

The terms and conditions set out below apply to the SUPPLIER'S participation in the LINK-UP AUDIT scheme, through which the LINK-UP SUBSCRIBERS qualify SUPPLIERS for the provision of particular products or services by means of on-site validation audits. The SUPPLIER will be deemed to have accepted these terms at the time when the SUPPLIER submits payment for their LINK-UP AUDIT to ACHILLES.

## 1. Definitions

ACHILLES means Achilles Information Limited.

AUDIT REPORT means the completed written report detailing the findings and results of a LINK-UP AUDIT.

EXPIRY DATE means the date on which the LINK-UP AUDIT will cease to be valid, as advised to the SUPPLIER by ACHILLES.

CORE AUDIT MODULE is a particular audit module owned and maintained by Network Rail and provided to ACHILLES for use within the LINK-UP AUDIT scheme.

INTELLECTUAL PROPERTY means all intellectual property rights including copyright (in any software, LINK-UP AUDIT PRODUCT CODE and QUESTION SETS, operational manuals and reports), database rights, neighbouring rights and all rights in relation to inventions (including any program, system, procedure, process, formula or method of production), patents, registered and unregistered trademarks, registered and unregistered designs, trade secrets and confidential information.

LINK-UP means the common database operated by ACHILLES on behalf of SUBSCRIBERS in the rail and transport industry.

PARTIES to these terms and conditions mean ACHILLES and the SUPPLIER. A PARTY to these terms and conditions means either ACHILLES or the SUPPLIER.

LINK-UP AUDIT means an annual audit, undertaken by or on behalf of ACHILLES, of SUPPLIERS of products/services that are identified as auditable within the LINK-UP scheme PRODUCT CODE BROCHURE, and which have been selected by the SUPPLIER as a part of their LINK-UP Product Code selection and their responses to the LINK-UP Qualification Questionnaire. A LINK-UP AUDIT may also include a CORE AUDIT MODULE dependent upon the location and scope of work undertaken by the SUPPLIER as identified in their Product Code selection and responses to the LINK-UP Qualification Questionnaire. The results of these audits and the AUDIT REPORTS are shared amongst SUBSCRIBERS (subject to their agreed access limitations), to reduce the auditing burden within the rail industry.

LINK-UP AUDITOR means an auditor who has successfully completed the LINK-UP AUDIT Licensed Auditors Course and who is assigned by ACHILLES to conduct LINK-UP AUDITS.

LINK-UP AUDIT PRODUCT CODE QUESTION SET means the questions and associated documentation governing the content of LINK-UP AUDITS used by ACHILLES, and which have been accepted by Network Rail or other approved designated bodies where appropriate.

PRODUCT CODE BROCHURE means the latest version of the document of the same name published on the RAIL PORTAL, which displays the current available selection of Product Codes from which the SUPPLIER may select. The PRODUCT CODE BROCHURE also identifies those Product Codes which are auditable by the LINK-UP AUDIT scheme.

RAIL PORTAL means the website operated by ACHILLES and located at [www.rail.achilles.com](http://www.rail.achilles.com) through which SUBSCRIBERS access LINK-UP and the AUDIT REPORTS, in addition to other industry information and services.

SUBSCRIBER means one or more of the companies holding either a Buyer contract or a Supplier-Patron contract for access to the LINK-UP scheme.

SUPPLIER means a supplier, contractor or a service provider who is registered on the LINK-UP scheme and who is required to undergo LINK-UP AUDITS.

A Working Day is defined as a weekday, excluding UK public holidays, between the hours of 0900 and 1730.

## 2. General Terms

In undertaking the LINK-UP AUDIT and making available AUDIT REPORTS, ACHILLES provides validation to SUBSCRIBERS as to whether or not a SUPPLIER has provided evidence of having appropriate management systems and controls in place in respect of the relevant auditable product/service categories. ACHILLES makes no warranties, either to the SUPPLIER or to SUBSCRIBERS that a SUPPLIER that has passed a LINK-UP AUDIT will always act in accordance with any management systems and controls which were in evidence at the time of the LINK-UP AUDIT.

ACHILLES will make the AUDIT REPORT available to SUBSCRIBERS (subject to their agreed access limitations), by loading the AUDIT REPORT onto the RAIL PORTAL. ACHILLES will endeavour, to load the SUPPLIER'S AUDIT REPORT onto the RAIL PORTAL within four weeks of the AUDIT DATE (as defined below). This will include amending the SUPPLIER'S status as displayed on the RAIL PORTAL. Notwithstanding anything else in these terms and conditions ACHILLES will not be liable for any failure in performing any of its obligations under these conditions if such failure is caused by circumstances beyond the control of ACHILLES, which shall include any Act of God, war, trade dispute, fire, flood, drought, tempest or any other abnormal weather conditions.

In all cases ACHILLES' liability is limited to the value of the LINK-UP AUDIT fees paid by the SUPPLIER.

