



# LINK-UP SUPPLIER STANDARD TERMS AND CONDITIONS



The terms and conditions set out below apply to the SUPPLIER'S participation on the LINK-UP DATABASE (including NOTICE and MARKIT as applicable) and their access to the QUESTIONNAIRES. The SUPPLIER will be deemed to have accepted these terms at the time when the SUPPLIER submits its payment to ACHILLES. However, a contract between ACHILLES and the SUPPLIER will not be formed unless and until ACHILLES sends to the SUPPLIER an email confirming acceptance of the SUPPLIER's application. These terms and conditions shall apply to the exclusion of any other terms and conditions, including without limitation any purchase order or confirmation of order provided by the SUPPLIER.

## 1. Definitions

ACHILLES means Achilles Information Limited.

CPV Code means the product/service category structure used by OJEU.

INTELLECTUAL PROPERTY means all intellectual property rights including copyright (in any software, 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 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 QUESTIONNAIRES. A LINK-UP AUDIT may also include a CORE AUDIT MODULE dependent upon the location and scope of work undertaken by the SUPPLIER. The resulting audit result and reports are shared amongst SUBSCRIBERS (subject to their agreed access limitations), to reduce the auditing burden within the rail industry.

LINK-UP DATABASE means the common database operated by ACHILLES on behalf of SUBSCRIBERS in the rail or other industries.

MARKIT means the web directory service enabling SUPPLIERS to make further marketing information available to SUBSCRIBERS in addition to that contained within their completed LINK-UP QUESTIONNAIRES.

NOTICE means the database and email notification service through which ACHILLES provides participating SUPPLIERS with summaries of and links to contract opportunity and tender award notices published by the Official Journal of the European Union ("OJEU"), and other selected third party information providers.

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

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.

QUESTIONNAIRES means the online questionnaires (or their hard-copy equivalents) to be completed by the SUPPLIER for the purpose of collecting certain company information which will subsequently be made available to SUBSCRIBERS (subject to their agreed access limitations) via the LINK-UP DATABASE.

RAIL PORTAL means the website operated by ACHILLES and located at [www.rail.achilles.com](http://www.rail.achilles.com) through which SUBSCRIBERS access the LINK-UP DATABASE and the LINK-UP 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 DATABASE.

SUPPLIER means a supplier, contractor or a service provider who wishes to register, or is registered on the LINK-UP DATABASE.

## 2. General Terms

ACHILLES will provide to SUBSCRIBERS (subject to their agreed access limitations), the information provided by the SUPPLIER through the QUESTIONNAIRES, by loading the information received from the SUPPLIER into the LINK-UP DATABASE. ACHILLES will notify the SUPPLIER in writing or by email confirming the registration of the SUPPLIER'S information onto the LINK-UP DATABASE, or providing notification of any amendments that may be required before the SUPPLIER'S information can be registered onto the LINK-UP DATABASE. The SUPPLIER binds itself to answer the questions in the QUESTIONNAIRES as accurately and completely as possible such that the completed questionnaires reflect the general status of, and the specific goods and or services offered by, the SUPPLIER at the specified time of completion of the questionnaires. The SUPPLIER is responsible for reviewing the accuracy of the data information entered on the QUESTIONNAIRES.

If the SUPPLIER has applied to join the NOTICE service ACHILLES will provide the SUPPLIER with the ability to search the OJEU database of contract opportunities and tender award notices. Upon successful registration of the LINK-UP QUESTIONNAIRE ACHILLES will send to the SUPPLIER regular emails containing hyper-links to relevant contract opportunity or tender award notices published in the OJEU. The relevance to the SUPPLIER of such notices is initially based on a default profile established by ACHILLES using its best endeavours to match the corresponding product/service categories selected by the SUPPLIER in their completed LINK-UP QUESTIONNAIRES with the CPV CODES on the notices provided by OJEU. It is the responsibility of the SUPPLIER to establish and modify as necessary their own notice profile using the tools provided by ACHILLES. ACHILLES is not responsible for the content available on the OJEU or other third party websites.

If the SUPPLIER has applied to join the MARKIT service, ACHILLES will send to the SUPPLIER a set of template instructions describing the format of the information which the SUPPLIER may submit for inclusion within MARKIT. ACHILLES reserves the right at its sole discretion not to publish within MARKIT any information or associated files submitted by the SUPPLIER which (i) are not in accordance with the template instructions provided by ACHILLES, or (ii) may breach any of these terms and conditions.



