

MEMBERS LICENCE AGREEMENT – RSSB/ATOC PERSONAL TRACK SAFETY DVD

THE AGREEMENT shall commence on the date ‘Registration’ takes place and shall continue in accordance with the terms of this agreement.

PARTIES:

- (1) RAIL SAFETY & STANDARDS BOARD LTD (a company registered in England and Wales number 04655675) whose registered office is at Evergreen House, 160 Euston Road, London, NW1 2DX (“the Licensor”) and
- (2) *The person whose name is entered into the online form completed as part of the Application Process (“the Licensee”)*

RECITAL:

The Licensor wishes to grant the Licensee a licence to use The System and to deliver to the Licensee a DVD, certain data and computer programs incorporating and/or relating to The System and the Licensee wishes to receive the same upon the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED as follows:

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

1. Interpretation

1.1 Definitions

In this Agreement where the context admits:

“Application Process”	means the process by which applicants apply to use The System and which is determined by the website known as www.ptscourse.co.uk ;
“Business Day”	means a day (excluding Saturdays, Sundays) on which banks are open for normal business in London;

"Intellectual Property Rights"

means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights to goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"Nominated Representative"

means the representative of each party nominated in accordance with clause 4.1;

"Purpose"

means use as training resource material by persons having extensive knowledge and experience of the railway industry and who are qualified through the nature of that knowledge and experience to provide Personal Track Safety training to individuals who work all or part of the time on a railway line open to movements or in the vicinity of live conductor rails and who are employed or subcontracted by the same organisation as the trainer; and

"The System"

means the Personal Track Safety DVD and all related data supplied by RSSB to the Licensee pursuant to this Agreement.

1.2 Interpretation

In this Agreement where the context admits:

- A. words and phrases the definitions of which are contained or referred to in Part XXVI Companies Act 1985 shall be construed as having the meanings so attributed to them;
- B. any reference to a "person" includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same shall include a reference to the others;
- C. references to statutory provisions shall be construed as references to those provisions as amended or re-enacted or as their application is modified by other provisions from time to time and shall include references to any provisions of which they are re-enactments (whether with or without modification);

- D. reference to Clauses and Schedules are references to Clauses of and Schedules to this Agreement;
- E. references to the singular include the plural and references to the plural include the singular; and references to the male include the female and references to the female include the male.

1.3 Headings

The headings and sub-headings are for ease of reference only and shall not affect the interpretation of Clauses and Schedules of this Agreement.

2. Grant of Licence to Use the System

- 2.1 In consideration of the sum of £1 (receipt of which is hereby acknowledged), RSSB hereby grants to the Licensee a royalty-free, non-exclusive, non-transferable, non-assignable licence to access and use the System for the Purpose in the United Kingdom.
- 2.2 The Licence shall be revocable by the Licensor at any time and shall terminate upon the Licensor giving two day's written notice of termination to the Licensee.
- 2.3 The System may be used by the Licensee for the Purpose and for no other purpose of any kind.

3. Proprietary Rights

- 3.1 Except where specifically identified in this Agreement, on the face of The System or within the components of The System, The Licensor is the owner of the System and reserves all its rights in and to The System and all and any Intellectual Property Rights of whatever nature in or associated with The System.
- 3.2 The Licensee shall notify RSSB immediately if the Licensee becomes aware of any unauthorised use of the whole or any part of the System by any person.
- 3.3 The Licensee shall not modify, disassemble, reverse engineer or otherwise interfere with or copy The System or its constituent code or data and at all reasonable times will permit RSSB to check the use of The System by the Licensee.

4. Nominated Representative

- 4.1 Each party shall nominate a Nominated Representative.
- 4.2 The Licensee's Nominated Representative should be identified via the Application process.
- 4.3 The Nominated Representative shall be responsible for the management of all matters relating to this Agreement. All communications, documentation and materials relating to this Agreement and sent by a party shall be sent to the other party's Nominated Representative.

5. No Warranty

- 5.1 RSSB does not represent or warrant that The System is fit for the Purpose nor that it meets the Licensee's individual requirements.
- 5.2 The System is not intended to constitute a definitive or complete statement of the law or practice of Personal Track Safety or any other subject.
- 5.3 The System is not intended to constitute advice on any specific situation.
- 5.4 The System includes information and resources that may be incorrect or out of date.
- 5.5 The System and RSSB's means of delivering it may be incompatible with the Licensee's software or computer configuration.
- 5.6 RSSB declares and the Licensee acknowledges that in respect of The System and the Licensee's use of it all implied warranties and conditions are excluded to the maximum extent permitted by law.
- 5.7 RSSB may maintain The System in accordance with the System Specification developed by RSSB, make updates available and advise members of the railway industry of the availability of such updates through an appropriate media identified by RSSB and where requested by the Licensee provide support in relation to The System but RSSB shall have no express or implied obligation to the Licensee to enhance The System or to supply more extensive or up-to-date data for use within the System.
- 5.8 Where information is supplied to the Licensee under clause 7 it shall be supplied by RSSB and accepted by the Licensee on and subject to the terms of this Agreement.