The SUPPLIER binds itself to answer the questions and to provide any relevant supporting materials or documents requested in the course of a LINK-UP AUDIT as accurately and completely as possible such that the completed AUDIT REPORT reflects the status of the management systems and controls put in place by the SUPPLIER at the time of completion of the LINK-UP AUDIT.

The SUPPLIER shall not offer, give or agree to give to the LINK-UP AUDITOR or any person employed by or on behalf of ACHILLES any gift or consideration of any kind as an inducement or reward for any act in relation to the performance of the LINK-UP AUDIT. Any breach of this condition by the SUPPLIER (or by anyone employed by or acting on their behalf) in

relation to the LINK-UP AUDIT will entitle ACHILLES to terminate this agreement with immediate effect. Under such circumstances ACHILLES will not refund any fees received from the SUPPLIER.

The SUPPLIER agrees to maintain the confidentiality of any LINK-UP AUDIT PRODUCT CODE QUESTION SETS issued by Achilles or downloaded from the RAIL PORTAL.

The SUPPLIER agrees to limit distribution of the LINK-UP PRODUCT CODE QUESTION SETS to individuals in the SUPPLIER'S organisation who require access to them for the purpose of completing the LINK-UP AUDIT. In addition the SUPPLIER will notify ACHILLES immediately if it knows or suspects any misuse of, or breach of confidentiality relating to the LINK-UP AUDIT PRODUCT CODE QUESTION SETS.

If at any time any one of the provisions of these conditions becomes invalid, illegal or unenforceable in any respect, the validity and enforceability of the remaining provisions shall not in any way be affected or impaired. These terms and conditions shall continue in effect until amended or terminated by ACHILLES by written notice.

### **3. Indemnities**

The SUPPLIER shall indemnify and keep indemnified ACHILLES, its officers, employees and agents against all and any liability, losses, damages, awards, claims, costs and expenses that they may sustain or incur arising from SUPPLIER'S breach of any representations, warranties or obligations set forth under these terms and conditions, subject to the limit stated below. Each PARTY'S aggregate liability to the other in respect of all claims (whether in contract or tort) shall not exceed £50,000. The PARTIES will not in any circumstances be liable for indirect, incidental or consequential loss or damage or loss of profits, loss of revenue or loss of anticipated savings. Such agreed limitations on the liability of either PARTY will not apply in respect of death or personal injury arising from the negligence of either PARTY, its employees, sub-contractors or agents or in respect of any claims based on fraud.

### **4. Fees, Audit Dates**

ACHILLES will charge the SUPPLIER a fee for the LINK-UP AUDITS which are to be carried out, based on the prevailing rates as advertised by ACHILLES through the RAIL PORTAL.

Following receipt of full payment of the SUPPLIER'S relevant fees, a LINK-UP AUDITOR will contact the SUPPLIER to agree a suitable date on which to conduct the LINK-UP AUDITS (the "AUDIT DATE"). For SUPPLIERS undergoing their first LINK-UP AUDIT, the AUDIT DATE must fall within 180 days of the SUPPLIER'S first registration on the LINK-UP scheme. For SUPPLIERS renewing a previous LINK-UP AUDIT, the AUDIT DATE must fall on or before the EXPIRY DATE of their previous LINK-UP AUDIT.

The AUDIT DATE must be agreed with the LINK-UP AUDITOR within 30 days of the fees being received by ACHILLES. If the SUPPLIER is unable to agree a suitable AUDIT DATE within the relevant periods stated in this clause, the LINK-UP AUDIT will be deemed to be cancelled and ACHILLES will reimburse to the SUPPLIER 90% of the fees received. In such a scenario the SUPPLIER will be required to submit a new application for a LINK-UP AUDIT.

### **5. Cancellation, Administration Fees**

No refund in respect of any cancelled LINK-UP AUDITS will be made if cancellation is made by the SUPPLIER five or less working days before an agreed AUDIT DATE. In the event that a cancellation request is received by ACHILLES between six and ten working days in advance of the agreed AUDIT DATE, ACHILLES will refund the SUPPLIER'S fees less a £250 administration fee. If a cancellation request is received by ACHILLES eleven or more working days in advance of the agreed AUDIT DATE, ACHILLES will refund the SUPPLIER'S fees less a £100 administration fee.

If additional auditable Product Codes are added by the SUPPLIER 10 days or less before an agreed AUDIT DATE such that additional LINK-UP AUDIT fees become payable, Achilles reserves the right to carry out the original planned LINK-UP AUDIT only, in which case the SUPPLIER may need to apply for a separate LINK-UP AUDIT in respect of the added Product Codes. ACHILLES will not refund fees to the SUPPLIER following the completion of a LINK-UP AUDIT.

