



INTERPRETATION

1. In this Agreement:-

“**Authorised Representative**” in respect of each party means the person signing this Agreement on behalf of such party who shall have the functions set out in Clause 1 of Schedule 2;

“**Confidential Information**” means all information of a commercial or proprietary nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by the Disclosing Party to the Receiving Party whether before or after the date of this Agreement including in particular any information relating to the Disclosing Party’s know-how, trade secrets and business affairs;

“**Contract Officer**” is a person appointed pursuant to and having the functions set out in Clause 1 of Schedule 2;

“**Direct Award Agreement**” means an agreement (taking effect after the expiry of the Franchise Agreement) between the Company and the Department of Transport to operate passenger carrying train services which may be awarded by the Department for Transport to the Company, as such agreement may be amended from time to time”

“**Disclosing Party**” means the party disclosing confidential information;

“**Force Majeure Event**” means any event beyond the reasonable control of a party including, without limitation and to the extent beyond the reasonable control of a party acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule regulation or direction or any overriding emergency procedures, accident fire, flood, storm and strikes or any industrial action by employees of any party other than the party relying on the Force Majeure Event;

“**Franchise Agreement**”: means the franchise agreement between the Company and the Department of Transport to operate passenger carrying train services, as such agreement may be amended from time to time.”

“**Industry Standards**” means the rules and regulations including codes of practice and conduct in force from time to time relating to the Services to be provided under the Agreement;

“**Period**” means a four week period notified by RIQC to the Customer or such other period as may be agreed between the parties;

“**Receiving Party**” means the party to whom confidential information is disclosed;

“**Safety Plans**” means RIQC safety and environmental policies considered necessary by RIQC for the safe performance of the Agreement as notified by RIQC to the Customer.

“**Services**” means the Services to be carried out by RIQC as specified in Schedule 3;

“**Specified Rate**” means 2% per annum above the base lending rate of the Royal Bank of Scotland plc for the time being.

“**Variation**” has the meaning set out in Clause 5 of Schedule 2;

“**Year**” means each consecutive period of fifty-two weeks during this Agreement beginning on 1 April or such other date as may be agreed between the parties.

2. In this Agreement, a reference to:

- 2.1 persons includes a reference to anybody corporate, unincorporated association or partnership;
- 2.2 a person includes a reference to that person’s legal personal representatives, successors and permitted assigns;
- 2.3 a Clause or Schedule is a reference to a clause of or a schedule to this Agreement;
- 2.4 an agreement or other document is a reference to that agreement or document as from time to time supplemented, varied or amended.

3. The headings in this Agreement shall not affect the interpretation of this Agreement.

**CONDITIONS****1. APPOINTMENT AND FUNCTIONS OF REPRESENTATIVES**

- 1.1 The Authorised Representatives shall have sole authority to agree additions or variations to, and to receive notices issued pursuant to, this Agreement on behalf of the parties to this Agreement.
- 1.2 The Authorised Representatives shall appoint deputies to act in the place of the Authorised Representatives in their absence and shall notify the other party's Authorised Representative of such appointment.
- 1.3 Each party shall appoint a Contract Officer and notify the other of the Contract Officer's name, address and telephone number. The Contract Officer shall be responsible for the day to day operation of the Agreement.

2. PROVISION AND STANDARD OF SERVICES

- 2.1 Unless provided to the contrary in any Schedule 3 to this Agreement, RIQC shall provide all equipment and other facilities necessary for the performance of the Services and shall provide all operating and support services necessary for carrying out the Services.
- 2.2 The Services shall be provided with all reasonable skill, care and diligence throughout the duration of this Agreement.

3. ACCESS TO THE CONTRACT SITE

- 3.1 RIQC will only allow access to the Customer's premises or the Contract Site authorised employees or other representatives named in a Site Access Authority Certificate provided in advance to RIQC or such other form of authorisation as may be agreed between the parties.
- 3.2 The Customer shall make available to RIQC'S representatives any safety regulations relating to the Contract Site and RIQC shall ensure that all its employees and other representatives comply with the requirements of such safety regulations.
- 3.3 In order that RIQC may provide the Services detailed in Schedule 3 the Customer shall supply RIQC with any necessary information and facilities as appropriate.
- 3.4 Any requirements relating to Sub-clause 3.1 and 3.2 above required by the Customer in pursuance of the agreed contractual duties shall be notified to RIQC in advance in any case, with reasonable notice in order to allow RIQC to meet the terms of the Agreement.
- 3.5 Where RIQC is unable to undertake work pursuant with the Agreement as a direct failure of the Customer to meet 3.3 above the Customer will be responsible for all reasonable costs incurred by RIQC in respect of non-delivery of planned work.

