** means the services, duties and responsibilities to be provided, performed and observed by the Applicant pursuant to this Contract, the Proposal, the RISAS Rules and Principles and the Accreditation Certificate (if applicable).

## **2. DURATION**

Subject to Condition 12 hereafter, the Applicant shall be entitled to provide RISAB Services from the date, for the term and subject to the conditions and product group(s) specified in the Accreditation Certificate.

## **3. KEY PERSONNEL**

The Applicant agrees that the RISAB Services shall be performed by the Key Personnel named in the Accreditation Certificate where and as may be agreed. No changes in the Key Personnel shall be made without the prior approval of RSSB's Representative, which shall not be unreasonably withheld.

## **4. RISAB SERVICES**

Without prejudice to or limitation of RSSB's statutory rights, an Applicant who has been accredited by RSSB as a RISAB shall

- a) comply in all respects with the RISAS Rules and Principles and Terms of Accreditation, as detailed above, when providing RISAB Services;
- b) ensure and be able to demonstrate to the sole satisfaction of RSSB's Representative that the RISAB Services provided are undertaken by competent and suitably trained persons, exercising reasonable skill and care;
- c) exercise its rights so as to ensure that any supplier certified by it pursuant to the RISAS Rules and Principles shall comply with such RISAS Rules and Principles, together with and subject to any terms applying to the Applicant's certification of that supplier;
- d) ensure that the provision of RISAB Services is undertaken impartially and not influenced or compromised by commercial, financial or other pressures, advising RSSB where such impartiality has been threatened and/or compromised and the actions taken by it to overcome such exposure and risk;
- d) advise RSSB of any material issues which it becomes aware of that may affect its status as a supplier of RISAB, or as may affect a supplier it has assessed and certificated;
- e) have in place a legally enforceable agreement, subject to reasonable terms and by agreement within an appropriate commercial framework, for the provision of RISAB Services to a supplier(s), including but not limited to, the inclusion of provisions and obligations for such supplier(s), when successfully assessed [and for the duration of their certification], to:
  - i) advise the Applicant of any material issue subsequently affecting such assessment and its ability as a supplier(s) to conform with the certification requirements;
  - ii) co-operate with the Applicant in the notification and investigation of any complaints as may arise regarding a supplier(s) it has certificated in relation to such certification status and/or the product(s) in question;
  - iii) to participate and co-operate jointly with the Applicant on follow up investigations if material issues occur;
  - iv) take appropriate action as may be recommended by the Applicant in respect of such complaints and any deficiencies in the product(s) that may affect a supplier(s) and its compliance with the requirements and the ongoing integrity/efficacy of its approval to supply the product(s)
  - v) not use its product certification in such a manner which may be misleading or unauthorised and in making reference to it, complies with the requirements of the RISAB and/or as may be specified by RISAS
  - vi) acknowledge and accept that in the event of failure to comply with the requirements of e),(v) that this shall be dealt with by suitable action including, but not limited to, corrective actions, withdrawal of a certificate, publication of the transgression and if necessary, legal action.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- a) Unless otherwise agreed in writing between the parties, all copyright, design rights and other intellectual property rights in any work which is developed by RSSB in the course of the Accreditation Procedure shall be vested in RSSB and the Applicant shall do all things and render all such assistance as may be reasonably required by RSSB in order to vest such rights in RSSB.
- b) Any plans, drawings, documents, handbooks, codes of practice or other information (the "Documents") and the RISAS Rules and Principles as may be provided by RSSB pursuant to the Contract shall at all times remain RSSB's property and the Applicant shall not use, reproduce, disseminate, adapt, transmit in any form or by any means the Documents or the RISAS Rules and Principles or any part thereof, or permit the same to be so used, reproduced, disseminated, adapted

or transmitted as aforesaid or published, other than for the purposes of carrying out its obligations under the Contract.

c) The Applicant hereby grants to RSSB an irrevocable, non-exclusive, royalty-free licence to use the Applicant's intellectual property which the Applicant has used or supplied in connection with the Accreditation Procedure and for the purposes thereof, provided that the Applicant shall have no liability for any use of such intellectual property other than for the purposes for which it is intended.

d) The Supplier shall indemnify RSSB against all loss, damage, costs and expenses for which RSSB is or becomes liable as a result of any infringement or alleged infringement of the Applicant of any third party's intellectual property rights.