### **6. Results of a LINK-UP AUDIT**

Upon completion of the LINK-UP AUDIT, the LINK-UP AUDITOR may be able to give the SUPPLIER a recommendation as to whether the SUPPLIER has passed or failed the LINK-UP AUDIT. Any recommended result given by the LINK-UP AUDITOR will be subject to the final decision of ACHILLES; final confirmation of the result will be provided by ACHILLES within 4 weeks of the AUDIT DATE, along with a copy of the AUDIT REPORT. In the event that the SUPPLIER has passed the LINK-UP AUDIT, the status of the SUPPLIER'S record on LINK-UP will be shown as "Qualified via Audit". In the event that the SUPPLIER fails a LINK-UP AUDIT, the status of the SUPPLIER'S LINK-UP AUDIT record on LINK-UP will be shown as "Failed via Audit".

Under the rules of the LINK-UP and LINK-UP AUDIT schemes, if the SUPPLIER fails a LINK-UP AUDIT the SUBSCRIBERS will be notified as such within two WORKING DAYS, and this could result in SUBSCRIBERS ceasing to use the SUPPLIER'S services and/or not inviting the SUPPLIER to tender for additional work until the SUPPLIER has passed a subsequent LINK-UP AUDIT. Any appeals regarding the results of a LINK-UP AUDIT must be made to ACHILLES in writing. Following any failure of a LINK-UP AUDIT, the SUPPLIER will be required to demonstrate that Corrective Actions have been implemented. This may require a full re-audit. Following a successful re-qualification, SUBSCRIBERS will be notified within two WORKING DAYS. ACHILLES will endeavour to load the SUPPLIER'S AUDIT REPORT onto the RAIL PORTAL within four weeks of the AUDIT DATE. This will include amending the SUPPLIER'S status as displayed on the RAIL PORTAL.

The results of the SUPPLIER's first LINK-UP AUDIT will remain valid for a period of one year commencing on the first AUDIT DATE and thereafter on the anniversary of the EXPIRY DATE for subsequent LINK-UP AUDITS. ACHILLES will send the SUPPLIER a reminder three months prior to the EXPIRY DATE. If the SUPPLIER does not agree a subsequent renewal of the LINK-UP AUDIT or agree a suitable future AUDIT DATE in accordance with the terms in clause 4 above, the status of the SUPPLIER'S LINK-UP AUDIT record on LINK-UP will be set to "Audit Expired".

## 7. General Audits

One or more of the SUBSCRIBERS is entitled, at its own discretion and cost, to audit the SUPPLIER for validation of any information which is placed at ACHILLES' disposal for completing the LINK-UP AUDITS. The SUBSCRIBERS have committed themselves to give reasonable notice to the SUPPLIER and ACHILLES in writing for an intended audit. The result of such an audit shall be presented to ACHILLES. If such an audit is refused by the SUPPLIER, or in the event material breaches of these terms and conditions or material misrepresentations are found, ACHILLES and the SUBSCRIBERS may decide to expel the SUPPLIER from the LINK-UP and LINK-UP AUDIT schemes with immediate effect under the rules approved by the LINK-UP Governance Group.

## 8. Ownership Rights

The copyright and all intellectual property rights whatsoever of all computer programs, user manuals, ACHILLES sponsored web sites, questionnaires and other documentation in connection with the LINK-UP AUDITS, the LINK-UP PRODUCT CODE QUESTION SETS, the LINK-UP DATABASE or the RAIL PORTAL will remain vested in and be the property of ACHILLES. The intellectual property in the information and other material provided by the SUPPLIER in the course of a LINK-UP AUDIT shall, at all times, remain vested in the SUPPLIER.

## 9. Confidentiality

ACHILLES and the SUPPLIER agree to keep in confidence for a minimum period of five years from the termination of these terms and conditions any information obtained under these terms and conditions and will not divulge the same to any third party, other than its own officers, employees or agents, without the prior written consent of the other PARTY.

ACHILLES shall use all reasonable endeavours to protect and safeguard the information provided by the SUPPLIER from loss, theft, destruction, third party intervention, "hacking" and the like from accidental disclosure and shall ensure all employees do likewise.

These confidentiality provisions shall not apply to:

- i any information in the public domain other than in breach of these terms and conditions;
- ii information that is either trivial or obvious or already in the possession of the receiving PARTY before its receipt from the disclosing PARTY;
- iii information received from a third party (other than a SUBSCRIBER) who is free to disclose the same;
- iv disclosure of information which is required by law or a regulatory body or by a law enforcement agency;
- v information developed by one PARTY independent of the other;
- vi information disclosed to professional advisers, auditors, bankers or financiers provided a confidentiality undertaking is in force with at least the same terms as this clause.

ACHILLES agrees to ensure that each LINK-UP AUDITOR undertakes similar terms of confidentiality before being allowed to conduct any LINK-UP AUDITS, and that each SUBSCRIBER undertakes similar terms of confidentiality before being allowed to access the LINK-UP AUDIT REPORTS.

## 10. Law and Jurisdiction

These terms and conditions shall be governed by the laws of England and Wales, and the parties shall be subject to the exclusive jurisdiction of the English Courts.