4. COMPLIANCE WITH INDUSTRY STANDARDS

- 4.1 RIQC shall comply with all current Industry Standards and Safety Plans in the performance of the Services and in the provision of the Services shall employ only staff deemed competent and where required certificated in accordance with the relevant Industry Standards.
- 4.2 Each party shall ensure that its employees and other representatives comply with all such requirements for safety training, medical standards and certification as may be prescribed by Industry Standards applicable to the provision of the Services and by any governmental or other authority.

5. VARIATIONS

- 5.1 Subject to the following provisions of this Clause, the Customer may at any time require RIQC to undertake any reasonable Variation to the Services. A Variation is one which will result in Services being provided (i) which are not included in the Services, (ii) which are required other than as a result of any negligent or wrongful act or omission on the part of RIQC and (iii) which involve additional expense to RIQC
- 5.2 In the event of such a Variation being required, RIQC shall state in writing the effect the Variation will have on the ability of RIQC to comply with its obligations under the Agreement and what adjustment if any will be required to the price otherwise payable for the Services. Any adjustment to the price shall be in accordance with the rates, if any, set out in the Agreement and shall be such amount as is reasonable in the circumstances. RIQC shall notify the Customer with such details within 14 days of receipt of the Customer's request or such other period as may be agreed.
- 5.3 The Customer shall notify RIQC whether or not the Customer wishes to commission the Variation to the Services on the basis of RIQC's details. RIQC shall not undertake any Variations unless agreed to in writing by the Customer.
- 5.4 All correspondence pursuant to this Clause 5. shall be conducted by the Authorised Representatives of the parties.

6. AUDIT

- 6.1 RIQC shall arrange at its own cost for its procedures to be regularly audited for compliance with applicable Industry Standards by the responsible authority.
- 6.2 RIQC shall in addition conduct its own audit of its procedures to ensure compliance with its obligations under the Agreement.



6.3 RIQC shall allow the Customer's representatives access at all reasonable times upon reasonable prior notice to the Contract Site to permit such representatives to conduct their own review of RIQC's procedures to ensure compliance with the Agreement.

7. PRICE AND PAYMENT

- 7.1 RIQC shall charge the Customer and the Customer shall pay to RIQC the price for the Services established by the procedures set out in Clause 7.4, or such other procedures as may be agreed between the parties from time to time and such disbursements and out of pocket expenses reasonably incurred in the provision of the Services.
- 7.2 If any additional costs are incurred by RIQC as a result of any negligent or wrongful act or omission of the Customer, its employees or representatives, RIQC shall be entitled to make a reasonable additional charge in respect thereof, or vice versa.
- 7.3 The Customer shall not pay for any Services or materials provided by RIQC other than as expressly provided for under the Agreement or any Variation.
- 7.4 The Customer shall pay RIQC within 28 days following submission of RIQC's invoice. Sums not received by the due date shall bear interest at the Specified Rate whether before or after judgement until payment in full has been received.
- 7.5 All sums due to either party under this Agreement are exclusive of VAT thereon, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply and shall be payable by the paying party only against receipt from the other of a valid VAT invoice in respect thereof.

8. LIABILITY AND INSURANCE

- 8.1 Subject as may otherwise be agreed between the parties, neither party shall be liable to the other in respect of this Agreement except as expressly provided for herein.
- 8.2 If RIQC fails to provide the Services in accordance with the Agreement, the Customer shall be discharged from its obligations to pay for the Services to the extent of such failure. RIQC shall have no liability for any costs of remedying any such failure.
- 8.3 RIQC shall indemnify the Customer against any loss of or damage by RIQC to any equipment, vehicle or materials of the Customer whilst at the Contract Site.
- 8.4 The parties shall make such arrangements for insurance as may be required by the Agreement.
- 8.5 Neither party shall in any circumstances be liable to the other for any indirect or consequential losses howsoever caused, including in particular, loss of anticipated profits goodwill reputation or loss or expenses resulting from third party claims.
- 8.6 Except as set out herein neither RIQC nor any of its servants or agents (on behalf of each of whom RIQC has agreed this clause) shall be liable for any loss damage or expense whatever sustained by any person due to any act or omission or error of whatsoever nature and howsoever caused by RIQC its servants or agents or due to any inaccuracy of whatsoever nature and howsoever caused in any information, review, audit, certification or advice given in any way whatsoever by or on behalf of RIQC, even if held to amount to a breach of warranty.
- 8.7 The Customer undertakes to indemnify RIQC against any losses suffered by or claims made against RIQC as a result of misuse of any Approval or Licence granted by RIQC under this Agreement.
- 8.8 The provision of this Clause 8 may be varied by agreement between the parties in writing and signed by the Authorised Representatives.