# LINK-UP SUPPLIER STANDARD TERMS AND CONDITIONS



During use of the LINK-UP DATABASE or the QUESTIONNAIRES the SUPPLIER agrees to:

- i. Comply with ACHILLES reasonable requirements and directions as to use of the QUESTIONNAIRES (and NOTICE and/or MARKIT as applicable);
- ii. Use the QUESTIONNAIRES in accordance with applicable law, including data privacy laws and communication regulations;
- iii. Not interfere with the proper functionality of the web site hosting the QUESTIONNAIRES;
- iv. Ensure that no virus or other harmful element is uploaded onto the LINK-UP DATABASE, or QUESTIONNAIRES.

The SUPPLIER agrees not to use the LINK-UP DATABASE, the QUESTIONNAIRES or MARKIT to knowingly load, post or distribute any information that:

- i. infringes the INTELLECTUAL PROPERTY rights of any other person or entity;
- ii. is harmful, inaccurate, misleading, fraudulent, defamatory, obscene, offensive or otherwise illegal.

ACHILLES and the SUPPLIER shall use their reasonable endeavours to ensure that computer software viruses that may damage hardware, software or communication systems are not knowingly created or introduced to the web-site hosting the LINK-UP DATABASE or the QUESTIONNAIRES.

The SUPPLIER agrees to maintain the confidentiality of the unique QUESTIONNAIRE log on, required by the SUPPLIER to gain access to the QUESTIONNAIRES, and issued by ACHILLES in the LINK-UP introductory letter or email. The SUPPLIER agrees to limit distribution of this log on to individuals in the SUPPLIER'S organisation who require access to this log on for the purpose of completing the questionnaires. In addition the SUPPLIER will notify ACHILLES immediately if it knows or suspects any misuse of, or breach of confidentiality relating to this log on.

Notwithstanding anything else in these terms and conditions ACHILLES shall 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 standard information material required for registration on the LINK-UP DATABASE.

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 by ACHILLES by written notice.

### 3. Equifax Financial Information

The SUPPLIER hereby accepts that ACHILLES has the right to obtain the SUPPLIER'S Equifax Score (which is based on the SUPPLIER'S statutory audited accounts and other financial information) directly from Equifax plc ("Equifax"), and to display this Equifax Score in the LINK-UP DATABASE alongside the additional information submitted by the SUPPLIER in the QUESTIONNAIRES. The SUPPLIER is solely responsible for ensuring that the Equifax Score provided to ACHILLES by Equifax is correct. ACHILLES shall endeavour to rectify any incorrect Equifax Score within a reasonable period where the fault is with ACHILLES; where the fault is with Equifax then the SUPPLIER must liaise with Equifax directly to rectify any incorrect information. ACHILLES shall advise the SUPPLIER how to contact Equifax if this is the case. ACHILLES accepts no liability whatsoever for the accuracy of Equifax Score provided by Equifax or any arising consequential loss that may be incurred. In addition, the SUPPLIER accepts the disclaimer issued by Equifax as defined in Schedule A.

### 4. Indemnities

ACHILLES shall indemnify the SUPPLIER for any loss suffered by the SUPPLIER as a result of ACHILLES' failure to comply with any applicable laws or regulations in providing the LINK-UP DATABASE, subject to the limit stated below.

ACHILLES shall indemnify and keep indemnified the SUPPLIER, 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 ACHILLES breach of any representations, warranties or obligations set forth under these terms and conditions, subject to the limit stated below.

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 circumstance 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.

### 5. Fees and Payment

Both SUPPLIERS and SUBSCRIBERS will contribute towards the administration cost of operating the LINK-UP DATABASE. For registration in this database an annual non-refundable fee is payable by the SUPPLIER. Such fee is payable by the methods set out on the ACHILLES website from time to time. The SUPPLIER acknowledges and agrees that if paying online:

- payment will be processed on ACHILLES' behalf by ACHILLES' payment processing sub-contractor (the "Payment Processor") from time to time (currently CyberSource Limited (a UK registered company));
- the Payment Processor may process any personal data provided by the SUPPLIER for the purpose of processing payment of the fee;
- receipt by the SUPPLIER of any email notification that the SUPPLIER'S payment is being or has been processed does not constitute



# LINK-UP SUPPLIER STANDARD TERMS AND CONDITIONS



acceptance by ACHILLES that it will include the SUPPLIER'S information in the LINK-UP DATABASE and/or that there exists a contract. If ACHILLES decides, for whatever reason, to decline the SUPPLIER's application, then any amounts paid by the SUPPLIER will be repaid without delay; and

- payment of the fee may be made to ACHILLES or any of its affiliates and receipt by any such entity shall constitute valid performance by the SUPPLIER of its obligation to pay such fee.