## **6. CONFIDENTIALITY**

a) Each party agrees to keep all documents supplied to it by the other party or which are created in connection with this Contract and the Accreditation Procedure and all other matters arising or coming to its attention in connection with the Accreditation Procedure secret and confidential and not at any time for reason whatsoever to disclose them or permit them to be disclosed to any third party except as permitted hereunder at b) and to enable RSSB to carry out its functions, duties and obligations in accordance with the RISAS Rules and Principles and the Applicant to carry out its functions, duties and obligations as a RISAB (if and as applicable). The parties' obligations under this Condition shall survive the expiry or the termination of the Contract for whatever reason.

b) Each party may rely on or disclose such confidential information as may be required by any applicable law, or by the order of a court of competent jurisdiction, or by a government department, or agency, or other bona fide regulatory body entitled at law to require such disclosure of the information.

## **7. LIABILITY**

a) RSSB will be relying upon the Applicant's skill, expertise and experience in the provision of the RISAB Services and also upon the accuracy of all representations or statements made and the advice given by the Applicant in connection with the Accreditation Procedure and the provision of the RISAB Services and the accuracy of all contractual documentation and the Applicant hereby agrees and accepts to indemnify RSSB against all reasonably foreseeable properly mitigated loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by RSSB or by a third party as a result of failure of the applicant to use such skill, expertise and experience, or the provision by the Applicant of inaccurate, or incorrect representations, statements, or contractual documentation.

b) The Applicant accepts:

- (i) liability for death and personal injury howsoever resulting from the Applicant's negligence;
- (ii) liability for damage to property resulting from the Applicant's negligence where such negligence has arisen or arises in connection with the Accreditation Procedure and provision of the RISAB Services or in connection with any other activities undertaken by the Applicant pursuant to or for any purpose related to the Contract; and
- (iii) the Applicant hereby agrees to indemnify RSSB against all and any liability, loss, damage, costs and expense of whatsoever nature incurred or suffered by RSSB or by any third party whether arising from any disputes, contractual, tortious or other claims or proceedings which seek to recover loss and damage incurred by reason of any such death, personal injury or damage to property in relation to the Accreditation Procedure and/or provision of the RISAB Services.

c) The Applicant undertakes to:

- (i) maintain, at its own cost, public liability insurance for the amount of £1,000,000 (one million pounds) in respect of any one occurrence or series of occurrences arising out of one event and in the aggregate to ensure that its activities under the Contract are insured and remain insured under an annual professional indemnity policy, or policies for six years after completion of any RISAB Services, provided that such insurance remains available at commercially reasonable rates.
- (ii) maintain at its own cost, professional indemnity insurance for the amount of £1,000,000 (one million pounds) in respect of any one occurrence or series of occurrences arising out of one event to ensure that its activities under the Contract are insured and remain insured under an annual professional indemnity policy or policies.
- d) The Applicant undertakes to obtain and maintain at its own cost, all consents and licences which are necessary for the RSSB to carry out its functions and obligations in accordance with the RISAS Rules and Principles.
- e) The total aggregate liability of the Applicant arising under, or in connection with this Contract, whether in tort, or otherwise, shall be limited in respect to professional indemnity to £1,000,000 (one million pounds), except in respect of death and personal injury caused by its negligence and neither party shall be liable to the other for any other consequential or indirect losses of any kind resulting from or arising out of or in connection with this Contract.
- f) The provisions of this Condition 7 shall survive the termination of the Contract for any reason.

## **8. SAFETY REQUIREMENTS**

a) The Applicant shall take all measures as may be necessary to comply with the requirements of the Health and Safety Act 1974 and any other acts, orders, regulations and codes of practice (as amended from time to time) relating to health and safety which may apply to it including but not limited to those as may be applicable whilst providing RISAB Services at a supplier's site(s) and shall procure that its Key Personnel, other employees, agents, sub-contractors and sub-suppliers comply with such requirements.

b) The Applicant shall promptly notify RSSB of any health and safety issues or hazards which may arise on connection with RSSB's performance of the Accreditation Procedure.

## **9. PAYMENT**

a) RSSB shall from time to time raise an invoice in respect of costs it has incurred in relation to the Accreditation Procedure. The Applicant agrees that payment will be made within 28 days of the issue of such invoice, failing which interest shall accrue at a rate of 3% above the base rate set by Barclays Bank from time to time.

## **10. ASSIGNMENT AND SUB-CONTRACTING**

The Applicant shall not assign, transfer, sub-contract or in any other manner make over to any third party the benefit of the Contract, or RISAB status (if applicable) without the prior written consent of RSSB.