9. SPECIFICATIONS AND THIRD PARTY RIGHTS

- 9.1 RIQC accepts no responsibility for any errors, omissions, or other defects in any drawings, designs or specifications provided by the Customer and the Customer shall indemnify RIQC against any and all claims, liabilities, costs and expenses incurred by RIQC in respect of them, including in particular in respect of any infringement or alleged infringement of any rights of any third party.
- 9.2 Any additional work required to be carried out by RIQC as a result of any inaccuracy in the Customer's drawings, designs or specifications shall constitute a Variation and shall be charged for accordingly.
- 9.3 'The certified client, and not the certification body, has the responsibility for consistently achieving the intended results of implementation of the management system standard and conformity with the requirements for certification'.
- 9.4 Conformity assessment activities shall be undertaken impartially. The certification body shall be responsible for the impartiality of its conformity assessment activities and shall not allow commercial, financial or other pressures to compromise impartiality.

10. RIGHTS IN COMPLETED WORK

- 10.1 Subject as otherwise agreed in writing between the parties all copyright, design rights and other intellectual property rights in any work that is developed in the course of the provision of the Services shall rest with RIQC.



- 10.2 Notwithstanding the above RIQC shall grant to the Customer an irrevocable world-wide royalty-free perpetual non-exclusive licence (without the right to sub-licence) to use such intellectual property rights for its own use.
- 10.3 The foregoing provision is expressly subject to any provisions to the contrary contained within any Schedule 3 to this Agreement.

11. TERMINATION

- 11.1 Either party may terminate this Agreement with immediate effect by notice in writing to the other party on or at any time after the occurrence of any of the events specified in Clause 11.2 in relation to the other party.
- 11.2 The events are:
- 11.2.1 a material breach by the other party of any of its obligations under this Agreement which (if the breach is capable of remedy) the other party has failed to remedy within 28 days after receipt of notice in writing giving particulars of the breach and requiring the other party to do so;
- 11.2.2 the passing by the other party 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 other party or the dissolution of the other party;
- 11.2.3 the making of an administration order in relation to the other party or the appointment of a receiver over, or the taking possession or sale by an encumbrancer of, any of the other party's assets;
- 11.2.4 the other party 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.
- 11.3 All rights and obligations of the parties shall cease to have effect immediately upon termination of this Agreement except that termination shall not affect the accrued rights and obligations of the parties at the date of termination.
- 11.4 In the case of termination of the Agreement RIQC's Certificate of Approval shall immediately cease to be valid.
- 11.5 This Agreement shall automatically terminate in the event of the termination of the Franchise Agreement of the Customer either by expiry or earlier in accordance with its terms and on written notification to RIQC by the Customer.
- 11.6 Termination and Expiry of the Franchise Agreement and Direct Award Franchise Agreement
- 11.6.1 In the event of a termination (for whatever reason and howsoever arising) of the Franchise Agreement (or, if applicable, the Direct Award Agreement) this Agreement shall terminate immediately.
- 11.6.2 Other than as set out in 11.6.3 in the event of the expiry of the Franchise Agreement (or, if applicable, the Direct Award Agreement) this Agreement shall terminate immediately.
- 11.6.3 This Agreement shall not terminate pursuant to 11.6.2 where the Company is awarded a Direct Award Agreement, the Franchise Agreement expires and the Franchise Agreement and such Direct Award Agreement run consecutively.

12. FORCE MAJEURE

- 12.1 If either party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event then:
- 12.1.1 that party's obligations under this Agreement shall be suspended for so long as the Force Majeure Event continues and to the extent that party is so prevented, hindered or delayed;
- 12.1.2 as soon as reasonably possible after commencement of the Force Majeure Event that party shall notify the other party in writing of the occurrence of the Force Majeure Event, the date of commencement of the Force Majeure Event and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
- 12.1.3 if that party fails to give the notice referred to in Clause 12.1.2 it shall forfeit its rights under clause 12.1.1;
- 12.1.4 that party shall use all reasonable efforts to mitigate the effects of the Force Majeure Event upon the performance of its obligations under this Agreement; and
- 12.1.5 as soon as reasonably possible after the cessation of the force Majeure Event that party shall notify the other party in writing of the cessation of the Force Majeure Event and shall resume performance of its obligations under this Agreement.
- 12.2 If the Force Majeure Event continues for more than three months after the commencement of the Force Majeure Event either party may terminate this Agreement by giving not less than 28 days notice in writing to the other party.