## 6. LINK-UP Audits

Under the rules of the LINK-UP DATABASE, SUPPLIERS who have registered information in relation to Product Codes that are identified as Auditable within the PRODUCT CODE BROCHURE will be required to undergo one or more LINK-UP AUDITS. An additional fee will be payable by SUPPLIERS requiring LINK-UP AUDITS, details of which will be provided by ACHILLES at the time it is identified that the SUPPLIER will be required to undergo any such LINK-UP AUDITS. If the SUPPLIER is required to undergo such LINK-UP AUDITS the SUPPLIER binds itself to answer the questions put to it during the course of such audits as accurately and completely as possible such that the results of the LINK-UP AUDITS accurately reflect the status of the SUPPLIER'S management systems and controls at the time of the LINK-UP AUDITS. Separate Terms and Conditions also apply to the delivery of LINK-UP AUDITS and these are available on the RAIL PORTAL.

In undertaking and making available the results of a LINK-UP AUDIT, ACHILLES provides verification to SUBSCRIBERS (subject to their agreed access limitations), as to whether or not a SUPPLIER has provided evidence of having effective management systems and controls in place in respect of the relevant auditable 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.

## 7. General Audits

One or more of the SUBSCRIBERS to the LINK-UP DATABASE is entitled, at its own discretion and cost, to audit the SUPPLIER for validation of information which is placed at ACHILLES' disposal for updating the LINK-UP DATABASE. 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 DATABASE with immediate effect under the rules approved by the LINK-UP Governance Group.

## 8. Ownership Rights

The copyright and all INTELLECTUAL PROPERTY rights whatsoever in the LINK-UP DATABASE, NOTICE, MARKIT, all computer programs, user manuals, ACHILLES sponsored web sites, QUESTIONNAIRES, PRODUCT CODE BROCHURE and other documentation in connection with the LINK-UP DATABASE will remain vested in and be the property of ACHILLES. The INTELLECTUAL PROPERTY in the information and other material entered by the SUPPLIER onto the QUESTIONNAIRES or submitted through MARKIT 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.

This provision shall not apply to:

- any information in the public domain other than in breach of these terms and conditions;
- information that is either trivial or obvious or already in the possession of the receiving PARTY before its receipt from the disclosing PARTY;
- information received from a third party (other than a SUBSCRIBER) who is free to disclose the same;
- disclosure of information which is required by law or a regulatory body;
- information developed by one PARTY independent of the other; or
- 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 SUBSCRIBER undertakes similar terms of confidentiality before being allowed to access the LINK-UP DATABASE.

## 9. Term and Termination

The contract shall continue for the period to which the fees paid by the SUPPLIER pursuant to clause 5 relates and shall terminate automatically at the end of such period.

Without prejudice to any of ACHILLES' other rights or remedies, ACHILLES may remove the SUPPLIER'S details (either temporarily or permanently) from the LINK-UP DATABASE and terminate the contract in the event of any actual or suspected breach by the SUPPLIER of these terms and conditions, or any insolvency or other event occurring in respect of the SUPPLIER as a consequence of debt.



## LINK-UP SUPPLIER STANDARD TERMS AND CONDITIONS



### 10. Law and Jurisdiction

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

#### Schedule A Equifax Plc Disclaimer

Where indicated, Equifax Plc (**Equifax**) is the source of the financial information displayed in the LINK-UP DATABASE (**Financial Information**). As a condition of Equifax allowing Achilles Information Limited to provide the Financial Information to you, Equifax Plc requires you to agree to the following terms and conditions.

- Most of the Financial Information is provided to Equifax by others and as such Equifax does not control the Financial Information's accuracy or completeness. The volume and nature of the information on Equifax's databases makes it impractical for Equifax to check it. Because of this, Equifax will only be liable to you for any loss or damage caused by its negligence or wilful default and Equifax shall not in any other circumstances be liable for any inaccuracies, faults, or omissions in the Financial Information.
- You must not rely upon the Financial Information as the only factor or source of information in making any decision. Further advice and information from appropriate experts and professionals should be obtained before making any decision.
- Equifax shall not in any circumstances (whether for breach of contract, negligence or any other tort, under statute or otherwise at all) be liable for any indirect or consequential loss or damage at all, or any loss of business, capital, profit, reputation or goodwill.
- Nothing in these terms shall limit or exclude Equifax's liability for death or personal injury arising from its negligence.
- Equifax's entire liability in respect of all causes of action arising by reason of or in connection with these terms (whether for break on contract, negligence or any other tort, under statute or otherwise at all) shall be limited to the amount you paid Achilles Information Limited for the Financial Information (excluding VAT).
- If you want to make a claim against Equifax in relation to the Financial Information, you must give Equifax written notice of the claim within 3 months of becoming aware of the circumstances giving rise to the claim or, if earlier, 3 months from the time you ought reasonably to have become aware of such circumstances. If you do not, Equifax shall not be liable for the claim.