6. Licensee's Warranty

- 6.1 The Licensee acknowledges, represents and warrants that:
 - A. where directly or indirectly it uses The System for the Purpose it will do so in reliance upon its own consideration of the merits of The System and after having assessed the information, data and messages within the System for the purpose of checking to its own satisfaction that The System is a tool suitable for inclusion in a programme of Personal Track Safety tuition to be delivered by or to the Licensee, its directors, officer, employees, subcontractors and/or other persons that the Licensee intends to train or have trained;
 - B. it is not relying on any statements or representations made by RSSB in respect of The System;
 - C. The System has not been prepared to meet the Licensee's individual requirements;
 - D. RSSB has made no investigation of the Licensee's requirements; and

- E. the grant of this Licence by RSSB after RSSB's receipt of information concerning the Licensee's individual requirements shall not constitute any warranty or representation by RSSB that The System is fit for the Purpose or meets the Licensee's individual requirements.

7. Liability

- 7.1 Except as expressly stated in this Agreement, RSSB shall have no liability to the Licensee for any liability, loss or damage arising from or in respect of the grant of this License or the Licensee's use of The System, whether in contract, tort or otherwise and whether caused by the breach or non-performance by RSSB of any obligation or duty owed to the Licensee, its directors, officers, employees or agents or caused otherwise howsoever.
- 7.2 The exclusion from liability in Clause 9.1 shall not apply in the case of death or personal injury caused by the negligence of RSSB or its fraudulent misrepresentation or otherwise to the extent contrary to applicable law.
- 7.3 Neither party hereto is dealing as a consumer within the meaning of Section 12 of the Unfair Contract Terms Act 1977.

8. Assignment

- 8.1 The Licensee shall not assign or transfer or otherwise deal with any right or obligation under this Agreement without the prior written consent of RSSB.
- 8.2 RSSB may at any time assign all or any part of its rights and benefits under this Agreement.

9. Confidentiality

- 9.1 The Licensee shall keep all data and details of the functionality of The System confidential.
- 9.2 Each party undertakes to use all documents and all technical, commercial, financial and other information which is obtained from the other party in connection with this Agreement, or with the negotiations leading up to it, solely for the purpose of performing this Agreement, to keep them confidential and to make them available or disclose them to third parties only so far as it is necessary for the performance of this Agreement.
- 9.3 Each party undertakes not to disclose to any third party, without the prior written consent of the other party, the existence or any term of this Agreement, or the existence or any information about any dispute or disagreement between the parties.
- 9.4 The obligations of confidentiality set out above shall not apply to any documents or information which a party can show:
 - A. at the time of its acquisition was in, or at a later date has come into, the public domain, other than following a breach of this Agreement;
 - B. it knew prior to first disclosure to it by the other party;

- C. it received independently from a third party with the full right to disclose; or
 - D. is information which a competent judicial or administrative body, including but not limited to the Office of Rail Regulation, has a legal right or duty to have access to or knowledge of.
- 9.5 The obligations of confidentiality set out above shall remain in effect after the termination of this Agreement and the parties shall impose corresponding obligations on their employees and third parties involved in the performance of this Agreement.
10. Notices
- 10.1 Any notice required to be given under this Agreement or in connection with the matters contemplated by it shall, except where otherwise specifically provided, be in writing.
- 10.2 Any such notice shall be addressed to the Parties identified. Any notice may be:
- A. personally delivered, in which case it shall be deemed to have been given upon delivery at the relevant address; or
 - B. if sent by first class pre-paid post, in which case it shall be deemed to have been given 2 Business Days after the date of posting; or
 - C. sent by facsimile, in which case it shall be deemed to have been given when despatched, subject to confirmation of uninterrupted transmission by a transmission report.
- 10.3 Where any notice is in fact delivered after 5:30 pm on a Business Day or at any time on a day which is not a Business Day, then it shall be deemed to be given on the next Business Day.
11. Relationship of the Parties
- Nothing in this Agreement shall constitute, or be deemed to constitute, a partnership between the parties nor shall either party be deemed to be the agent of the other.
12. Publicity
- The Licensee shall not, in any manner, either advertise or publish the fact that RSSB has entered into this Agreement without RSSB's prior written consent.
13. Entire Agreement
- 13.1 This Agreement constitutes the entire contract and understanding of the parties and supersedes any prior representations, warranties or arrangements relating to the subject matter of this Agreement.
- 13.2 Neither party is entitled to rely on any contract, understanding, representation, warranty, or arrangement which is not expressly stated in this Agreement.
- 13.3 No variation of this Agreement shall be effective unless made in writing.

14. Waiver

No failure or delay on the part of either party to exercise any right or remedy under this Agreement shall be construed or operate as a waiver of that right or remedy nor shall any single or partial exercise of any right or remedy. The rights and remedies provided in this Agreement are cumulative save where expressed otherwise in this Agreement and are not exclusive of any rights or remedies provided by law save where expressed otherwise.

15. Further Assurance

At any time after the date of this Agreement either party shall, at the request and cost of the other party, execute or procure the execution of such documents and do or procure the doing of such acts and things as the other party may reasonably require for the purpose of giving to the other party the full benefit of all the provisions of this Agreement.

16. Invalidity and Severability

If any provision of this Agreement shall be held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

17. Counterparts

This Agreement may be executed in any number of counterparts, which shall together constitute one Agreement. Any party may enter into this Agreement by signing any such counterpart.

18. Contract (Rights of Third Parties) Act 1999

No term of this Agreement is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

19. Privacy Policy

RSSB may process information about the Licensee in accordance with its privacy policy <http://www.rssb.co.uk/privacy/index.asp>. By accepting the grant of the Licence, the Licensee consents to such processing.

20. Governing Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with, English Law and the parties irrevocably submit to the jurisdiction of the English Courts.