13. CONFIDENTIALITY

- 13.1 During the term of this Agreement and after termination or expiration of this Agreement for any reason whatsoever the Receiving Party shall:
- 13.1.1 keep the Confidential Information confidential;
- 13.1.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 13.2 and 13.3; and
- 13.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.



- 13.2 During the term of this Agreement the Receiving Party may disclose the Confidential Information to its employees and sub-contractors (the “Recipient”) to the extent that it is necessary for the purposes of this Agreement.
- 13.3 The Receiving Party shall procure that each Recipient is made aware of and complies with all the Receiving Party’s obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.
- 13.4 The obligations contained in Clauses 13.1 to 13.3 shall not apply to any Confidential Information which:
- 13.4.1 is at the date of this Agreement or at any time after the date of this Agreement comes into the public domain other than through breach of this Agreement by the Receiving Party or any Recipient;
- 13.4.2 can be shown by the Receiving Party to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party;
- 13.4.3 subsequently comes lawfully into the possession of the Receiving Party from a third party; or
- 13.4.4 is required by law to be disclosed.
- 13.5 GDPR – RIQC’s Privacy Policy for Contracts and Terms and Conditions

To undertake this contract RIQC will require to retain some personal data relating to the client’s staff. Data such as names, e-mail addresses, telephone numbers and office addresses may be required by RIQC to deliver the service. This will include information gathered while delivering the service. All data will be retained and managed under RIQC’s Privacy Policy which includes the justification for legally retaining this information in accordance with General Data Protection Regulation requirements. The above policy is available on request to clients.

14. ANNOUNCEMENTS

No public announcements, communication or circular (other than to the extent required by law) concerning the transactions referred to in this Agreement shall be made or despatched by either party without the prior written consent of the other party.

15. GENERAL

- 15.1 This Agreement together with any documents referred to in this Agreement constitute the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all previous such Agreements.
- 15.2 If there is any conflict or inconsistency between the provisions of Schedule 2 and Schedule 3 to this Agreement Schedule 3 shall prevail.
- 15.3 No variation of this Agreement shall be valid unless it is in writing and signed by the Authorised Representatives.
- 15.4 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 15.5 Except as expressly provided in this Agreement the rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 15.6 The Customer shall not solicit, procure or engage the Services of any employee or agent of RIQC other than through this Agreement or with the written authority of RIQC who will be entitled to charge an introduction fee at a level to be determined by RIQC.

16. ASSIGNMENT AND SUB-CONTRACTING

- 16.1 Neither party shall assign or transfer or purport to assign or transfer any of its rights or obligations under this Agreement provided that this shall not affect any right of RIQC to assign either absolutely or by way of charge any monies due or to become due to it or which may become payable to it under the Agreement.
- 16.2 RIQC shall not without the consent in writing of the Customer (such consent not to be unreasonably withheld) Sub-contract the Agreement or any part thereof. Any such Consent shall not relieve RIQC from its obligations under the Agreement.

17. NOTICES

- 17.1 Any notice or other communication under or in connection with this Agreement shall be in writing and may be delivered personally, sent by first class post to the Authorised Representatives of the relevant party at the address for correspondence set out in the Agreement or to such other address either party may specify by notice in writing to the other.



18. GOVERNING LAW, JURISDICTION AND ARBITRATION

18.1 This Agreement is governed by, and shall be construed in accordance with, English law.

18.2 Except as otherwise provided to the contrary, all disputes or differences between the parties with respect to any matter or thing of whatsoever nature arising out of or in connection with the Agreement which the parties have failed to resolve after 28 Days shall be referred to arbitration.

SPECIFIC DEFINITIONS

1. In this Agreement:

“**Contract Site**” - the premises where the Services are to be carried out.

“**Services**” - the provision as defined in Schedule 3.

“**Surveillance Audit**” - the process of carrying out a six-monthly or twelve-monthly visit to review the management systems as described more fully in Section 1.4 of the document, Certification Process (MS-PROC-020/009).

“**Non-conformity Request**” or “**NCR**” - written notification of non-compliances identified during an Audit, at any stage of the certification process, as described more fully in Section 1.8 of the document, Certification Process.

“**Stage 1**” - an initial visit to establish details about the Customer to enable the resources and time scales for the system audits to be confirmed and the programme to be prepared and agreed, as described more fully in Section 1.2 of the document, Certification Process.

“**Stage 2**” - an in depth appraisal of the Customer’s management system as described more fully in Section 1.3 of the document, Certification Process.

“**Re-audit**” - an in depth appraisal of the Customer’s management system prior to the expiry of the existing certification to enable certificates to run consecutively as described more fully in Sections 1.5 and 1.7 of the document, Certification Process.