## **11. STATUTORY AND OTHER REGULATIONS**

- a) The Applicant shall comply in all respects with the law and all applicable rules and regulations in all matters arising in the performance of or in connection with the Contract.
- b) Without prejudice to or limitation of any other rights RSSB may have, if the Applicant does not fulfil his obligations and responsibilities under the Contract, the Applicant shall indemnify RSSB against all properly mitigated costs for which RSSB becomes liable and for which it would not otherwise be liable.

## **12. SUSPENSION OR TERMINATION**

- a) The Contract shall terminate automatically on the completion date (as defined in Condition 2).
- b) The Contract shall also be deemed terminated in the event of:
  - (i) the passing by the Applicant of a resolution for its winding-up or the making by a court of competent jurisdiction of an order for the winding-up of the Applicant or the dissolution of the Applicant; or

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- (ii) the making of an administration order in relation to the Applicant or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the Applicant's assets; or
- (iii) the Applicant making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally. In such event RSSB may, without prejudice to any other power of termination or to any rights or remedies it may have, terminate the Contract forthwith by notice and the Applicant shall indemnify RSSB against all costs, expenses and damages for which RSSB becomes liable arising from such termination.
- c) Without prejudice to RSSB's other rights and remedies, RSSB may at any time and by notice in writing summarily terminate the Contract or suspend delivery of the RISAB Services by and without compensation to the Applicant if:
  - (i) the Applicant commits any breach of the Contract and on being given written notice to do so by RSSB fails to remedy such breach (a) within 14 days, or (b) other period as may be agreed by the parties, (or in the absence of such agreement (a) shall apply); or
  - (ii) the Applicant fails to perform its obligations under the Contract with due diligence.
- d) Termination of the Contract shall not prejudice or affect any right or remedy which has accrued or shall accrue thereafter to RSSB, and any provision which is expressed to survive the Contract shall remain in full force and effect.
- e) On expiry or termination of the Contract:
  - i) the Accreditation Certificate shall immediately become null and void.
  - ii) the Applicant shall immediately cease to provide RISAB Services and all rights, authorities and obligations of the parties shall cease, but without prejudice to any accrued rights, obligations, remedies or liabilities of either party, or any rights or obligations which give effect to or are expressly or impliedly intended to come into effect on or to continue after expiry or termination.
  - iii) the Applicant will immediately notify all persons to whom it has or proposes to provide RISAB Services of Condition 12 e), i) above.
  - iv) the Applicant will, at its cost, co-operate with RSSB's representative in the collation and subsequent release into the care custody and control of RSSB, of all documentation and records relating to the provision of RISAB Services and certification of a supplier(s) [produced during the period and validity of this contract].

**13. DATA PROTECTION**

The Applicant agrees that it shall in relation to personal data processed in connection with this Contract ('RISAS Data'):

- a) process the RISAS Data in accordance with the Data Protection Act 1998 ('DPA') and any other applicable data protection legislation as may apply;
- b) use all reasonable efforts to assist RSSB to comply with such obligations as may be imposed on RSSB by the DPA in relation to the RISAS Data.

**14. DRUGS AND ALCOHOL POLICY**

The Applicant agrees to:

- a) comply with RSSB's Drugs and Alcohol Policy (as amended from time to time) ('the Policy'), a copy of which may be obtained from RSSB and
- b) to procure that its Key Personnel, employees, staff and agents comply with the Policy.

**15. GOVERNING LAW AND JURISDICTION**

The validity, construction and performance of the Contract shall be governed by English Law and all disputes, claims or proceedings between the parties relating to the validity, construction or performance of the Contract shall be subject to the non-exclusive jurisdiction of the High Court of Justice in England to which the parties hereto irrevocably submit

**16. SET OFF**

Without prejudice to RSSB's other rights and remedies, if the Applicant is in breach of any of his obligations under this Contract, the Applicant shall pay or allow to RSSB such sum as RSSB's Representative estimates to be fair and reasonable in respect of any losses, damages, costs or expenses which RSSB has suffered or may become liable for by reason thereof. As and when the amount of any such loss or damage is known, RSSB's Representative shall issue a statement in relation thereto.

**16. NO WAIVER**

No failure to exercise or delay in exercising any right, power or remedy under or in connection with the Contract shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

**18. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available other than pursuant to that Act.